

COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION

SYDNEY EASTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSEC-367 – MDA-2025/27
PROPOSAL	Modification to DA-2021/95 to an approved residential care facility including internal and external alterations, increase in bed numbers from 115 to 128 beds, modifications to basement level, roof pitch, change to façade and materials, and changes to open space areas
ADDRESS	Lot 2 in DP 857520 - 119 Barton Street Monterey
APPLICANT	Mecone Group Pty Ltd and Monterey Equity Pty Ltd
OWNER	Monterey Equity Pty Ltd
MOD LODGEMENT DATE	3 March 2025
ORIGINAL DA DETERMINATION DATE	29 November 2023
APPLICATION TYPE	Modification Application under Section 4.55(2)
REGIONALLY SIGNIFICANT CRITERIA	Clause 2.19(1), Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : declares the proposal regionally significant development as development that has an estimated development cost of more than \$30 million and subject to Ministerial Directions for a modification application under S.4.55(2) of the Act that may amend a condition previously imposed by the panel.
CIV	Originally \$ 36,365,251.00 (excluding GST)
CLAUSE 4.6 REQUESTS	No change – previously approved variation to building height under clause 4.3 of the Bayside LEP 2021 to be retained.
KEY SEPP/LEP	Housing SEPP, Biodiversity and Conservation SEPP, Industry and Employment SEPP and Bayside LEP 2021.
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Seven (7) unique submissions – building height, overshadowing, loss of privacy and amenity, noise, landscaping, construction impacts, setbacks, insufficient car parking and traffic congestion.
DOCUMENTS SUBMITTED FOR CONSIDERATION	Architectural and landscape plans, plan of management, statement of environmental effects, traffic and parking assessment, operational waste management plan and acoustic assessment.
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A

RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	15 July 2025
PLAN VERSION	Sheet created on 20 October 2024 Revision Nos D & E
PREPARED BY	Michael Maloof – Senior Development Assessment Planner
DATE OF REPORT	15 July 2025

Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	N/A No greater variation than previously approved
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	N/A
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	Yes

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.55(2) of the *Environmental Planning and Assessment Act 1979* ("EP&A Act") and seeks consent for amendments to a consent granted under DA-2021/95 approved by the Sydney East City Planning Panel on 21 December 2021. This consent approved the demolition of existing structures and construction of a part 2 and part 3 storey residential aged care facility comprising of 112 rooms (115) beds basement level parking, front fencing and signage at 119 Barton Street Monterey ("the site").

The modification application includes the relevant information required by Clause 100 of the *Environmental Planning and Assessment Regulation 2021* (2021 EP&A Regulation').

The application is referred to the Sydney Eastern City Planning Panel ('the Panel') as the development is '*regionally significant development*', pursuant to Section 2.19(1) and Clause 2 of Schedule 6 State Environmental Planning Policy (Planning Systems) 2021 as it comprises a residential care facility with a CIV over \$30 million and as per a Ministerial Direction, a modification under S.4.55(2) of the Act. The proposed modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the EP&A Regulation 2021 (formerly CI 123BA of the Regulation 2000).

The proposed modification relates to an increase in bed numbers from 115 to 128 beds whilst retaining the same number of rooms, gross floor area and FSR, modifications to the basement parking level, a change to the roof pitch, change to the front façade and building materials, and changes to the open space areas between the building wings. The proposal generally retains and in places increases the approved setbacks, and the proposal does not increase the approved building height.

The proposed modification is considered to satisfy the substantially the same development test required by Section 4.55 of the EP&A Act. For more information relating to the changes please refer to Table 1 in the section of this report titled "Proposal".

The proposed modification seeks a minor wording alteration to several conditions previously imposed by the Sydney East City Planning Panel. However, it will not change the basis of the previous assessment for which original approval was granted. The conditions imposed by the regional panel are discussed in more detail later in this report. For more information, please refer to the section titled **Changes to conditions** of this report.

The modification proposes changes to the basement which transects the groundwater table and was referred to Water NSW for their approval. They raised no objections to the proposal subject to the approved General Terms of Approval being revised with amendments. The revised condition has been included in the draft Notice of Determination.

The application was placed on public exhibition from 25 March 2025 to 8 April 2025, with seven (7) unique submissions received. These submissions raised issues relating building height, overshadowing, loss of privacy and amenity, noise, landscaping, construction impacts, setbacks, insufficient car parking and traffic congestion. These issues are considered further in this report. These matters were addressed through the design and conditions imposed. The resulting development is acceptable and in the public interest.

A briefing was not held with the Panel as the applicant had a Pre DA (PDA-2024/34) prior to lodgement of the modification application and the scheme was significantly improved in this regard.

The key issues associated with the proposal identified in the assessment of the application included:

1. **Urban Design** - The proposal includes a similar but revised layout that will improve the functionality and operation of the facility including enhanced infection control with an improved internal amenity for the future residents. The revised design achieves a more cost-effective building solution for the site that is a sympathetic response to the existing and desired future context. The building fronting Barton Street (containing the reception and cafe) will include a revised façade that will make a positive contribution and provide visual interest to the existing streetscape character being compatible with the dwellings in the street and adding to the diversity of architectural styles. Front

setbacks are sufficient and there are minimal amenity impacts to the surrounding properties.

2. *Bulk and Scale* - The amended scheme contains a bulk and scale similar to the previously approved scheme with the same variation to the building height control located centrally within the site. The revised layout of rooms in the facility is in keeping with the intent and style of the previously approved residential care facility. The revised landscaping, materials and finishes will result in a suitable internal and external building form that will create a suitable amenity both within the central courtyard and around the periphery of the site.
3. *Intensity of Use* – The proposed increase in the number of beds (from 115 to 128) is not unreasonable as the scheme will retain the same number of previously approved rooms (112) and can be contained and adequately serviced on the site without resulting in any unreasonable additional adverse amenity impacts on the site and dwellings on the adjoining properties. The modification does not involve any increase in building height, gross floor area or the floor space ratio on the site. Parts of the building have increased setbacks and appropriate landscape screening.
4. *Parking* – The revised basement parking level will include one additional parking space (39 previously approved and 40 spaces proposed) along with improved loading and bus and ambulance parking spaces. The kitchen, laundry, bin storage, maintenance and plant rooms have been appropriately designed within the basement parking level.

The changes to the previously imposed conditions of development consent include the following:

- Condition 2 – to refer to the revised architectural and landscape plans
- Condition 9A – VPA revised amount of \$ 586,800.00
- Conditions 10, 12, 14, 23, 28, 30, 31, 32, 35, 36, 37, 38, 39, 40, 42, 43, 48, 68, 83, These conditions are addressed later in this report. Please refer to Table 1 of this report for a complete listing of the condition changes sought.
- Conditions were added that relate to the revised Remediation Action Plan submitted with this modification. These are sub conditions numbered A to J after the last condition in the relevant section of the draft Notice of Determination.

Based on the matters for consideration under Section 4.15(2) and 4.55(2) of the EP&A Act, it is considered that the proposed modification can be supported.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site is located at 119 Barton Street, Monterey (Site) and comprises one battle axe shape lot. The Site is located on the southern side of Barton Street between Jones Avenue and The Grand Parade. The legal description of the Site is Lot 2 in DP 857520.

The Site has a total area of 7,218sqm, is a regular battle axe lot in shape and is wider than it is deep. The battle axe handle has a frontage of 34.385m to Barton Street, a depth of 95.23m along its eastern side, a rear boundary of 95.3m adjoining the properties fronting Scarborough Street and western side boundary of 63.91m which steps in for a length of 62.58m and then heads north to Barton Street for a length of 31.32m.

The Site has a north-south orientation with Barton Street to the north and the rear boundary of the site adjoining properties that have frontage to Scarborough Street to the south.

