

8 November 2021

Sydney Eastern City Planning Panel
 C/- Bayside Council
 Rockdale Customer Service Centre and Library
 444-446 Princes Highway
 Rockdale NSW 2216

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

1. Introduction

The letter has been prepared by Mecone on behalf of the SummitCare (the applicant) in relation to DA-2021/95 for a new residential aged care facility at 119 Barton Street, Monterey (the site). This letter has been prepared and is issued to the Sydney Eastern City Planning Panel (Panel) in response to Bayside Council's (Council) recommendation report to the Panel dated 30 November 2021. Council's report recommends that DA-2021/95 be refused.

The ensuing sections below summarise the compliance of the development as proposed under the Seniors SEPP as well as the applicant's responses to Council's reasons for refusal.

2. Summary of design amendments

Following the site visit with the Panel and Council on 7 December 2021, minor amendments to the proposal were undertaken to third storey building elements to further alleviate any concerns with the impacts on the properties adjoining to the north. These amendments are provided in the amended plans in **Appendix 1** and are summarised as follows:

- **Third storey northern setback:** The third storey portion of the building has been setback from the northern boundary to a minimum of **9.4m**, increasing to up to 10.6m at other points. The stairs connecting the second and third storey are open and with a 900mm balustrade and do not constitute a third storey building element.
- **Screen planting:** Additional opportunity for screen planter beds has been provided from the third storey multi-purpose rooms and extends around the activity deck to further reduce any potential visual privacy impacts.

3. Compliance summary

Table 1. Compliance summary			
Control	Control	Proposed	Comments
Building Height Clause 40(4)(a) and (b) of the Seniors SEPP	8m (to ceiling)* 2 storeys where adjacent to property boundary <i>*height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost</i>	The proposed building height variation is as follows: <ul style="list-style-type: none"> • Topmost floor ceiling: 9.97m • Top of building: 12.6m • Lift overrun: 12.1m The proposed building	The proposal relies on a Clause 4.6 Variation Request that provides adequate grounds to justify a non-compliance with the numeric controls. It should be noted that Council's report provides for incorrect information as well as the fact that a majority of the built form is at a height of one

	<p>floor of the building to the ground level immediately below that point.</p>	<p>height variation is 1.97m, representing a variation of 24.7%.</p> <p>The third storey GFA represents 14.2% of the site area.</p> <p>Note: Council's existing ground assessment is taken from the depressions created for the existing bowling greens. The prevailing boundary alignments range between 400-700mm above the height of the bowling greens in the centre of the site.</p>	<p>or two storeys but for a small portion (14.2% of site area) which comprises the third storey. information has been provided to demonstrate that there are no substantive amenity impacts associated with the breach in the height standard as discussed further in Table 2 below.</p> <p>It is important to note that the existing boundary levels would be met by the new works and would not be altered and there would be no retaining required at the boundaries.</p>
<p>Floor Space Ratio</p> <p>Clause 48(b) of the Seniors SEPP</p>	1:1	0.94:1	<p>Clause 48(b) of the Seniors SEPP in relation FSR is a standard which, if satisfied, cannot be used to refuse an application (non-discretionary standard) on the grounds of density and scale.</p>
<p>Setbacks</p> <p>DCP control for rear setback for medium density housing</p>	<p>Ground floor: 3m</p> <p>First floor: 6m</p> <p>Second floor: N/A</p>	<p>Ground floor: min 6m</p> <p>First floor: min 6m</p> <p>Second floor: min 9.4m</p>	<p>Council report states that where a third 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.</p> <p>In consideration of this position of Council, the third storey has been setback to achieve a minimum of 9.4m from all boundaries.</p>
<p>Landscaping</p> <p>Clause 48(c) of the Seniors SEPP</p>	<p>Minimum 25m² of landscape area* per residential aged care facility bed.</p> <p>(116 beds = 2,900m²)</p> <p><i>*landscaped area 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.</i></p>	<p>Deep soil landscaping (excluding over basement): 3,426.1m² (or 29.5m² / bed)</p> <p>Landscaping (including over basement): 3,846.2m² (or 33.2m² / bed)</p>	<p>The proposal complies with the non-discretionary standard of the SEPP in relation to landscaping. Accordingly, the proposal cannot be refuse on landscaping grounds.</p>
<p>Deep Soil</p> <p>Clause 4.3 of DCP</p>	<p>20% of site area*</p> <p>*The landscaping standard of the Seniors SEPP prevails over the DCP deep soil control.</p>	<p>25% of site area.</p> <p>1,793m² (excluding over basement).</p>	<p>The proposal achieves compliance with the DCP deep soil control.</p>

