

## Clause 4.6 – Exceptions to Development Standards

Request to Vary Section 108(2)(a) & (b) of the State Environmental Planning Policy (Housing) 2021

**Address:** 669-683 Old South Head Road, Vaucluse

**Proposal:** The amended DA seeks consent to undertake the demolition of all structures on the site and construction of a seniors housing development involving 30 independent living units and ancillary facilities, including a ground floor retail/business premises, associated earthworks, lot consolidation, landscaping and tree removal works, located at No. 669-683 Old South Head Road, Vaucluse ('the site').

**Date:** 26 September 2024

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### 1. Introduction

This Statement has been prepared in accordance with the provisions of Clause 4.6 of the Waverly Local Environmental Plan 2012 (WLEP 2012). The statement sets out a request to vary the non-discretionary development standards for building height at Section 108(2)(a) and (b) of the State Environmental Planning Policy (Housing) 2021.

It is noted that this statement seeking to vary the non-discretionary standards has been prepared and submitted for abundant caution only, as it is considered that the provisions of the non-discretionary development standards at Section 108(2)(a) and (b) of the Housing SEPP is not relevant in the circumstances of the proposed development.

### 2. Site and Proposed Development

#### 2.1. Site Description

The site is located at No. 669-683 Old South Head Road, Vaucluse and is comprised of nine (9) allotments that are legally described as the following:

- Lot A, DP 324744;
- Lot B, DP 324744;
- Lot 2, DP 10314;
- Lot 1, DP 169310;
- Lot 4, DP 192614;
- Lot 1, DP 168877;
- Lot 1, DP 167942;
- Lot 1, DP 666626; and
- Lot 2, DP 316716.

The site has an area of 4,345.03m<sup>2</sup> and is irregular in shape. The site is located on the north-eastern corner of Old South Head Road and Oceanview Avenue, with a splayed frontage to Old South Head Road of 105.17m in length. The site has a secondary frontage to Oceanview Avenue of 33.53m.

The site has a significant fall (of approximately 5m) from the south-east to the north-west towards Old South Head Road. The northern part of the site drains to the rear of the existing properties on the site from west to east.

Vehicle access to the site is currently achieved via multiple separate driveways located along Old South Head Road and Oceanview Avenue.

The development site has a split zoning in accordance with the provisions of the Waverley Local Environmental Plan 2012 (WLEP 2012), such that the southern end (being Lots A and B in DP 324744) is zoned E1 Local Centre and the remainder of the site (the northern portion) is zoned R3 Medium Density Residential.

## **2.2. Development Description**

The amended DA seeks consent to undertake the demolition of all structures on the site and construction of a seniors housing development involving 30 independent living units and ancillary facilities, including a ground floor retail/business premises (on the E1 zoned land), associated earthworks, lot consolidation, landscaping and tree removal works, located at No. 669-683 Old South Head Road, Vaucluse ('the site').

## **3. Description of the Environmental Planning Instrument, development standard and proposed variation**

### **3.1. What is the name of the environmental planning instrument that applies to the land?**

The Waverley Local Environmental Plan 2012 (WLEP 2012) and the State Environmental Planning Policy (Housing) 2021 (the 'Housing SEPP').

### **3.2. What is the zoning of the land?**

The site is partly located within both the R3 Medium Density Residential zone and the E1 Local Centre zone under WLEP 2012 as illustrated in the extract of the Land Zoning Map in Figure 1.