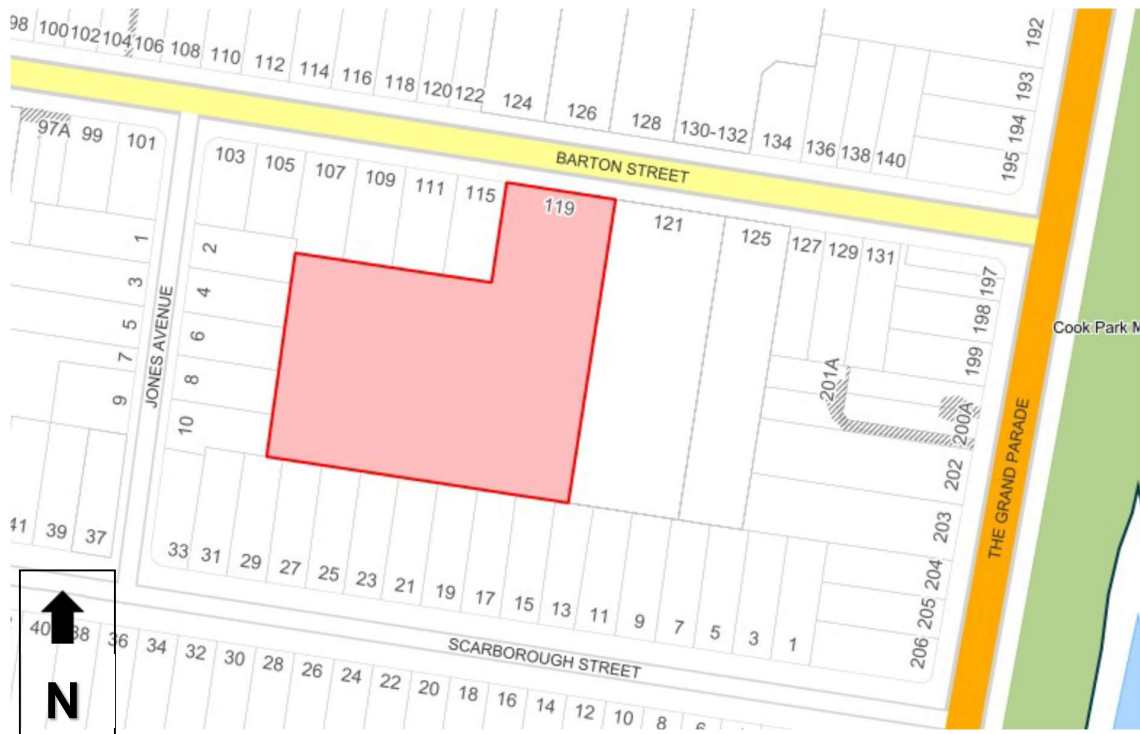


Figure 1. Location of the Subject Site

The Site is relatively flat in the middle of the battle axe with a level of RL 3.8 and 3.9 which rises to RL 5.0 at both the rear boundary and the Barton Street frontage. The site has a maximum fall of up to 1.2m from the Barton Street frontage (north) to the middle of the site. The entire site is zoned R3 – Medium Density Residential under the Bayside LEP 2021 and is surrounded by low to medium density residential properties similarly zoned for medium density development.

The existing improvements on the Site have not yet been demolished and removed in readiness for the Aged Care Facility.

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

An aerial map of the Site is provided at Figure 2 below.



Figure 2. Aerial Map of the Subject Site

1.2 The Locality

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

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

The area is undergoing transition from low density residential development to medium density residential development. The precinct has retained a large proportion of low density residential development.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

The proposed modification to DA-2021/95 an approved residential care facility, includes internal and external alterations, an increase in bed numbers from 115 to 128 beds with no increase in the number of previously approved rooms (112), modifications to the basement level, roof pitch, change to façade and materials, and changes to open space areas

Essentially the resulting development includes the same general layout of the approved building on the site only with three more distinct tiers across the site which are more manageable. The minor changes to the arrangement of the building (with tiers rather than building wings) will function more efficiently.

In a summary, the modification seeks the following changes:

- Rationalise the internal layout of the facility to comply with the operator's requirements, including improved functionality for infection control, and provide a greater level of amenity to future residents.
- The reconfiguration of the facility will also provide an internal courtyard for improved amenity and privacy to residents within the facility as well as to neighbouring residents. These changes also provide the opportunity to reconfigure 13 single rooms into double rooms, to meet seniors living market drivers by catering to more couples.
- Minor changes to the pitch of the roof to provide required access for service of proposed PV solar and plant equipment.
- Reconfiguration of the basement to allow for the footprint to match the altered building footprint and to allow for better waste management and serviceability with less impact on neighbouring properties. The revised basement extends across the site rather than a T shaped design and will straighten the driveway for ease of construction.
- Amend the building façade with changes to the cladding to improve the finish quality and appearance of the façade as well as provide further privacy treatments.
- Facilitate changes to landscaping to resolve privacy and stormwater conflicts as raised through conditions of consent.



Figure 3. Proposed modified ground floor plan

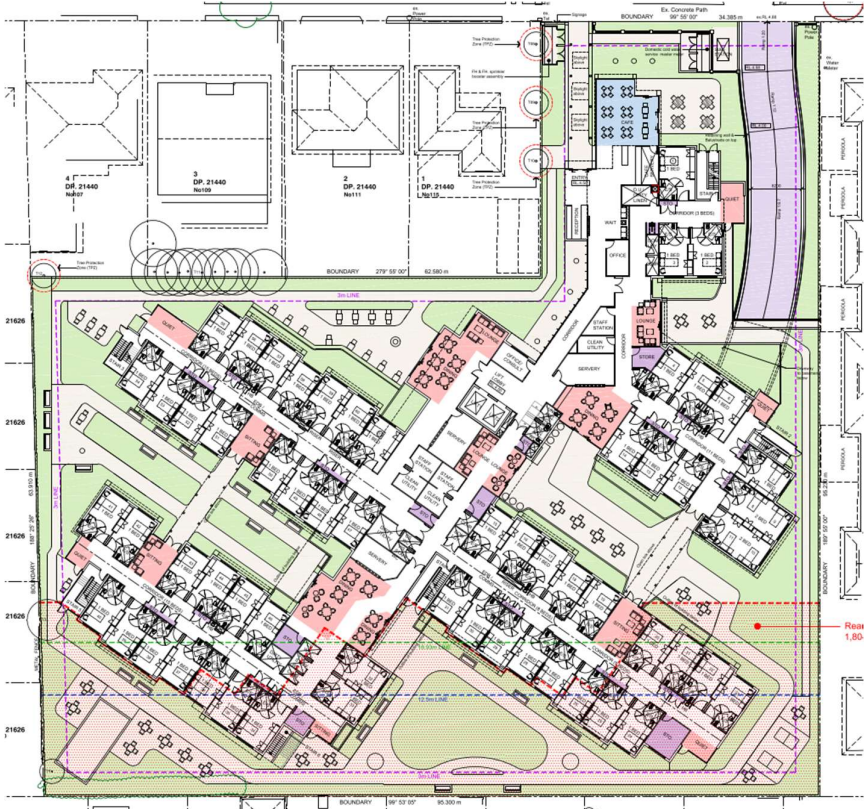


Figure 4. Previously approved ground floor plan

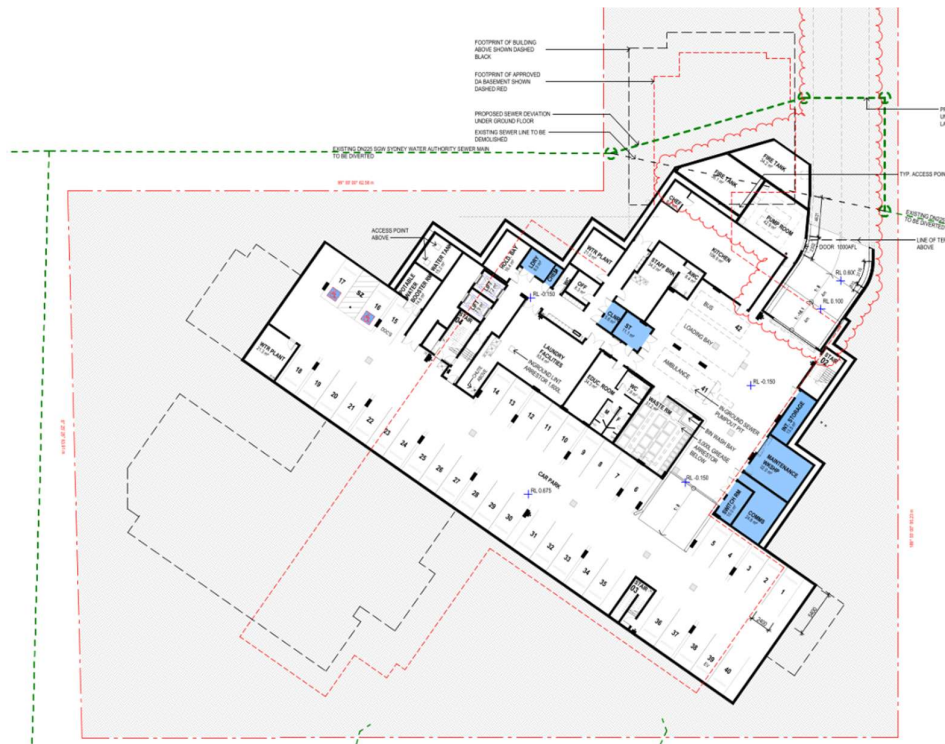


Figure 5. Amended basement plan



Figure 6. Modified front elevation / streetscape plan from Barton Street

The proposal will not alter the previously approved hours of operation, deliveries or the use of the level 2 terrace. It will not undermine the basis of the original approval of the use on the site.

Proposed Changes to Conditions

The proposal will include changes to twenty-one (21) conditions relating to the revised plans, various permits, the latest technical reports submitted with the application (e.g., acoustic, plan of management, etc) and to change the wording in some conditions from “the construction certificate” to “the *relevant* construction certificate”.

