

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSEC-130
DA Number	DA-2021/95
LGA	Bayside Council
Proposed Development	Integrated Development - Demolition of existing structures and construction of a part 2 and part 3 storey residential aged care facility comprising of 113 rooms (116 beds), basement level parking, front fencing and signage
Street Address	119 Barton Street, Monterey
Applicant/Owner	Monterey Equity Pty Ltd / Monterey Equity Pty Ltd
Date of DA lodgement	15 March 2021
Total number of Submissions	• 13 + 1 petition
Number of Unique Objections	• 14
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	General development with a capital investment value over \$30 Million
List of all relevant s4.15(1)(a) matters	• State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Housing for seniors and people with a disability) 2004 • State Environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy No. 55 (Remediation of Land) • State Environmental Planning Policy No. 64 (Advertising and Signage) • Rockdale Local Environmental Plan 2013 • Bayside Local Environmental Plan 2021 • Rockdale Development Control Plan 2011 • Environmental Planning and Assessment Act 1979 • Environmental Planning and Assessment Regulations (Cl. 92)
List all documents submitted with this report for the Panel's consideration	• Architectural plans • Landscape Plans • Access for People with Disability Report • Acid Sulphate Soils Report • Arborist Report • Civil Drawing (stormwater) • Civil Engineering Report • Clause 4.6 Variation (SEPP 25% rear setback) • Clause 4.6 Variation (SEPP Building Height) • Clause 26 Survey • Construction and Demolition Waste Management Plan • Contamination Assessment • Crime Prevention Through Environmental Design • Demolition Plan • Geotechnical Report • Noise Impact Assessment • Operational Waste Management Plan • Plan of Management • QS Cost Estimate • Remedial Action Plan • RFI Response – 5 November 2021 • Rockdale DCP 2011 Compliance Table • Rockdale LEP 2011 Compliance Table • Section J Report • Seniors Living Compliance Table • Statement of Environmental Effects • Supplementary Site Investigation • Traffic Impact Assessment • Urban Design Review
Clause 4.6 requests	Please list: • Clause 4.6 variation to Clause 40(4)(a) – 8m Building Height - State Environmental Planning Policy (Housing for seniors and people with a disability) 2004

	Clause 4.6 variation to Clause 40(4)(c) – Single storey building height in rear 25% site area - State Environmental Planning Policy (Housing for seniors and people with a disability) 2004
Summary of key submissions	- Traffic and Parking - Streetscape - Intensity of development - Building height / visual bulk - Privacy impacts - Noise impacts - Construction impacts
Report prepared by	- Michael Maloof, Senior Assessment Planner - Pascal van de Walle, Coordinator Development Assessment
Report date	30 November 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

No

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Yes

BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2021/95
Date of Receipt:	15 March 2021
Property:	119 Barton Street, MONTEREY (Lot 2 DP 857520)
Owner:	Monterey Equity Pty Ltd
Applicant:	Monterey Equity Pty Ltd
Proposal:	Integrated Development - Demolition of existing structures and construction of a part 2 and part 3 storey residential aged care facility comprising of 113 rooms (116 beds), basement level parking, front fencing and signage
Recommendation:	Refused
No. of submissions:	Thirteen (13) submissions and one (1) petition
Author:	Michael Maloof
Date of Report:	30 November 2021

Key Issues

The subject site is a battle-axe lot with three of the site's five side/rear boundaries being rear gardens and courtyards to 18 detached dwellings and the rear courtyards for six (6) villas. The site is currently occupied by the St Pope Kyrillos VI and St Habib Girgis Coptic Orthodox Church, however prior to this the site was occupied by the Sir Francis Drake Bowling Club.

The zone of the site was recently changed from RE2 Private Recreation to R3 Medium Density Residential under the *Rockdale Local Environmental Plan 2011* (Amendment No 23), and the proposal is inconsistent with relevant objectives of the new R3 zone. Along with a change in the zoning, the minimum lot size (to 450m²), maximum height (to 8.5m) and maximum floor space ratio development control (to 0.6:1) applying to the site were also changed. The R3 site zoning, objectives, building height and FSR controls have all been retained in the recently adopted *Bayside Local Environmental Plan (BLEP) 2021*. One additional zone objective has also been adopted.

The proposal is found to be overdevelopment of this battle-axe lot. The part two and part three storey aged care facility exceeds the maximum 8m height permitted under the Seniors Living SEPP by 1.975m (24.68%) and exceeds the maximum 8.5m height permitted under Rockdale LEP 2011 (and Bayside LEP 2021) by 4.096m (48.2%). The proposal also exceeds the one storey height permitted in the rear 25% of the site and the applicant has submitted two (2) clause 4.6 variations for variations to the maximum 8m height and to the maximum one storey height within the rear 25% of the site. The Clause 4.6 variation to the rear 25% area is, in principle, acceptable however the Clause 4.6 variation for the maximum 8m height does not adequately address the matters contained in the clause, does not demonstrate compliance with the objectives of the standards or of the zone, and the proposed variation

to Clause 40(4)(a) is not found to be in the public interest.

The proposal also results in numerous other non-compliances with the Seniors Living SEPP. It is Council officer's view that the proposed third floor is '*adjacent to a boundary of the site*' and warrants submission of a Clause 4.6 variation to vary Clause 40(4)(b) of the Seniors Living SEPP, however the applicant does not consider the third floor to be 'adjacent' to any boundaries and contend that a Clause 4.6 is not required. The proposal also does not satisfy all 'Compatibility Criteria' under clause 29, results in adverse amenity impacts to the neighbourhood contrary to clause 33 and results in adverse visual and acoustic privacy impacts contrary to clause 34. While the proposal satisfies the solar access and landscape area requirements of the SEPP, the proposed stormwater retention tanks located within setbacks will minimise the ability for suitable landscape screening for significant parts of the site, and the layout of the development will result in significant overshadowing of internal courtyards and some rooms for future occupants.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) was gazetted on 26 November 2021 and replaces the Seniors Living SEPP, however that Savings and Transitional Provisions in Schedule 7 of the Housing SEPP ensure that the provisions of the Seniors Living SEPP continue to apply to this application which was lodged prior to commencement of the new policy. The SEPP has removed the single storey height requirement in the rear 25% of the site, however development standards contained in Clause 84(2)(c) require that a development be either a maximum of 9.5m or no more than two (2) storey adjacent to the boundary of a site. The proposed development is 12.6m in height (33% variation) and is, in Council's view, three (3) storey adjacent to the boundary of the site and therefore does not satisfy the requirements of this clause. The SEPP also contains non-discretionary development standards in Clause 107, including that '*no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building*'. The proposed building height would not be supported in the context of the site, and a Clause 4.6 variation may be required to Clause 4.3 of Bayside LEP 2021. The applicant submitted an Urban Design Report prepared by Rothelowman dated 30 November 2021 however there has been no time to make an assessment of this report.

The application was referred to Council's Design Review Panel (DRP) on two occasions - 12 May 2021 and 2 September 2021. The Panel found that the rotated layout was at odds with its context, that the proposal greatly exceeded the massing and scale of surrounding development, that the third floor should be deleted and that the proposed built form would increase the extent of built form required and could appear as a large mass thereby increasing visual bulk. An alternate layout in keeping with the existing context and in accordance with the *Seniors Living Policy - Urban design guidelines for infill development 2004* was recommended, including 6m landscape setbacks with 9m setbacks to habitable windows (6m to non-habitable). The 6m landscape setbacks have been provided, however habitable windows are not 9m from boundaries. The Panel did not support the Applicant's 'alternate layout' which proposed building bulk adjacent to residential boundaries and they flagged an alternative option with the applicant that would minimise impacts to neighbours and improve amenity for future occupants while addressing operational needs. Ultimately, the Panel did not believe that the amended scheme on 2 September 2021 demonstrated that the proposed density could be housed on the site. While amendments have been made, and the density reduced from 0.99:1 (GFA = 7,138.6m²) to 0.94:1 (GFA = 6,798.2m²), the proposal remains part three storey and key comments from the Panel are not resolved by the amended scheme. The applicant submitted an Urban Design Report prepared by Rotehlowman dated 30 November 2021 however there has been no time to make an assessment of this report and it does not form part of this assessment.

The proposal includes excavation works for one level of basement car parking that will transect the

water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 4.47 of the Environmental Planning and Assessment Act 1979, and required approval from WaterNSW. WaterNSW have by letter dated 15 September 2021 provided their General Terms of Approval (GTA's) for that part of the proposal that requires that a Water Supply Work approval under the Water Management Act 2000 be obtained prior to commencement of any work.

The applicant has submitted an acoustic report, however Council's Environmental Health Officers have advised that the acoustic report contained insufficient information to demonstrate that a facility of this size on a battle axe allotment would have minimal acoustic impacts.

An odour report has not been submitted despite numerous requests and Council's Environmental Health Officers consider it necessary given the proposed centralised kitchen at basement level and the close proximity to a large number of surrounding residents.

The adjoining owners of the surrounding properties were notified of the development application with the notification period being from 24 March to 27 April 2021. A total of thirteen (13) submissions and one (1) petition were received in response to the proposed development. The key issues raised include objection to the residential aged care facility in respect to its size, height, bulk and scale, design of the buildings, streetscape, overshadowing, loss of privacy and amenity, loss of property values, parking and traffic congestion, intensity of the use in a residential area, and construction safety and structure problems. Many of the issues are considered valid and the applicant has not been able to address them to a satisfactory degree.

The application requires the determination of the Sydney Eastern City Planning Panel as it is general development with a capital investment value of more than \$30 million (State Environmental Planning Policy (State and Regional Development) 2011, Schedule 7 Clause 2).

In accordance with the recommendations of the Sydney Eastern City Regional Panel briefing meeting of 14 October 2021 Council Officer's continued discussions with the Applicant to '*narrow issues as far as possible*' as requested by the Panel. The final amended architectural and civil (stormwater) plans were received on 9 November 2021 and the final landscape plans on 22 November 2021. While impacts to surrounding residents have generally remained the same or have been reduced, part of the third floor moves closer to properties to the north of the site and a 2.1m fence is proposed adjacent to 121 Barton Street resulting in a greater impact to neighbouring residents. Such amendments would ordinarily be re-notified to neighbouring properties in accordance with Table 4, Part 8 of Rockdale Development Control Plan (RDCP) 2011, however the late submission of information has not permitted notification of the amended scheme to be completed.

The proposal has been improved however the amended scheme is contrary to key provisions in the Seniors Living SEPP, has adverse impacts to surrounding residents, is an overdevelopment of the battle-axe lot and is not in the public interest. Accordingly, the proposal is recommended for refusal.

Bayside Local Environmental Plan 2021

The Bayside LEP 2021 was on public exhibition from 8 April to 1 June 2020 and was gazetted on 27 August 2021. The Bayside LEP 2021 applies to the subject site but was a draft LEP at the time of lodgement of the application on 15 March 2021.

The Bayside LEP 2021 contains a savings provision under clause 1.8A which states that a development application lodged before the commencement of the draft LEP that is not determined before the commencement of the draft LEP must be determined as if the plan had not commenced. As such, the current development application has been assessed under the Rockdale LEP 2011, however consideration is given to the BLEP 2021 below.

The Bayside LEP 2021 consolidates Council's planning controls by amalgamating three previous LEPs that Council inherited in the 2016 amalgamation. The Bayside LEP 2021 generally harmonises and updates planning controls for the Bayside Local Government Area. The provisions of the Bayside LEP 2021 include the same R3 Medium Density Residential zone which identifies seniors housing as permissible development with the consent of Council. The height and floor space ratio (FSR) controls in the Bayside LEP 2021 are the same. The site is limited to a maximum height of 8.5m on the maximum height map and the maximum floor space ratio control on the site to 0:6.

The proposal does not comply with the maximum height control of 8.5m (12.6m proposed) and does not comply with the maximum floor space ratio control of 0.6:1 (0.94:1 proposed) under the Bayside LEP 2021. As discussed previously, the proposal exceeds the maximum height permitted under the SEPP however seeks to comply with the FSR control under the Seniors Housing SEPP 2004.

The Bayside LEP 2021 contains the same objectives for the R3 Medium Density Residential zone as the RLEP 2011 (shown below) apart from the last objective which is in the latter plan. The proposal is a high density development that will result in adverse impacts on the character and amenity of the area. The development is not consistent with all of the objectives of the R3 Medium Density Residential zone under the Bayside LEP 2021:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure land uses are carried out in a context and setting to minimise impact on the character and amenity of the area.*
- *To enable residential development in accessible locations to maximise public transport patronage and encourage walking and cycling.*

Accordingly, the proposal results in a significant variation to the recently adopted height control contained within BLEP 2021 and is inconsistent with several objectives of the zone. The proposal also exceeds the maximum permitted FSR under the LEP and the development would not be supported under the recently adopted BLEP 2021.

Recommendation

- (A) That the Sydney Eastern City Planning Panel, exercising the functions of the Council as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, not support the variation to the to the maximum 8m height prescribed by Clause 40(4)(a) of the *State Environmental Planning Policy (Housing for seniors or People with a disability) 2004*, as it is not satisfied that the applicant's request has adequately addressed the matters required to be demonstrated by cl4.6 of that Plan, and the proposed development would not be

in the public interest because it is not consistent with the objectives of that particular standard and the objectives for development within the zone.

