

Our ref: SM/225042

17 April 2025

Ms Tegan Lewis  
Team Leader Development Assessment  
Commission Assessment  
Planning and Land Use Services  
Department for Housing and Urban Development

Dear Tegan

**Response to representations - Helping Hand Aged Care Incorporated – retirement facility - DA 24040803**

This firm acts for Helping Hand Aged Care Incorporated (**Helping Hand**) regarding its proposed retirement facility in the form of two, three storey residential flat buildings on the land at 153 and 157 Childers Street, North Adelaide and the allotment to the south of 153 Childers Street comprised in CT 5845/885 (**Land**).

We have been provided with a copy of the representation submitted by Mellor Olsson Lawyers on behalf of several North Adelaide residents dated 5 February 2025.

This letter:

1. sets out the correct approach to the necessary planning assessment;
2. responds to Mellor Olsson's assertions about (i) the approach to the planning assessment of the proposed development under the Planning and Design Code (**Code**), and (ii) the assessment of the proposed development against the provisions of the City Living Zone and the North Adelaide Low Intensity Subzone; and
3. comments on the appropriateness of the proposed built form within the locality.

This letter should be read together with the response to representations prepared by Helping Hand's planning consultant, Ekistics.

**Background**

4. Helping Hand was established in 1953 as a not-for-profit establishment that offers help and support to older South Australians with assisted living solutions and has become a part of the fabric of North Adelaide in its 7 decades of operation.
5. Helping Hand's landholdings form a precinct which comprises appropriately 2.4 hectares in North Adelaide and extends from Molesworth Street (south) to Childers Street (north).

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6. The Land:

- 6.1 currently comprises 3 single storey residential buildings containing 10, 2 and 3 bedroom assisted living units with associated garages and carports. This amounts to “*medium net residential density*” as that term is defined in the Code;
  - 6.2 is located in the City Living Zone (**Zone**) and the North Adelaide Low Intensity Subzone (**Subzone**);
  - 6.3 amalgamates several allotments and comprises approximately 2,270 square meters in site area;
  - 6.4 has a frontage to Childers Street of approximately 32 meters; and
  - 6.5 is between approximately 67 and 74 metres in depth.
7. The proposed retirement facility comprises 2, 3 storey residential flat buildings collectively housing 12 new independent living units that are intended to replace the existing units on the Land (**proposed development**).
8. Helping Hand has sought and obtained the views of a highly experienced and respected Landscape Architect, Warwick Keates of WAX Design, on (i) the landscape and urban character of the subject land and locality, and (ii) manner in which the proposed development sits within that character. Mr Keates’ views and the reasons for them are set out in his detailed report of 17 April 2025. Notably, Mr Keates concludes as follows in his report:

*The landscape and urban character assessment demonstrate the built form diversity of the locality and that there are only a few instances of low-rise, low-density housing on large allotments in an open landscaped setting. Given that the prevailing character of the subject land and the locality does not meet the desired outcome requirements of the North Adelaide Low Intensity Subzone, the responding performance outcomes do not appear relevant, and greater weight has been placed on the performance outcomes of the City Living Zone.*

*Having said this, the architectural and landscape response of the proposed development acknowledges the intent of the North Adelaide Low Intensity Zone and the importance of reflecting the underlying context of the locality. In this regard, the proposed development has been designed to present as a large, low-rise dwelling on a large allotment with a well-landscaped setting.*

*The proposed development of the subject land represents a well-considered architectural and landscape response that complements the locality's existing urban and landscape character. By amalgamating three allotments, the development achieves a generous 32-metre frontage and appears as a large, well-landscaped development that reflects the local context of the street. The architectural design employs a mansard roof to contain the three-storey functional requirements of the building while visually presenting to the street as a two-storey form. This design response enables the building's built form to align with the low-rise character that typifies much of Childers Street.*

*From an architectural and landscape design perspective, the proposed development achieves the applicable performance outcomes outlined in the City Living Zone. The design responses also acknowledge the desired outcomes of the North Adelaide Low Intensity Subzone. While the existing context does not contain a prevailing residential character of low-rise houses on large allotments with open landscaped settings, the proposed development is responsive to these characteristics.*

*Key strengths of the proposal include its sensitive approach to massing, its articulation that breaks down the building's scale, and a landscape design that reinforces the gardenesque character of Childers Street. The inclusion of architectural detailing, contextual material selections, and layered tree and shrub planting support the amenity of the street.*

