

5 November 2021

Bayside Council
Rockdale Customer Service Centre and Library
444-446 Princes Highway
Rockdale NSW 2216
Att: Michael Maloof

Dear Michael,

Re: 119 Barton Street, Monterey – Development Application (DA-2021/95) for a residential aged care facility

The letter has been prepared by Mecone on behalf of the SummitCare (the applicant). The purpose of this letter is to respond to the matters raised by Bayside Council (Council) in their Request for Information letter dated 22 October 2021.

Following the Eastern City Planning Panel briefing on 14 October 2021, a number of significant design amendments have been made to the proposal as discussed in this letter below.

Amended Proposal

As a result of the proposed design amendments, the proposal now comprising the following:

- Demolition of the existing structures on the site;
- Construction of a part 1/part 2/part 3 storey Residential Aged Care Facility (RACF) comprising of:
 - 113 x rooms;
 - Ancillary facilities including a reception area and offices, storage areas, café, dining/lounge/sitting areas, gym/physio, multi purpose and private function areas, roof deck area and plant area to the roof;
- A basement level accessible from Barton Street which incorporates a laundry room, store areas, kitchen, offices, waste room, commuter showers, education room and the following parking spaces:
 - 39 x car parking spaces; and
 - 1 x ambulance space/loading dock.
- The proposal will retain 12 x trees on the site (with 6 x being important and 6 x being unimportant) whilst it will remove four trees (with two trees having a low retention category and two having a high retention category) and landscaping works (including replacement trees).
- The RACF will service up to 116 x seniors and 40 x staff.

Table 1 – Summary of proposed Development

Item	Total				
Site Area	7,218m ²				
Gross Floor Area	6,798.2m ² (based on the Seniors Living SEPP definition of GFA)				
Floor Space Ratio	0.94:1				
Building Height	9.975m (based on the Seniors Living SEPP definition – i.e. to the ceiling of the topmost floor)				
Bedroom and room mix		1 Bed	2 Bed	Total	
	Ground Floor	53	1		
	First Floor	42	1		
	Second Floor	15	1		
	Total no. of beds	110	6	116	
	Total no. of rooms	110	3	113	
Parking	39 x Car Parking 1 x Ambulance Parking / Loading Space Total 40 x spaces				
Landscaping	<u>Deep soil landscaping (excluding over basement)</u> 3,430m ² (or 29.6m ² / bed) <u>Landscaping (including over basement)</u> 3,850.5m ² (or 33.2m ² / bed)				
Deep soil landscaping	1,800m ²				
Amenities	Private Amenities: 634m ² Common Amenities: 278.8m ²				
Storage	251.3m ²				

Please refer below to our responses to the matters raised by Council and the DRP. We trust that Council gives due consideration to the contents of letter and additional information, and we look forward to discussing this matter further.

Yours sincerely



Tom Cook
Director

Planning / Seniors SEPP

1. Clause 40(4)(a) and (b) – The **height exceeds 8m and 2 storeys** with the lift overrun and ridge height for two storey form. The proposal should be reduced in height to comply with this control. The clause 4.6 variations to these controls are not supported.

The variation building height under clause 40(4)(1) is proposed to be retained. A revised Clause 4.6 Variation Request has been provided which reflects the design changes to the proposal .

The proposed building height variation is as follows:

- Topmost floor ceiling: 9.97m
- Top of building: 12.6m
- Lift overrun: 12.1m

Note: The proposed building height variation is 1.97m, representing a variation of 24.7%. This measurement is in accordance with the Seniors SEPP building height definitions which is as follows:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

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.

In light of the above, a Clause 4.6 Variation Request is not required for clause 40(4)(b).

2. Clause 40(4)(c) – The **height of the building within the rear 25% of the site** is not limited to 1 storey and should be amended to comply. The clause 4.6 variation to this control as submitted is not supported. The alignment of the rear 25% shall be a straight line and not an area-based calculation. While the argument based on an area shaped control is not accepted, the development shall comply around the periphery of the battle axe lot. However, a variation may be considered given the existing building on the site.

The building design has previously been amended to include a significant increase to the second storey rear setback. This comprised an increase of 8.2m (from 4.3m to 12.5m). The variation is supported by an updated Clause 4.6 Variation Request.