4. Responses to reasons for refusal

Table 2. Responses to reason for refusal	
Issue	Comments
Building Height	<p>Reason for refusal: Council's report provides that the proposed variation to the building height standard of the Seniors SEPP is not supported for the following reasons:</p> <ul style="list-style-type: none"> • The proposed third storey is located a minimum 6m from No. 109, 111, 115 Barton Street. • The third storey portion of the development is on an inappropriate scale that will result in adverse visual bulk to neighbouring properties. • The site is a battle-axe allotment which is constrained. The DCP only permits single storey development on battle-axe lots. • The applicant has not provided evidence of genuine consideration of alternative site layouts. • The proposal is not considered to be orderly development of land as it significantly exceeds the maximum height permitted. • The building height is inconsistent with the existing and desired character of the medium density area. • Third storeys are not permitted. <p>Design changes: The following design changes have been undertaken in response to the above:</p> <ul style="list-style-type: none"> • The third storey building elements have been setback to a minimum 9.4m to the northern boundary including those properties at No. 109, 111 and 115 Barton Street. • An urban design peer review has also been undertaken by Rothelowman (Appendix 4) which supports the proposed building height and orientation. This is discussed further in the ensuing sections. <p>Environmental Impact: In response to the matters raised by Council, the proposal has demonstrated how the development would result in acceptable environmental impact outcomes including:</p> <ul style="list-style-type: none"> • <u>Visual impact:</u> Amended View Analysis diagrams were provided with the DA illustrating the difference between a two storey development and the three storey development as proposed. As illustrated in these diagrams, the proposed third storey would not give rise to any additional visual bulk from those properties located directly north of the development. • <u>Visual privacy:</u> The proposed building orientation lends itself to a superior amenity outcome in terms of potential visual privacy impacts. Information has been provided which demonstrate the privacy measures which would be adopted, including generous landscaping (including raised planters and 12m height trees along the boundaries); screens; and window blades. • <u>Solar access:</u> It has been adequately demonstrated how the proposal achieves the solar access requirements for neighbouring properties. Council's report accepts this position. • <u>Streetscape character:</u> The proposed third storey would be marginally visible from the street. However, the majority of the built form is screened by existing dwellings in front. The streetscape perspectives provided in Appendix 2 illustrates the building not being highly visible from the street with the third storey element largely perceived to be either in-line or below those dwellings in front. The elements that exceed the height standard is not discernible as viewed from the street as it has been setback from the edges of the building. The proposed elements that breach the height standard do not contribute to distinguishable bulk, scale or density and allow an appropriate height transition where visible. In this respect, it is important to note that the 8m building height limit is applicable to all residential aged care facilities proposed under the Seniors SEPP, regardless of the nature of the site. The height standard has been established in consideration of sites as small as 1,000m² (minimum lot size under the Seniors SEPP). Accordingly, the height standard doesn't necessarily contemplate lots of a much greater scale, such as the subject site, which provide opportunities for appropriate building height transition.

Site and Planning Context: In response to the matters raised by Council in relation to the building height exceedance, the following is provided:

- The site is not a **battle-axe allotment** and given the characteristics of the site, it is considered inappropriate to refer to it as such in the context of planning controls relating to battle-axe lots. The lot comprises a generous street frontage of 34.3m which is in fact wider than prevailing property street frontages in the locality and does not contain a battle-axe access handle. Accordingly, it is deemed more appropriate to describe the site as an irregular shaped lot. Indeed, the site is constrained as a result of surrounding rear property boundaries on all sides. However, the design has appropriately responded to these constraints by adopting substantial setbacks on all levels which exceed the rear DCP setback requirements, including double the setback requirement on the ground level. The potential for amenity impacts have been addressed above.
- **Alternative layouts/orientation** of the building have been considered at length by the applicant. The orthogonal building orientation as suggested by the DRP was found to not deliver an optimal design or functional outcome for the facility. Further, this in fact resulted in greater potential for amenity impacts to surrounding properties in terms of bulk and scale and visual privacy. This is discussed further below.
- The building height breach does not preclude the development from being **orderly development**. Building height breaches may be considered, and commonly are, where it can be demonstrated that the criteria under clause 4.6 is satisfied. This includes consideration of building heights which may not otherwise be anticipated under an EPI and are different to those prevailing. Accordingly, building heights different to those on surrounding low density developments do not result in result in unordered development. Orderly development in terms of building orientation is discussed further below.
- While the proposed building height and density of the development may not typically be envisaged for a site surrounded by an R2 zone, it is important to note that the development is proposed under the Seniors SEPP and not the LEP. In this respect, the Seniors SEPP anticipates and encourages different development outcomes to that of the LEP and should be considered independent to the LEP provisions that apply to a site.
- It is common practise for development outcomes afforded under the Seniors SEPP to be accepted where they do not align with the standards or anticipated development under a LEP. In this respect, the aims and intent of the SEPP encourage varying scales, height, densities and forms to the prevailing character, while remaining compatible and harmonious to existing development.
- In light of the above, the proposed building height would not set a precedence for building height in the locality as it is specific to development sought under the Seniors SEPP and the context and characteristics of the site.
- Notwithstanding the building height development standards, **clause 48(b)** of the Seniors SEPP is a standard which, if satisfied, cannot be used to refuse an application (non-discretionary standard) on the grounds of **density and scale**. The non-discretionary standard under clause 48(b) prescribes a floor space ratio standard of 1:1, which the proposal satisfies. Accordingly, the consent authority cannot refuse the proposal on the grounds of density and scale.
- While it is acknowledged that the proposed building height exceeds the standards of the Seniors SEPP, it has been demonstrated that there are no substantive amenity impacts associated with the breach in height, as discussed above.
- For the consent authority to not contemplate a building height breach, regardless of the level of environmental impact (or lack thereof), undermines the aims of the Seniors SEPP as well as the purpose of clause 4.6. Given the characteristics of the site and opportunity to provide design responses to its constraints, it is considered appropriate to consider height breaches where an acceptable amenity outcome can be achieved. In this respect, clause 4.6 is in itself is a development standard which should, in circumstances such as this, be used to consider superior development outcomes, particularly when considering the delivery of social