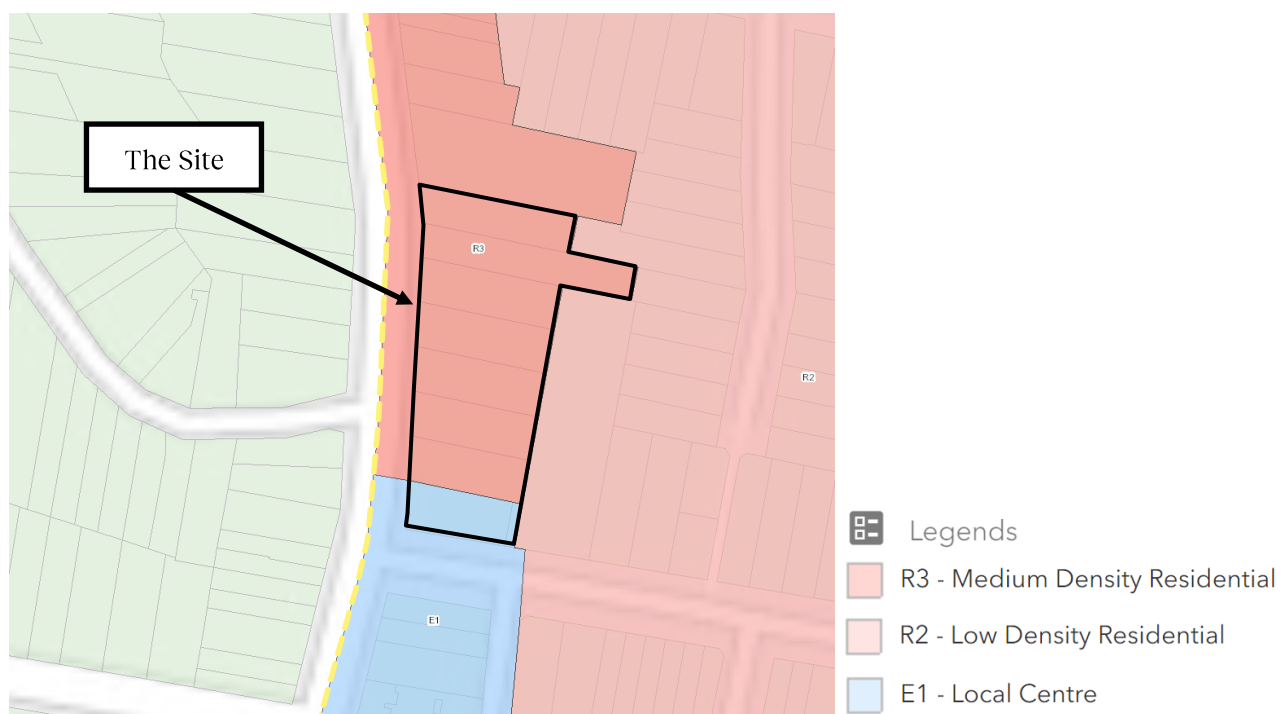


Figure 1: Extract of WLEP 2012 Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

The objectives of the R3 Medium Density zone are:

- *To provide for the housing needs of the community within a medium density residential environment*
- *To provide a variety of housing types within a medium density residential environment*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents*
- *To maximise public transport patronage and encourage walking and cycling*
- *To increase or preserve residential dwelling density*
- *To encourage the supply of housing, including affordable housing, that meets the needs of the population, particularly housing for older people and people with disability*
- *To provide development that is compatible with the desired future character and amenity of the surrounding neighbourhood*
- *To promote development that incorporates planning and design measures that reduce the urban heat island effect*
- *To improve the urban tree canopy by providing high levels of deep soil planting and additional landscaping*

The objectives of the E1 Local Centre zone are:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings*
- *To strengthen the viability of Waverley's existing business centres as places of vitality for investment, employment and cultural activity*
- *To maximise public transport patronage and encourage walking and cycling*
- *To encourage the provision of affordable housing*
- *To provide for a range of other uses, including light industrial, that serve the surrounding neighbourhood without impacting on the amenity of the adjoining uses*
- *To ensure development is of a height and scale that achieves the desired future character of the neighbourhood*
- *To promote employment growth by giving preference to commercial development over residential development*
- *To provide active ground floor uses to create vibrant centres*

### **3.3. What is the development standard being varied?**

This Statement seeks to vary the building height non-discretionary development standards under s108(2)(a) and (b) of the Housing SEPP.

Section 108(2)(a) of the Housing SEPP reads as follows:

- “(2) The following are non-discretionary development standards in relation to development for the purposes of independent living units—
- (a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,
  - (b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—
    - (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and
    - (ii) is limited to an area of no more than 20% of the surface area of the roof, and
    - (iii) does not result in the building having a height of more than 11.5m,”

### 3.4. Type of development standard.

Section 108(2)(a) and (b) are numerical non-discretionary development standards.

### 3.5. What is the numeric value of the development standard in the environmental planning instrument?

Section 108(2)(a) of the Housing SEPP provides a non-discretionary building height development standard of 9.5m for development for the purpose of independent living units.

Section 108(2)(b) of the Housing SEPP provides a non-discretionary building height development standard of 11.5m for servicing equipment on the roof of a building of development for the purpose of independent living units.