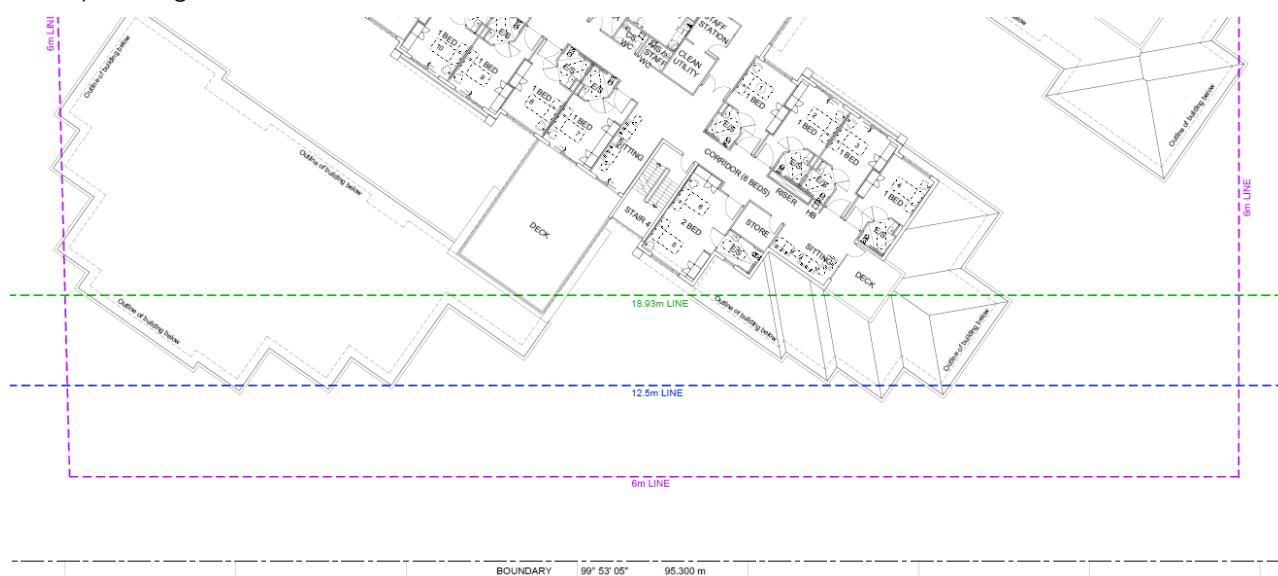
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The **rear 25% of the site area commences at the 18.93m green line** shown in the figure below. The first floor (red dashed line) protrudes past the 18.93m line in some areas, this however is not for the full expanse of the rear boundary. The **first floor protrudes a maximum of 6.43m beyond the rear 25% area line**, with a **minimum first floor setback of 12.5m**.

From a strict numerical standpoint, the proposal results in a **variation of 34%** (at its closest point). Further, the elements of the first floor which encroach into the rear 25% of the site comprise minor expanses of the building, due largely to the angled building envelope.

It is also important to note that the proposed rear setback represents a vastly improved amenity outcome for residents to the south compared to the existing bowling club which currently provides a zero setback to 40% of the length of the boundary. The amended rear setback for the first floor aligns with the recommended design changes proposed by the DRP and therefore is considered acceptable.

It is acknowledged that the site boundaries to the east, west and north also interface with rear boundaries of residential properties. However, it is considered inappropriate and unreasonable to apply this standard to any boundary other than the rear boundary. Further, the proposal has been amended to provide 6m setbacks to these boundaries for all floors of the building which exceeds the DCP setback controls applicable to the site for medium density housing.



3. Clause 26 - The proposal does not comply with the **location and access requirements** in the SEPP. Details shall be provided demonstrating how the proposal will comply with these requirements in the SEPP. Note the information previously received is currently under consideration by Council's Development Engineers.

The upgrades to the three ramp locations in the Clause 26 report can be addressed through a Section 138 certificate and could be undertaken as a separate process to the Development Application.

This requires the replacement of kerb ramps which would be undertaken by the developer using Council approved contractors. These works are required due to the Council's existing non-compliant assets.

As provided in the Clause 26 Report, the works required to these kerb ramps to achieve compliance with Clause 26 access requirements are minor and are capable of being achieved.

4. Clause 33 – The proposal does not comply with the requirements of clause 33 in relation to meeting the character test with the design principles or neighbourhood amenity and streetscape under clause 33(c)(i) under the SEPP. Please also review the DRP comments (attached) which also demonstrate that it does not meet this control.

Clause 33(c)(i) of the Seniors SEPP:

- (c) maintain reasonable neighbourhood amenity and appropriate residential character by—
- (i) providing building setbacks to reduce bulk and overshadowing

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.

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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.

Solar access/overshadowing is further addressed in item 6 below. **Bulk and scale** are addressed below:

A Visual Analysis has been carried out to illustrate the view impacts of the development from surrounding properties. In terms of streetscape amenity, the building and landscape design has previously been amended to achieve a more consistent and harmonious relationship with the street and prevailing character. In this respect, the front setback area was reconfigured to bring front building line forward and incorporate a pitched roof to be more consistent with the existing built form along Barton Street.

While the second floor will be partially visible from the street, the building is setback significantly from the street and therefore will only be visible from certain vantage points, primarily from the northern side of Barton Street. Further, the built form of the second level provides extensive articulation through the angled building envelope and therefore would not be read as a continuous building line from the street.

The impact on the residential character of the area is further analysed through the planning principle established by Moore SC in **Davies v Penrith City Council [2013] NSWLEC 1141** where the following criteria was considered for assessing impact on neighbouring properties and residential character:

- o *How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?*

As demonstrated through the Solar Access and View Analysis undertaken the impact of the built form does not drastically change the amenity of surrounding properties. In this respect, adequate (and compliant) sunlight as well as prominent views are retained. Given the setbacks of the second level, providing a compliant two storey development would not provide a measurable benefit to surrounding properties and would only serve to burden the development.