(B) That development application, DA-2021/95, for Integrated Development including demolition of existing structures and construction of part 2 and part 3 storey residential aged care facility comprising of 137 rooms including basement level parking and fencing at 119 Barton Street, Monterey, be **REFUSED** pursuant to s4.16(1)(b) of the Environmental Planning and Assessment Act 1979 for the following reasons:

1. The proposed development, pursuant to the provisions of Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* (the Act), is not consistent with the Objects of the Act, particularly with regards to Sections 1.3(c) and 1.3(g), as follows
 - (c) *to promote the orderly and economic use and development of land,*
 - (g) *to promote good design and amenity of the built environment.*
2. Pursuant to the provisions of Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development exceeds the maximum building height controls contained in Clauses 40(4)(a) and 40(4)(b) of the State Environmental Planning Policy (Housing for seniors or People with a disability) 2004 requiring that development have a maximum of 8m and a maximum of 2 storey adjacent to site boundaries respectively. The proposal also exceeds the maximum 8.5m height permitted under clause 4.3 of Rockdale Local Environmental Plan 2011 (and Bayside Local Environmental Plan 2021), and the proposed building height will have adverse amenity impacts on surrounding residents particularly in terms of visual bulk, scale and privacy. The proposal is contrary to the requirements and objectives of these provisions. The applicant has submitted a Clause 4.6 variation for Clauses 40(4)(a) which is not supported. No Clause 4.6 variation has been submitted for Clause 40(4)(b) and is unable to be approved in its absence.
3. Pursuant to the provisions of Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development will have adverse amenity impacts on surrounding residents particularly in terms of visual bulk, scale and privacy impacts resulting from the proposed three storey height and diagonal layout of the scheme. The proposal is therefore contrary to the provisions of Clauses 29 and 33 of *State Environmental Planning Policy (Housing for seniors or People with a disability) 2004*.
4. Pursuant to the provisions of Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development will have adverse visual and, in the absence of adequate information, adverse acoustic privacy impacts on surrounding residents and is contrary to the provisions of Clause 34 of State Environmental Planning Policy (Housing for seniors or People with a disability) 2004.
5. Pursuant to the provisions of Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development is contrary to the first, second and fourth objectives of the R3 - Medium Density Residential zone under the Rockdale Local Environmental Plan 2011 (as well as the recently gazetted Bayside Local Environmental Plan 2021) as the proposal is three storeys in height and provides housing in a 'high density environment' not 'medium density environment', and the proposal does not ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area. The relevant objectives are listed below:
 - * *To provide for the housing needs of the community within a medium density residential environment.*
 - * *To provide a variety of housing types within a medium density residential environment.*

** To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

6. Pursuant to the provisions of Section 4.5(a)(iii) of Environmental Planning and Assessment Act 1979, the proposed development is contrary to the objectives and controls of the Rockdale Development Control Plan 2011, particularly with regards to:
 - (i) Part 4.2 - Streetscape and Site Context
 - (ii) Part 4.3.1 - Open Space and Landscape Planting
 - (iii) Part 4.4.5 - Visual Privacy
 - (iv) Part 4.4.5 - Acoustic Privacy
 - (v) Part 4.6 -Design of Loading Dock
 - (vi) Part 5.1 - Building Design
 - (vii) Part 8 - Notification
7. Pursuant to the provisions of Section 4.15(b) of the Environmental Planning and Assessment Act 1979, the proposed development in its proposed form and based on the information currently before Council, will result in adverse visual bulk, privacy, noise and odour impacts to surrounding properties.
8. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed three storey portion of the development will be visible beyond the existing dwellings fronting Barton Street and will result in unacceptable impacts on the streetscape and character of the R3 Medium Density area. The proposal would set an undesirable precedent within the built environment.
9. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is incompatible in its layout, bulk, scale, size and design with surrounding developments and would adversely impact upon the existing and desired future scale of developments within the R3 Medium Density Residential zone.
10. Pursuant to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, insufficient information has been provided to allow a full and proper assessment of potential noise and odour impacts to surrounding residents. The applicant has not submitted an odour report and the acoustic report does not adequately address potential noise impacts resulting from site operations or from mechanical plant / exhaust systems.
11. Pursuant to the provisions of Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed layout and scale of the development is considered unsuitable for the battle-axe allotment which shares its boundaries with the rear yards of 18 dwelling houses and courtyards of 6 villas and results in adverse visual bulk, scale and privacy impacts to surrounding properties. In addition, in the absence of an odour report and in the absence of additional acoustic assessment, there is insufficient information to demonstrate that the proposal will not result in adverse odour and noise impacts to surrounding residents. Therefore, the site is not considered suitable for the proposed development.
12. Having regard to the submissions received by Council in opposition to the proposed development, pursuant to the provisions of Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979, numerous issues raised in the submissions are considered valid as the proposal will result in unacceptable visual bulk, scale and privacy

impacts to the adjoining properties. In addition, in the absence of adequate information, the proposal is likely to result in adverse noise and odour impacts to surrounding properties. Pursuant to the provisions of Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, and having regard to the reasons noted above, the proposed development will set an adverse precedent and is not considered to be in the public interest.

(D) That the submitters be notified of the Sydney Eastern City Planning Panel's decision.

Background

History

In November 2020 the zone of the site was changed from RE2 Private Recreation to R3 Medium Density Residential under the Rockdale Local Environmental Plan 2011 (Amendment No 23). Along with a change in the zoning, the minimum lot size (to 450m²), maximum height (to 8.5m) and maximum floor space ratio development control (to 0.6:1) applying to the site were also changed.

A redevelopment with 28 townhouse dwellings was envisaged with the Rezoning Application lodged with Council in 2017 and had regard for the limitations of the site in the context of the low density residential development surrounding the site.

Council had extensive discussions with the proponent at the time regarding a Voluntary Planning Agreement (VPA) for the site. The VPA provided for a monetary contribution of \$750,000.00 to be used for a public purpose under the relevant legislation, being for the improvement of active transport links and improvement and/or development of new play spaces and recreational facilities across Monterey, including the foreshore along the Grande Parade and Scarborough Park.

Prior to the above, the following development applications were previously considered by Council in relation to the subject site:

- DA-2008/195, Carry out minor alterations and additions to the existing bowling club including changeroom facilities, handicapped entry ramp works and upgrade kitchen and bar - Approved on 21/02/2008.
- DA-2003/794, New 5m High Light Pole Within Bowling Club Car Park – Approved on 29/05/2003

Proposal

Council is in receipt of a development application DA-2021/95 at 119 Barton Street, Monterey, which seeks consent for the demolition of the existing structures and construction of a part two (2) and part three (3) storey residential aged care facility comprising 113 rooms (reduced from 137 rooms), 116 beds (reduced from 153 beds), communal open space, landscaped garden with seating areas and fencing including amenities, café, gym, offices, dining rooms, quiet rooms, function room, roof top deck, services and one car parking within one (1) level of basement parking. The basement car park will include 39 spaces and one loading bay / ambulance bay (reduced from 41 spaces with ambulance space). The proposal will remove 4 existing trees and retain 12 existing trees on the site.

Specifically, the proposal consists of:

- A residential aged care facility of part two and part three storey height containing 110 x 1 bedroom and 3 x 2 bedroom rooms (total of 116 beds) with one x 2 bed room on each floor, as follows:
 - Basement - 39 parking bays, loading bay, staff room, education room, kitchen, laundry, waste storage, store rooms, plant rooms & sprinkler pump room;
 - Ground Floor - 55 beds / 54 rooms (53 x 1 bed & 1 x 2 bed rooms); Cafe; reception with waiting area; common dining / sitting / serveries / lounge areas; storage areas / dirty linen / clean utilities; Staff Stations;
 - First Floor - 44 beds / 43 rooms (i.e. 42 x 1 bed & 1 x 2 bed rooms); gym; physio; common dining / sitting / serveries / lounge areas; storage areas / dirty linen / clean utilities; Staff stations.
 - Second Floor - 17 beds / 16 rooms (i.e. 15 x 1 bed & 1 x 2 bed rooms);
- A built form that extends diagonally down the centre of the site with two perpendicular building wings protruding on each side being apart approximately 8.3m to 9.5m on the western side and 9.5m to 11.8m on the eastern side;
- A landscaped area of approximately 3,846.2m² (53.3% of the site) of which 1,793m² of deep soil (24.8%) including courtyards between the building wings, two connecting bridges over the courtyards between the two wings on each side and turfed lawns and seating areas to the front and rear of the head of the battle axe lot (Note - On-site retention systems are located in the deep soil areas and restrict planting);
- Direct and separated access to the site for pedestrians and vehicles from Barton Street, including deliveries and waste collection with a Medium Rigid Vehicle (MRV).
- The DA form and Statement of Environmental Effects submitted with the application did not indicate the proposed hours of operation of the residential care facility. The information submitted indicated that the use will operate 24 hours a day 7 days a week and there will be approximately 40 staff employed in the facility (down from 54 for the original scheme).
- The proposal will include directional signage within the property and a business identification sign at the front of the site along Barton Street. The identification sign will state "SummitCare Monterey" and be a non illuminated sign mounted on the sandstone front fence adjacent to the pedestrian entry to the site. (Refer to the front page of the drawings submitted with the application).

The proposal was accompanied by a Plan of Management (PoM). The PoM has not been updated for the current scheme however it includes some key operational matters, such as:

- Waste collection - 7am to 6pm Monday to Friday.
- General Deliveries - 8am to 6pm Monday to Friday.
- Use of the community bus and resident pick-ups.
- Complaints handling procedure.

Note - the landscape plans show replacement of boundary fencing, however this is not proposed by the applicant.



Figure 1: Proposed ground floor plan showing the diagonal spine arrangement of the residential care facility



Figure 2: Northern (Barton Street) elevation showing proposal and existing dwellings at 115 & 111 Barton Street

Site location and context

The subject site is regular battle axe lot and is wider than it is deep. The battle axe handle has a frontage of 34.385m to Barton Street, a depth of 95.23m along its eastern side, a rear boundary of 95.3m adjoining the properties fronting Scarborough Street and western side boundary of 63.91m which steps in for a length of 62.58m and then heads north to Barton Street for a length of 31.32m. The site contains a total area of 7,218m² and is relatively flat with a level of RL 3.8 and 3.9 in the middle which rises to 5 at the rear boundary and Barton Street frontage. The site has a maximum fall of up to 1.2m from the Barton Street frontage (north) to the middle of the site. The entire site is zoned R3 – Medium Density Residential under the RLEP 2011 and is surrounded by low to medium density residential properties similarly zoned for medium density development.

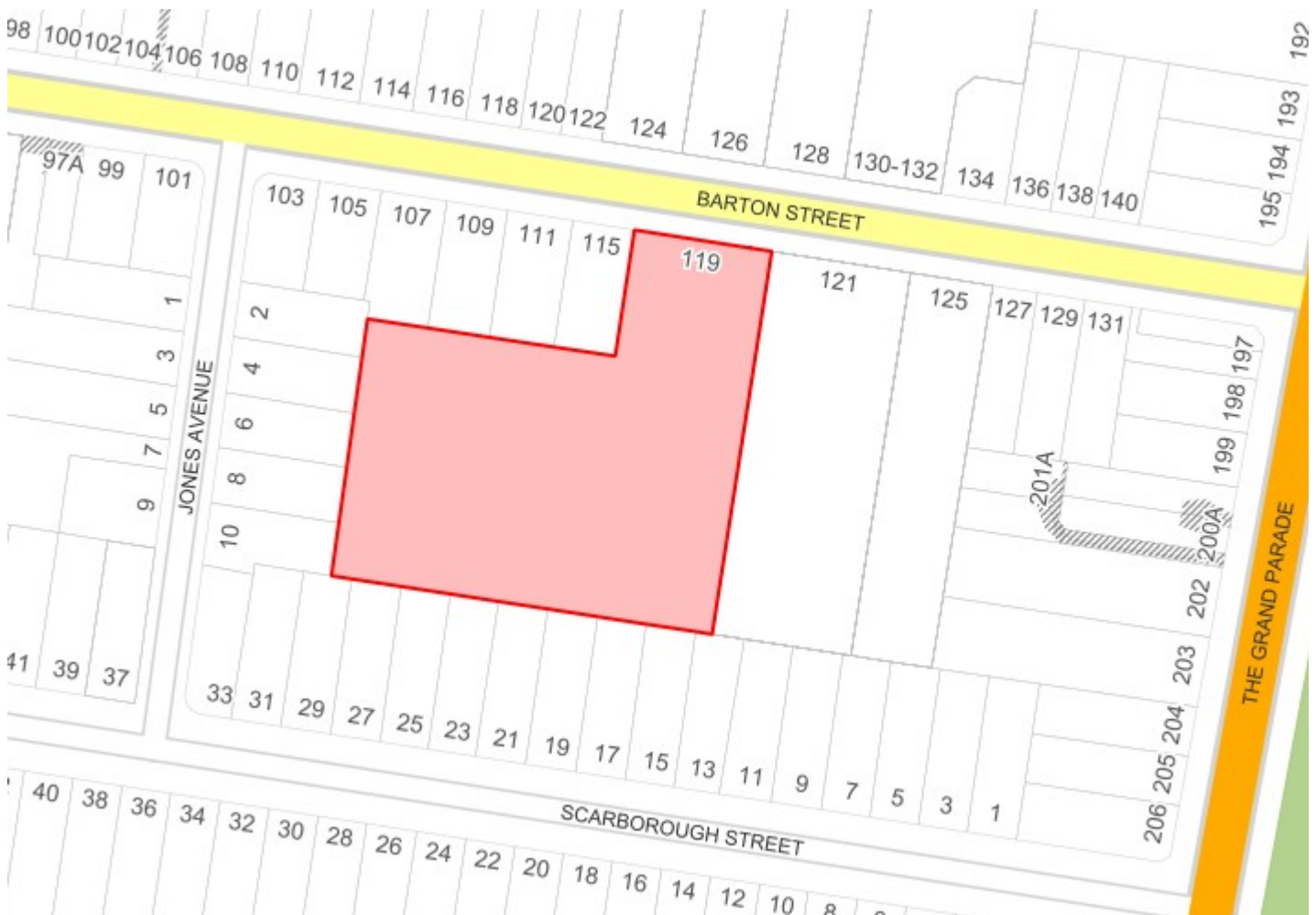




Figure 4 - Aerial Photograph of the subject site and surrounds



Figure 5 - Oblique angle view of the site (Source: Nearmap)

Vehicular access to the site as existing is via Barton Street. The western adjoining properties front

Jones Avenue and the southern adjoining properties front Scarborough Street. The site adjoins properties to the east which front Barton Street but further along the properties are perpendicular and front The Grand Parade.

The subject site is currently vacant and was previously known and used as The St Pope Kyrillos VI and St Habib Girgis Coptic Orthodox Church. Prior to this the existing building was used as the Sir Francis Drake Bowling Club. The site comprises the remains of the church (former club house), two bowling greens and car park on site fronting Barton Street. A range of trees are scattered across the periphery of the site, primarily along the inside boundaries and closest to the location of the previous club house.

The context surrounding the site is residential and includes single and two storey dwelling houses fronting Barton Street (north), Jones Avenue (west) and Scarborough Street (south). The adjoining development to the east comprises two rows of a single storey villa development either side of a central driveway at No. 121 Barton Street containing thirteen (13) dwellings, five (5) of which have rear private open space areas adjoining the eastern boundary of the site. Further to the east is another villa development at No. 125 Barton Street containing seven (7) dwellings while developments further to the east are single storey dwelling houses and attached dwellings.

To the north of the site on the opposite side of Barton Street are a mixture of single and two storey dwelling houses and villa developments. Further away from the site are more residential properties to the north (zoned R3) and to the south (zoned R2). Further to the east is Cook Park and the beach at Monterey. Further to the west the next street block is zoned R3 Medium Density Residential and contains a mixture of residential developments including dwelling houses and villa developments.

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S4.46 - Development that is Integrated Development

The proposal includes excavation works for one level of basement car parking that will transect the water-table and require temporary dewatering during the construction phase. The proposal is therefore Integrated Development pursuant to Section 4.47 of the Environmental Planning and Assessment Act 1979, and requires approval from WaterNSW. WaterNSW have by letter dated 15 September 2021 provided their General Terms of Approval (GTA's) for that part of the proposal that requires a Water Supply Work approval under the *Water Management Act 2000*.

WaterNSW have requested that the following condition be included in any notice of determination:

"The attached GTA issued by WaterNSW do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to WaterNSW for a Water Supply Work approval after consent has been issued by Council and before the commencement of any work or activity.

A completed application form must be submitted to WaterNSW together with any required plans, documents, application fee, and proof of Council's development consent".