*The project thoughtfully balances contemporary residential design with the historic and varied context of North Adelaide, resulting in a development that enhances and integrates into its established setting.*

9. In terms of the existing density of development in the locality, we note that there are significant examples of medium to high net residential densities on Childers Street. Ekistics has provided the below helpful table which demonstrates this:

Table 7-1 Existing Medium and High Density Sites Within the Locality (red = high density, orange = medium density)

Address	Number of dwellings	Site area	Residential net density
142 Childers Street	8 dwellings	1,100sqm	72dw/ha
150 Childers Street	25 dwellings	1,680	148dw/ha
157 Childers Street	7 dwellings	1,000sqm	70dw/ha
165-171 Childers	8 dwellings	2,157sqm	37dw/ha
177 Childers Street	10 dwellings	1,133sqm	88dw/ha
187-193 Childers Street	11 dwellings	2,074sqm	53dw/ha
224-240 Childers Street	10 dwellings	2,079sqm	48dw/ha

10. Plainly, medium density residential development is currently a significant feature in the locality.

### Approach to planning assessment generally

11. A number of general principles have of course been established by the Courts which guide a planning authority in the interpretation and application of planning instruments. Those principles apply equally to the Code as they did to Development Plans under the *Development Act 1993*:
  - 11.1 the Code is a practical “*planning document*” rather than a statute. In other words, it is to be approached on the basis that it expresses planning objectives and principles rather than hard and fast rules having mandatory effect;
  - 11.2 although the provisions of the Code are important, they are at the end of the day not mandatory; they are couched in the language of “*guidelines*”; and
  - 11.3 the Code is not applied in a “*theoretical vacuum*”. The assessment of a proposed development against the provisions of the Code must be undertaken having regard to the factual and historical context in which the proposed development will be implemented and having regard to relevant surrounding circumstances. Any individual development application will of course need to be assessed in the context of the characteristics and facts about the locality and the subject land.
12. In the decision of the Full Court of the South Australian Supreme Court in the matter of *DAC v A&V Contractors*, Justice Kourakis (as he then was), who delivered the leading judgment, determined that:

*... planning authorities do not apply the objectives and principles of development plans in a vacuum. First, as I earlier observed, there will often be tension between those objectives and principles. **Most of the objectives and principles, as a matter of construction, apply as general rules and not as inviolable prescriptions; they are guidelines within which an expert planning judgment must be made. Most obviously, the particular factual circumstances of a proposed development will inform that planning judgment, and, in particular, affect which of the principles and objectives will predominate.***

(our emphasis)

13. This principle was recently endorsed in relation to the Code by the Supreme Court in *Rymill Park Apartments Pty Ltd v Rymill House Foundation Pty Ltd & Anor* at [67]:

*...the hierarchy introduced in the Code **does not convert the planning authority’s task into a mechanical exercise.** It still must interpret the Code, bring experience to bear on the likely effect of the development in a variety of respects, and must **balance and weigh the various factors that contribute to a lawful decision** that planning consent should be granted in respect of a particular development.*

(our emphasis)

14. The South Australian Supreme Court of Appeal also recently endorsed the following principles of planning assessment specific to the Code:
  - 14.1 Desired Outcomes (**DOs**) are not separate planning policies, but rather, they inform the consideration of the relevant Performance Outcomes (**PO**) in a planning assessment; and
  - 14.2 Designated Performance Features (**DPF**) are a guide to what is generally considered to satisfy the corresponding PO. They are not 'requirements' and they do not, of themselves, determine compliance with the PO. If a DPF is not met, then the approach is to undertake a planning assessment against the relevant PO.

#### **Relevance of the Subzone provisions**

15. Mellor Olsson appears to place much weight on the fact that the Land is located in the North Adelaide Low Intensity Subzone in support of its arguments about the appropriateness of the proposed built form.
16. The necessary assessment of course requires assessment of the proposed development against the Performance Outcomes for the Subzone, namely:
  - 16.1 PO 1.1 - "*Buildings [are] sited and designed to complement the low-density or very-low density character of the neighbourhood, **in locations where an open landscape setting is the prevailing character***"; and
  - 16.2 PO 2.1 - "*Building footprints consistent with the character and pattern of the prevailing open landscaped character of the neighbourhood, **in locations where an open landscaped setting is the prevailing character***".