- o *How reasonable is the proposal causing the impact?*

As aforementioned, the proposal, including the second level of the building, does not give rise to any measurable or unacceptable amenity impacts to surrounding properties in terms of solar access or views. The proposed second storey is a reasonable design outcome as if removed compliant GFA (built form) away from residential boundaries and relocates this to a higher, but centralised, location within the site. This design outcome result in less bulk and scale along these adjoining residential boundaries and reduces impact. Accordingly, given the role the increased building height plays in improving the interface and ultimately the amenity of surrounding properties and the streetscapes, the proposed built form is reasonable.

- o *How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?*

The surrounding properties are inherently vulnerable to impacts from the development of the site due to the majority of these surrounding properties (on all boundaries) comprising rear yards (open space) along these interfacing boundaries to the site. Accordingly, for any development of the site, there is an added constraint. For this reason, setbacks in excess of the DCP requirement have been imposed to ensure the amenity of these adjoining residences is maintained. In this respect, while removing the second floor may marginally remove some impact, this would be at a significant burden to the development potential. The burden of such an outcome would far outweigh any nominal benefit being achieved for those surrounding properties.

- o *Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?*

The second level is not a result of poor design. As aforementioned, the second level has been provided to remove compliant GFA and built form from the boundaries of the residential properties and deliver a greater amenity outcome for surrounding residents as well as those internally. While the same amount of floor space

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may be achievable within the site through the removal of the second level, this would likely be at the expense of the amenity of surrounding residents.

- o Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?

The proposal does not comply with the building height standard under the Seniors SEPP. However, as analysed through the findings of the Solar Access Analysis and View Analysis, the impacts arising from the non-compliant building elements are nominal and are acceptable.

Through the application of the 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.

The proposed building height and its potential impacts to the character of the area is discussed further in the Clause 4.6 Variation Request.

The **Seniors Living Policy - Urban design guidelines for infill development 2004** has been further reviewed in consideration of the design and impacts on streetscape. The general, built form and residential amenity design principles under **section 3 (Impact on Streetscape)** have been considered below:

General Respond to the desired streetscape character by:	
Locating and designing new development to be sympathetic to existing streetscape patterns (building siting, height, separation, driveway locations, pedestrian entries, etc)	<p>The proposed development has been located and designed to be sympathetic to the existing streetscape by:</p> <ul style="list-style-type: none"> • Setting the building back extensively from the street. • Centralising the upper levels thereby allowing an appropriate height transition. • Providing adequate building separation including setbacks greater than that required under the DCP. • Providing a built form at the street that is consistent with the scale and form of the prevailing streetscape and character.
Providing a front setback that relates to adjoining development.	The front setback has been revised in accordance with the recommendations of both Council and the DRP to achieve a front building line consistent with the prevailing setbacks along Barton Street.
Built form Reduce the visual bulk of a development by:	
Breaking up the building massing and articulating building facades	The building massing has been broken up by providing substantial articulation, primarily achieved through the angled building envelope arrangement. Further, the built form will not highly visible from the streetscape due to this largely being screened from existing dwellings in front. Those elements of the building which are visible from the street include the upper third storey which provides generous side setbacks and building height transitions.
Allowing breaks in rows of attached dwellings	The built form elements visible from the street primarily comprise of just the upper third storey with generous building breaks on either side of these elements.
Using variation in materials, colours and openings (doors, windows and balconies) to order building facades with scale and proportions that respond to the desired contextual character	The design has appropriately incorporated variation in materials, colours and openings to achieve an appropriate building scale commensurate to the character of the area.

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Setting back upper levels behind the front building façade	The upper levels of the building have been extensively setback behind the front building line.
Where it is common practice in the streetscape, locating second storeys within the roof space and using dormer windows to match the appearance of existing dwelling houses	This is not common practice in the streetscape.
Reducing the apparent bulk and visual impact of a building by breaking down the roof into smaller roof elements	The first and second levels have been broken down and setback significantly from the boundaries to provide smaller roof elements and reduce visual impact.
Using a roof pitch sympathetic to that of existing buildings in the street	A pitch roof has been introduced at the front of the site to respond to the prevailing streetscape character.
Avoiding uninterrupted building facades including large areas of painted render	Due to the building envelope orientation, the building avoid long uninterrupted façade when viewed from the street or surrounding properties.
Residential amenity	
Clearly design open space in front setbacks as either private or communal open space	Communal open space has been dedicated within the front setback.
Define the threshold between public and private space, for example by level change, change in materials, fencing, planting and/or signage.	The change between public and private space is clearly delineated through use of materials and landscaping.
Design dwellings at the front of the site to address the street.	The building has been design to appropriately address the street and present as a single dwelling consistent with prevailing character of the area including those dwellings to either side.
Provide a high quality transition between the public and private domains by: <ul style="list-style-type: none"> - Designing pedestrian entries where possible to be directly off the street - For residents, providing a pedestrian entry that is separate from vehicular entries - Designing front fences to provide privacy where necessary, but also to allow for surveillance of the street - Ensuring that new front fences have a consistent character with front fences in the street - Orientating mailboxes obliquely to the street to reduce visual clutter and the perception of multiple dwellings - Locating and treating garbage storage areas and switchboards so that their visual impact on the public domain is minimised. 	The development provides a suitable transition between public and private domains by: <ul style="list-style-type: none"> • Providing the pedestrian entry directly from the street which is separate to the vehicular entry. • Providing a front fence which allows adequate privacy as well as surveillance of the street. • The front fence will comprise substantial landscaping on either side so as to not allow the fence to dominate the streetscape. • Locating the waste storage area so that it is appropriately screened from the streetscape.