The changes will not alter the approved hours of operation, delivery hours, staff numbers and the like. Details of the proposed changes to the twenty-one (21) conditions are outlined below:

Table 1: Proposed Changes to Conditions

Condition No	Condition requirements	Change Proposed	Reason for Change
2	Approved plans and documents	Modify architectural plans and include landscape plans	Modify to updated plans to reflect the proposed modifications
10	Key operational requirements	Refer to the correct number of beds 128	Amend sub paragraph b to reflect the correct number of beds 128
12	Plan of Management	Delete the wording (e.g. reduced bed and room numbers)	Modify to reflect the amended plans with the exact bed and room numbers.
14	Acoustic report	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
23	Operational Waste Management	Refer to the updated operational waste management plan (OWMP)	To remove the old OWMP and replace with the new one.
28	Long Service Levy	Request for staged payments to reflect each stage of CC.	To reduce drawdown during the construction process.
30	Public Domain Frontage Design	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
31	Access (In accordance with the Access report)	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
32	Swept Paths – Medium Rigid Vehicle & Community Bus	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.

Condition No	Condition requirements	Change Proposed	Reason for Change
35	Privacy Amended plans prior to issue of the Construction Certificate	Refer to the “ <i>relevant Construction Certificate</i> ” Refer to the latest window treatment plan Refer to the privacy treatment areas in the revised plans.	To refer to the latest plans To refer to the latest design changes. To allow this requirement to be conducted at the correct stage of the development.
36	Amended plan prior to Construction Certificate	To refer to the latest revision D of the landscape plan To increase separation from trees rather than relocate from the setback	To refer to the latest plans. To refer to the latest design changes which are permissible in the Technical Specification.
37	Stormwater plans – Amend prior to issue of Construction Certificate	Refer to the “ <i>relevant Construction Certificate</i> ” (b) Stormwater tanks shall not be located within 2m of the boundary setbacks. (delete prohibition) (f) Refer to the updated MUSIC model	To allow this requirement to be conducted at the correct stage of the development. To refer to the latest hydraulic calculation method used.
38	Aire Quality / Odour Report	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
39	Architectural Plans – to be amended to be consistent with the Landscape and Stormwater plans	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
40	Detailed Traffic and Parking Design requirements and certification.	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
42	Geotechnical Certification	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.

Condition No	Condition requirements	Change Proposed	Reason for Change
43	Protection of Basement and Building Structures Below Gutter Level	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
48	Food Premises Requirements	Refer to the “ <i>relevant Construction Certificate</i> ”	To allow this requirement to be conducted at the correct stage of the development.
68	Approval and Permits under Roads Act and Local Government Act for Work Activities on Public Land	Temporary Dewatering paragraph is questioned.	This is covered by Water NSW conditions. If captured by Water NSW, this condition should be deleted.
69	Temporary Dewatering Permit - Water Quality Requirements	Temporary Dewatering application is required. This paragraph is questioned.	This is covered by Water NSW conditions. If captured by Water NSW, this condition should be deleted.
83	Parking	Forty (40) spaces	Align with amended plans in respect to car parking spaces.

Development Data

Table 2: Development Data

Control	Previous Approval	Proposal
Site area	7,218.7m ²	7,218.7m ²
GFA	6,798.2m ²	6,797.5m ²
FSR (retail/residential)	0.94:1	0.94:1
Clause 4.6 Requests	Yes – clause 4.3 Building Height	No – Not required
No. of beds	115	128 (13 additional)
No. of Rooms	112	112
Max Height	10.3m (3 storeys based on SEPP definition of height)	10.126m (3 storeys)

Control	Previous Approval	Proposal
Landscaped area	3,430.0m ² (47.5%)	2,535.95m ² (35.1%)
Deep soil area	1,793m ²	2,059.3m ²
Car Parking spaces	39 spaces with 1 ambulance bay	42 spaces with 1 ambulance bay 1 bus bay
Setbacks	<p>Ground floor</p> <ul style="list-style-type: none"> - 6m at sides and rear of the battle axe - 6.47m to 8.5m stepped front setback to street - 3m side setback of front building (handle) - 1.5m min for driveway <p>First floor</p> <ul style="list-style-type: none"> - 6m at side boundaries of the battle axe - 12m setback at the rear boundary - 15m front setback to the street - 3m side setback of front building <p>Second Floor</p> <ul style="list-style-type: none"> - 9.4-11.12m front of battle axe to rear of adjoining - 9m to eastern side - 18m to western side - 18.93m to rear boundary 	<p>Ground floor</p> <ul style="list-style-type: none"> - 6m at sides and rear of the battle axe - 7.5m setback to the street - 14m setback to front wall - 3m side setback of front building and driveway (handle) <p>First floor</p> <ul style="list-style-type: none"> - 6m at side boundaries of the battle axe - 12m setback at the rear boundary - 7.5m columns front setback to the street - 13m front setback to the front wall (2 storey void) - 3m side setback of front building <p>Second Floor</p> <ul style="list-style-type: none"> - 9-10.5m front of battle axe to rear of adjoining - 4.8m to eastern side - 20.8m to western side - 14m to rear boundary

2.2 Background

The original development consent (DA-2021/95) was approved on 21 December 2021 by the Sydney Eastern City Planning Panel (hereon referred to as the “regional planning panel”) with the key issues considered in the assessment of the original development comprising the following:

- The site was upzoned from R2 to R3 Medium Density residential.
- The site is a battle axe lot.
- The proposal exceeds the maximum height control of 8m by 1.975m (24.68%) and the one storey height at the rear 25% of the site under the Seniors Living SEPP
- The DRP stated the proposal was at odds with its context, exceeded the massing and scale of surrounding development and would increase the extent of built form.
- The proposal was reduced somewhat and complied with the FSR control but remains part three storeys in the middle of the site.

The applicant appealed to the Land and Environment Court of NSW on 30 November 2022 seeking to amend condition 29 and delete the amount payable under that condition (\$627,849.70) and replace that sum with \$7,615.50. The court made an order on 29 November 2023 to impose condition 9A relating to a voluntary planning agreement in the order of \$527,000 and delete condition 29 relating to the contribution levied under Section 7.11.

The proposed modification application was lodged on 3 March 2025. A chronology of the modification application since lodgement is outlined below in **Table 3** including the Panel's involvement (briefings, deferrals etc) with the application:

Table 3: Chronology of the Modification Application

Date	Event
3 March 2025	Modification application lodged
12 March 2025	Modification referred to internal departments
25 March 2025 to 8 April 2025	Exhibition of the application
24 April 2025	Emailed status update to applicant
27 March 2025	Modification referred to external agency Water NSW
23 April 2025	Referral response received from external agency
24 April 2025	Email status update to applicant
20 May 2025	Email from applicant with changes to the plans
20 May 2025	Internal referral response received
04 June 2025	Internal referral response received
04 June 2025	Request for additional information from the applicant
10 June 2025	Email status update to applicant
11 June 2025	Submission from applicant to address engineering matters by Council
12 June 2025	Email status update to applicant
13 June 2025	Referral response received from external agency
19 June 2025	Additional information from applicant referred internally
30 June 2025	Email from applicant with additional information to Council
30 June 2025	Email to applicant confirming information received and a status update
10 July 2025	Internal referral response received
15 July 2025	Internal referral responses received
22 July 2025	Panel briefing

2.3 Site History

The subject site was previously used for the purposes of a bowling club and then more recently a place of public worship.

The site has a history of the following approvals:

- DA-2003/794 – New 5m high light pole within the exiting bowling club car park. This was approved on 29 May 2003.
- DA-2008/195 - Carry out minor alterations and additions to the existing bowling club including changeroom facilities, handicapped entry ramp works and upgrade kitchen and bar. This was approved on 21 February 2008.
- DA-2021/95 - Integrated Development - Demolition of existing structures and construction of a part 2 and part 3 storey residential aged care facility comprising of 112 rooms (115 beds), basement level parking, front fencing and signage was approved by the regional planning panel on 21 December 2021 subject to conditions.
- PDA-2024/34 - Modification to approved integrated development DA-2021/95 including changes to facade, internal layout, and landscaping. The pre DA letter was issued by Council on 20 December 2024.
- MDA-2025/27 - Modification to DA-2021/95 to an approved residential care facility including internal and external alterations, increase in bed numbers from 115 to 128 beds, modifications to basement level, roof pitch, change to façade and materials, and changes to open space areas. This modification was lodged with Council on 3 March 2025 and forms the basis of the current assessment report.

Prior to 1995 the site formed part of a larger lot which was then subdivided into two with the townhouses on one lot (DA-1995/324 which is currently No. 121 Barton Street adjoining the site to the east) and the vacant residual lot forming the subject site (No. 119 Barton Street).

The current modification application under assessment (the subject of this report) is the only modification sought on the subject site after approval of DA-2021/95. There are no other concurrent applications being considered by Council.

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.55(2) of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

3.1 Section 4.55 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority (for s4.55 applications) and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

For Section 4.55(2) applications:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all) (s4.55(2)(a)), and*

The proposed changes do not substantially alter the approved development in that the land is still to be used for a residential aged care facility and does not result in any changes with significant impacts on the site or adjoining properties. While some aspects of the design and layout of the site will be altered, the proposed changes will retain the same overall layout and use of the site. Furthermore, the proposal generally retains the approved FSR, building height and setbacks, and the proposed changes are considered unlikely to adversely impact on the amenity of nearby residents as they will increase setbacks while the building height (previously varied) will be located centrally on the site.

There are no other aspects of the proposed modification which may result in additional noise, overshadowing or overlooking for adjoining properties. Accordingly, it is considered the proposed modification is substantially the same development as the development for which consent was originally granted as modified in December 2021.

- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent (s4.55(2)(b)), and*

Consultation was undertaken for concurrence and/or GTAs for integrated development with Water NSW. On 23 April 2025 Water NSW did not raise any objections subject to the attached GTAs being imposed for the proposed modification. Refer to Section 4 of this Report.

- (c) *it has notified the application in accordance with—*
(i) *the regulations, if the regulations so require, or*
(ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.55(2)(c)), and*

The adjoining owners were notified of the application between 25 March and 8 April 2025, and seven (7) submissions were received by Council during the notification period. The notification was carried out in accordance with Council's Community Participation Plan and Council's DCP 2022. The submissions received have been outlined and considered later in this report. For more information, please refer to Section 4 of this Report.

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be (Section 4.55(2)(d)).*

The modification application was notified between 25 March and 8 April 2025, and seven (7) submissions were received. The issues raised in these submissions are considered in Section 4 of this report.

Section 4.55(3)

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (Section 4.55(3)).

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – outlined below.

Reasons for Grant of Consent

The SYDNEY EASTERN CITY Planning Panel granted consent to the original development (DA-2021/95) in a notice of determination dated 21 December 2021. The reasons outlined in the Statement of reasons for this decision included the following:

- 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 cafe 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.
- ix. 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.

The proposed modification is consistent with the reasons for the decision of this consent in that the proposed development is consistent with the planning controls (notwithstanding the previously approved height variation) and expectations for the site given the zoning and other planning controls for the site. The proposal will reduce the landscape area to less than 50% however it will retain dense landscape screening and increased building setbacks. The proposal is acceptable in this regard, and this is discussed in more detail later in this report.

The proposed modification does not alter the basis of approval of the original scheme by the Sydney East City Planning Panel as it will retain the conditions previously imposed by the panel in addition to being consistent with the previous reasons for approval. The conditions imposed by the panel included the following:

- 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

The changes sought to condition 12 in relation to the Plan of Management (POM), (shown as condition 11 above as the community liaison committee condition was added), are limited to updating the correct number of bedrooms. The POM shall retain the establishment of a community liaison committee. Condition 11 which requires the establishment of the committee shall also be retained.

The changes sought to the acoustic report (condition 14), swept paths (condition 32) and the air quality report (condition 38) refer to them being submitted prior to the “*relevant Construction Certificate*” rather than “*any Construction Certificate*”.

The remaining dot points above shall be retained in the relevant draft conditions as previously approved by the regional panel.

3.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.55(3), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

3.2.1 Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations

The relevant provisions under s4.15(1)(a) are considered below.

(a) Environmental planning instruments (s4.15(1)(a)(i))

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Bayside Local Environmental Plan 2021.*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

Table 4: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas	Yes
State Environmental Planning Policy (Housing) 2021	Chapter 3: Diverse Housing Part 5: Housing for Seniors and people with a disability <ul style="list-style-type: none"> • Permissible development within the R3 zone • Development controls 	Yes
State Environmental Planning Policy (Industry and Employment) 2021	Chapter 3: Advertising and Signage <ul style="list-style-type: none"> • Section 3.6 – Granting consent to signage • Section 3.11(1) – Matters for consideration 	Yes
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2.19 of Schedule 6 as it comprises a development which has a cost over \$30 million dollars. While the current application is a modification, the proposal relates to the entire scheme and the proposal must be determined by the Regional Panel in accordance with s275(2) of the EP&A Regulation. 	Yes
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation have been considered in the updated Remediation Action Plan and the proposal is satisfactory subject to conditions. 	Yes
Proposed Instruments	No compliance issues identified.	Yes
Bayside LEP 2021	<ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zone objectives • Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio • Clause 5.21 – Flood Planning • Clause 6.1 – Acid Sulphate Soils • Clause 6.2 – Earthworks • Clause 6.3 – Stormwater and WSUD • Clause 6.7 – Airspace Operations • Clause 6.10 – Design Excellence 	Yes
Bayside DCP 2022	<ul style="list-style-type: none"> - Streetscape, Materials and Finishes - Transport, Parking and Access - Landscaping, Private Open Space and Biodiversity - 3.12 - Waste Minimisation and Site Facilities - Changes to conditions 	Yes

State Environmental Planning Policy (Biodiversity and Conservation) 2021

The previous approval included the removal of 4 existing trees and retention of the remainder whilst providing substantial trees and landscape elements as previously approved on the site. In this regard, the proposed modifications will retain the existing trees around the periphery of the site whilst adding water elements within the centralised courtyard which can include vegetable gardens and the like for the future occupants. The resulting landscape elements are an improvement over the previous scheme and will adequately screen and soften the proposed residential care facility.

The proposal will include additional (compensatory) trees and landscape elements in accordance with the conditions of consent previously imposed on the site. The revised landscape plan resolves some of the issues between landscape elements and the stormwater plans. In this regard, the revised landscape plan was referred to Council's Landscape Architect who raised no objections to the proposal subject to the imposition of amended conditions of development consent. The amended conditions have been included in the draft Notice of Determination. Accordingly, the proposed amendment is consistent with the provisions of the SEPP and is acceptable in this regard.

State Environmental Planning Policy (Housing) 2021

Chapter 3 Diverse Housing

Part 5 Housing for seniors and people with a disability

While the previous application was assessed under the SEPP Housing for Seniors or People with a Disability 2004 (Seniors Living SEPP), only selected and relevant provisions were gazetted to Chapter 4 of the Housing SEPP 2021. As such, the Housing SEPP 2021 did not include any savings or transitional provisions and took effect immediately. Accordingly, the current assessment has completed in accordance with the relevant provisions of the Housing SEPP 2021.

The proposal is permissible with consent within the R3 zone under clauses 79 and 81 of the SEPP. The proposed modifications will not alter the basis of the previous approval on the site as the use will comply with the *Development Standards – General* in clause 84 of the SEPP apart from the height control which was varied in the original instance. The modification retains the same departure to the building height standard and therefore is not unreasonable and does not require a reassessment of the scheme in this regard.

The proposed modification will be consistent with the requirements in clause 88 of the Housing SEPP in relation to the restrictions on the occupation of seniors housing as a condition limiting the use for a residential care facility only (condition 10A of DA-2021/95) will be retained in the modified consent.

Pursuant to clause 97 of the SEPP, the previous assessment of the residential care facility was carried out in respect to the requirements in the Seniors Housing Design Guide, published by the Department in December 2023 and the provisions of Schedule 8 of the SEPP which relate to design principles for seniors housing. In respect to clause 97, the proposed modifications do not alter the basis of the previous decision to approve the application for a residential care facility on the site. The modification is acceptable in respect to the design principles and the scheme will not result in any greater adverse amenity

impacts than the previously approved scheme for the site. The new materials and finishes in the modification will improve the development and result in a better outcome for the site.

Clause 107 subclause 2 of the SEPP relates to non-discretionary development standards and includes minimum internal and external common open space requirements (d), minimum landscaping (e), deep soil (f) and parking (h to j). The modified proposal complies with all these requirements and is acceptable in this regard.

Finally, the clause limiting the proposal to one storey in the rear 25% of the site from the previous SEPP (SEPP Housing for Seniors or People with a Disability 2004) no longer applies as this clause was not included in the latest Housing SEPP 2021.

Based on the above, the proposed amendment is consistent with the provisions of the Housing SEPP and is acceptable in this regard.

State Environmental Planning Policy (Industry and Employment) 2021

The proposed modification will include the following changes to the previously approved signage:

The signage will include a front fence non illuminated sign measuring 0.5m x 2m not unlike the previously approved signage on the front masonry fence which will measure 0.8m. The site will read wording similar to the previous approved signage, e.g., “*SummitCare Monterey*”.

The proposed signage is similar to the previously approved signage, which is for purposes of *business identification signage* as it incorporates the name of the aged care facility. In this regard, the proposed signage satisfies the definition of this term under the SEPP. The proposed signage has been assessed against Clause 3.11 of the SEPP which requires Council to determine the consistency with the objectives highlighted under Clause 3.1 (1)(a) of the SEPP and to assess the signage itself under the assessment criteria in Schedule 5. The modification has been found acceptable in the R3 residential context for a residential care facility of this particular nature and scale. The proposed modification is therefore acceptable with regards to the relevant provisions of the SEPP.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal is development for a residential care facility has a value of over \$30 million dollars and as per the Ministerial Directions, the S.4.55(2) modification is to be referred to the regional planning panel for determination. The regional panel is the determining authority pursuant to Section 4.7(2)(h) of the EPA Act, 275(2) of the EPA Regulation and Instruction on Functions Exercisable by Council on Behalf of Sydney District or Regional Planning Panels—Applications to Modify Development Consents published on the NSW planning portal on 30 June 2020.

Accordingly, the proposal is consistent with the above Policy and the Regional Panel is the consent authority for the application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') have been considered in the assessment of the modification application as the applicant has submitted an amended Remediation Action Plan. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, an amended Remediation Action Plan ('RAP') dated February 2025 has been prepared for the site by Martens Consulting Engineers.

