

DATE OF DETERMINATION	21 December 2021
DATE OF PANEL DECISION	21 December 2021
DATE OF PANEL MEETING	9 December 2021
PANEL MEMBERS	Jan Murrell (Chair), Chris Wilson, Susan Budd, Michael Sheils, Paul Pappas
APOLOGIES	Carl Scully
DECLARATIONS OF INTEREST	Ed McDougall and Michael Nagi both declared a conflict of interest and did not participate.

Public meeting held by videoconference on 9 December 2021, opened at 9.30am and closed at 11.55am.

MATTER DETERMINED

PPSSEC-130 – Bayside – DA-2021/95 at 119 Barton Street Monterey (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Following the site inspection, 7 December 2021 the Applicant modified the development to provide an increased setback of the three storey element on the northern elevation to properties with a frontage to Barton St to increase the separation distance from 6 metres to a minimum of 9.4 metres. This increased setback also provides the opportunity for further deep soil tree planting to ameliorate the height and bulk of the development when viewed from the rear of those properties and when viewed from Barton Street.

Applications to vary development standards

Following consideration of the applicant's variation request made in accordance with cl 4.6 (3) of the Rockdale Local Environmental Plan 2013 (LEP), the panel is satisfied that the applicant has demonstrated that:

1. compliance with the subclauses at 40(4) of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP), namely,
 - a) the height of all buildings in the proposed development must be 8 metres or less, and
 - b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and
 - c) a building located in the rear 25% area of the site must not exceed 1 storey in height
2. there are sufficient environmental planning grounds to justify contravening the development standards.

the Panel is also satisfied that:

1. the applicant's written variation requests adequately address the matters required to be addressed under cl 4.6 (3) of the LEP; and
2. the development is in the public interest because it is consistent with the purposes of subclauses 40(4)(a), (b) and (c) of the Seniors SEPP and the objectives for development in the R3 zone of the LEP; and
3. the concurrence of the Secretary has been assumed.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 4:1 in favour, against the decision was Michael Sheils.

REASONS FOR THE DECISION

On a merits assessment the Panel determined to approve the application for the following reasons:

- i. The development will provide for an increased supply of seniors housing in a suitable location and is in the public interest.
- ii. The Panel consider the building form and footprint are appropriate for the subject site and provides the opportunity for the facility to be located within a generous landscaped setting with over 50% of the site as landscaped area with the deep soil planting area exceeding the Seniors SEPP and Housing SEPP requirements. This will benefit both future occupants of the development, and the surrounding residential precinct.
- iii. With a floor space ratio (FSR) is less than 1:1 and therefore complies with the relevant development standard of the Seniors Housing SEPP and the Housing SEPP. Whilst acknowledging the comments of the Design Review Panel about the development's orientation, the Panel is satisfied that the diagonal orientation provides for a better design outcome particularly in relation to overlooking and privacy for the occupants of adjoining properties.
- iv. The length of walls to common boundaries is reduced by the footprint of the building and provides the opportunity for the development to present in a landscaped setting with canopy trees. Furthermore, Council Officer's assessment considers the internal solar access and amenity is satisfactory. It is also noted the overshadowing impacts on surrounding properties meets Council's guidelines given the setbacks to common boundaries.
- v. There have been amendments to the plans by the applicant during the course of the assessment, including increased setbacks to the three storey portion along the northern boundary, however in the context of the totality of the whole development these design changes ameliorate impacts.
- vi. In accordance with Council's notification requirements adjoining landowners and the community were provided the opportunity to make submissions on the development proposal at the time the application was exhibited after lodgement. Submitters were also advised by the Panel's secretariat that a public meeting would be held and invited submitters the opportunity to address the Panel at the public determination meeting held 9 December 2021. The Panel considers that amendments made since notification have generally reduced impacts on adjoining properties.
- vii. The Panel appreciates the concerns of members of the community but considers that the applicant has responded to many of these concerns, in particular by increasing setbacks at critical locations (in particular the setbacks to the Barton Street properties to the north), relocating the café to the Barton Street frontage, retention of certain trees and providing increased canopy cover that will soften the built form when viewed from adjoining properties as well as the public domain. Furthermore, the Panel has imposed additional conditions to respond to issues raised.
- viii. The Panel considers the final form of the development, including the three-storey component with increased setbacks to the north has now been addressed satisfactorily despite the non-compliant height of the building. While it will be visible when viewed from adjoining properties, and from the street, on balance this will not be overwhelming to adjoining properties, given the setbacks and the landscaped setting, and in the Panel's view the built form will sit comfortably within the streetscape and R3 residential area.