Further to the above, **section 4 (Impacts on Neighbours)** of the *Seniors Living Policy - Urban design guidelines for infill development 2004* has been considered below which also speaks to the building orientation approach proposed:

Built form	
Design the relationship between buildings and opens space to be consistent with the existing patterns of the block: <ul style="list-style-type: none"> - Where possible maintain the existing orientation of dwelling 'front' and back' - Where the dwelling must be orientated at 90 degrees to the existing pattern of the development, be particularly sensitive to the 	The portion of the site and building directly at the street frontage is consistent with the existing building patterns along the street. The building envelope to the rear of the site, screened largely by existing development along the street, has been design with an angled orientation. The orientation has been adopted to reduce impacts on surrounding

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potential for impact on the privacy of neighbours.	residential properties in terms of views, privacy and overshadowing as discussed within this letter.
<p>Protect neighbours' amenity by carefully designing the bulk and scale of the new development to relate to the existing residential character, for example by:</p> <ul style="list-style-type: none"> - Setting upper storeys back behind the side or rear building line. 	<p>Through the provision of increased setbacks to all boundaries, an appropriate transition is achieved which also serves to minimise the amenity impact on surrounding neighbours. In this respect, the first floor has been setback by at least 6m to all boundaries. The impact from the first floor is further mitigated through the angled building envelope, resulting in the majority of the building being setback greater than 6m.</p> <p>The second floor is further setback from all side and rear boundaries at measurements ranging from 11.3m and 22.4m.</p> <p>As demonstrated in this response letter, these setbacks deliver an appropriate amenity outcome for surrounding neighbours, resulting in adequate solar access, privacy and views being maintained.</p>
Reduce the visual bulk of roof forms by breaking down the roof into smaller elements, rather than having a single uninterrupted roof structure.	A Visual Analysis has been carried out to illustrate the view impacts of the development from surrounding properties. The upper third storey is provided as a smaller building element with extensive setbacks from all boundaries which serves to provide an appropriate building height transition as well as building breaks. The angled building envelope also contributes to this and avoids a single uninterrupted roof structure.
<p>Design second storeys to reduce overlooking of neighbouring properties, for example by:</p> <ul style="list-style-type: none"> - Incorporating them with the roof space and providing dormer windows - Offsetting openings from existing neighbouring windows or doors. 	The upper levels have been designed to reduce overlooking which is largely mitigated through the angled building envelope design. Significant landscaping around the side and rear setbacks will also contribute to protecting privacy of neighbours.
Reduce the impact of unrelieved walls on narrow side and rear setbacks by limiting the length of the walls built to these setbacks.	The building envelope design removes potential for unrelieved walls along side and rear setbacks.

5. Clause 34 - Loss of **visual and acoustic privacy** and amenity to the surrounding residential properties resulting in significant overlooking into the private open space and rear of the dwellings on the adjoining properties. The proposed setbacks are less than required by Rockdale DCP for two storey buildings and the site is a battle-axe allotment with significant interfaces to surrounding properties. In this regard, the proposal does not comply with clause 34 of the SEPP which requires appropriate site planning, location of windows and balconies, use of screening and landscaping.

Clause 34 of the Seniors SEPP:

- The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by—
- appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and
 - ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.

The setbacks of the building have been increased to achieve DCP compliance with 6m setbacks provided to all boundaries for the ground and first floors. These setbacks exceed that DCP requirements and align with the setbacks recommended by the DRP. As a result, the potential of privacy impact is substantially reduced. Further opportunity for landscaping and other screening methods will ensure that the privacy of open space areas of adjoining residents will not be impacted unreasonably.

Further to the above, the proposed building angled envelope has also been used to mitigate privacy issues which might otherwise arise. In testing other massing and envelope options, it was discovered that the 'rectilinear' massing would result in a significant number of windows looking directly into adjoining neighbours and there will be limited

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opportunity for landscaping. However, the proposed massing locates the windows at oblique angles and offsets them to reduce potential visual privacy concerns whilst creating more long distant views from these windows.

6. Clause 35 - Solar access / overshadowing - Overshadowing impacts to rooms and gardens within the development which is unacceptable and shadowing to the east (townhouses) and south (dwelling houses) which do not comply with the solar access requirements under the SEPP and Council's DCP 2011.

Clause 35 of the Seniors SEPP:

The proposed development should—

- (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, 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.*

Internal solar access requirements under the Seniors SEPP applies to living and communal open space, not rooms. Direct Sun Analysis Diagrams, at hourly intervals between 9am and 3pm are provided which demonstrate the amount of solar access being achieved internally for the development. These diagrams illustrate the significant amount of living areas, rooms and open space that will achieve direct sun access throughout the day and how the proposed building orientation facilitates such an outcome.

External solar access to surrounding properties has been demonstrated in previous solar access diagrams issued to Council. These diagrams demonstrate how surrounding properties achieve a compliance solar access outcome as a result of the proposed development.