S4.15 (1) - Matters for Consideration - General

S4.15 (1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

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

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) was gazetted on Friday 26 November 2021 and contains all provisions for Aged Care Facilities. The Housing SEPP contains Savings and Transitional Provisions in Schedule 7 that the provisions of the Seniors Living SEPP continue to apply to this application.

The application has therefore been assessed against the provisions of the Seniors Living SEPP as detailed in the table below.

In summary, the proposal results in significant variations to the maximum 8m and 2 storey height permitted under clauses 40(4)(a) & 40(4)(b), exceeds the maximum 1 storey height permitted within the rear 25% contrary to 40(4)(c), does not satisfy all 'Compatibility Criteria' under clause 29, results in adverse amenity impacts to the neighbourhood contrary to clause 33 and results in adverse visual and acoustic privacy impacts contrary to clause 34. While the proposal satisfies the minimum area of landscape planting required by the SEPP, the landscape scheme conflicts with the proposed stormwater retention tanks which are located within setback areas and planting will not be possible as proposed.

Standard	Requirement	Proposal	Complies
CI 7 – Suspension of Certain Agreements and Covenants	Any covenant imposing restrictions does not apply to the development	No covenants restricting the development other than stormwater restrictions on the title of the land that are not prohibitive	Yes
CI 11 – Residential Care Facilities	Residential Care Facility Definition	The proposal is for a residential care facility and complies with the definition of the term	Yes

CI 26 - Location / Access to Facilities	Access within 400m max from site to shops / banks / retail / commercial services / GP / community services / recreation facilities and accessed by suitable pathway max 1:14 Public transport (available minimum once between 8am – 12pm and 12-6pm daily Monday to Friday) and within 400m of site and accessible by suitable pathway	A Clause 26 report has been submitted which details three footpath locations that are required to be improved to allow compliance with the gradient requirements.	Yes - subject to footpath works being carried out at three locations to ensure gradients comply. Yes
CI 28 – Water and Sewer	To be provided	The site currently has access to water and sewer services - provision exists in the street	Yes

CI 29 - Compatibility Criteria	Consideration to be given to clause 25(5)(b)(i), (iii) & (v) including whether the proposed development is compatible with the surrounding land uses having regard to: (i) The natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development (iii) The services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail, community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision. (v) Without limiting any other criteria, 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 of the development.	The proposed development exceeds the maximum permitted height and does not comply with the rear setback requirements in the SEPP. The proposal will result in adverse scale and visual bulk impacts to surrounding residents and the height variation is not supported by Council officers nor the Council's Design Review Panel. The layout of the proposal is not supported by the Design Review Panel who recommended that an orthogonal scheme be provided in lieu of the diagonal scheme proposed. The Panel were of the view that the proposed scheme would result in visual bulk impacts despite the breaks in the built form.	No
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CI 33 – Neighbourhood Amenity and Streetscape	New buildings to contribute to the quality and identity of the area Maintain reasonable neighbourhood amenity and appropriate residential character Front setbacks in sympathy with existing building line Planting in sympathy with streetscape Retain major existing trees	The proposal has been amended to improve its relationship with Barton Street, increase setbacks from adjoining boundaries to 6m and reduced its intensity. However the proposal remains part three storey and will result in adverse scale and visual impacts when viewed from surrounding properties. The Council's Design Review Panel have reviewed the scheme and is not supportive.	No - see Note 1
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CI 34 – Visual and Acoustic Privacy	Appropriate location and design of windows and balconies and the use of screening devices and landscaping Locating bedrooms away from driveways, parking areas and paths	The proposal is surrounded by rear yards of 18 detached dwellings and 6 villas. The proposal aims to reduce visual privacy impacts by orienting the building on angles to minimise overlooking. However given the significant number of windows, juliette style balconies and large common terrace at level 2, the proposal will result in adverse visual privacy to adjoining properties. While setbacks to boundaries have been increased to allow additional planting, several areas are unable to contain trees due to conflicts with the stormwater system. Planning Principles also confirm that reliance on planting cannot be used to address privacy. Council's Environmental Health Officers have advised that inadequate information has been provided to demonstrate that noise from the facility will be minimised and acceptable.	No
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CI 35 – Solar Access and Design for Climate	Adequate daylight to main living area of neighbours and residents Adequate sunlight to substantial areas of private open space Reduce energy use and maximise natural ventilation, solar heating and lighting with provision of northern windows and living areas	The applicant has provided shadow diagrams showing that the proposal will only start impacting the rear courtyard of one or two villas at 121 Barton Street after 1pm. Therefore, the amended scheme retains adequate daylight to main living areas of dwellings on neighbouring properties. Refer to assessment of Part 4.4.2 of RDCP 2011 for more detail. Within the site, most of the private open space areas at the periphery of the site benefit from adequate sunlight, however the areas between the wings of the building do not. This was not supported by the Design Review Panel who recommended north-south orientated courtyards to benefit from winter sun and to respect the site context. Sustainability and energy reduction measures have not been adequately employed including solar energy, heating and water saving devices and WSUD.	Yes - however, inadequate solar access between building wings during the winter months
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CI 36 – Stormwater	Control and minimise disturbance and impacts of runoff on adjoining properties Provision of on site stormwater detention or reuse	Retention tanks are proposed within setbacks with neighbouring dwellings will not allow appropriate landscape planting to screen the development. Amendments to remove conflicts with landscaping required.	No
CI 37 – Crime Prevention	Provide security and encourage crime prevention	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 some rooms fronting the street. Additional proposed measures shall be included as conditions of consent. The proposal is satisfactory in regards to safety and security.	Yes

CI 38 – Accessibility	To be provided to public transport services / local facilities To parking on site	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.	Yes
CI 39 – Waste Management	Appropriate facilities to be provided	A waste storage room is provided at basement level which can be accessed by a Medium Rigid Vehicle (SRV). Waste collection can be carried out by private contractor using a MRV.	Yes
40 (2) - Site Area	Min. 1000sq/m	Site has an area of 7,218m ² in a battle axe configuration	Yes
40 (3) - Site Frontage	20m wide at building line	Site has a frontage of 34.385m to Barton Street	Yes
40 (4)(a) – Height <i>“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.”</i>	Max. 8m	Maximum height of 9.975m (24.68% or 1.975m variation) under the SEPP - measured to the top ceiling height Height of 12.6m under the RLEP 2011 (48.2% or 4.096m variation) measured to highest point on the roof	No - max 9.975m (24.68% or 1.975m variation) Clause 4.6 variation submitted with the application not supported.

40 (4)(b) – Storeys	<i>"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"</i> "storey" means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include: (a) a space that contains only a lift shaft, stairway or meter room, or (b) a mezzanine, or (c) an attic.	Maximum of 3 storeys for part of the site. The third level is setback 6m from the sites northern boundary with No.109 Barton Street and 5.2m from the sites boundary with No. 115 Barton Street, and is considered to be 'adjacent to' this site boundary. The applicant was requested to submit a clause 4.6 variation however is of the view that the provision has no work to do as the building is not adjacent to the sites boundary.	No - See Note 2. Variation not supported. Clause 4.6 variation not provided.
40 (c) - Height at Rear 25% of site	Max. 1 storey at rear of site Rear 25% of site depth = 23.8m Rear 25% of battle axe head = 16.0m	Setback of first floor at rear is 12.5m and steps in at one point to 23.8m and out again - portions of non compliance Setback of second floor at rear is 19.5m	No - does not comply - applicant contends area based control to defend building step in and out
48(a) - Building Height	Proposal cannot be refused if it's height is 8m or less	Maximum height of 9.975m (24.68% or 1.975m variation) and may be refused based on height.	No
48 (b) – Density and Scale	1:1	0.94:1 (6,798.2m ²)	Yes

48 (c) - Landscaped Area	Min. 25sq/m per bed (116 beds = 2,900 sq/m) <i>landscaped area</i> means 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.	3,430m ² (1,793 m ² - Deep Soil area - landscaped area excludes built upon area)	Yes - however stormwater retention tanks located within setback areas will not permit appropriate planting in accordance with the submitted plans.
48 (d) - Parking	1 per 10 beds = 12 spaces for 116 beds 1 per 15 beds dementia = 0 spaces no dementia beds 1 per 2 staff = 20 spaces for 40 staff 1 ambulance bay (shared with loading bay) Total Required = 32 spaces + 1 ambulance bay	39 car parking spaces and 1 shared loading bay / Ambulance space	Yes - however separate ambulance bay should be provided

Note 1 - Clause 33 - Neighbourhood Amenity and Streetscape

Clause 33 requires that the development recognise desirable elements of its current location, maintain reasonable neighbourhood amenity and appropriate residential character, provide setbacks that minimise bulk and overshadowing and maintain reasonable amenity for neighbours.

The application was referred to Council's Design Review Panel (DRP) on two occasions - 12 May 2021 and 2 September 2021. The Panel found that the rotated layout was at odds with its context, that the proposal greatly exceeded the massing and scale of surrounding development, that the third floor should be deleted and that the proposed built form would increase the extent of built form required and could appear as a large mass thereby increasing visual bulk. An alternate layout in keeping with the existing context and in line with the *Seniors Living Policy – urban guidelines for infill development* was recommended, including 6m landscape setbacks with 9m setbacks to habitable windows (6m to non-habitable).

The Panel did not support the Applicant's 'alternate layout' which proposed building bulk adjacent to residential boundaries and they flagged an alternative option with the applicant that would minimise impacts to neighbours and improve amenity for future occupants while addressing operational needs. The minutes of the 2 September 2021 meeting contained the following comment:

"Therefore, the Panel must ask again that an orthogonal scheme be prepared that:

- aligns the proposal with the orientation of the adjacent lots*
- creates north south oriented courtyards, not east west*

- *removes the third storey*
- *creates discrete built forms, joined by lighter living room elements, rather than one hipped roof form"*

The Panel did not believe that the amended scheme on 2 September 2021 demonstrated that the proposed density could be housed on the site. While the density has been reduced, the comment is still considered applicable to this amended scheme.

The applicant has provided a detailed justification for the proposed scheme in their RFI Response dated 5 November 2021. The applicant considers that the proposal does *"not drastically change the amenity of surrounding properties"*. They are of the view that the proposal has minimal impacts on neighbours and the streetscape. They have addressed the Planning Principles established by Moore SC in *Davies v Penrith City Council [2013] NSWLEC 1141*, responded to the general, built form and residential amenity design principles under section 3 (Impact on Streetscape) and section 4 (Impacts on Neighbours) of the *Seniors Living Policy - Urban design guidelines for infill development 2004*, and they have responded to the Council's Design Review Panel's concerns.

The applicant is of the view that the proposed diagonal layout is appropriate for the site and for their proposed operations, that it minimises adverse impacts to neighbouring properties and that the third floor is acceptable in the context. Some quotes from their RFI Letter of 5 November are provided below:

- *Seniors Living Policy – urban guidelines for infill development does suggest that, “where possible”, the existing orientation pattern of buildings is to be maintained. However, it also provides that where dwellings must be orientated differently, it must ensure that it is sensitive to the potential impact on privacy of neighbours.*

The proposal has ensured that the portion of the site and building directly at the street frontage is consistent with the existing building patterns along the street thus providing the impression from the streetscape of a consistent and harmonious built form.

The building envelope behind the frontage building portion is screened largely by existing development along the street, has been design with an angled orientation. The orientation has largely been adopted to avoid large expenses of built form along the side and rear boundaries and reduce impacts on surrounding residential properties in terms of views, privacy and overshadowing as discussed within this letter.

*Due to the generous setbacks provides to side and rear boundaries, the development provides an appropriate building height transition. As demonstrated in this response letter, this has resulted in acceptable levels of amenity in terms of views, privacy and solar access. This is discussed further against Council item 4 above (Clause 33) where the impacts on residential character and amenity of the area is analysed through the planning principle and criteria established by Moore SC in *Davies v Penrith City Council [2013] NSWLEC 1141*.*

- *The proposal adequately demonstrates the high level of amenity being retained by neighbouring properties. To improve the level of amenity to neighbouring properties, the building envelope has been amended to increase ground and first floor setbacks to achieve a minimum 6m setback to all boundaries, excluding ground floor office/reception at the front of the site as well as an 18.93m first floor setback to the rear boundary.*

The setbacks to side and rear boundaries exceed compliance with the DCP setback controls for medium density housing being 3m and 6m on the ground and first floor respectively. The setbacks to these boundaries now proposed achieve both Council's request (DCP setback compliance) as well as the DRP's request (6m ground and first floor) and result in an acceptable amenity outcome for adjoining properties. Clause 33(c)(i) of the Seniors SEPP calls for the need to provide building setbacks to reduce bulk and overshadowing.

The generous setbacks provided to surrounding neighbouring boundaries (beyond DCP compliance), the proposal does not result in any unreasonable overshadowing impacts and adjoining properties maintain compliant solar access in this respect. While it is acknowledged that the building will be visible from the street, the extensive setback of the building from the street results in minimal visual impact on the streetscape and affords the ability for the building to remain compatible with the prevailing character.

Comment: The proposal is for a part two and part three storey building which exceeds the maximum height by 1.975m (24.68%) under the Seniors Living SEPP and 4.096m (48.2%) under the Rockdale LEP 2011. The proposal will be visible from the street (**Figure 6**) and will appear dominant when viewed from the rear yards of surrounding properties. The subject site was recently zoned R3 Medium Density Residential with a height limit of 8.5m, however the proposal is part three storey and is considered out of context with both the existing and desired future context of the area.

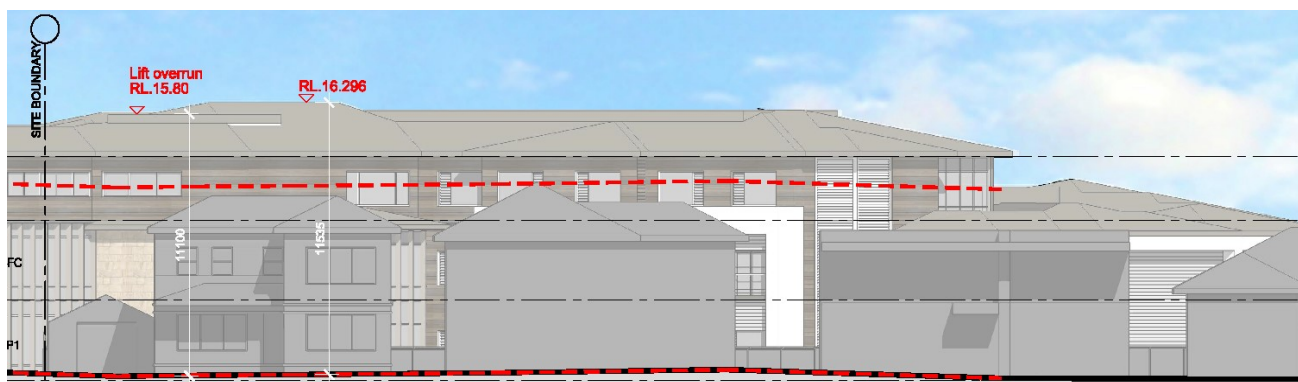


Figure 6 - view of Barton Street properties (No's 115, 113, 111) with proposed facility beyond.