A remedial action plan prepared by Martens Consulting Engineers dated February 2025 and was submitted with the modification application. The report was a revision of the previously submitted report and discusses the most appropriate method of remediating the site. The report concludes that the site can be made suitable for the proposed development. The report includes steps on how to remediate the site and includes a site management plan for the remediation process. This conclusion was based on the proposed demolition of the existing building and the excavation of the site for the basement removing fill materials (if present) as well as shallow residual soils. The processes discussed in the report will effectively mitigate the potential health and ecological risks associated with the contaminants in readiness for future use of the site.

The amended RAP and its conclusions were reviewed by Council's Environmental Scientist who raised no objections to the scheme. Subject to the imposition of conditions, the modified proposal can comply with Council's requirements in respect to contamination.

Under Part 2.2 Division 3, the eastern half of the subject site is affected by the Coastal Use Area in accordance with the map of the same. In this regard, the proposed modification is not likely to result in any adverse impacts on the existing access to the foreshore, beach, headland or rocky platforms. In this regard, it is a modification that is not likely to result in any impacts on the existing views of the foreshore or its visual amenity and scenic qualities from any public places. The proposal is unlikely to result in any adverse amenity impacts in respect to the cultural and built environmental heritage of the coastal use area. In this regard, the Council is satisfied that the proposed modification complies with the requirements of clause 2.11 of the SEPP in relation to development on land within the coastal use area.

Based on the above, the site can be made suitable for the proposal. Subject to imposition of relevant conditions of consent in relation to remediation works, the proposal can comply with the requirements of chapters 2 and 4 of the SEPP. Accordingly, subject to the imposition of the recommended conditions, the proposal is acceptable in this regard.

Bayside Local Environmental Plan 2021

The relevant local environmental plan applying to the site is the *Bayside Local Environmental Plan 2021* ('the LEP'). The relevant aims of the LEP include the following:

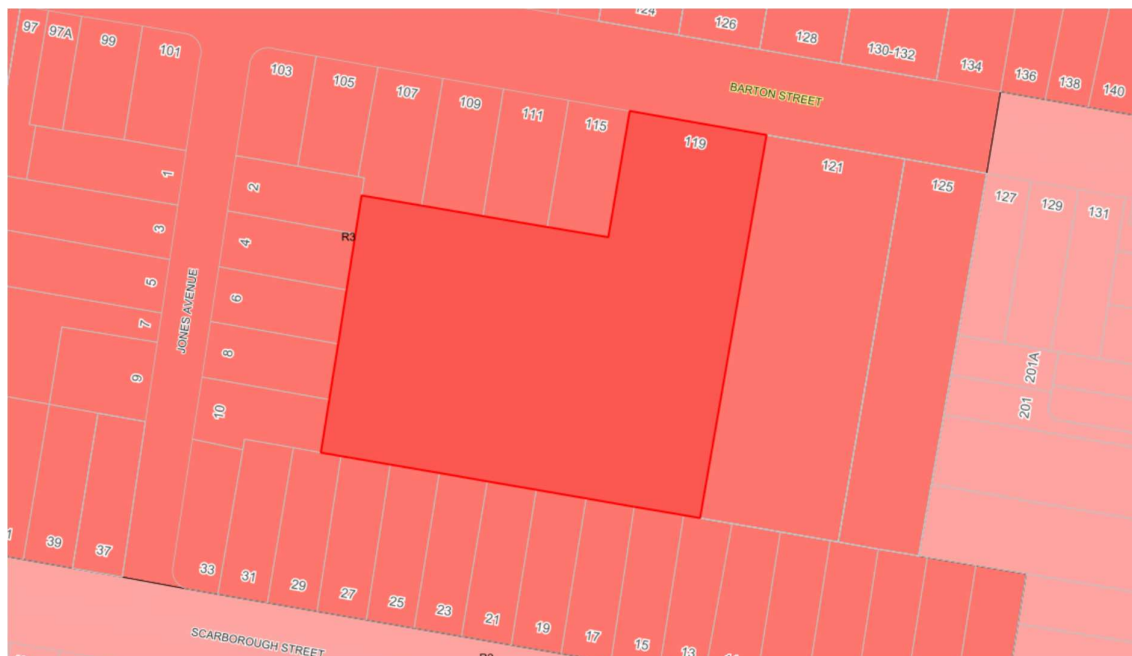
- (d) *to encourage sustainable economic growth and development in Bayside,*
- (e) *to create a liveable urban place through the application of design excellence in all elements of the built environment and public domain,*
- (f) *to encourage diversity in housing to meet the needs of, and enhance amenity for, Bayside residents,*

- (g) to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,
- (h) to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,

The proposal is consistent with these aims as the proposal will not only include housing for seniors, but it will also provide housing with an improved design, services, access to public transport and is an efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles.

Zoning and Permissibility (Part 2)

The site is located within the R3 Medium Density Residential zone pursuant to Clause 2.2 of the Bayside LEP 2021.



The proposal is consistent with these zone objectives for the following reasons:

- The proposed modification will provide an improved layout for seniors housing within the R3 medium density zone.
- The modification will ensure the residential care facility will operate appropriately with facilities and services in support of the use.
- The modification will involve an increase in deep soil area and appropriate setbacks that will minimise impacts on the character and amenity of the residential precinct.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below. The proposal does not comply with the building height development standard under clause 4.3 of the LEP 2021 however the Housing SEPP prevails. The proposed modification will reduce the previously approved building height (by 0.174m) and is acceptable in this regard.

Table 5: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	8.5m 9.5m and up to 11.5m for servicing equipment permitted under the Housing SEPP	10.126m (3 storeys) as defined under the Housing SEPP (6.6% variation to housing SEPP)	No – however acceptable (previously approved 10.3m)
FSR (CI 4.4(2))	0.6:1 (4,331.22m ²) 1:1 permitted under the Housing SEPP	0.94:1 (6,785.578m ²)	Yes (previously approved 0.94:1)
Acid sulphate soils (CI 6.1)	Class 4 Works within 500 metres of adjacent Class 1, 2, 3 or 4 ASS and that is below 5m AHD and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.	One basement level retained as per previous approval but with a minor change to the building footprint. Conditions previously proposed to be imposed were not – these conditions will now be imposed in the consent relative to the revised RAP.	Yes (subject to conditions being imposed)
Stormwater Management (CI 6.3)	Avoid / minimise adverse impact of urban stormwater	A Stormwater Management Plan has been included with On Site Detention proposed to mitigate and manage stormwater. However, it did not comply with Council's requirements. This has been addressed through	Yes (subject to conditions being imposed)

		the imposition of conditions (like the previously approved development). WSUD has been incorporated into the scheme i.e. rainwater to be used for car washing, toilet flushing, irrigation etc	
Airspace Operations (CI 6.7)	OLS at RL 51.0m	Top of modification is at RL 16.296m	Yes

Based on the above, the proposed modification is considered to be generally consistent with the Bayside LEP 2021.

(b) Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))

There are no proposed instruments which have been the subject of public consultation under the EP&A Act, which are relevant to the proposed modification.

(c) Provisions of any Development Control Plan (s4.15(1)(a)(iii))

The following Development Control Plan is relevant to this application:

Bayside Development Control Plan 2022 ('the DCP')

Streetscape and Materials and Finishes

The proposed modification responds well to the established streetscape and incorporates a suitable landscaped front setback in keeping with the dwelling houses on the adjoining properties. The front elevation includes suitable building elements that will contribute to the streetscape through a pitched roof with supporting columns, glazed elements and a legible pedestrian entry point separate from the driveway to the basement ramp. The modification includes suitable materials and finishes which will contribute to the streetscape with horizontal louvres, coloured concrete, metal roof form and masonry front fence. The internal amenity will be improved with brick, feature brick and different clad elements (e.g. mimicking red brick and silver metal) providing a variety of finishes with hooded metal around glazed window openings.

The modifications respond well with the surrounding urban context and will not dominate or challenge the existing streetscape, subdivision pattern or views in the locality. The front entry and reception are appropriately located on the site with the café across the remainder of the frontage with seating benefitting from a northern aspect. The front fence is consistent with the streetscape and adjoining properties. The front building will provide an acceptable site context with a part two storey form whilst the part 2 and part 3 storey form is set well back from the street.

Traffic, Basement Parking Access and Loading Facilities

The proposal includes a revised basement level which contains one additional car parking space with improved facilities including bus and ambulance spaces with all of the necessary services for the facility, such as laundry, kitchen, meeting room and the like.

The amended scheme was referred to Council's Development Engineer who raised no objections to the amendments subject to amending several previously imposed conditions of consent. These relate to the stormwater management plan (condition 37), flooding (condition 43) and basement car parking (condition 83) which relates to the number of parking spaces and access.

Based on the above, the proposed amendment can satisfy Council's on site car parking and loading requirements and subject to the imposition of the amended conditions of development consent can comply with the relevant Australian Standards and is acceptable in this regard.

Landscape Design and Open Space

The proposal will result in a reduced landscape area from 3,430m² (47.5%) to 2,535.95m² (35.1%) due to coverage of the café at the front, small private courtyards to ground floor rooms and a small increase in the building width given the reduction of the building wings (i.e., the length of the building wings has been reduced and wings thickened with the connecting bridges being deleted on the first floor). The revised building layout results in a narrower central courtyard which has been improved with a more legible internal entry point, water feature, table and seating areas, more dense landscape beds and a central walkway.