In relation to the townhouses to the east, as illustrated in the Direct Sun Analysis Diagrams, these townhouses receive 3-4 hours of sunlight in their backyard from 11am – 2pm.

In relation to the dwelling houses to the south, as illustrated in the Direct Sun Analysis Diagrams, these properties receive 3-4 hours of sunlight in their backyard from 11am – 2pm.

Further to the above, the proposal incorporates a 6m deep soil landscaping zone to the majority of the perimeter which will allow for canopy trees and landscaping buffers.

In light of the above, the proposal has adequately demonstrated how internal areas of the facility and neighbouring properties achieve sufficient and compliant solar access.

7. Setbacks - the proposal does not comply with the minimum 3m side and 6m rear setback to boundaries and is not consistent with the objectives of Council's setback controls. The proposal does not comply with these setbacks which should be clear of structures, unbuilt upon and for landscape elements with deep soil only.

Please refer to the revised design which provides increased 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.

In light of the proposal achieving compliance with the relevant setback controls of the DCP and in the absence of any unreasonable amenity impacts to surrounding properties, the proposal is considered to satisfy the objectives of the setback controls and will allow for improved landscaping along boundaries.

8. Clause 4.6 to Height under Rockdale LEP is required. The applicant submitted an original request under clause 4.6 for the LEP control at the time of lodgement of the application but is no longer valid given the amendments made to the scheme.

Clause 5(3) of the Seniors SEPP provides:

- (3) If this Policy is inconsistent with any other environmental planning instrument, made before or after this Policy, this Policy prevails to the extent of the inconsistency.*

In accordance with Clause 5(3) of the Seniors SEPP, given the Seniors SEPP building height standard is inconsistent with the LEP building height standard, the Seniors SEPP standard prevails. Accordingly, a Clause 4.6 Variation Request to the LEP building height standard is not required.

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9. The proposal exceeds the 9m height control under the **Draft Housing SEPP 2021**.

The development application was lodged prior to the exhibition of the draft Housing SEPP. Accordingly, the application is not required to consider the draft Housing SEPP pursuant to the EP&A Act.

Additional Information

10. SEPP 55 – A deficient report was submitted in relation to contamination (SEPP 55) (dated 2018 from the rezoning application in 2017) despite additional information being requested in Council's previous letter; more detail was requested in a more detailed site investigation report (DSI) and the information was not provided. While a RAP was submitted, it did not address all contamination issues to render the site suitable for the proposal and must be amended to include all findings regarding remediation in an amended DSI report.

A Supplementary Site Investigation Report was lodged on 5 November 2021.

11. Environmental Health – insufficient **acoustic and odour information** was submitted with the amended plans despite being requested in Council's previous letter.

The architectural plans and acoustic report have been updated to illustrate the external plant and resulting acoustic impacts.

It is understood that an Odour Report was no longer a requirement for the DA following a meeting with Council officers. The development does not comprise any uses or activities which would give rise to odour impacts. Notwithstanding this, an Odour Report can be provided prior to the issue of a Construction Certificate and it is requested that this requirement be imposed as a condition of consent as the findings of this will not influence the design outcomes of the building.

12. Engineering matters – no details of the basement tanking or head clearance was provided, the basement is not confined to the building footprint, the stormwater drainage plan submitted with the application was for a previous scheme (townhouse development) and no new stormwater plan was submitted despite being requested; even the revised SEE (Section 6.5) that was resubmitted referred to a new stormwater plan. A stormwater drainage plan shall be submitted that complies with Council's Technical Specification – Stormwater Management.

A revised Civil Stormwater design (plans and report) was lodged in August 2021 and again on 5 November 2021. In response to some of the matters raised:

1. The development would not have any runoff from the site, as per the civil package. All rainwater goes through gross pollutant traps and into seepage tanks on our site, down into the sand as filtered water, like it was rain. There is no need to connect to the council stormwater system.
2. The required headroom clearance for the basement is no more than 3.5m (it actually only needs 2.8m). 4.5m is not necessary and will lead to wasteful construction.
3. The basement will be tanked and, as is typically the case, the design for the tanked arrangement will be detailed at the Construction Certificate stage.

13. Landscape Plan - The deep soil area shall be increased from 18% to a minimum of 20% of the site area in accordance with clause 4.3 of Council's DCP. The minimum clear unbuilt upon setbacks shall be increased to a minimum of 3m for shrubs and trees to maintain sufficient soil depth. The front setback does not contain enough canopy trees and must present to the street with sufficient soft elements.

The revised landscape plan does not include Water Sensitive Urban Design principles, inadequate fencing details and lack of sustainability and environmental outcomes. The revised landscape plan shall be consistent with any new stormwater drainage plan for the site (e.g., infiltration trenches shall not conflict with planting). (Please refer to the attachment for the full details from Council's Landscape Architect).

Revised Landscaped Plans have been prepared. In consideration of the proposed design amendments, including increased setbacks, the proposal provides a landscaped area of 53% and deep soil area of 25% of the site area.

In response to the matters raised by Council's landscape officer the following is provided:

1. A 25% deep soil minimum (compliant with the description / spec of deep soil noted by Council officers).
2. The entire boundary comprises a minimum 6m setback which will have substantial planting including heavy screen planting.