While some amendments have been made to the scheme since this time, the Design Review Panel's comments are still generally applicable. The applicant has not undertaken genuine consideration of alternative site layouts and the proposed development will result in adverse visual bulk, scale and privacy impacts to surrounding residents.

Based on the above, the proposal is considered contrary to the provisions of Clause 33 and cannot be supported.

Note 2 - Clause 40(4)(b) - Storeys

Clause 40(4)(b) reads as follows:

"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"

The proposal is part 3 storey however it is the applicant's view that the 3 storey portion is not adjacent to the site boundary and that a Clause 4.6 variation is not required.

The applicant's position was provided in their written submission dated 5 November 2021 which accompanied the final amended architectural plans, and is detailed below:

"In relation to clause 40(4)(b), the third storey elements of the building are considered to comply with this clause as these are not adjacent to a boundary of the site, to which the 2 storey building height limit applies under this clause. In this respect, the third storey elements to the side and rear boundaries are setback between 11.3m and 22.4m. It is accepted that the development is three storeys in height however, this clause contemplates developments that exceed two storeys by specifying that a building must not exceed two storeys when it is adjacent to a boundary of the site. The clause does not prescribe a two storey height limit across the entire site.

While the Seniors SEPP or Standard Instrument do not define the term 'adjacent', given the considerable setback of the third storey elements to the boundaries, these are not considered to be adjacent to the boundaries. The fact that the proposal incorporates three levels in part of the building, does not in and of itself mean it is adjacent to a boundary of the site.

In Taouk v The Hills Shire Council [2015] NSWLEC 1512, the Court held that 'adjacent' means "lying near, close, or contiguous". In that case, the Court held that the large setback proposed of 8.2 metres could not be regarded as 'adjacent', in that the distance between the proposed unit and the dwelling to the south is not "lying near, close or contiguous" even though the Court accepted that the relationship between buildings could be said to be "adjoining; neighbouring". In that particular case, Council's side setback controls required a distance of 900mm to be provided at first and second floor levels and 1.5 metres to be provided at third floor level.

The DCP establishes setbacks for the development of the site (for medium density housing) of 3m and 6m for ground and first floors respectively. These setbacks should, therefore, reasonably be accepted as the setback against which a building would be defined as adjacent to a boundary. The proposed third storey of the proposed building is setback between 11.3m and 22.4m to all boundaries. At its closest point, this is almost double what would reasonably be established at the 'adjacent' setback.

For these reasons, the proposed third storey is not in this case adjacent to a boundary of the site and therefore this clause does not have any work to do.

Lastly, the purpose of this clause (as provided in the note above) is to avoid an abrupt change in the scale of development in the streetscape. The proposal reasonably demonstrates that a gradual building height increase is proposed to the highest point of the development, notwithstanding the non-compliant building height in the centre of the building. Accordingly, the proposed building height, including the third storey, satisfies the purpose of this clause by not locating the third storey adjacent to the surrounding boundaries".

Officer's Comment:

The proposed third floor is considered to be "adjacent" to the sites northern boundary and Council requested that a Clause 4.6 variation be submitted.

The proposal has been relocated closer to the sites northern boundary and is now setback 6m from the

sites northern boundary with No. 109 Barton Street, not 11.3m as identified by the applicant above. The proposed setback to level 3 is also minimum of 5.2m to the outdoor 'Activity Deck' and 8m to the buildings lift lobby from No. 115 Barton Street and a minimum of 7.5m to the rear of No. 111 Barton Street (**Figure 7**).

The site is zoned R3 Medium Density Housing and Council's DCP limits the height of 'medium density development' to 2 storeys. The DCP requires a 3m setback for a single storey building, a 6m setback for the second floor of a medium density housing scheme, and there are no DCP setback controls for a 3 storey building (as they are not supported). However if a three storey building were permitted, then the pattern of increasing setbacks by 3m for each floor would be expected to continue and a minimum 9m setback would be required. The proposal would not comply and the development would be found to be adjacent to the sites northern boundary based on the planning principles established by the applicant.

Council officer's do not support a three storey development, as discussed previously, and it remains the officer's view that a Clause 4.6 variation is required to be submitted for the proposed variation to clause 40(4)(b) of the SEPP. Without a Clause 4.6 variation the Panel is unable to approve the development.



Figure 7 - Setbacks for 3rd Floor of proposal to the rear of properties fronting Barton Street

State Environmental Planning Policy (State and Regional Development) 2011

Pursuant to clause 2 of Schedule 7 of *State Environmental Planning Policy (State and Regional Development) 2011*, the proposal is regionally significant development, as indicated below:

2 General development over \$30 million

Development that has a capital investment value of more than \$30 million.

The proposal has a capital investment value of \$36,365,251.00 million and the proposal requires the determination of the Sydney Eastern City Planning Panel.

State Environmental Planning Policy No 55—Remediation of Land

The property is not identified in Council's records, however the site was previously used as a bowling green and is proposed to be used for residential purposes. The application was therefore accompanied by a "Contamination Assessment", by Martens Consulting Engineers (dated March 2018) and a "Remedial Action Plan" (RAP), by Martens Consulting Engineers (dated December 2020).

The reports were found to be inadequate and on 5 November 2021 (**4 months after the original request**), a Supplementary Site Investigation Report was submitted to Council. The supplementary report prepared by Martens Consulting Engineers (Ref: P1706332JR01V01, dated October 2021) concluded that the site could be made suitable for the proposed development subject to compliance with submitted RAP, as follows:

"We consider that the site can be made suitable for the proposed development provided that the existing site RAP (MA, 2020) is implement and a site validation report is prepared confirming successful site remediation. The nature of the proposed remediation works (i.e. excavation and offsite disposal) provides Council with certainty that the site shall be made suitable for the intended future residential use. As such, Clause 7(1) of SEPP 55 is satisfied as:

- The contamination status of the site is known.*
- The site may be made suitable through the works proposed in the application by way of the existing site RAP (MA, 2020).*
- By imposing condition of consent, certainty that the site shall be remediated is achieved".*

Council's consultant environmental scientist considered the deficiencies to be relatively minor and able to be resolved by conditions, as follows:

"I consider the above deficiencies are relatively minor and would either (1) unlikely change the outcome of the development application with respect to contamination; or (2) can be conditioned to address the data gaps".

The recommended conditions included a requirement for an amended RAP to be submitted prior to the issue of any Construction Certificate for any excavation or construction works, as follows:

"The amended RAP must incorporate all findings and recommendations in the Contamination Assessment (Martens 2018) (report P1706332JR01V01) and Supplementary Site Investigation (Martens 2021) (report P1706332JR04V01) for the site. In addition, the amended RAP must also include additional assessments or justifications to specifically address, but not limited to, the following data gaps:

- 1. The extent and nature of fill have not yet been adequately characterised against health and ecological based criteria. Additional testing or justifications must be included.*
- 2. The supplementary report did not present survey details of the monitoring wells and groundwater flow directions. In addition, no monitoring wells were located in the western portion of the site. Further details and/or justifications must be presented.*
- 3. SafeWork NSW's dangerous goods search to confirm the absence of underground storage tanks, or justifications for not undertaking the search.*

The amended RAP must clearly state proposed clean-up objectives and demonstrate how the site will be made suitable for the proposed use.

The amended RAP must be provided to the Site Auditor (Contaminated Land), the Council and the Principal Certifying Authority (if the Council is not the Principal Certifying Authority) for written

concurrence, prior to the issue of any Construction Certificate for any excavation or construction works.

Subject to imposition of recommended conditions relating to the submission of a Remedial Action Plan, Acid Sulfate Soil Management, removal of asbestos and dewatering of the site, the proposed development is acceptable.

Therefore, the development proposal has been considered under SEPP 55 in respect of unauthorized fill and potentially contaminated land. Accordingly, in accordance with Clause 7 (1)(b) of SEPP 55, Council is satisfied that the land is suitable for the purpose for which the development is proposed to be carried out.

State Environmental Planning Policy No 64—Advertising and Signage

The proposed signage is for purposes of business identification as it incorporates the name of the aged care facility. In this regard, the proposed signage satisfies the definition under the SEPP. The proposed signage has been assessed against Clause 8 and Schedule 1 of the SEPP which requires Council to determine the consistency with the objectives highlighted under Clause 3 (1)(a) of the SEPP to assess the appropriateness of the proposed signage, and has been found acceptable in the R3 residential context for a facility of the proposed nature and scale. The proposal is therefore acceptable with regards to SEPP 64.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone R3 Medium Density Residential	No - see discussion	No - see discussion
4.3 Height of buildings	No - see discussion	No - see discussion
4.4 Floor space ratio - Residential zones	Yes - see discussion	No - see discussion
4.6 Exceptions to development standards	No - see discussion	No - see discussion
6.1 Acid Sulfate Soil - Class 4	Yes - see discussion	Yes - see discussion
6.2 Earthworks	Yes	
6.4 Airspace operations	Yes - see discussion	Yes - see discussion
6.7 Stormwater	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes

2.3 Zone R3 Medium Density Residential

The subject site is zoned R3 - Medium Density Residential under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The proposal is defined as **seniors housing** under the Rockdale LEP 2011 which constitutes a permissible development only with development consent. The objectives of this zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.

The proposed development is inconsistent with the first, second and fourth objectives of the zone in that the proposed three storey development results in a high density development which is out of keeping with the envisaged character of the area being a '*medium density residential environment*', and the proposal will result in adverse impacts on the character and amenity of the area. Principally the development will result in adverse visual bulk, scale and privacy impacts to immediately surrounding properties and the applicant has not provided adequate information to demonstrate that the proposal will not have adverse acoustic impacts on surrounding residents.

4.3 Height of buildings

The height of the proposed building is 12.6m when measured in accordance with the definitions in RLEP 2011. The proposal therefore exceeds the maximum 8.5m height permitted in Clause 4.3 (Height of buildings) of RLEP 2011 by 4.096m (a 48.2% variation). As detailed earlier in this report, the height of the proposed building under the Seniors Living SEPP is 9.975m as the definition of height under this instrument measures to the ceiling of the top most floor.

The proposed 48.2% variation to Clause 4.3 (Height of Buildings) is not supported. The proposal does not provide a high quality urban form, does not maintain satisfactory sky exposure for surrounding residential dwellings and with a 6m setback to the three storey built form will not provide an appropriate transition in built form or land use intensity to surrounding detached dwellings within the R3 Medium Density zone. The proposal is therefore contrary to the objectives of the control which are as follows:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The applicant has not submitted a request to vary the development standard Clause 4.3 (height of buildings) under the provisions of Clause 4.6 (Exceptions to development standards) of the Rockdale LEP 2011 and they are of the view that a variation is not required as the proposal is assessed under the SEPP. Notwithstanding, the significant variation to a newly adopted height provision demonstrates the unsuitability of the proposal in the medium density zone and the variation to the LEP height provision is not supported.

4.4 Floor space ratio - Residential zones

The gross floor area (GFA) of the proposed development has been calculated as 6,798.2m² over a site area of 7,218m². In this regard, the proposed floor space ratio (FSR) for the building is 0.94:1 and therefore exceeds the maximum permissible FSR control applying to the land (0.6:1) as shown on the Floor Space Ratio Map. However, the applicant seeks to comply with the FSR control under the State Environmental Planning Policy - Housing for Seniors or Persons with a Disability (2004) which is limited to a maximum of 1:1. Please refer to the section of this report headed SEPP Housing for Seniors or Persons with a Disability 2004.

In addition to the above, the Council's Design Review Panel provided the following conclusion for their density considerations of the amended scheme considered by them on 2 September 2021 - "*The Panel does not believe that the amended scheme demonstrates that the density proposed can be housed on the site.*" The conclusion is still considered relevant to the current scheme.

4.6 Exceptions to development standards

Clause 4.6 allows a variation to a development standard subject to a written request by the applicant justifying the variation by demonstrating:

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

In considering the applicant's submission, the consent authority must be satisfied that:

- (i) the applicant's written request is satisfactory in regards to addressing subclause (3) above, and
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives of the relevant zone.

- 5(a) The consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and
- 5(b) the public benefit of maintaining the development standard.

Clauses to be varied

1. Clause 40(4)(a) - Maximum 8m building height;
2. Clause 40(4)(c) - Maximum 1 storey in the rear 25% of the site.

Further to the above, it is Council's view that the proposal is three (3) storey adjacent to the boundary of the site and that the proposal is contrary to Clause 40(4)(b) which restricts development to 2 storeys, however as discussed in the assessment of the Seniors Living SEPP, the applicant does not consider that the proposal is 'adjacent to a boundary of the site' and therefore they have not considered a clause 4.6 to Clause 40(4)(b) of the Seniors Living SEPP.

Objectives of the controls / zone:

Objectives of Clause 40 'Height' of the Senior's Living SEPP:

There are no stated objectives for this provision however the applicant has used the objectives from Clause 4.3 of RLEP 2011 (and Council officers agree) as follows:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

Objectives of the R3 Medium Density Residential zone:

- *To provide for the housing needs of the community within a medium density residential environment.*

- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

Extent of Variations

The applicant seeks to vary the following building height standards under the Seniors Living SEPP,:

1. Clause 40(4)(a) - Maximum 8m building height;

* Maximum height of 9.975m (24.68% or 1.975m variation) as measured to the top ceiling height in accordance with the SEPP.

The Applicant finds that the three storey element is located 6.17m from No. 109 Barton St, 19.5m from the sites southern boundary, 21.2m from the sites western boundary and 15.4m from the sites eastern boundary.

* Height of 12.6m under the RLEP 2011 (48.2% or 4.096m variation) measured to highest point on the roof.

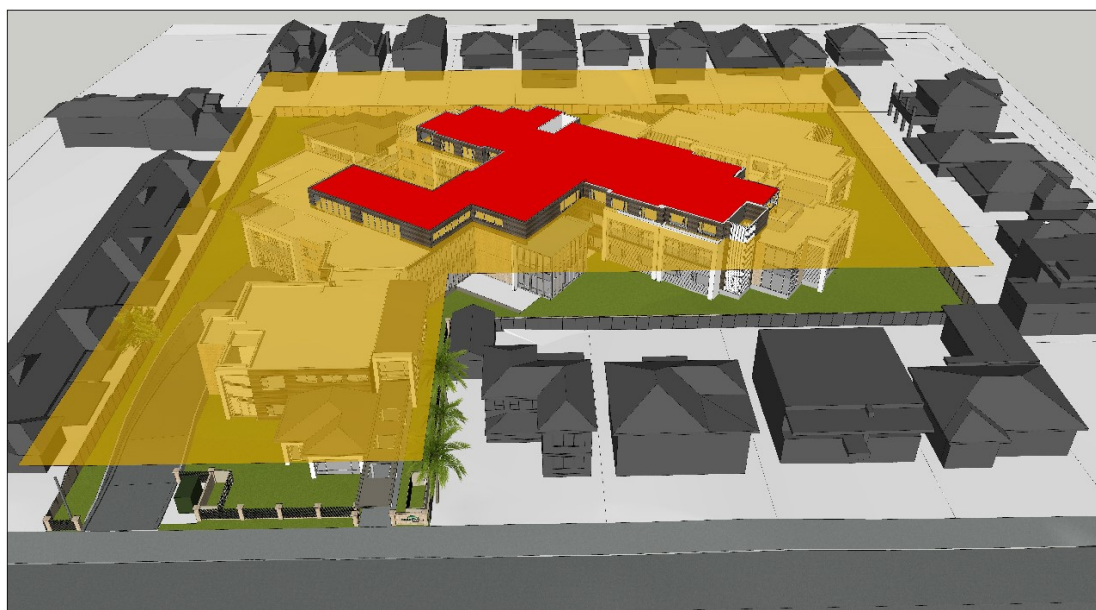


Figure 8 - *Extent of building above 8m to the underside of the ceiling (as measured by Seniors Living SEPP). The proposal includes a roof above which extends up to 12.6m in height.*

2. Clause 40(4)(c) - Maximum 1 storey in the rear 25% of the site.

The proposal is based on a 25% rear area calculation. It is Council's view that the rear 25% is defined by a straight line at the rear of the site with a setback of m.