The proposal provides more landscaping with deep soil areas than that required for low and medium density residential development (25%) within the R3 Medium Density Residential zone. The proposed modification was referred to Council's Landscape Architect who raised no objections to the scheme subject to the amendment of several conditions previously imposed in the approved development on the site.

The applicant has requested condition 37 be amended to allow OSD to be within landscape boundary setbacks, but not within 2m of the boundary. This was referred to Council's Landscape Architect who raised no objections subject to the Magnolia grandiflora not being planted in deep soil areas, given the nature of the root system of this tree and is to be swapped with an equivalent native tree species. In this regard, condition 36 shall be amended to confirm this requirement.

Based on the above, no objections are raised to the proposed amendments in respect to open space and landscaped design. Accordingly, the proposal is acceptable and complies with the requirements of Council's DCP in this regard.

Changes to conditions

The changes sought to the conditions as detailed in Table 1 in this report are generally supported, apart from the change to conditions 28 and 69. Condition 28 relates to the payment of the Long Service Levy. This is a state levy subject to the conditions outlined in the Building and Construction Industry Long Service Payments Act 1986. Section 36 of this act states that levies are due and payable before building work is commenced. Accordingly, the wording of condition 28 shall be retained as approved.

Water NSW has dewatering requirements in condition 97 which contain the GTAs (General Terms of Approval). They have requested that condition 97 remain subject to the revised GTAs (General Terms of Approval) which have been updated in the draft Notice of Determination. Condition 68 has been amended to clarify that Council's temporary dewatering permit is required if temporary dewatering occurs, given it may affect Council's assets (i.e., Council's stormwater drainage system).

The applicant sought clarification on or to delete conditions 68 and 69 as they relate to dewatering which was addressed by WaterNSW. Conditions 68 and 69 relate to numerous

issues requiring permits under the Local Government Act that are regulated by Council including a temporary dewatering permit from Council. These conditions have been retained as they are relevant to the development and are regularly imposed on developments of this nature.

The remaining changes to conditions are approved for the following reasons:

- To refer to the revised plans and documents to be approved (e.g. architectural plans and revised plan of management).
- To refer to the correct number of beds (128 not 115)
- To refer to and allow different Construction Certificates to be issued (e.g., a partial CC) over the course of the construction of the development.
- To allow certain conditions to require a task to be carried out prior to submission of the “**relevant** Construction Certificate” rather than “**any** Construction Certificate”.
- To refer to the increased parking within the basement parking level (condition 83 for 40 spaces not 39 as previously approved).

The SEE submitted with the application indicates that separate Construction Certificates (CCs) will be submitted in the following stages:

CC No. 1 Demolition & groundworks

CC No. 2 Structure, Façade & Building Services

CC No. 3 Internal Fit-out, Landscaping, and balance of building

Council's raises no objections to the separate CC stages for the above works.

The applicant submitted a modified Remediation Action Plan (RAP) which was reviewed by Council's Environmental Scientist. In this regard, no objections were raised by Council subject to the imposition of the fifteen (15) recommended conditions of development consent. These were required to implement the revised RAP and are included at the end of the relevant section of the conditions (e.g., at the end of “Prior to Issue of the Construction Certificate” with 51A to 51D).

Contributions

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Bayside S7.11 Development Contributions Plan*

The Contributions Plan has been considered, and a condition was included in the previously approved application. However, the applicant previously appealed to the NSW Land and Environment Court of NSW in relation to the contributions levied in the application.

The application seeks the modification to DA-2021/95 approved by LEC for the construction of a 115-bed residential aged care facility. Based on the previous judgement from the Land and Environment Court of NSW (LEC), Council entered into a Voluntary Planning Agreement (VPA) to receive the development contributions on the terms and conditions of the VPA.

Based on Schedule 3 of VPA, the applicant should pay \$527,000 for 115 beds prior to the issue of any Occupation Certificate in relation to the development consent. The amount can be indexed only after 24 months from the date of the execution (19/09/2023). Based on Clause 6.5 of the VPA, in the event of any modification to the development consent in the form of increasing the number of beds, the monetary contribution of \$4,600 would be applicable per

additional bed. Therefore, the payable amount of contribution in Schedule 3 of the VPA will be increased for 13 additional beds. As such, condition 9A in LEC Approved DA Consent is modified to reflect the new payable amount for 128 beds.

Accordingly, condition 9A shall be modified to read as follows:

A voluntary planning agreement between Council, Monterey Equity Pty Ltd and Sydney Eastern City Planning Panel was entered into in connection with the development application which is the subject of this development consent (VPA). All obligations imposed by the VPA on the applicant/ developer must be complied with at all times in accordance with the terms of the VPA, including in particular the payment of the monetary contribution of \$586,800 prior to the issue of any Occupation Certificate in relation to the development consent in accordance with clause 6 and Schedule 3 of the VPA (including as increased at the time of payment as referred to in Column 3 of Schedule 3 of the VPA).

(d) Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))

The following voluntary planning agreement (VPA) has been entered into under Section 7.4 of the EP&A Act:

- **Bayside Council and Sydney Eastern City Planning Panel and Monterey Equity Pty Ltd.**

The proposal is consistent with this Planning Agreement as discussed in this report.

(e) Provisions of Regulations (s4.15(1)(a)(iv))

Section 61 of the EP&A Regulation 2021 contains matters that must be taken into consideration by a consent authority in determining a development application. If demolition of a building proposed the provisions of AS 2601 are relevant. Further, section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) as per the EP&A Regulation. However, these provisions are not relevant to the proposal as it will involve demolition of all structures and construction of a new residential care facility.

The remaining provisions of the Regulations are considered in Table 7 below. For more information in relation to the Regulations 2021, please refer to section 3.3 below.

Accordingly, these provisions of the EP&A Regulation 2021 have been considered and are addressed in the recommended draft conditions as amended (where necessary).

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

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposed modification is well designed in locating the highest point in the middle of the site surrounded by lower built forms amongst landscaped areas with deep soil planting. The proposed changes are appropriate for the site and are the result of minor improvements and regard for the local context. The

modification is not likely to challenge the character and amenity of the locality and represents an appropriate balance of scale, mass and form that reduces potential impacts on the adjoining properties.

- Access and traffic – The proposal complies with the minimum provision of on site car parking spaces for the proposed development. The design of the basement parking areas and lift arrangements facilitate and ensure vehicles can enter, utilise parking spaces and exit the site in a forward direction. Access and manoeuvrability to the parking and loading areas on site as proposed is acceptable. The proposal was accompanied by a Traffic and Parking Report and has been assessed by Council's Development Engineers. The proposal was considered and is not likely to result in any significant adverse amenity impacts in respect to road safety or the free flow of traffic within the surrounding road network.

As such, the proposal complies with the requirements of clause 3.5 of Council's DCP 2022 and is acceptable in this regard.

- Public Domain – As conditioned, the proposal is not likely to result in any significant impact on the public domain. In this regard, the proposal will contribute to the precinct by introducing a well landscaped front setback with ground cover, shrubs and trees adjacent to the front seating area of the café. The proposal includes a generous pedestrian access path to the landscaped front setback and seating area.
- Utilities – the site currently has public utilities available. However, an increase in public utilities may be required for the increase in density of the residential care facility on the site. Accordingly, the condition that was previously imposed on the approval requiring the provisions of clause 7.1 of the Bayside LEP 2021 to be met shall be retained.
- Water/air/soils impacts - The site has a history of recreational and residential use and a Remediation Action Plan was submitted with the application. The proposal was referred to Council's Environmental Scientist who raised no objections to the proposal subject to the imposition of conditions relating to the decontamination of the site. In addition, a Waste Management Plan was submitted with the application.
- Flora and fauna impacts - the proposal will include the provision of suitable landscape planting in accordance with the revised landscape plan for the site. The site does not contain any threatened species or ecological communities that will be impacted by the proposed development.
- Natural environment – The proposal will not involve any significant changes to the natural contours of the site and will provide compensatory plantings and well landscaped open space areas within all setbacks. The proposal will make a worthy contribution to the natural environment.
- Noise and vibration – the proposal will involve the excavation of the site in readiness for the proposed basement car parking level as previously approved. In this regard, the proposal will involve construction impacts which may affect the adjoining properties. This has been addressed previously through the imposition of conditions of development consent which will be retained in the modification. In this regard, no objections are raised to the proposal subject to the conditions imposed being retained.
- Natural hazards – The site is not affected by natural hazards such as flooding and bushfire. However, revised consultant reports have been submitted with the application

in respect to contamination and GTAs from Water NSW. These have included in the draft Notice of Determination and the modification is acceptable in this regard.