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3. Relocation of substation – This is not possible as electricity providers require direct access from the street boundary for future kiosk replacement and servicing, dedication of easement etc. Electricity providers will not accept any other form (including a chamber sub as proposed by Council) in this location. In any case, a chamber sub is not at all appropriate in a medium density residential area.
4. Enclosure of water service – This was relocated from the nth west corner of the frontage, adjacent the boosters, at the request of Council. In previous location it was screened by the booster enclosure and landscape planting (enclosure is a 1500mm high palisade type fence structure – no roof). This has been relocated to the space next to stair 1 & the quiet room.
5. Fire Booster – Boosters are required to be more than 10m away from the substation as per NSWFB requirements. It can only move to the middle of the property, it must be at the street boundary.
6. Fencing – Fencing is 1200mm high for all but a small section adjacent the entry pathway, the landscape plan has been updated to show this. There is a planting strip in front of it so the fence will not be prominent from the streetscape.
7. Palm trees in the front of the site will be removed and substituted.
8. The proposal currently has 10 large canopy trees (tuckeroos) that meet the 12m height requirement, as per the most recent landscape package. There are at least 95 large trees proposed to be planted as advanced specimens.
9. In relation to WSUD principles, no stormwater leaves the site at all. All water is managed through the sandy soils. Infiltration trenches are predominantly under hardscape elements, with the exception of one small area (about 16sqm), where it is under a portion of lawn between two hardscape areas. This has been further adjusted in line with the setback revision.

Design Review Panel (DRP) Matters

Comments were provided by the following the meeting held with them on 2 September 2021. These matters are addressed below.

Context and Neighbourhood

DRP comment: *This strategy creates irregular angular spaces along side/rear boundaries with varying setbacks, as opposed to rectilinear gardens similar to adjacent properties. The Seniors Living Policy – urban guidelines for infill development (SLC_UG) points out that “when new building types are introduced with a different relationship to the block and lot, they may have negative impacts” (p4). In this case, the relationship of the built form to its neighbours does detrimentally impacts on the character and scale relationships to the lower scale adjoining backyards in a number of ways:*

- *although the setback built form undulates, two storey built form comes very close to the boundary in places*
- *the undulating setback creates inefficiencies, arguably increasing the extent of built form*
- *without discrete volumes arranged in an orthogonal pattern, the proposed built form can appear as a contiguous mass, thereby greatly increasing visual bulk*

Response: The 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.

Response to Council RFI dated 22 October 2021

DRP comment: The SEPP recognises that aged care facilities are a different typology which are to be integrated into residential precincts and therefore requires that any building located in the rear 25% area of the site must not exceed 1 storey in height. The intent of this clause is to retain reasonable neighbourhood amenity in terms of overlooking and overshadowing private open space and outlooks from backyard spaces. The application does not comply with this requirement in any setback and detrimentally impacts on neighbourhood character and amenity. The Panel considers the objectives of transitioning-built form scale to rear gardens should apply to all boundaries adjoining the rear garden condition. The Panel recognises that this is a significant urban design constraint that can only be dealt with successfully by skilful design where an application seeks to construct a building higher than one storey in the transition zone.

Where buildings are proposed to be two storeys within the designated rear setback zones the setback is to be increased to 9m for habitable windows and 6m for non habitable and solid walls. This design principle is similar to that of Building Separation Cl.2F in the ADG relating to transition zones where high density residential adjoin lower density zones an additional 3m is applied to normal setbacks. (The rear setback for two storey adjoining dwellings in DCP 5.1 rear setback control is 6m minimum).

Recognizing that flexibility can be applied where there is currently a bowling club high wall with a zero setback along 40% of the southern boundary. This means that a two storey building envelope setback in the rear setback zone may be feasible where analysis is able to demonstrate that no additional overshadowing between 9am and 3pm in mid-winter will result and that building windows can be designed/arranged to prevent overlooking whilst allowing good outlook from the residents' bedrooms.

Response: This matter is addressed against Council item 2 above. The proposed first floor setbacks have been designed with a 12.5m setback, at a variable length, for less than 50% of the property width. As demonstrated, above, notwithstanding the non-compliance, the proposal achieves an acceptable level of amenity for those residents to the rear in terms of overlooking and overshadowing.

In relation to side boundaries and application of this standard to these boundaries, as guided by Council, the rear setback controls of the DCP (3m ground; 6m first floor) have been applied. As demonstrated in the amended plans, these setback controls are not only satisfied, but exceeded with at least 6m setbacks provided to all boundaries for both the ground and first floors. It is unreasonable and not consistent with the SEPP standard to impose this to any boundary other than the rear. It is also important to note that the proposed separation distances comply with the ADG building separation requirements which was originally recommended by the DRP to achieve.

It is also important to note that the proposed rear setback represents a vastly improved amenity outcome for residents to the south compared to the existing bowling club which currently provides a zero setback to 40% of the length of the boundary. The amended rear setback for the first floor aligns with the recommended design changes proposed by the DRP and therefore is considered acceptable.

The variation is supported by an updated Clause 4.6 Variation Request.