The applicant has submitted two (2) separate Clause 4.6 variations being for Clause 40(4)(a) and Clause 40(4)(c).

Assessment - Clause 4.6 variation to Clause 40(4)(a) - 8 metre height

The applicant is of the view that a Clause 4.6 variation is not required for the variation to the 8m building height, however they have provided a Clause 4.6 variation in case the Panel is of the view that it is required.

- ***Clause (3)(a) - that compliance with the standard is unreasonable or unnecessary in the circumstances of the case***

The applicant states they satisfy the first test from *Wehbe v Pittwater Council [2007] NSWLEC 827* in that the compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The key rationale provided by the applicant to demonstrate that the proposal is consistent with the aims of Clause 40 are summarised below:

- The proposed two storey built form at rear of the subject site will be consistent with the heights of the adjoining properties and will not be seen from public streets (e.g. Scarborough Street).
- With a minimum setback of 3.9m (at closest point) from the rear boundary, the proposal incorporates a staggered edge (not a solid/consistent built form) along all boundaries to facilitate greater landscaping and create a buffer with the adjoining properties to ensure an appropriate built form transition and protect the amenity of surrounding neighbours.
- The proposal incorporates generous landscaping buffers along all the boundaries. The proposal incorporates 3,850.5m² landscaping which equates to 33.2m² /bed.\
- Overshadowing impacts are minimal and comply with the 3 hours required by RDCP 2011.
- Visual and acoustic privacy impacts are minimised and acceptable
- The proposed height encroachment is setback considerably from surrounding property boundaries to ensure an appropriate transition is achieved. In this respect, it is important to note that buildings do not have to be the same height to be compatible.
- In the context of seniors housing, it is generally accepted that buildings can exist in harmony without having the same density, scale or appearance.
- A view analysis provided by the architects demonstrates that a rectilinear built form as recommended by Council's DRP would result in greater impacts. The view analysis also demonstrates that the upper (third) level will not be highly visible from surrounding residential properties.
- The view analysis illustrates that the proposed scheme does not create any measurable or discerning impact when compared to the 'complying' scheme.

The applicant's Clause 4.6 also includes a range of additional reasons to demonstrate how compliance has been achieved with each of the four objectives adopted from Clause 4.3 of RLEP 2011. Some key matters include:

- the building responds to the landform within the uncommon battle-axe lot form;
- direct boundary interfaces are one or two storeys in height, with the third floor in the centre of the site.
- the Seniors Living SEPP affords an additional up to 0.4:1 FSR in recognition of the importance of seniors housing and its direct need within NSW. The scale of the site permits a third floor that has minimal impacts to surrounding residents.
- the buildings frontage to Barton Street is 2 storey being consistent with neighbouring

dwellings.

- The proposal includes a generous setback to Barton Street
- The proposal brings a contemporary design to the locality while respecting the character and design of surrounding development
- the proposal will be compatible with surrounding residential dwellings
- the proposed height is consistent with the existing skyline
- generous setbacks are provided to all boundaries.
- an appropriate transition in building heights is provided to surrounding developments. The proposal is compatible with the prevailing character of the area and capable of existing harmoniously with the surrounding development.

Planners comment:

The site and adjoining properties are zone R3 Medium Density Housing zone. Developments are restricted to a maximum of 8.5m and 2 storey in height. The proposed three (3) storey built form is located a minimum of approximately 6m from No.109 Barton Street and No. 115 Barton Street, and nearby No.111 Barton Street. As shown in Figures 2 & 6 it is evident that the proposed three storey portion of the development is of an inappropriate scale that will result in adverse visual bulk to neighbouring properties. Figure 2 has been copied below and shows that the proposed two storey built form is appropriate for the existing and desired 8.5m / 2 storey building height context of surrounding sites.

The applicant's rationale is not agreed with and the proposal is considered to be contrary to the underlying objectives of Clause 40. Specifically,

- The proposal will not provide an appropriate transition in built form and land use intensity.
- The proposed building height does not encourage high quality urban form.
- The proposed building height will have adverse impacts on the sky exposure enjoyed by surrounding residents, particularly those to the north



- **Clause (3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?**

The applicant discusses the strategic merit of the proposal and the reasons for departing from the building height development standard. A summary is below:

- *The proposal seeks to deliver a high-quality aged care facility that directly responds to the needs of the ageing population. The additional height generated as a result of the proposal will accommodate additional rooms to service the ageing population, in line with the additional FSR permitted through the Seniors SEPP.*
- *The additional residents and workers will benefit from easy access to public transport, shops and other key infrastructure such as hospitals, which strongly aligns with Regional*

and State strategic planning objectives.

- *The proposal will facilitate investment in health services and social infrastructure that will support the liveability and productivity Planning Priorities for the South District.*
- *The proposed aged care facility will create and deliver additional employment opportunities within the LGA for this critical workforce.*
- *The proposal will provide generous open space with landscaping within the development.*
- *The subject site benefits from its proximity to public transport and nearby services such as commercial centres and the St George Hospital precinct which has been designated for major health/education development.*

The key justification from the applicant's Clause 4.6 to demonstrate sufficient environmental planning grounds are met are provided below:

- *The proposed variation better promotes the orderly and economic use of the land compared to a compliant scheme, permitting the provision of aged care housing at a density envisaged by the SEPP.*
- *The proposed variation allows for improved internal amenity and equitable access for residents to common open space area and landscaped area*
- *Much of the area that exceeds the development standard is not discernible as viewed from the public domain or surrounding residential properties as it has been setback from the edges of the building.*
- *The proposal has demonstrated that the portion of the building which exceeds the maximum building height limit would not give rise to any unreasonable environmental impacts.*
- *In the absence of any material or adverse environmental impact arising from the proposed building height, delivering a compliance building height would not yield a better outcome for the site,*
- *Through the application of the above criteria established within the planning principle by Moore SC in Davies v Penrith City Council [2013] NSWLEC 1141, the proposal demonstrates an acceptable built form outcome as it represents good planning and design to, notwithstanding the building height non-compliance, reduce amenity impacts on surrounding properties as well as the residential character.*

Planners comment:

The subject site is a battle-axe allotment which is constrained by its context. It shares its boundaries with the rear private open space areas for 18 dwellings and courtyards for 6 villas. While facilitation of aged care housing is supported in accordance with the SEPP the proposed scheme has been unable to demonstrate that the site is suitable for the scale of proposed development in this context. The applicant has not provided evidence of genuine consideration of alternative site layouts as recommended by Council's Design Review Panel and their 'Visual Impact Assessment' is limited and not considered to provide a real understanding of the visual impacts that will result. The proposal will result in adverse visual bulk and privacy impacts, and the applicant has not demonstrated that adverse acoustic and odour impacts will not result. The proposal is not considered to be orderly development of the land as it significantly exceeds the maximum height permitted by the Seniors Living SEPP, the newly adopted Housing SEPP, the RLEP 2011 and the newly adopted Bayside LEP 2021 and will result in adverse impacts to surrounding properties. It is evident from the plans and site inspection that a two storey built form is suitable for the subject site. It is also noted that Council's DCP permits only single storey development on battle-axe lots and this is evidence that such sites are known to result in adverse impacts to rear yards of surrounding properties.

The applicant's rationale is not agreed with and the proposal is not considered to demonstrate sufficient environmental planning grounds to warrant justification of the departure.

- ***Clause (4)(a) - The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)***

The Applicant's written submission deals adequately addresses the matters required to be demonstrated by subclause (3). In accordance with the principles established in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. Particularly, the applicant's submission has attempted to:

- Demonstrate why compliance with the development standard is unnecessary or unreasonable.
- Demonstrate there is sufficient environmental planning grounds to justify contravening the development standard

Consideration has therefore been given to the merits of the request.

- ***Clause (4)(b) - Is the proposed development 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?***

The applicant finds that the proposed development is in the public interest because it is consistent with the objectives of the standard and the zone.

Refer to assessment of subclause (3) above for consideration of the objectives of the height standard.

The applicant considers that the proposal satisfies the objectives of the zone for the following key reasons:

- *The proposal facilitates a high quality, medium density, aged care facility that responds to the changing demographic trends, including the unprecedented growth of the ageing population;*
- *The proposal appears to be a two storey residential aged care facility from the street and surrounding private properties, with the third storey located at the centre of the site. As such, the proposal is consistent with the surrounding medium density residential environment;*
- *The proposal facilitates investment in health services and social infrastructure that will support the liveability and productivity Planning Priorities for the South District*
- *Diversifying housing choice by facilitating alternative housing options is crucial to help maintain the population levels. The proposed aged care facility will support the growing ageing population and responds to the community's changing needs; and*
- *The proposal includes 113 single bedrooms which provides a variety of housing choices and creates a more sustainable, equitable and healthy community.*
- *The proposal includes a total of 634m² GFA of private amenities including lounge, dining, quiet and sitting areas for the use of future residents;*
- *The proposal also incorporates 245m² of communal open space areas for the future residents comprising a social lane with BBQ, contemplation /fern garden, social corner, active corner/boccie court and sensory lane or productive garden; and*

- *Finally, the proposal includes function and other spaces that can be booked by the wider community and will facilitate and assist day-to-day community activities in the area*
- *As demonstrated in Section 7.2 of this report above, the proposed built form has been carefully designed to minimise any impact on the character and amenity of the area. The proposed built form is stepped down to two storeys at all side boundaries; one storey at the rear boundary; and incorporates a generous front setback. The third storey is introduced at the centre of the site which reduces its potential overshadowing onto neighbouring properties;*
- *The proposal includes a generous front street setback with significant landscaping provided which will soften the built form viewed from public streets;*
- *The development will not overshadow any adjoining main living areas of adjoining neighbours at south and will only generate minor additional overshadowing to the private open space areas compared to existing; and*
- *Overall, the proposal is consistent with the existing character and amenity of the area. The proposal will bring a contemporary edge to the surrounding area whilst reflecting the scale, rhythm and materiality of the neighbouring residence.*

Planners comment:

The assessment of the R3 zone under RLEP has found that the proposal does not satisfy the objectives of the zone. The applicant's rationale above is not agreed with. The proposal is considered to be high density development and is therefore not located within a medium density environment. The proposal results in adverse impacts to surrounding properties particularly in terms of visual bulk and privacy. Insufficient information has been provided to demonstrate that adverse noise and odour impacts will not result. Furthermore the proposed layout is considered contrary to the *Seniors Living Policy – urban guidelines for infill development* and the proposed layout is found by Council's Design Review Panel to result in adverse impacts on the character and amenity of the area. No genuine consideration has been provided to demonstrate that genuine alternatives have been considered.

- **Clause (5)(a) - the consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and**

The proposed variation to the height development standards contained in Clauses 40(4)(a) and 40(4)(b) will not result in any matters of significance for State or regional environmental planning.

- **Clause (5)(b) - the public benefit of maintaining the development standard**

The justification (as stated above) demonstrates that the proposed variation prevent compliances with the objectives of the standard itself and of the zone. The proposal for a building of the proposed height is inconsistent with the existing and desired future character for the 'medium density area' and will result in adverse impacts to surrounding properties and adverse impacts on the character of the area. In this regard, it is considered that the proposal is not the public interest.

- **Clause 5(c) - any other matters required to be taken into consideration by the Secretary before granting concurrence**

The proposed variation exceeds the maximum 10% variation to the floor space ratio standard and is submitted to the Sydney Eastern City Planning Panel for determination.

- **Conclusion - Variation to Clause 40(4)(a) - 8 metre height**

The Clause 4.6 variation to the maximum 8m height does not adequately address the matters contained in the clause, does not demonstrate compliance with the objectives of the standards or of the zone, and the proposed variation is not found to be in the public interest. The proposed variation to Clause 40(4)(a) of the Seniors Living SEPP is not supported.

Assessment - Clause 4.6 variation to Clause 40(4)(c) - One storey in rear 25% of the site

Clause 40(4)(c) minimum sizes and building height in the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP):. Clause 40(4)(c) requires a 1 storey building height limit to the rear 25% of the site.

The Council considers that the rear 25% area is established by a straight line being 23.8m from the sites southern boundary. This is 25% of the 92.53m length of the site between Barton Street and the rear of the property.

The applicant considers that the rear 25% **area** is establishing where the rear 25% of the total site area would be located - i.e. 25% of 7,218m² = 1,804.5m². This results in setback of 18.93m from the sites southern (rear) boundary.

Either way, the proposed area comprising only single storey built form is found to be acceptable in the context of the subject site..

The newly adopted Housing SEPP no longer contains this development control and, based on merit assessment, the setback is not found to be unreasonable.

The proposed first floor is no closer than 12.5m from the sites southern boundary and solar access, privacy and other impacts are minimised from this two storey built form. However, part of the rear 25% area includes a three storey built form which, for reasons discussed in response to Clause 40(4)(a) above is not supported.



Figure 8: Applicant's rear 25% area diagram. Purple = 6m setback; Blue = 12.5m setback; Green = 18.93m setback.

An assessment of this clause is provided below:

- **Clause (3)(a) - that compliance with the standard is unreasonable or unnecessary in the circumstances of the case**

The applicant states they satisfy the first test from *Wehbe v Pittwater Council [2007] NSWLEC 827* in that the compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The key rationale provided by the applicant to demonstrate that the proposal is consistent with the underlying objectives of Clause 40 are summarised below:

- The proposed two storey built form at rear of the subject site will be consistent with the heights of the adjoining properties and will not be seen from public streets (e.g. Scarborough Street).
- The first floor includes a setback of 12.5m, at its closest point, from the rear boundary.
- The proposal incorporates generous landscaping buffers along all the boundaries. The proposal incorporates 3,850.5m² landscaping which equates to 33.2m² /bed.
- Overshadowing impacts are minimal and comply with the 3 hours required by RDCP 2011.
- Visual and acoustic privacy impacts are minimised and acceptable
- In relation to the change in scale between the proposed development and that immediately

to the rear (south), the generous separations between these built forms facilitates an appropriate transition and is sympathetic to the residents to the south.