- a. The Panel is satisfied the development application warrants approval and the impacts have been satisfactorily addressed and ameliorated by either plan amendments or conditions imposed.

Michael Sheils disagreed with the majority decision for the following reasons:

- In particular, he disagreed in so far as the height of the three-storey building is concerned, which has a variance of 33% with respect to maximum allowable height under the Seniors Housing SEPP.

CONDITIONS

The development application is approved generally in accordance with the without prejudice draft conditions provided in the Council Officer's assessment report and subject to the following amendments.






- The deferred commencement conditions are to be made operational prior to CC
- A condition requiring the establishment of a community liaison committee convened by the operator to allow neighbours a forum to discuss any issues that may arise from time to time is to be incorporated. The committee is to meet a minimum of three times per year.
- Condition 11 relating to the preparation and implementation of a Plan of Management is to be amended to reflect the establishment of the Committee.
- The need to review and update the acoustic report to address a number of residual concerns including potential night-time noise from the garage door mechanism , waste collection and mechanical plant to be provided prior to CC even though it is noted the garage door is recessed and waste collection is now fully contained within the basement.
- The need to submit an air quality report prior to CC confirming that odours from commercial activities, in particular the kitchens, will meet applicable standards at the boundary of the premises
- A requirement for additional privacy measures for certain windows/doors to be provided prior to CC.
- The need to amend the landscape plan prior to CC to retain the healthy Tuckeroo on the western boundary; provide further canopy trees across the site and within the vicinity of where the detention basin in the north west corner is to be relocated away from the common boundary
- Add a condition requiring confirmation of swept paths to be provided prior to CC.
- Amend Condition 2 to include amended plans and additional information provided by applicant
- Amend Condition 25 to add additional trees to be protected

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and the views of those who addressed the Panel. The Panel notes that issues of concern included:

- Traffic and parking
- Streetscape
- Intensity of development
- Building height / visual bulk
- Privacy impacts
- Noise impacts
- Overshadowing
- Construction impacts

The Panel notes that concerns raised by the community were addressed in the assessment report. Furthermore, the Panel notes that in addressing these issues the applicant made further changes to the design of the development, including significantly increased setbacks to the 3rd storey elements on the northern elevation adjoining the rear of the Barton Street properties and the conditions (as amended) to be imposed will ensure an appropriate design outcome and ensure all residual matters are addressed.

PANEL MEMBERS	
 Jan Murrell (Chair)	 Chris Wilson
 Susan Budd	 Michael Sheils
 Paul Pappas	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-130 – Bayside – DA-2021/95
2	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.
3	STREET ADDRESS	119 Barton Street, Monterey
4	APPLICANT/OWNER	Monterey Equity Pty Ltd / Monterey Equity Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ 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 No. 55 (Remediation of Land) ○ State Environmental Planning Policy No. 64 (Advertising and Signage) ○ Rockdale Local Environmental Plan 2013 • Draft environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Housing) 2021 • Development control plans: <ul style="list-style-type: none"> ○ Rockdale Development Control Plan 2011 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Cl. 92 • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 3 December 2021 • Clause 4.6 variation requests – Seniors SEPP subclauses 40(4)(a), (b) and (c) • Supplementary assessment report received: 8 December 2021 • Additional information received by the applicant dated: 8 December 2021 • Written submissions during public exhibition: 14 • Verbal submissions at the public meeting: <ul style="list-style-type: none"> ○ Leonie Palmer, Lydia Jerkovic, Kevin Read, Mary Katsidis ○ Council assessment officer – Pascal Van de Walle, Michael Maloof ○ On behalf of the applicant – Tom Cook, Nick Winberg, Mark Boffa • Total number of unique submissions received by way of objection: 14
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 14 October 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell (Chair), Roberta Ryan, Michael Sheils, Paul Pappas ○ <u>Council assessment staff</u>: Michael Maloof, Pascal Van de Walle, Luis Melim

		<ul style="list-style-type: none"> • Site inspection: 7 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell, Chris Wilson, Susan Budd, Michael Sheils, Paul Pappas ○ <u>Council assessment staff</u>: Pascal Van de Walle, Michael Maloof ○ <u>Applicant representatives</u>: Tom Cook, Nick Winberg, Mark Boffa <u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues. • Final briefing to discuss Council's recommendation: 9 December 2021 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Jan Murrell, Susan Budd, Chris Wilson, Paul Pappas, Michael Sheils ○ <u>Council assessment staff</u>: Pascal Van de Walle, Michael Maloof
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT WITHOUT PREJUDICE CONDITIONS	Attached to the Council assessment report