Built Form and Scale

DRP comment: The development proposes part of the built form to be three storeys with a significant height noncompliance of approximately 5m above 8.5m (13.6m). The ridge of the second floor will also result in a 1.2m height noncompliance (9.78m). The Panel is of the view that a three storey built form is excessive in its visual context and its impacts of over shadowing the internal courtyards within the development.

Response: Please refer to Council item no. 1 above as well as the Clause 4.6 Variation Request.

As noted above, the proposed angled built form adversely impacts on adjoining properties, creates planning inefficiencies and without clear orthogonal articulation into discrete volumes, greatly increases visual bulk. The proposal has limited through site visual links and appears as an excessively large continuous institutional building; this appears not to align with the best practice of aged care design.

Response: Please refer to response above to this matter.

The proposal should provide amenable and well-proportioned garden spaces with clear visual links from living areas, good solar access throughout the year and amenable outlook from residential rooms. However, many of the garden spaces proposed are long and narrow, with tight ends restricting outlook. Many of these gardens are aligned east west; hence, they will be overshadowed by adjacent built form, especially in winter.

Response to Council RFI dated 22 October 2021

Response: The significant reduction to the second floor rear setback will improve solar access to the garden spaces. Furthermore, the amended scheme has straightened up the wings which will improve the outlook onto the garden areas for some of the rooms.

The various garden areas create private areas which allow for sufficient solar access for future residents to enjoy. The rooms have been designed to look onto the landscaped garden areas which is a lot better outlook than a boundary fence which would be proposed with a rectilinear massing.

Density

DRP comment: *The application does not demonstrate that visual impact of the built form on its neighbours is appropriate to the site and its context. In fact, the Panel is concerned that the angled arrangement of built form reads as one continuous mass, which increases apparent bulk and its impacts on adjacent properties. A non-compliant third storey is proposed, which is not supported. Therefore, the Panel considers that the density and floor space area of the development is excessive. The Panel does not believe that the amended scheme demonstrates that the density proposed can be housed on the site.*

Response: A view analysis has been provided by Boffa Robertson Group which illustrates the views of 3 x points around the perimeter of the site from adjoining properties. The view points illustrate the worst case and do not illustrate any landscaping to be carried out. The view analysis illustrates that the third storey will not be highly visible from the adjoining neighbours and where visible, it will be generally behind the building edge of the lower level.

Sustainability

DRP comment: *The Panel was not apprised of any sustainable initiatives proposed beyond compliance with Section J. The Panel notes and supports the inclusion of productive gardens in the landscape concept.*

The passive design of the building, and in particular the third storey, limits access to solar heating in winter. Older people are more likely to feel cold in winter and will require increased artificial heat and higher energy usage. Removal of the third floor will significantly improve solar access and the passive performance of the building.

The Panel encourages the applicant to consider eliminating or minimizing the use of fossil fuels by providing hot water by solar heat pump systems with energy offsets provided by a commitment to PV solar panels on the roof. Given the extent of landscaped area the provision of adequate rainwater harvesting to irrigate the landscaped area is strongly encouraged.

Response: The roof plan has been revised to incorporate solar panels to the north and west facing roof planes. A minimum 50kw PV system will be implemented to support the building services requirements which reduce the reliance on fossil fuels to provide energy. An updated Section J report is to be prepared and submitted to Council.

Furthermore, the significant reduction to the first floor rear setback will increase the solar access to rooms and therefore minimise the reliance of artificial heating. The proposal incorporates rainwater harvesting and promotes WSUD principles. All of the stormwater runoff is to be used on the site via an infiltration system. Total suspended solids and gross pollutants are to be treated and used on site.

Landscape

DRP comment: *The amended landscape proposal does not however provide refined solutions and shows spaces and placement of trees, gardens beds and hardscape without sufficient detail and integration into a working design outcome. The result is a continuation of bland and expansive hardscape entrance pathway, a lack of integration of services into built form and compromised spaces that do not sufficiently consider neighbours' amenity.*

The overall landscape design response remains compromised as a result of the general built form arrangement, with the courtyard spaces proposed being long, narrow and internalised with limited amenity, problematic interfaces and little access to sun. Landscape structures should not impose on neighbouring properties. The landscape, and the built form, needs to provide a more considered response in terms of neighbouring amenity and internal amenity. These two key aspects of the design must be resolved in tandem as the design response.

Response: To address the concerns raised by the DRP, the Landscaping Plans have been updated and have considered each garden area further to ensure they are integrated with the built form. This includes greater opportunity for substantial perimeter planting due to the increased 6m side and rear setbacks. The proposal incorporates a range of garden areas with some to be used for more active uses whilst others are quiet zones. The plans provide details on the different garden zones and how these are to be separated via safety gates.

Response to Council RFI dated 22 October 2021

The updated Landscaping Plans provide further detail on screen trees proposed along the boundaries. The landscaping treatment to the front setback area and the location of the services has been considered further and improved from the original scheme. The footpath to the front garden has been reduced in width and driveway has been setback further along the eastern boundary to allow for screen planting.