Planners comment:

The applicant's position is agreed with. The proposed development is considered to satisfy the underlying objectives of the height control (Clause 40).

Note: The provision of a third floor is not supported in its entirety and parts of the third floor are located within the rear 25% area of the site when the rear 25% is established in accordance with Council's calculations.

- **Clause (3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?**

The applicant discusses the strategic merit of the proposal and the reasons for departing from the building height development standard. This is identical to the strategic merit for the previous clause 4.6 and a summary is below:

- *The proposal seeks to deliver a high-quality aged care facility that directly responds to the needs of the ageing population. The additional height generated as a result of the proposal will accommodate additional rooms to service the ageing population, in line with the additional FSR permitted through the Seniors SEPP.*
- *The additional residents and workers will benefit from easy access to public transport, shops and other key infrastructure such as hospitals, which strongly aligns with Regional and State strategic planning objectives.*
- *The proposal will facilitate investment in health services and social infrastructure that will support the liveability and productivity Planning Priorities for the South District.*
- *The proposed aged care facility will create and deliver additional employment opportunities within the LGA for this critical workforce.*
- *The proposal will provide generous open space with landscaping within the development.*
- *The subject site benefits from its proximity to public transport and nearby services such as commercial centres and the St George Hospital precinct which has been designated for major health/education development.*

The key justification from the applicant's Clause 4.6 to demonstrate sufficient environmental planning grounds are met are provided below:

- *The proposed variation better promotes the orderly and economic use of the land compared to a compliant scheme, permitting the provision of aged care housing at a density envisaged by the SEPP. The proposed height variation facilitates the delivery of an aged care facility of a density envisaged under the Seniors SEPP while allowing for improved amenity at ground level for residents, as well as the interface with surrounding properties. The generous site area facilitates a more orderly development outcome through the rear first second storey building height variation as opposed to locating this floor space at the ground which would be at the expense of the surrounding residents and internal amenity of the residents of the facility.*
- *The proposed variation allows for improved internal amenity and equitable access for residents to common open space area and landscaped area*
- *Much of the built form that exceeds the development standard is not discernible as viewed from surrounding residential properties as it still provides a generous setback*

from the rear boundary.

- *The proposal has demonstrated that the portion of the building which exceeds the maximum building height limit would not give rise to any unreasonable environmental impacts.*
- *In the absence of any material or adverse environmental impact arising from the proposed building height, delivering a compliance building height would not yield a better outcome for the site,*

Planners comment:

The applicant's rationale is agreed with. The proposal demonstrates sufficient environmental planning grounds to warrant a variation to Clause 40(4)(c) of the Seniors Living SEPP.

- ***Clause (4)(a) - The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)***

The Applicant's written submission deals adequately addresses the matters required to be demonstrated by subclause (3). In accordance with the principles established in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. Particularly, the applicant's submission has attempted to:

- Demonstrate why compliance with the development standard is unnecessary or unreasonable.
- Demonstrate there is sufficient environmental planning grounds to justify contravening the development standard

Consideration has therefore been given to the merits of the request.

- ***Clause (4)(b) - Is the proposed development 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?***

The applicant finds that the proposed development is in the public interest because it is consistent with the objectives of the standard and the zone.

Refer to assessment of subclause (3) above for consideration of the objectives of the height standard.

The applicant considers that the proposal satisfies the objectives of the zone for the following key reasons:

- *The proposal facilitates a high quality, medium density, aged care facility that responds to the changing demographic trends, including the unprecedented growth of the ageing population;*
- *The proposal appears to be a two storey residential aged care facility from the street and surrounding private properties, with the third storey located at the centre of the site. As such, the proposal is consistent with the surrounding medium density residential environment;*
- *The proposal facilitates investment in health services and social infrastructure that will support the liveability and productivity Planning Priorities for the South District*
- *Diversifying housing choice by facilitating alternative housing options is crucial to help maintain the population levels. The proposed aged care facility will support the growing*

- ageing population and responds to the community's changing needs; and
- The proposal includes 116 bedrooms and five twin bedrooms which provides a variety of housing choices and creates a more sustainable, equitable and healthy community.
- The proposal includes a total of 776m² GFA of private amenities including lounge, dining, quiet and sitting areas for the use of future residents;
- The proposal also incorporates 245m² of communal open space areas for the future residents comprising a social lane with BBQ, contemplation /fern garden, social corner, active corner/boccie court and sensory lane or productive garden; and
- Finally, the proposal includes function and other spaces that can be booked by the wider community and will facilitate and assist day-to-day community activities in the area
- As demonstrated in Section 7.2 of this report above, the proposed built form has been carefully designed to minimise any impact on the character and amenity of the area. The proposed built form is stepped down to two storeys at all side boundaries; one storey at the rear boundary; and incorporates a generous front setback. The third storey is introduced at the centre of the site which reduces its potential overshadowing onto neighbouring properties;
- The proposal includes a generous front street setback with significant landscaping provided which will soften the built form viewed from public streets;
- The development will not overshadow any adjoining main living areas of adjoining neighbours at south and will only generate minor additional overshadowing to the private open space areas compared to existing; and
- Overall, the proposal is consistent with the existing character and amenity of the area. The proposal will bring a contemporary edge to the surrounding area whilst reflecting the scale, rhythm and materiality of the neighbouring residence.

Planners comment:

The applicant's position is agreed with. The proposal is in the public interest because it is consistent with the objectives of the standard and of the zone. Again, this does not indicate support for the third floor level, only that the single storey portion of the building is acceptable.

- **Clause (5)(a) - the consent authority must also consider whether contravention of the development standard raises any matter of significance for State or Regional environmental planning, and**

The proposed variation to the height development standards contained in Clause 40(4)(c) will not result in any matters of significance for State or regional environmental planning.

- **Clause (5)(b) - the public benefit of maintaining the development standard**

The justification (as stated above) demonstrates that the proposed variation permits compliance with the objectives of the standard itself and of the zone. The proposal for a building that is single storey within the rear 12.5m of the site is acceptable, however a three storey building within the site and at a setback of 18.93m from the rear is not supported as discussed previously. In this regard, it is considered that the proposed single storey portion of the development is in the public interest.

- **Clause 5(c) - any other matters required to be taken into consideration by the Secretary before granting concurrence**

The proposed variation exceeds the maximum 10% variation to the floor space ratio standard and is submitted to the Sydney Eastern City Planning Panel for determination.

6.1 Acid Sulfate Soil - Class 4

Acid Sulfate Soils (ASS) – Class 4 affect the property. Development Consent is required as the proposal involves works below the natural ground level and the works may lower the watertable which was found at 2m to 3m below the surface. In this regard, an Acid Sulfate Soils Assessment prepared by Martins Consulting Engineers dated February 2021 and was prepared for the proposed development. The Acid Sulfate Soil Assessment found that there was only one sample taken from the site from a sandy clay layer that was below detection limits. While this sample had acidic soil, it was not from acid sulfate soils. As such, the site was not identified to contain actual acid sulfate soils or have the potential for acid sulfate soils. As such, the report recommended that an Acid Sulfate Soils Management Plan is not required and the site is suitable for the construction of the proposed aged care facility and no further investigation or assessment regarding acid sulfate soils is considered necessary. An additional condition of consent shall be imposed in the draft Notice of Determination to require further investigation should the need arise through construction. Therefore, the proposal is consistent with the objectives and requirements of clause 6.1 of the Rockdale LEP 2011 in respect to acid sulfate soils.

6.4 Airspace operations

The proposed development is affected by the Obstacle Limitation Surface (OLS) which is set at 51 metres to Australian Height Datum (AHD). The proposed building height is at 12.6m or RL 16.296 metres to AHD and in this regard, it is considered that the proposed development will have minimal adverse impact on the OLS and hence is acceptable with regards to this Clause.

6.7 Stormwater

The proposal includes an on-site retention system with stormwater discharging into the absorption tanks to then permeate into the Botany Bay Sands Aquifer. The site is lower than the levels at Barton Street and the system has therefore been designed to cater for a 100 year ARI storm event. Some of the proposed absorption tanks are located in setback areas and conflict with the landscape planting scheme. Amendments are therefore required to ensure adequate landscape planting can be achieved.

S4.15(1)(a)(ii) - Provisions of any Draft EPI's

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) applies to the site. It was a draft policy until 26 November 2021 when it was gazetted. The Housing SEPP does not apply to the current proposal in accordance with the Savings and Transitional provisions contained in Schedule 7 of the SEPP, however consideration has been given to the provisions of the SEPP below.

The Housing SEPP consolidated five existing housing related SEPPs including the following:

- State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP);
- State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70);
- State Environmental Planning Policy No 21—Caravan Parks; and
- State Environmental Planning Policy No 36—Manufactured Home Estates.

The Housing SEPP proposes several changes to the previous Housing for Seniors or People with a Disability SEPP 2004 in respect to the general standards. The key provisions are detailed below:

- **Clause 84(2)(c) - Development Standards - General**

"for development on land in a residential zone where residential flat buildings are not permitted—the development will not result in a building—

(i) with a height of more than 9.5m, or

(ii) with more than 2 storeys if the building is adjacent to the boundary of the site area".

Comment:

The SEPP has removed the single storey height requirement in the rear 25% of the site, however development standards contained in Clause 84(2)(c) above require that a development be either a maximum of 9.5m or no more than two (2) storey adjacent to the boundary of a site. The proposed development is 12.6m in height (33% variation) and is, in Council's view, three (3) storey adjacent to the boundary of the site and therefore does not satisfy the requirements of this clause. The applicant does not consider the development is located 'adjacent' to the sites boundaries and may argue that this provision is complied with.

Notwithstanding, for the reasons discussed in response to the Seniors Living SEPP and Clause 4.6 of RELP 2011, the proposed three storey building with a maximum height of 12.6m would not supported.

- **Clause 91 - Fire Sprinkler Systems in Residential Care Facilities**

This provision requires the consent authority to be satisfied that the development will include a fire sprinkler system.

- **Clause 94 - Location and access to facilities and services—residential care facilities**

Comment:

The proposal includes a Clause 26 report which requires improvements to three locations to ensure gradients comply with the requirements of the clause.

- **Clause 101 - Solar access and design for climate**

The design of seniors housing should—

(a) for development involving the erection of a new building—provide residents of the building with adequate daylight in a way that does not adversely impact the amount of daylight in neighbouring buildings, and

(b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation, solar heating and lighting by locating the windows of living and dining areas in a northerly direction.

Comment: The proposal is not considered to satisfy the solar access provision for future occupants of the facility as many windows, living areas and courtyards are overshadowed by the proposed development. Many of the windows of living and dining areas are not located in a northerly direction.

- **Clause 107 - Non-Discretionary Development Standards for hostels and residential care facilities**

(1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

(2) *The following are non-discretionary development standards in relation to development for the purposes of hostels or residential care facilities—*

- (2)(a) - *Maximum building height of 9.5m*
Comment: The proposal exceeds the maximum height of 9.5 m by 3.1m (32.6%). The variation is not supported for similar reasons provided previously in response to the requested height variations under Clause 4.6.
- (2)(b) - *Servicing equipment on the roof may have a maximum height of 11.5m subject to it being integrated into the roof form, being suitably screened from public places and comprising an area of no more than 20% of the roof area.*
Comment: The proposed development has a maximum height of 12.6m for the residential portion of the building inclusive of area proposed for servicing equipment. The proposal exceeds the maximum and would not be supported.
- 2(c) - *FSR less than 1:1*
Comment: The definition of GFA remains similar to that contained in the Seniors Living SEPP. The proposal would therefore satisfy this requirement, with an FSR of 0.94:1.
- 2(d) - *A minimum 10m² internal and external communal open space per resident (i.e. 1,160m² required for this facility)*
Comment: The proposal contains minimal internal communal open spaces however contains ample external communal open spaces to satisfy this clause.
- 2(e) - *At least 15m² of landscape area per bed (i.e. 1,740m² for this facility).*
Comment: The proposal satisfies the minimum 25m² per bed required by the Seniors Living SEPP and therefore satisfies this clause.
- 2(f) - *Deep soil area being a minimum 15% of the site area, with minimum dimension 6m (i.e. 1,083m² required for this facility).*
Comment: The proposal includes 1,793m² deep soil, which exceeds the minimum 1,083m² required. The areas are generally 6m in width, however these areas also contain stormwater retention tanks and further information is required to demonstrate that the complies with the requirements.
- 2(h), (i) & (j) - *Parking - 1 space per 15 beds (= 8 spaces) + 1 space per 2 staff working at the same time (=20 spaces) + 1 Ambulance bay.*
Comment: The proposal includes 39 spaces and complies with the minimum 28 spaces. The proposal includes a shared Ambulance / loading bay.

S4.15 (1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is

provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.1.1 Views and Vista	Yes	Yes - see discussion
4.1.3 Water Management	Yes - see discussion	Yes - see discussion
4.1.3 Groundwater Protection	Yes - see discussion	Yes - see discussion
4.1.4 Soil Management	Yes - see discussion	Yes - see discussion
4.1.6 Development on Sloping Sites	Yes	Yes
4.2 Streetscape and Site Context - General	No - see discussion	No - see discussion
4.3.1 Open Space and Landscape Design	No - see discussion	No - see discussion
4.4.1 Energy Efficiency - Residential	Yes - see discussion	Yes - see discussion
4.4.2 Solar Access - General Controls	No - see discussion	No - see discussion
4.4.3 Natural Lighting and Ventilation - Residential	Yes - see discussion	Yes - see discussion
4.4.4 Glazing - General Controls	Yes - see discussion	Yes - see discussion
4.4.5 Visual privacy	No - see discussion	No - see discussion
4.4.5 Acoustic privacy	No - see discussion	No - see discussion
4.5.2 Social Equity - Equitable Access	Yes - see discussion	Yes - see discussion
4.6 Basement Parking - General	Yes - see discussion	Yes - see discussion
4.6 Design of Loading Facilities	No - see discussion	No - see discussion
4.7 Air Conditioning and Communication Structures	Yes - see discussion	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes - see discussion	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
4.7 Letterboxes	Yes	Yes
4.7 Hot Water Systems	Yes	Yes
5.1 Building Design - General	No - see discussion	No - see discussion

4.1.1 Views and Vista

The site and adjoining properties are relatively flat and contain minimal views out over the curtilage of each parcel of land and the adjacent properties. In this regard, they do not contain any iconic or significant view corridors. As such, the siting of the proposed building will ensure that there is minimal adverse impact on the surrounding views presently enjoyed by adjacent residents.

4.1.3 Water Management

The roofwater and runoff is to be directed to an absorption trench and arrangement of pits throughout the site. A stormwater plan has been submitted with the application.

4.1.3 Groundwater Protection

The site is affected by the Groundwater Protection Zone 3, and the proposal will include the construction of one basement level underneath the proposed building. The application may involve excavation in relation to the proposed basement and was referred to Water NSW. In this regard, Water NSW raised no objections to the proposal subject to the imposition of conditions of development consent. Notwithstanding, an appropriate condition is to be included in the consent to ensure the provisions of this Clause are satisfied.