- Safety, security and crime prevention – The previous approved development employed CPTED Principles to increase security and pedestrian safety. The applicant has improved the design and overall layout on the site and in this regard the modified design will benefit improve operations and increased security. Conditions previously imposed to increase safety and security measures used in the proposed development will be retained.
- Social impact – The resulting development will add to the health and safety of the community in the provision of well landscaped private and communal open spaces for the future occupants of the development. The areas provided will provide a sense of place, community facilities and increased social interactions between the occupiers of the new development and the surrounding community.
- Economic impact – the proposal will involve employment generation during the construction of the development along with economic benefits to the community with the provision of residential care housing in the long term for the precinct.
- Site design and internal design – the proposed development is arranged and set out appropriately on the site to minimise any potential impacts on the adjoining properties. The proposal complies with the setback and landscaping requirements and is largely commensurate with the future desired character of the precinct. In this regard, the internal design and site layout is appropriate for the site and no objections are raised in this regard.
- Construction – The potential impacts from the construction process have been adequately mitigated with the imposition of the draft conditions of development consent. The proposed demolition and construction works are restricted to specific hours on the site to minimise any significant disturbance to the residents on the adjoining and adjacent properties. Conditions have been imposed to ensure modern construction techniques are used to minimise the disturbance of land on the adjoining properties.
- Cumulative impacts – The proposal is not likely to result in any adverse cumulative impacts and has been designed with appropriate setbacks and building separation. The proposal is generally consistent with the planning controls applying to the land (apart from a minor height breach which is minimal) and is not likely to result in any adverse cumulative impacts on the site or adjoining properties.

Accordingly, it is considered that the proposed modification will not result in any significant adverse impacts in the locality as outlined above.

3.2.3 Section 4.15(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the proposal, throughout this report. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development. The proposed modification is considered to be consistent with the streetscape and will not dominate or challenge the existing precinct. There are sufficient services available to the site for the increase in the number of beds and proximity to public transport.

Appropriate conditions of consent are proposed to be retained that will further manage and mitigate impacts on neighbouring properties and the environment. Subject to the recommended amendment and retention of conditions, the proposal is suitable for the site.

3.2.4 **Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 4.3 of this report.

3.2.5 **Section 4.15(1)(e) - Public interest**

The proposed development is in the interest of the public given the proposal will improve the layout, buildability and operation of the previously approved residential care facility on the site. The proposed residential care facility will meet the needs of the community and contribute to the provision of aged care with a suitable design with minimal adverse amenity impacts on the surrounding residential precinct. The proposal is generally consistent with the planning controls applying to the site. The impacts of the scheme have been offset with the provision of compliance setbacks and imposition of conditions of development consent. The proposed use is permissible within the R3 Medium Density Residential zone and will provide both economic and social benefits throughout construction and for the term of the life of the development.

The proposal will facilitate the provision of a residential care facility on the site and is consistent with the principles of Ecologically sustainable development. In this regard, the proposal will make a positive contribution to the site and is in the public interest.

3.3 **Part 5 of the 2021 EP&A Regulation**

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the EP&A Regulation 2021. These matters are considered in **Table 7** below.

Table 6: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application has been made by Mecone with the consent of the owner.	Yes
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent is not required.	N/A
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Yes
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Yes
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Yes

Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Yes
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Yes
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.55(2) to allow changes to the plan and stage the development and is not to correct a minor error, misdescription or miscalculation.	Yes
Description of the expected impacts of the modification (CI 100(1)(f))	There are unlikely to be any significant impacts resulting from the proposed modification given there are only minor changes to the external building form with a similar arrangement and layout on the site. Only minor changes are proposed largely to the internal layout of the facility. Any other impacts were considered in the original proposal, which was supported by Council.	Yes
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Yes
If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	A biodiversity development assessment report was not required to be submitted with the application.	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Yes
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.55(2) of the EP&A Act.	Yes
BASIX Certificate (CI 100(3))	The proposed modification does not involve BASIX development, and an updated BASIX Certificate is not required.	N/A
Penrith Lakes Development Corporation (CI 101)	The proposed modification does not involve Penrith Lakes Development Corporation.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does not involve residential apartment development, and a qualified designer statement is not required.	N/A
Mining and petroleum development consents (CI 102)	The proposed modification does not involve mining and petroleum development consents.	N/A
Notification and exhibition requirements (CI 105-112)	Refer to Section 4.3 of this report.	Yes

Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application has been referred to the relevant concurrence and approval bodies as outlined in Section 4.1 of this Report.	Yes
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4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application is for:

- Integrated Development (s4.46)

Accordingly, the modification application was referred to an agency (Water NSW) for approval as required by the EP&A Act and Clause 109 of the 2021 EP&A Regulation and outlined in **Table 8**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 7: Concurrence and Referral Agencies

Agency	Concurrence/referral Trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	The subject site does not contain any threatened or endangered species and accordingly, the applicant was not required to provide a biodiversity development assessment report.	N/A
Rail authority for the rail corridor	Section 2.97 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> - Development land that is in or adjacent to a rail corridor.	Referral not required	N/A
Referral/Consultation Agencies			
Electricity supply authority	S2.48 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Referral not required	N/A
Transport for NSW	S2.121 of the <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	Referral not required	N/A
Integrated Development (s4.46 of the EP&A Act)			

RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	The proposal does not involve bush fire safety or subdivision of land.	N/A
Natural Resource Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	The application was referred to Water NSW who on 23 April 2025 responded with approval subject to conditions (GTAs) being imposed in the modified consent.	Yes

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined **Table 9**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and found that it did not comply with Council's Technical Specifications or address the issues conditioned in the previous approval. In this regard, Council's Engineer has amended previously imposed condition 37 to address this issue. Outcome: Satisfactory subject to the amended conditions being imposed on the draft consent. For more information, please refer to the draft consent in Attachment A .	Yes (conditions)
Traffic	Council's Traffic Engineering Officer reviewed the proposal and did not raise any concerns in relation to traffic generation and car parking. The Traffic and Parking Report submitted with the application was reviewed and considered in this regard. The application was found to be acceptable subject to the imposition of amended conditions of development consent.	Yes (conditions)
Building Surveying	The application will involve demolition and the construction of new buildings in accordance with the requirements in the Building Code of Australia (BCA). A condition of development consent has been imposed in this regard.	Yes (conditions)
Environmental Scientist	The application was referred to Council's Environmental Scientist who raised no objections to the proposal subject to the imposition of conditions of development consent. The conditions were previously not imposed and have	Yes (subject to additional conditions)

	now been included in the modified consent. The conditions relate to implementing the revised Remediation Action Plan (RAP) that was submitted with the application and are required for the site.	
Waste Management	The application was referred to Council's Waste Management Officers who requested the proposal comply with Council's Technical Specification – Waste Management 2022. In this regard, condition 23 is to be amended to refer to the latest Waste Management Plan with the remaining conditions retained to comply with the Technical Specification. Subject to the amended conditions, the proposal can comply with Council's requirements. These include a Council indemnity, compliance with the Technical Specification and collection matters.	Yes (conditions)
Landscape Architect	The scheme has been improved in respect to landscaping and complies with the requirements of Council's DCP 2022. The modification application was referred to Council's Landscape Architect who raised no objections to the proposal subject to the imposition of amended conditions of development consent.	Yes (conditions)
Contributions	The application was assessed by Council's Contributions Planner and this has been addressed earlier in this report.	Yes (conditions)

4.3 Notification and Community Consultation

The modification application was notified in accordance with the Bayside DCP 2022 and Council's Community Participation Plan from 25 March 2025 until 8 April 2025. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (one hundred and ninety-seven as a rough estimate of the number of letters sent);
- Notification on the Council's website.

The Council received a total of seven (7) unique submissions, comprising five (5) objections and two (2) constructive submissions in support of the proposal. The issues raised in these submissions are considered in **Table 10** below.

The issues raised in the community submissions have been addressed in this report and in the recommended conditions of consent in **Attachment A**.

Table 9: Community Submissions

Issue	No of submissions	Council Comments
Building Height	1	The front building facing the street retains a two storey form not unlike the existing development in the street. The proposed two storey form with pitched roof

Issue	No of submissions	Council Comments
		extends further back than a normal dwelling house and will increase overshadowing to the west. However, this will be limited to the morning hours, and the adjoining property contains a shed to the rear with a nil side setback adjoining to the site. The shed will similarly overshadow the rear yard of the adjoining property. The building height along Barton Street is consistent with the predominant streetscape.
Reduced setback and overshadowing	1	The proposal has an increased setback from the front boundary (7.3m to 7.5m) and the front entry door moving closer to the street from 18.3m to 15m. The front setback of 7.5m is to the columns supporting the open awning at the front which is 5m deep. The building form will retain the same overall setbacks and shadowing as previously approved despite the entry point being 3.3m closer to the street. The proposed amendment has no greater adverse amenity impacts than the previously approved scheme.
Setback encroachments on 6m to the sides and rear	1	The small variations referred to in the submission are on the ground floor and comprise the corners of the ground floor courtyards of some of the ground floor rooms. These courtyards involve small 1.8m x 2.2m areas for the individual room occupant delineated with a dwarf wall surround. These dwarf walls extend out from the previously approved walls and are only 0.6m high. In this regard, the full height external building walls of the proposal still comply with the setbacks previously approved. As such, the modification is not likely to result in any greater adverse amenity impacts on the adjoining properties.
Lack of consultation with residents	1	The application was notified to the community in accordance with Council's Community Consultation Plan. Council provided 2 weeks in which residents could make a submission. A sign was also erected on the site notifying the surrounding residents.
Overshadowing and loss of solar access	2	The proposal will overshadow the adjoining property to the east but only in the late afternoon at the rear and with no greater impacts than the previous approval. This is achieved given the proposed setbacks and the same overall building height (as previously approved). The proposed changes will not result in any significant increase in overshadowing given the setbacks proposed and the modification is in keeping within the parameters of the previously approved development.
Overlooking and loss of Privacy	3	The proposal is generally the same as that which was previously approved. The modification includes a design that will not substantially alter the previously