Amenity

Visual and acoustic privacy – DRP comment: *To maintain the visual and acoustic privacy of the neighbours adjoining the Panel recommends providing a minimum deep soil landscaped setback of 6m from all boundaries with no encroachments of the built form.*

Response: A significant component of the site's perimeter provides the opportunity for a 6m of deep soil landscaping zone or more – this feature in our view will provide significant amenity improvement to neighbouring properties. A rectilinear building arrangement would be unlikely to match this provision.

The Landscaping Plans have also been updated to detail the screen planting to be provided along the boundary. Furthermore, the windows are at oblique angles and therefore will not look directly into the adjoining neighbours.

Solar access and design – DRP comment: *The orientation of the built form still compromises solar access to rooms and gardens, which is an unacceptable outcome.*

Response: The significant reduction to the rear setback of the first floor increases the solar access to the rooms and therefore would reduce the reliance on solar heating. Sun eye diagrams have been provided to illustrate the sun access to rooms and gardens which show these areas achieving sufficient sun access.

Internal access – DRP comment: *Generally, the quiet rooms are well located at the ends of clusters and are designed to provide an outlook along corridors, however the cluster to the north east does not achieve this and should be improved. For further explanation refer to Housing Diversity and Social Interaction below.*

Response: To address the DRP concerns, the quiet rooms have been relocated to the end of the wings.

Dementia wards – DRP comment: *The Panel recommends that in dementia wards the bathrooms need to be arranged so that toilets should be directly visible from the bed and that when the bathroom door is open (which it is permanently when the resident does not have visitors) it does not intrude into nurses entry circulation zones. The Panel recommends that in dementia wards to the doors to rooms are not located opposite each other to avoid residents being confused about where they are going.*

Response: This recommendation has been further considered and based on industry and similar project experience, it is not considered necessary for the bathrooms and doors to be reconfigured in the dementia wards.

Safety

DRP comment: *Although the entry has been amended, it now appears to be a long way from the main lifts and due to the kinked form of the layout, has no visual sight lines throughout.*

Response: The front garden area has been considered further and includes buffer planting to distinguish between the private and public realm.

DRP comment: *It appears that this design is not suited to post Covid aged care facilities. It is recommended that clusters (or houses) be limited to clusters of 8-10 rooms so that isolation will be better managed. This will also allow improved quarantine by mechanical pressurization. Large pods present a difficulty with how you manage PPE. The Panel recommends the size of clusters be reduced from 17 maximum in the current application.*

Response: The south-eastern and south-western wings have been reconfigured to reduce the number of rooms. The wings have been arranged to allow Summit Care to provide effective and tailored care according to the resident's care needs have been derived from their experience in running similar facilities elsewhere. Each wing has between 10-17 beds, however most of the wings have doors to the centre which allow areas to be isolated which have between 8-10 rooms.

Response to Council RFI dated 22 October 2021

DRP comment: *Lounges need to re-located so that the staff have clear lines of sight to the shared spaces and not hidden behind alcoves.*

Response: The shared areas will be visible as staff walk along the corridor and will mostly have windows to external areas. The sightlines into these shared spaces are considered to be reasonable for staff to monitor them whilst they will provide residents with some privacy and comfort.

Housing Diversity and Social Interaction

DRP comment: *The Panel was advised that the design uses a 4-cluster model suited to dementia care. In this model, up to 17 rooms share smaller lounges or quiet sitting spaces to enable familiar settings and a home like experience. The Panel considers that some of these spaces do not seem to be well located or equally accessible to resident's rooms. Moreover, wayfinding generally appears complicated, mazelike and could lead to disorientation with dementia residents. Ideally when a resident leaves a room they will be able to readily identify a lounge or sitting area destination.*

The Panel recommends consideration of locating lounges centrally in each cluster exceeding 10 rooms, as per the north west cluster, so that they facilitate social interaction to the extent possible in dementia care.

Response: The south-eastern and south-western wings have been reconfigured to reduce the number of rooms. Each wing will have less than 17 rooms and incorporate a separate sitting and quiet room for that wing.

The wings have been amended to reduce any disorientation future residents may have by minimising the number of rooms and lengths of some wings. Furthermore, wayfinding signage will be provided throughout the development to ensure residents can move easily around the building.

To address the DRP concerns, the lounge areas have been relocated centrally on all floors, so this facilitates social interaction.

Aesthetics

DRP comment: *The architectural design appears to be a mix of conventional pitched roof buildings with small eaves and architecturally 'modern' shapes collaged on to the building to spruce it up and give it visual interest.*

The entry and reception are identified by a flat roofed glass box, that does not appear to have any architectural or compositional relationship with the main body of the building.

As noted above, the skewed orientation of the built form without clearly articulated gardens between discrete orthogonal massing, contributes to an apparent visual bulk that is overwhelmingly large and endless; in small scale context, this is quite confronting.

Generally the visual appearance of the building does not achieve good design.

Response: To address the DRP concerns, the roof to the entry has been amended as a conventional pitched roof, which is consistent with built form along Barton Street. Further to this the building's finishes have been reviewed and revised. Stone, timber and lightweight cladding now make up more of the palette, which provides added variety to the wings which reduces the appearance of visible bulk as well as greater consistency with the locale.

The matters pertaining to the building bulk and orientation has been addressed above.