4.1.4 Soil Management

The Soil & Water Management Plan has been submitted and general erosion and sediment control strategies are proposed to ensure that the potential for impact on adjoining land and surrounding waterways is minimised.

Temporary fencing is to be erected along the boundaries of the site. A builders all weather access is required to be provided onto the site.

4.2 Streetscape and Site Context - General

The proposal does not respond to or sensitively relate to the sites context or existing patterns of development in the area, nor provide an appropriate transition in built form as discussed in more detail in response to Clause 33 of the Seniors Living SEPP and as detailed by Council's Design Review Panel. The proposal is therefore contrary to Controls 1 & 2 as follows:

- *Development is to respond and sensitively relate to the broader urban context including topography, block patterns and subdivision, street alignments, landscape, views and the patterns of development within the area*
- *Development adjoining land use zone boundaries should provide a transition in form, considering elements such as height, scale, appearance and setbacks*

The amended proposal has been moved closer to Barton Street to generally align with setbacks of existing dwellings in the street. The proposal includes a cafe at the sites frontage with outdoor seating which benefits from the northern aspect. The sites frontage is compromised by fire boosters, the substation and driveway access. The applicant has reduced the extent of these services however further detail of these services is required to ensure impacts to the streetscape are minimised. The front fence has been reduced to 1.2m in height with exception of a small part and is acceptable. The proposed part one and part two storey built form is acceptable in the streetscape context.

4.3.1 Open Space and Landscape Design

Council's Landscape Architect has reviewed the landscape plans and noted the outstanding issues below. Amended landscape plans are required.

Key controls in RDCP 2011 relevant to the proposal are:

C4 - *The amount of hard surface area is to be minimised to reduce run-off by*

- a. directing run-off from the overland flow of rainwater to pervious surfaces such as garden beds, and*
- b. utilising semi-pervious paving materials wherever possible*

C5 - *Landscape must relate to building scale and assist integration of the development with the existing street character.*

C6 - *Planting design solutions are to:*

- a. provide shaded areas in summer, especially to west facing windows and open car parking areas;*
- b. provide screening for visually obtrusive land uses or building elements;*
- d. provide privacy between dwellings;*
- f. incorporate plant species in locations and in densities appropriate for their expected size at maturity;*

h. use appropriate indigenous plant species wherever possible.

C7. Trees must be planted within properties to maximise tree cover.

C8. Landscaped areas should adjoin the landscaped area of neighbouring properties so as to provide for a contiguous corridor of landscape and vegetation.

The key issues identified by Council's Landscape Architect in response to the amended Landscape Plans prepared by LANDFX (Revision C, dated 19th November 2021) and relevant architectural and stormwater plans are as follows:

- Inconsistencies between the landscape plans, architectural plans and stormwater (civil) plans. The landscape plans do not show the stormwater system, including retention (absorption) tank locations. Some absorption tanks are located in side setbacks that will prevent adequate and suitable landscape planting to screen the proposed development. A bio swale 2 meters away from the periphery boundaries is recommended in this site.
- No genuine canopy trees are proposed. The proposal should include a minimum of six (6) canopy trees with the capability of growing to a minimum of 12 metres in local conditions. The canopy trees shall be provided with 5 metre measurement tree pits to allow proper growth.
- A minimum landscape (deep soil) area of 25% of the site shall be provided in accordance with RDCP 2011 for Medium Density areas. These areas shall be free of absorption tanks and paths.
- The circulation paths should be located outside the 3m setback area.
- The front setback includes several structures, including service structures which need to be redesign and/or relocated to ensure the front setback presents to the street with sufficient soft elements to balance the built form. The front fence in the landscape plan is depicted as a tall fence which is contrary to the RDCP 2011. The fence shall be reduced in height and complement and conserve the visual character of the street and neighbourhood as per RDCP 2011.
- Raised planter beds built on slabs in areas where privacy is to be addressed, shall be at least 1 meter wide, with at least 900mm soil depth, and planted with small leaves screening shrubs capable to reach at least 1 meter high in local conditions.

Subject to an amended scheme addressing the above the proposal is considered to be satisfactory with regards to open space and landscape design controls and objectives.

4.4.1 Energy Efficiency - Residential

The 113 bedrooms within the proposed residential care facility contain bathrooms and storage cupboards but do not contain a kitchen. The proposed residential care facility relies on a communal kitchen within the basement level and dining rooms with servery on each floor involving a shared food arrangement that is operated by the staff of the facility. The designated servery and dining areas throughout the facility will service the needs of the future occupants / patrons attending the facility.

In this regard, the proposed bedrooms are not separate self-contained residential dwellings and a BASIX Certificate is not required to be submitted for the proposed development. Notwithstanding this, a Section J report has been submitted with the application that addresses the energy efficiency of the proposed residential care facility. The proposal will include photovoltaic solar panels on the north and western facing roof planes and incorporate rainwater harvesting while promoting WSUD principles. In this regard, the proposal can comply with the energy efficiency requirements outlined in the Building Code of Australia (BCA). Accordingly, the proposal complies with the requirements of this clause and is acceptable in respect to energy efficiency.

4.4.2 Solar Access - General Controls

In accordance with State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and the Rockdale DCP 2011, the proposal should ensure that living rooms and private open space areas of adjoining properties should receive 3 hours solar access between 9am and 3pm in midwinter. The application has been amended with increased side and rear setbacks that substantially reduce and limit the extent of overshadowing on the adjoining properties to the sides and rear. The amended application was accompanied by overshadowing diagrams for midwinter (21 June) which demonstrate that the proposal will overshadow parts of the adjoining residential properties to the south along Scarborough Street and the east fronting Barton Street. However, these shadows will not create any unreasonable shadow impacts to the side and rear yards of these residential properties during the morning hours and up to 1pm in mid winter. After 1pm, the proposal starts to impact the adjoining property to the east at No. 121 Barton Street until the shadows extend across the yard and up to the town house building on this property by 3pm. Therefore, the proposal will not prevent these properties from receiving 3 hours direct sunlight between 9am and 3pm at midwinter.

The applicant has also been accompanied by overshadowing plans at equinox (March / September) which demonstrate that the proposal would not have any impacts to any of the dwellings on the adjoining properties along Jones Avenue, Scarborough Street or Barton Street and complies with the solar access requirements in this regard. While the amended scheme will result in some overshadowing over the adjoining properties to the east at the equinox however, these shadows are not significant and will not result in any unreasonable significant impacts on the adjoining property.

Notwithstanding the above, the proposal will include significant overshadowing into the landscaped communal open space areas between the buildings two wings on each side resulting in substantial impacts by way of insufficient access to natural light for the window openings apart from the upper most floor and impacts upon the use and enjoyment of the communal open space areas and landscape elements. These areas will be in complete darkness in the winter months with only small portions having access to natural light during the equinox. In this regard, the alternate scheme and layout for the site espoused by the Design Review Panel would have alleviated this problem and resulted in additional access to natural light within the communal open space areas on the site.

Accordingly, the overshadowing impacts from the proposal could be reduced further however the amended scheme is not unreasonable with regards to the requirements of this clause.

4.4.3 Natural Lighting and Ventilation - Residential

The proposed development is designed to achieved natural ventilation and lighting, incorporating minimum ceiling heights of 2.7m to the ground, first and second floors within the residential care facility. The proposal complies with the requirements of this clause and is acceptable in this regard.

4.4.4 Glazing - General Controls

The proposed development provides appropriate sun protection through the use of shading devices during summer for glazed areas facing north, west and east, including the use of eaves, frames around window elements, partial awnings and architectural projections around parts of the building containing window elements. Accordingly, the proposal complies with the requirements of this clause.

4.4.5 Visual privacy

The proposal includes some ground level courtyards, various first and second floor windows to bedrooms / sitting rooms and a large outdoor terrace at Level 2 that are considered to result in adverse

privacy impacts to surrounding properties. The site abuts rear yards of 24 dwellings and the proposed scheme will result in overlooking of many rear areas of 'private' open space. The proposal does not satisfy the objectives of this provision and is not supported on visual privacy grounds.

4.4.5 Acoustic privacy

The application was accompanied by a Noise Impact Assessment report prepared by Acoustic Logic dated 16 November 2021 (Version 2). Noise monitoring to determine existing background noise levels were carried out at one attended location (Barton Street frontage) and one unattended location (rear of No. 115 Barton Street). The unattended noise monitor was present for 12 days, the attended noise monitor was present for 30 minutes from 10:30am to 11:00am on 1st October 2020.

The Noise Impact Assessment report considered noise impacts to future occupants of the facility in accordance with RDCP 2011 and noise impacts from proposed site operations on adjoining properties in accordance with NSW EPA Noise Policy for Industry 2017.

The acoustic report provides recommended window, wall, roof and door treatments for the proposed facility to meet adopted internal design noise levels. No concerns are raised with these recommendations to ensure appropriate amenity for future occupants of the facility.

Assessment of noise impacts to surrounding properties has been found deficient by Council's Environmental Health Officer's (EHO's). The EHO's noted that the battle-axe allotment resulted in a significant number of neighbouring properties being located in close proximity to such a large facility, resulting in potential adverse noise (and odour) impacts to many neighbours. They also noted the numerous submissions that were received raising concern with potential noise (and odour) impacts resulting from the proposal and that there was insufficient information to demonstrate that a facility of this size would have minimal impacts.

The applicant has proposed a number of measures to minimise noise impacts, including a 1.2m solid barrier to minimise noise from rooftop plant, provision of a 2.1m barrier to minimise noise from vehicles using the driveway (24 hour operation for staff), and various measures to minimise noise from the Level 2 Ancillary Spaces room.

The following key issues have been identified with the Applicant's Noise Impact Assessment:

- No specifications and inadequate details provided for proposed mechanical plant and ventilation to allow a proper assessment of noise impacts associated with mechanical plant and ventilation required at the facility (e.g. air-conditioning plant, car park exhaust / ventilation, kitchen exhaust, toilet exhaust fans, waste room exhaust fans, condensers). Therefore a full and proper assessment and could not be carried out.
- Potential noise impact from site operations (e.g. deliveries, vehicle movements, resident activities, outdoor activities etc.) onto neighbouring residences from the aged care premise during the night time period (i.e. from 10pm to 7am) have not been adequately addressed. For example, driveway noise does not consider noise impacts from deliveries, does not provide delivery times, details for use of the outdoor terrace at Level 2 are not provided, use of outdoor seating areas located within site setbacks have not been provided. Therefore a full and proper assessment and could not be carried out.

Based on the above, it is found that insufficient information has been provided to demonstrate that

acoustic impacts from the proposed facility will be minimised and in accordance with the EPA Noise Policy for Industry 2017.

The proposed 2.1m barrier to minimise noise impacts from the vehicle access ramp to the site (which can accommodate MRV size trucks).

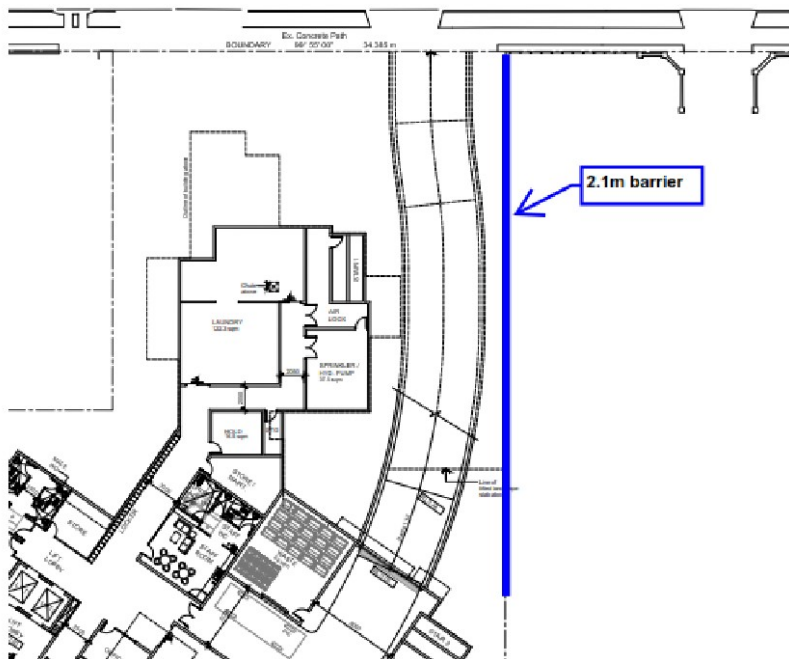


Figure 7 - Proposed 2.1m barrier to minimise noise impacts to villas at No. 121 Barton Street.

4.5.2 Social Equity - Equitable Access

The applicant submitted an Access Report prepared by Accessible Building Solutions dated 1 December 2020 and this report addresses how the proposed development will provide access to all patrons including the mobility impaired. The report address the relevant Australian Standards (including AS1428 and the BCA) and discusses access measures including ramp and lift access to ensure all patrons have accessibility to all parts of the proposed development. The report concludes that the proposal can provide sufficient access to the proposed development and comply with the requirements of the Building Code of Australia (BCA) and the Access to Premises Standard. Accordingly, the proposal complies with the requirements of this clause and is acceptable in this regard.

4.6 Basement Parking - General

The proposed residential care facility contains on site car parking provision within the basement level and complies with the parking requirements as discussed in the assessment of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 previously stated in this report. The parking spaces will not involve any mechanical parking system and will be linemarked and signposted accordingly. Council's DCP does not stipulate any minimum provision of bicycle or motorcycle parking spaces to be provided in connection with the residential care facility on the site.

Accordingly, the proposal will provide sufficient on site car parking and loading within the basement level in accordance with the requirements of the Seniors Housing SEPP and is acceptable in this regard.

4.6 Design of Loading Facilities

The basement parking level is proposed to accommodate a Medium Rigid Vehicle (MRV) and Council's Development Engineer has found that insufficient information is available to demonstrate that the basement level will permit the MRV to enter and leave the site in a forward direction. In addition, the Traffic Report does not provide swept paths for the community bus that is proposed to pick up residents from the facility for trips and activities. The loading bay will also accommodate the required ambulance bay and swept paths are acceptable.

The loading area is located off the driveway between the bin store room and kitchen. All cars will be able to enter and exit the site in a forward direction at all times, however further information is required to demonstrate that the MRV and community bus are capable of turning in the basement level. Otherwise, the loading area provided is sufficient, convenient and usable for a range of vehicles, away from the street frontage (being contained within the basement level). Further details around noise impacts from deliveries, including refrigerated delivery trucks, is required as discussed previously.

Accordingly, the proposal can be made acceptable with the requirements of this clause.

4.7 Air Conditioning and Communication Structures

The proposal shall include air conditioning units and TV antennas to service the proposed residential care facility on the site. This shall service all rooms within the development and has been addressed within the acoustic report in respect to the noise emissions from the site. In this regard, conditions will be imposed in respect to these services and ensure the development complies with the requirements of this clause.