	<p>infrastructure and housing the elderly.</p> <ul style="list-style-type: none"> • In the context of seniors housing, it is generally accepted that buildings can exist in harmony without having the same density, scale or appearance. To not consider such an outcome would undermine the aims of the Seniors SEPP. In this respect, development under the Seniors SEPP should not slavishly follow the form of development anticipated by a LEP or DCP for multi dwelling housing development as the intent under the SEPP is not to replicate outcomes which would otherwise be considered for a different development type. • The scale of the site presents an opportunity to appropriately locate additional floor space afforded under the SEPP where the resulting environmental impact would be nominal. While the proposed building height does exceed the established 'maximum limit', Clause 4.6 of the RLEP 2011 provides a mechanism to apply a reasonable level of flexibility in such cases. To not support such an outcome, there must be a clear nexus between the proposed building height and unreasonable environmental impacts. The determining factor in considering the level of flexibility afforded under Clause 4.6 cannot be the extent of variation being sought. In this respect, Council's report states that third storeys are not permitted. While Council's concerns regarding amenity impact relating to building height are acknowledged, implying that third storeys are not permitted indicates that a largely quantitative view and assessment of the height breach has been applied, removing proper consideration of a qualitative assessment as required under clause 4.6. • Further to the above, in <i>Wehbe v Pittwater Council</i> [2007] NSWLEC 827, Preston CJ states that "... development standards are not ends in themselves but means of achieving ends". Preston CJ, goes on to say that as the objectives of a development standard are likely to have no numerical or qualitative indicia, it logically follows that the test is a qualitative one, rather than a quantitative one. As such, there is no numerical limit which a variation may seek to achieve. • The above notion relating to 'numerical limits' is also reflected in Paragraph 3 of Circular B1 from the Department of Planning which states: <p><i>As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small in others it may be numerically large, but nevertheless be consistent with the purpose of the standard.</i></p> • In relation to the Clause 4.6 Variation Request, there are no objectives in the building height clause of the SEPP. The objectives of the SEPP would best be determined by consideration of the aims at clause 2 which states: <p>(1) <i>This Policy aims to encourage the provision of housing (including residential care facilities) that will—</i></p> <ul style="list-style-type: none"> (a) <i>increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and</i> (b) <i>make efficient use of existing infrastructure and services, and</i> (c) <i>be of good design.</i> <p>(2) <i>These aims will be achieved by—</i></p> <ul style="list-style-type: none"> (a) <i>setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and</i> (b) <i>setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and</i> (c) <i>ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.</i> • We submit that the height of the proposed residential aged care facility complies with the aims of the SEPP and that the built form is providing for the diverse housing needs of the neighbourhood, is of a good design and characteristic of the area and is serviced by infrastructure and other relevant services. If the Panel seeks to consider height against the height objectives in the Rockdale LEP, which was the EPI at the time of lodgement, or the new Bayside LEP, we submit that the
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	<p>height standard objectives of these EPIs are complied with by the proposed scheme, as further discussed in the Clause 4.6 Variation Request.</p> <ul style="list-style-type: none"> For the reasons presented above, it is reasonable to conclude that in the absence of any unreasonable physical impact on surrounding properties and the character of the area, there are sufficient environmental planning grounds to justify contravening the development standard, as the development will deliver one of the key Objects of the Planning Act, while also allowing for the promotion and coordination of the orderly and economic use and development of the land for community housing, community services and local commercial services.
Setbacks	<p>Council's report states that <i>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.</i></p> <p>As aforementioned, in consideration of this position of Council on the expected third storey setbacks, the design has been amended to accommodate a minimum third storey setback of 9.4m to the northern boundary.</p> <p>In relation to this setback, it is also important to note that due to the angled building orientation, the minimum setback at the third storeys on occurs at small intervals along this boundary with the built form falling away, resulting in minimal built form elements being located at the minimum setback line.</p>
Landscaping	<p>Tree planting is able to be carried out in accordance with the draft deferred commencement conditions.</p> <p>We also note that we intend to retain the existing tree #13 (tuckeroo) and would accept a condition to that effect. Further, there are 66 Lucious Water Gums which are noted to be 7-12m high trees, however intend to comply with Councils proposed deferred commencement conditions.</p>
Visual Privacy	<p>Clause 34(a) of Seniors SEPP <i>appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping</i></p> <p>The angled orientation of the building facilitates superior visual privacy outcomes compared to an orthogonal layout. Additionally, as illustrated in Appendix 3, the elevations have been appropriately treated (through screens and window blades) to minimise issues pertaining to overlooking and submit that if the committee do not agree with this, we are willing to accept conditions requiring additional glazing or privacy screening to allay any remaining concerns.</p>
Streetscape amenity	<p>The proposed third storey would be marginally visible from the street. However, the majority of the built form is screened by existing dwellings in front. As illustrated in the streetscape perspective provided in Appendix 2, the majority of the building elements that exceed 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 proposed elements that breach the height standard do not contribute to distinguishable bulk, scale or density and allow an appropriate height transition where visible.</p>
Acoustic impact and screening	<p>Further acoustic testing is able to be undertaken in accordance with the draft deferred commencement conditions. The exact type and location of plant is yet to be determined and a more accurate assessment may be undertaken at a later date demonstrating the relevant noise criteria can be achieved.</p> <p>Council also contends that the 2.1 acoustic screening along the boundary of 115 Barton Street is not acceptable. The existing fence sits approximately 2.7m above the future ground floor level. Accordingly, this acoustic screening will not give rise to any further amenity impacts to residents at 115 Barton Street.</p>
Odour	<p>Odour testing may be undertaken in accordance with the draft deferred commencement conditions. Given the nature of the commercial operations, there are not odour impacts anticipated.</p>
Solar access (internal)	<p>Clause 35 of Seniors SEPP: <i>The proposed development should— (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and</i></p>