(our emphasis)

17. What is clear from the Subzone's Performance Outcomes is that they will only have work to do in an assessment of a proposed development "**in locations where an open landscaped setting is the prevailing character**". Put another way, if a development is proposed to occur in a locality where an open landscaped character is **not** the prevailing character, then PO 1.1 and 2.1 have no work to do in the assessment of that proposed development.
18. In circumstances where the Subzone covers a large area of land with the Zone, it is inevitable that there will be varying landscape settings within different locations of the Subzone. Some locations within the Subzone will have an open landscaped setting as the prevailing character, some will not.
19. In this case, and as observed by Warwick Keates in his report, the Land is **not** in a location where an open landscaped setting is the prevailing character.
20. In light of the above, the Subzone's Performance Outcomes have no work to do in the assessment of the proposed development.

### Assessment of the proposed development against the Zone provisions

21. Mellor Olsson asserts that the Zone seeks low-density development which has an open, landscaped setting. Respectfully, this is **not** the case at all.

21.1 The Desired Outcome for the Zone expressly envisages “*medium-density housing*”.<sup>1</sup>

21.2 The Zone provisions make **no** mention of “*landscape setting*”.

22. Zone Performance Outcomes 2.2 and 2.3 relevantly provide that:

PO 2.2 - *[d]evelopment contributes to a predominantly low-rise residential character...*

PO 2.3 - *[n]ew buildings and structures visible from the public realm consistent with:*

*(a) the valued streetscape characteristics of the area*

*(b) prevailing built form characteristics, such as floor to ceiling heights, of the area.”*

23. It must first be recognised that the reference in Zone PO 2.2 to “*predominately low-rise residential character*” does **not** mean exclusively low-rise residential character.<sup>2</sup> The exceedance of the height guideline is **not** fatal to the proposed development.

24. It must also be recognised, and as set out above in the “Approach to Planning Assessment” section, while Zone PO 2.2 is relevant in guiding future building heights, this guidance is to be considered and balanced against any unique circumstance applicable to the site of a development or its local context. Mr Keates’ views on the context of the Land and its locality, including the fact that the locality comprises a diversity of built form characteristics, including several three-storey and even a four-storey development (i.e. medium-rise), are suggestive of the fact that the height of the proposed development is entirely appropriate. Indeed, we note Mr Keates’ views that:

*The proposed development of the subject land represents a well-considered architectural and landscape response that complements the locality’s existing urban and landscape character. By amalgamating three allotments, the development achieves a generous 32-metre frontage and appears as a large, well-landscaped development that reflects the local context of the street. The architectural design employs a mansard roof to contain the three-storey functional requirements of the building while visually presenting to the street as a two-storey form. This design response enables the building’s built form to align with the low-rise character that typifies much of Childers Street.*

*From an architectural and landscape design perspective, the proposed development achieves the applicable performance outcomes outlined in the*

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<sup>1</sup> See Zone DO 1 which seeks “*predominately ... low to **medium**-density housing*” (out emphasis).

<sup>2</sup> See *Barrio Developments Pty Ltd v State Planning Commission* [2020] SAERDC 32 where the Court considered the meaning of “predominately” in policies such as this.

*City Living Zone. The design responses also acknowledge the desired outcomes of the North Adelaide Low Intensity Subzone. While the existing context does not contain a prevailing residential character of low-rise houses on large allotments with open landscaped settings, the proposed development is responsive to these characteristics.*

25. Having regard to the above, and with the greatest of respect, Mellor Olsson has:
- 25.1 oversimplified the necessary approach to the planning assessment;
  - 25.2 incorrectly interpreted what the Zone seeks;
  - 25.3 failed to recognise the reality of the factual and historical context in which the proposed development will be implemented; and
  - 25.4 failed to undertake the necessary balancing and weighing of the various factors that contribute to a proper planning assessment.

## **Conclusion**

The Subzone's Performance Outcomes have no work to do in the assessment of the proposed development noting that the Land is **not** in a location where an open landscaped setting is the prevailing character. In any event, the proposed development is responsive to the characteristics referenced in the Subzone.

The Zone expressly envisages medium-density residential development which is also an existing key feature within the locality.

The necessary planning assessment requires the provisions of the Zone to be considered in the context of the factual and historical context in which the proposed development will be implemented. When undertaken in the proper context, it is plain that the built form of the proposed development is appropriate.

Yours faithfully



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