Issue	No of submissions	Council Comments
		<p>approved overlooking and loss of privacy impacts. This is achieved through a staggered arrangement of alternate window directions between building wings being limited to the first floor. The second floor has a reduced terrace level (building A) with a setback of 10m angled towards the street and stairwell separating the eastern adjoining property.</p> <p>The proposal will retain approximately the same setbacks and has 3 bedrooms each with one window on the first floor of the front building that look out to the east. However, the previously approved scheme had a first-floor quiet room with large window that anyone could use and look out over the fence to the east. As such, the proposal is an improvement with reduced overlooking and not unlike similar low density residential developments around the site.</p>
<p>Driveway</p> <p><i>The driveway will be alongside our dwelling house (villas) and the increase in patrons (compared to the bowling club) will result in impacts.</i></p>	1	<p>The driveway has been straightened and is otherwise like the previously approved driveway in the same approved location.</p> <p>The increased intensity of the residential care facility compared to the bowling club was considered in the previous application.</p> <p>While the proposal will increase the number of beds (from 115 to 128) the modification will not increase the number of previously approved rooms on the site. As such, the proposed modification does not represent any significant or unreasonable intensification of the approved use on the site.</p>
<p>Insufficient car parking.</p> <p>More parking for patrons, visitors and employees is required. The scheme will reduce parking in Barton Street.</p>	1	<p>The basement parking level will provide 42 parking spaces (include bus and ambulance spaces) which complies with the minimum number required (33) and is sufficient to cater for the modified use on the site.</p> <p>The proposal includes a bus space, ambulance space, loading bay and sufficient space for deliveries well as laundry, offices and waste storage rooms.</p> <p>The proposal was referred to Council's Development Engineer who raised no objections to the modification subject to the imposition of the conditions of development consent.</p>
<p>Traffic Congestion</p> <p>The scheme will result in increased traffic and deliveries</p>	1	<p>This has been addressed previously in this report. For more information, please refer to the Section relating to Bayside Council's DCP 2022.</p> <p>A Traffic and Parking Report has been submitted with the application. The amended scheme complies with Council's on site car parking and access requirements and subject to conditions is acceptable in this regard.</p>

Issue	No of submissions	Council Comments
given the local hospitals.		
Noise from Mechanical Services in the southeast corner of the site	1	The mechanical services (plant) are setback approx. 19m from the rear boundary and 14m from the eastern side boundary being located on the first and second floors. The ground floor services will be setback 6m from the middle of the rear boundary and screened behind landscaping. All mechanical services on the site will include enclosing acoustic treatment whilst still allowing ventilation. All services will be obscured behind landscape elements within the site when viewed from the adjoining properties.
Covered Corridor with cement roof and windows with privacy impacts and setback compliance	1	The previously approved deck on the second-floor plan in the rear building (building B) has been deleted and replaced with non-trafficable roof top in the south easter corner. The partly covered walkway on the second floor (building A) is an open terrace level which has been reduced in size when compared with the previous approval. The function room on this level has full length glazing which provides access to the terrace. The glazing is setback 4.2m from the edge of the building and the roof above covers half the terrace with no enclosing walls or windows. As such, the terrace is an improvement on the previous scheme, is setback 10m from the closest side boundary and is separated from the side boundary by an external staircase.
Landscape Insufficient details in the plans provided	1	The landscape plans include a schedule indicating the height, spread and species of the trees and planting elements used around the periphery of the site. The rear setback contains suitable widths of deep soil capable of accommodating landscape elements and trees at the rear to provide sufficient screening and softening of the proposed development.
Construction A dilapidation report for all adjoining properties must be provided Vibration and ground monitoring A contact person should be	1	Conditions imposed in the previously approved development require the application to submit a dilapidation report, vibration and monitoring report and address groundwater. The applicant can contact the private certifier during construction should there be any concerns. Details can be obtained from Council once the Construction Certificate has been issued. While the construction may result in temporary amenity impacts, e.g. delivery of building materials to the site, conditions have been imposed to ensure the proposed modification is not likely to result in any long term or permanent impacts in respect to construction.

Issue	No of submissions	Council Comments
provided to residents.		
Impact on Property Values	1	The proposal will add value to the site and provide a residential care facility for the locality. No evidence has been provided to substantiate that the proposed modification will result in any adverse impacts on the price of land.

Outcome: The above issues have been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent.

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Urban Design

The proposal includes a similar but revised layout that will improve the functionality and operation of the facility including infection control with an improved internal amenity for the future residents. The revised design achieves a more cost-effective building solution for the site that is a sympathetic response to the existing and desired future context. The building fronting Barton Street (containing the reception and cafe) will include a revised façade that will make a positive contribution and provide visual interest to the existing streetscape character being compatible with the street and adding to the diversity of architectural styles. Front setbacks are sufficient and there are minimal impacts to surrounding properties and the streetscape.

The revisions made to the proposed building forms are acceptable and the front building has a satisfactory front building alignment matching the prevailing setbacks along Barton Street. The front facade contains sufficient articulation with the café and open seating area with roof over. Its setbacks to the side boundaries are not unlike the previously approved scheme and relates well and is compatible with the spatial separation of existing dwellings and the existing residential streetscape character along Barton Street. The proposal contains additional beds within the same number of rooms that have regard for the surrounding low-density residential area. The proposed modification provides a harmonious fit to the existing streetscape context and is considered acceptable in its current form. For more information in respect to streetscape, please refer to an earlier section of this report titled “Bayside Development Control Plan 2022.”

5.2 Bulk and Scale

The bulk and scale of the proposal is like the previously approved scheme with the variation to the building height control being located centrally within the site. The revised layout of rooms in the facility is in keeping with the intent and style of the previously approved residential care facility. The revised landscaping, materials and finishes will result in a suitable internal and external building form that will create a suitable amenity both within the central courtyard and around the periphery of the site.

The proposed use of a hipped roof form mitigates the visual appearance of the increased built form to the rear of the site. Overall, the development achieves the urban design objectives to provide sufficient articulation without contributing to an excessive built form.

5.3 Intensity of Use

The increased number of beds (13 beds from 115 to 128) has been accommodated within the same number of previously approved rooms for the facility (112). The increase has been satisfactorily absorbed by the development without resulting in any greater adverse amenity impacts on the site or surrounding properties. The proposed increase is not unreasonable and can be serviced within the facility modification without resulting in any unreasonable additional adverse amenity impacts. The previously imposed conditions that limit amenity impacts are to be retained in the approval. The redesigned basement parking level contains the amenities, services and parking required to cater for the number of proposed beds within the facility. Given the setbacks, landscaping and open space areas provided, the proposed modifications are acceptable in respect to the intensity of the use on the site.

5.4 Traffic, Access and Parking

The revised basement parking level will include one additional parking space (39 previously approved to 40 spaces) along with improved loading and bus and ambulance parking. The kitchen, laundry, bin storage, maintenance and plant rooms have been appropriately designed within the basement parking level. The modifications proposed can adequately cater for the number of patrons, staff and visitors to the facility. The application was referred to Council's Development Engineer who raised no objections to the proposal subject to the imposition of amended conditions of development consent.

For more information in respect to streetscape, please refer to earlier sections of this report titled "Bayside Development Control Plan 2022" and 4.1 Agency Referrals and Concurrence.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

The proposed modifications to the previously approved residential care facility are in keeping with the spirit of the approval and an improvement to the appearance of the facility, the internal amenity and operations of the facility. The modifications will rationalise the operations, assist in the management of the facility and allow improved control of the facility in the case of an infectious disease or pandemic.

Changes sought have been accommodated within the designed and cater for the small increase in the number of beds without any greater adverse amenity impacts both on the site and adjoining properties. The changes to the design, materials and street frontage are satisfactory and not likely to result in any adverse amenity impacts in respect to external appearance or streetscape along Barton Street. The site is suitable for the proposal despite the modifications sought and the residential care facility will retain its compatibility with the medium density residential precinct.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through an appropriate revised design and/or in the amended draft conditions at **Attachment A**.

7. RECOMMENDATION

It is recommended:

- That the Modification Application No MDA-2025/27 to DA-2021/95 to an approved residential care facility including internal and external alterations, increase in bed numbers from 115 to 128 beds, modifications to basement level, roof pitch, change to façade and materials, and changes to open space areas at 119 Barton Street Monterey be **APPROVED** pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A; and
- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided in associated with this assessment report:

- Attachment A: Draft revised Conditions of consent
- Attachment B: Architectural Plans
- Attachment C: Landscape Plans
- Attachment D: Statement of Environmental Effects