	<p><i>residents and adequate sunlight to substantial areas of private open space, and</i></p> <p><i>(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.</i></p> <p>Council's report confirms compliance is achieved with clause 35 however that there is inadequate solar access between building wings during the winter months. Council contends that the solar access provisions are not satisfied for future occupants of the facility as <i>many windows, living areas and courtyards are overshadowed by the proposed development.</i></p> <p>Direct Sun Analysis Diagrams, at hourly intervals between 9am and 3pm have been provided which demonstrate the amount of solar access being achieved internally for the development. These diagrams illustrate a significant number of living areas, rooms and open space will achieve direct sun access throughout the day (including during winter months) and how the proposed building orientation further facilitates such an outcome.</p>
Stormwater	<p>The civil design as issued includes filtration and catchment pollutant screening elements that prevent any egress of onsite stormwater into the street / Council's stormwater infrastructure network. As such, the proposed RACF will have a net negative outflow impact on the Council stormwater capacity.</p> <p>All water is managed through the sandy soils. Infiltration trenches are predominantly under hardscape elements, with the exception of one small area (~16sqm), where it is located under a portion of lawn between two hardscape areas. This has been further adjusted in line with the setback revision.</p>
Building orientation	<p>Council contends that the applicant has not undertaken genuine consideration of alternative site layouts.</p> <p>As aforementioned, extensive massing testing of the building envelope has been undertaken to consider both alternative building orientations and reduced building heights. Through this testing it was discovered that an orthogonal building orientation would result in large expanses of solid built form along the side boundaries with limited relief for landscaping. The proposed staggered edge limits the built form along these boundaries and allows for generous landscaped zones in between the wings. Further, it was discovered that the visual privacy of neighbours would likely be impacted from an orthogonal arrangement, when compared to the proposed oblique angles and offsets. Lastly, the proposed orientation demonstrated significantly improved solar access to adjoining properties.</p> <p>Consideration of the relevant clauses of the SEPP including those requirements in the document entitled <i>Seniors Living Policy: Urban Design Guideline for Infill Development</i> have been taken into account in the proposal. The guidelines for infill development 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.</p> <p>In response, 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 expanses of built form along the side and rear boundaries and reduce impacts on surrounding residential properties in terms of views, privacy and overshadowing. Further, in accordance with the guidelines for infill development, the angled orientation delivers a superior amenity for neighbouring residents in terms of privacy and solar access as demonstrated above.</p> <p>In their urban design peer view, Rothelowman provides the following analysis of the proposed orientation:</p> <p><i>Whilst the building footprint as a result is large, the stepping and orientation means that it presents as a much smaller building than would be the case if it was parallel to the sites boundaries. As a result, this is a solution that mitigates the bulk and scale of the development to the surrounding context, with predominately 1 or 2-storey forms presenting to neighbours, and 3-storey elements consolidated in the centre of the site.</i></p>

5. Conclusion

In conclusion, we submit that the proposed residential aged care facility satisfies with the aims of the SEPP and that the built form is providing for the diverse housing needs of the neighbourhood, is of a good design and characteristic of the area and is serviced by infrastructure and other relevant services.

It is undoubtably evident that the site's characteristics presents a rare opportunity to deliver a facility which contributes to broader strategic objectives of aged care living and social infrastructure in the district which cannot be overlooked. While this should at no point be at the expense of the suitable amenity of others, a reasonable level of flexibility should rightfully be adopted when considering planning controls in such circumstances.

The site is unique given its large area and being surrounded by smaller residential lots comprising 1-2 storey dwellings. While it is conceded that the built form is not strictly *consistent* with the adjoining residential properties, the design response delivers a compatible and cohesive outcome.

While the proposal will result in varying built form outcomes with surrounding development, this has been designed to achieve compatibility with the locality which demands an increase of social infrastructure such as that proposed, close to public transport, shops and other key infrastructure such as hospitals which aligns with State, Regional and Local strategic objectives and directions.

The proposal has demonstrated that it would not give rise to any unacceptable environmental impacts to surrounding land uses. In this respect, it has been continuously proven in numerous seniors housing developments throughout NSW that aged care facilities of this scale can exist and operate harmoniously within a low-density residential environment such as this and therefore, the proposed built form and scale should be appropriately considered notwithstanding the development standard variations sought. To not consider such an outcome based on the quantitative variations being sought would undermine the aims of the Seniors SEPP.

As provided in the Clause 4.6 Variation Request submitted, in the absence of any measurable physical or amenity impact on surrounding properties or character of the area, the proposed building height variation has demonstrated adequate environmental planning grounds to justify contravening the development standard. This outcome will achieve one of the key Objects of the EP&A Act in allowing for the promotion and coordination of the orderly and economic use and development of the land for local community and social services.

We trust that Panel give due consideration to the contents of letter, and we look forward to discussing this matter further.

Yours sincerely



Tom Cook
Director

Enclosed:

- Appendix 1 – Second Floor Plan
- Appendix 2 – Streetscape Perspectives
- Appendix 3 – Typical Detail of Window Treatment
- Appendix 4 – Urban Design Peer Review