4.7 Waste Storage and Recycling Facilities

The application was accompanied by a Demolition and Construction Waste Management Plan (CDWP) and an Operational Waste Management Plan (OWMP).

The Operational Waste Management Plan was prepared by Elephants Foot (Rev 2, dated 2/12/202) and details stakeholder roles and responsibilities, education and signage requirements and full details about collection of waste and recycling from the site (including design of the waste room, etc.).

The proposed development includes a waste/bin storage room in the basement level for the proposed use and will cater for all waste from the facility and its varied uses, (e.g., the cafe, bedrooms, kitchen, servery, dining rooms, gym, medical waste, etc). The waste / bin room includes separate recycling facilities and is large enough to service the proposed development on the site. The bins can be collected from within the MRV loading bay at basement level and it is anticipated that waste will be collected three times weekly while recycling will be collected only once per week.

The hours of collection are provided in the Plan of Management and are proposed to be 7am to 6pm Monday to Friday. The submitted acoustic report does not consider potential noise from waste collection and the proposed hours are therefore not supported.

The proposed residential care facility shall include a common laundry for all materials, linens, clothing, etc, within the basement parking level towards the front of the site. The proposal includes storage areas within the basement and complies with the general requirements of the Seniors Housing SEPP previously in this report.

Based on the above, the proposal complies with the requirements of clause 4.7 of Council's DCP in respect to waste, laundry and storage facilities and is acceptable in this regard.

5.1 Building Design - General

The proposed development exceeds the maximum 2 storey height permitted for medium density development, is of a layout that is contrary to the character of the area and the building height is not sympathetic to the existing buildings in the immediate vicinity. The proposal is inconsistent with relevant controls and the objectives of Part 5.1 or RDCP 2011.

S4.15(1)(a)(iv) - Provisions of regulations

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 could be included to ensure compliance with the standard.

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

4.15(1)(b) - Likely Impacts of Development

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

Social Impact

Aged Care Facilities serve an important role in providing a range of housing for elderly residents within local communities. The proposal could, in principle, have a positive impact for the locality and broader community however in this case the development is considered to be of excessive scale and is unsuitable for this battle-axe allotment at the density proposed. The proposal will therefore have adverse social impacts on the surrounding residents and is not supported.

The facility proposes a staff room of 24m² at basement level which shows seating for 8 staff. The education room and other staff amenities are at basement level. The proposal will not provide adequate facilities with appropriate amenity for future staff of the facility.

Economic Impact

The proposal will provide economic investment and additional jobs in the local area.

Noise & Odour Impacts

The proposed development was referred to Council's Environmental Health Officers and insufficient information has been submitted to allow a full and proper assessment of the application. The site is a battle-axe lot and Council's Environmental Health team consider that high potential exists for adverse noise and odour impacts to surrounding residents. The applicant has not submitted an Odour Report (despite the initial request on 24 June 2021) and the submitted acoustic report does not adequately address all potential noise impacts emanating from the site. This has been discussed in further detail in response to Part 4.4.5 'Acoustic Privacy' of RDCP 2011. Therefore, insufficient information has been submitted to demonstrate that the proposal will not result in adverse acoustic and odour impacts to surrounding residents, particularly given the battle-axe nature of the site which has a significant number of immediate neighbours.

Scale, bulk and visual impacts

The proposal is part two and part three stories in height and exceeds the maximum permitted height under the Seniors Living SEPP and Council's RLEP 2011 and BLEP 2021. The third storey has a minimum setback of 5.2m from No.115 Barton Street and 6m from No.109 Barton Street. The proposal

will have adverse visual bulk and scale impacts on surrounding residents resulting from the excessive scale of the development within the R3 Medium Density Residential zone.

Privacy

As discussed in response to Part 4.4.5 of RDCP 2011, the proposal contains windows, outdoor courtyards and an outdoor terrace at Level 2 which are located in close proximity to residential boundaries and is found to result in adverse privacy impacts to surrounding residents.

Safety and Security

Safer by Design principles of crime prevention through environmental design are incorporated into Rockdale's DCP and this aspect is included in the assessment of this proposal.

The application was accompanied by a Crime Prevention Through Environmental Design (CPTED) report prepared by Harris Crime Prevention Services, dated 3 December 2020. The report found that the proposal satisfied the CPTED principles subject to implementation of a number of recommendations including number plate recognition for vehicles entering the basement, lighting levels and so on. The amended plans were not accompanied by an amended report, however the recommendations are relevant to the amended scheme and a condition is proposed requiring that the recommendations be complied with.

The application was also referred to the NSW Police for consideration and a response was received on 5 May 2011. The NSW Police confirmed that there were no current / trending crimes in the immediate area however indicated some concern with the basement car park which may attract opportunistic offenders given that it provides a relatively isolated area where natural surveillance is intermittent (e.g. only when staff and visitors come and go). Other concerns raised for this development site included increased traffic coming from and to Barton Street as well as limited off-road parking space for visitors and local residents. The NSW Police raised no objection to the proposal subject to imposition of recommended conditions including installation of CCTV, lighting which complies with the Australian Standard in and around the property and compliance with the submitted Plan of Management. Regarding issues raised with traffic and parking, these have been dealt with in the assessment above.

To minimise crime risk other standard requirements would include preparation of a lighting maintenance policy, installation of an intercom for basement access and use of security mirrors for blind corners. The proposal is found to be acceptable with regards to CPTED principles to minimise crime and safety in and around the development.

S4.15(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal. The proposed layout and scale of the development is considered unsuitable for the battle-axe allotment which shares its boundaries with the rear yards of 18 dwelling houses and courtyards of 6 villas and results in adverse visual bulk, scale and privacy impacts to surrounding properties. In addition, in the absence of an odour report and in the absence of additional acoustic assessment, there is insufficient information to demonstrate that the proposal will not result in adverse odour and noise impacts to surrounding residents. The Council's Design Review Panel also found that amended scheme on 2 September 2021 demonstrated that the proposed density could be housed on the site.

Based on the above, and for the reasons detailed in this report, the site is not suitable for the proposed development.

S4.15(1)(d) - Public submissions

The development has been notified between 24 March and 27 April 2021 in accordance with the provisions of Rockdale DCP 2011. A total of thirteen (13) submissions and one (1) petition were received in response to the proposed development.

Final amended architectural and civil (stormwater) plans were received on 9 November 2021 and the final landscape plans on 22 November 2021. While impacts to surrounding residents are generally reduced or of no greater impact, part of the third floor moves closer to properties to the north of the site and a 2.1m fence is proposed adjacent to 121 Barton Street resulting in a greater impact to neighbouring residents. Such amendments would ordinarily be re-notified to neighbouring properties in accordance with Table 4, Part 8 of Rockdale Development Control Plan (RDCP) 2011, however the late submission of information has not permitted notification of the amended scheme to be completed.

The key issues raised include objection to the residential aged care facility in respect to its size, height, bulk and scale, design of the buildings, streetscape, overshadowing, loss of privacy and amenity, loss of property values, parking and traffic congestion, intensity of the use in a residential area, and construction safety and structure problems. Many of the issues are considered valid and the applicant has not been able to address them to a satisfactory degree as discussed in the body of the report.

Traffic and Parking

Issue

1. Inadequate on site car parking for employees and visitors with only 42 spaces; Barton Street already has excessive on street car parking particularly in summer; Visitors will park in the street creating additional impacts which should be contained on the site;
2. Resulting on street car parking will render it impossible for surrounding residents to place their recycling and waste bins out for collection at the kerb;
3. Increased traffic in Barton Street and other local streets due to the intensity of use; The information submitted does not address the likely increase in traffic and its impact;
4. Traffic noise and delivery noises particularly given the increase in vehicles on the weekends when visiting the aged care facility; All hours use of the driveway ramp to the basement for deliveries will impact on our adjoining property with noise and exhaust gas;
5. Traffic report submitted with the application is disputed as more parking and better access (to avoid an accident) is required. Objection to the proposal on safety grounds and proper analysis is required in relation to the size of the development and volume of cars entering and exiting the site;
6. Objection to using the RMS Technical Direction (TDT2013/04a) since its 8 years old;

Comment: The proposal has been reduced in intensity from 153 to 116 beds with 40 staff (reduced from 53) and now exceeds the minimum parking required as discussed in assessment of the Seniors Living SEPP. Council is unable to require additional parking provision. The proposed delivery, waste and community bus movements have not been fully resolved. Potential acoustic impacts resulting from these operations are also required to be provided.

Streetscape

Issue :

1. The proposal will result in an eyesore and dominate the site despite minor landscaping; the three 'fingers' of building construction across the site will be too large over the surrounding residential dwellings;

Comment: The amended scheme is considered to provide a suitable response to the streetscape subject to further details being provided for the fire boosters and substation. The fence height has been lowered, the single storey built form moved closer to the street and the provision of landscape planting is found acceptable. However the three storey built form beyond will be visible from the street and this is not supported for the reasons discussed in the report.

Intensity

Issue:

1. Inappropriate site for a development of this scale; The sheer scale of it will result in reduced quality of life for residents and exposure to external spaces;
2. The proposal has an FSR of 0.91:1 and exceeds the 0.6:1 FSR control applying to development in the area; to reduce impacts, the FSR should be reduced to 0.6:1.
3. The proposal will have a detrimental impact upon the environment with greater trips to and from the site, more food and general waste and impact on wildlife;

Comment: The proposed FSR is permissible under the Seniors Living SEPP. The applicant has reduced the proposal from 153 to 116 beds and increased setbacks to 6m (in most cases), however this concern is agreed with as the scale and visual bulk of the development is considered to be unreasonable for the subject battle-axe allotment as discussed previously in the assessment of the proposal.

Height

Issue:

1. The three storey development does not integrate with the neighbourhood character which is 1 and 2 storeys high;
2. The proposal will exceed the height control by 5.12m or 60.23% which we strongly oppose as it is out of keeping with the area

Comment: This concern is agreed with as detailed previously in the report.

Amenity

Issue:

1. Overshadowing and loss of direct solar access to the south and east; Shadows to the east will remove all afternoon sun to the villas resulting in reduced quality of life and increase heating and lighting costs;
2. Access to natural light and fresh air during June and September for the future residents of the facility needs to be addressed;
3. Overshadowing onto our pool at the rear of our property and overlooking into our private areas both around our pool and within the rear of our house;
4. Loss of privacy and overlooking;
5. Loss of views out over the site; Loss of views out to the north over the site to Barton Street – these will be lost and will reduce our sky exposure if such a high development is constructed;
6. Noise from the proposed use including the cafeteria, hair salon and plant operations;
7. The Gym/Physio and the hair salon on the first floor will overlook our living room and kitchen windows and our backyard;
8. The cafeteria/hair salon directly faces our property and has not been angled like the rest of the scheme resulting in visual and acoustic privacy impacts;
9. The plans state a metal fence will be constructed around the site whilst leaving the existing colour

bond fence along boundaries. Will gap protection be provided to stop debris accumulation between the two fences?

10. Can consideration be given for a higher fence along the northern side of the development (back of our property) and/or brick construction to further reduce noise and improve privacy;
11. What is the height of the gardens at the northern end of the site? What will be done to mitigate water runoff onto our property and will a retaining wall be provided similar to the existing one along the villas on the eastern side boundary?
12. The site is contaminated and dust and debris may fall during excavation. What measures will be used to screen or cover the site?
13. Loss of property values;
14. Extreme impacts from the construction of the site from trucks, vehicle movements, excavation noise and dust impacts, etc.

Comment: Overshadowing impacts have been reduced and are found to be acceptable, construction would be required in accordance with relevant conditions and standards and loss of property values is not a matter for consideration. However the proposed development is considered to result in adverse acoustic, odour, visual bulk and visual privacy impacts to surrounding residents as discussed previously in the report. The applicant has confirmed that provision of new boundary fencing is not proposed, and provision of higher fencing between the subject site and adjoining properties would be a matter for the site owners in accordance with the Dividing Fences Act. Therefore several of the amenity issues raised above are found to be valid concerns.

General

Issue:

1. The plans do not address the impact on the hospitals in the area e.g. St George and Calvary Hospital;
2. Aged care facilities should provide a level of care and quality of life for residents – the sheer scale of this scheme suggests this care has not been given a priority;
3. The site is contaminated with elevated levels of heavy metals and is hardly the ideal location for an aged care facility;
4. There are numerous issues with this development type revealed by the recent “*Royal Commission into Aged Care Quality and Safety*” dated 26 February 2021. All 148 recommendations from the review must be included and adhered to.

Comment: The above items (1), (2) and (4) are not matters that are relevant to this planning assessment. With regards to site contamination, the applicant has provided Council with adequate information to demonstrate that the site is suitable for the proposed development in accordance with State Environmental Planning Policy No. 55 (SEPP 55). Refer to the assessment of SEPP 55 for more detail.

S4.15(1)(e) - Public interest

The proposed development exceeds the maximum 8m building height, the 2 storey building height adjacent to site boundaries and the maximum one storey permitted in the rear 25% of the site pursuant to the Seniors Living SEPP. The proposal exceeds the recently adopted 8.5m height control in both RLEP 2011 and the Bayside LEP 2021 and is contrary to the objectives of the R3 Medium Density Residential zone. The development also exceeds the maximum permitted 9.5m building height (by 33%) and the 2 storey adjacent to site boundary provisions contained in the recently adopted Housing SEPP.

For the reasons discussed in the assessment above, the proposal is contrary to key objectives in section 1.3 of the EP&A Act 1979 including objects (a), (c) and (g) as the development does not promote a better environment, does not promote orderly development of the land, and does not promote good design nor good amenity for future occupants or residents of adjoining sites. The relevant objects of the EP&A Act are listed below:

(c) to promote the orderly and economic use and development of land;

(g) to promote good design and amenity of the built environment;

The proposal is also considered to be unsatisfactory having regard to the objectives and requirements of the Seniors Living SEPP, Rockdale Local Environmental Plan 2011, Rockdale Development Control Plan 2011 and the draft Housing SEPP. Impacts on adjoining properties have been considered and the proposal will result in adverse impacts to adjoining properties and various issues raised in submissions are considered to be valid concerns as discussed in response to Section 4.15(1)(d) of the EP&A Act above. As such it is considered that the proposed development is not in the public interest.

S7.11 Contribution towards provision or improvement of amenities or services

A Section 7.11 Contribution Payment of \$ 661,914.77 is payable in accordance with Council's Policy and accordingly, imposed as a condition on the draft Notice of Determination.

Civil Aviation Act, 1988

The site is within an area that is subject to the Civil Aviation (Building Controls) Regulations 1988 made under the *Civil Aviation Act, 1988*.

Civil Aviation (Building Control) Regulations 1988

The Regulations require a separate approval from the Civil Aviation Safety Authority if a building or structure exceeds a prescribed height limit.

Section 5 Prohibition of the construction of buildings of more than 50 feet in height in specified areas

The proposed development is affected by the 15.24m Building Height Civil Aviation Regulations, however the proposed building height at 12.6m will have minimal impact upon the height requirement in the regulations.