It is noted however that Clause 4.3 of WLEP 2012 establishes a maximum building height of 12.5m to the northern part of the site, and 13m to the southern part of the site, as illustrated in the extract of the WLEP 2012 Height of Buildings Map included in Figure 2.

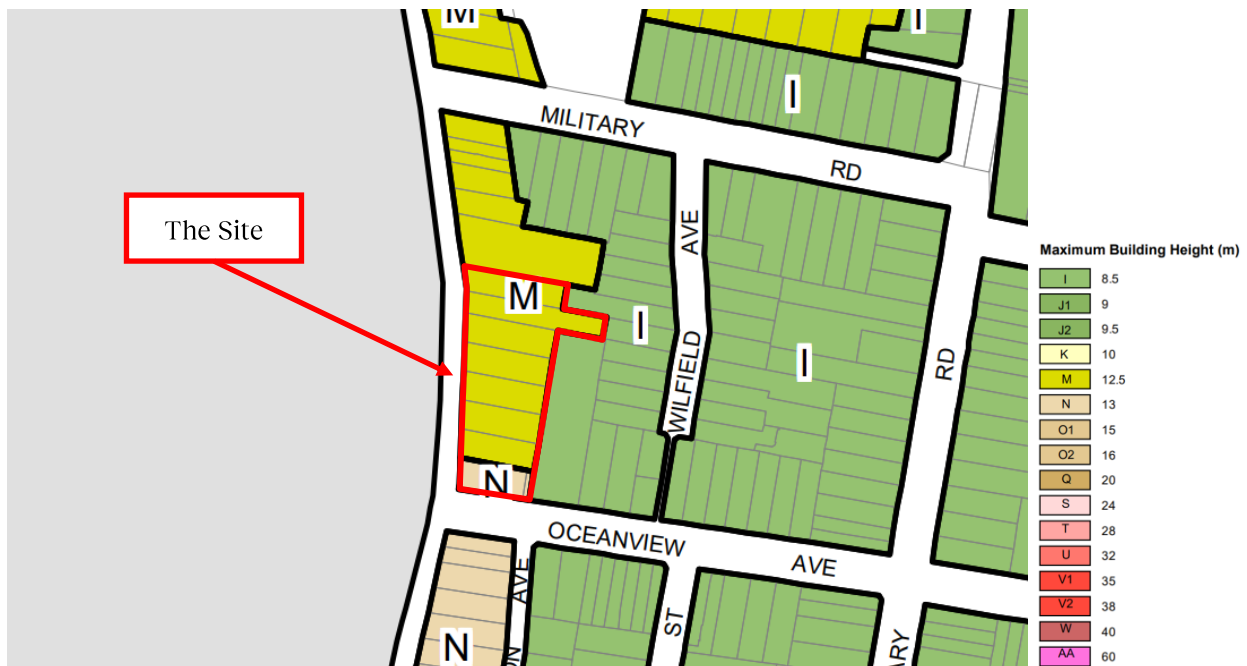


Figure2: Extract of WLEP 2012 Height of Buildings Map

In addition to maximum height of buildings outlined in Clause 4.3 of WLEP 2012, additional height is achievable at the site under the provisions of the “Additional Floor Space Ratios” development standard under the SEPP Housing 2021. Specifically, Section 87(2)(c) of the Housing SEPP reads as follows:

## 87 Additional floor space ratios

(1) This section applies to development for the purposes of seniors housing on land to which this Part applies if—

- (a) development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or
- (b) the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.

(2) Development consent may be granted for development to which this section applies if—

- (a) the site area of the development is at least 1,500m<sup>2</sup>, and
- (b) the development will result in a building with the maximum permissible floor space ratio plus—
  - (i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or
  - (ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or
  - (iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and
- (c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.”

The site is zoned part R3 and part E1 and development for residential flat buildings is permissible within the R3 zoned land under the WLEP 2012 and development for the purpose of shop top housing is permissible with consent within the E1 zoned land under WLEP 2012.

The development site has an area of 4,345.03m<sup>2</sup> and additional floor space proposed under the development is for the purpose of independent living units.

The provisions of Section 87 are therefore applicable to the site.

‘Maximum permissible building height’ is defined in the Dictionary to the Housing SEPP as “*the maximum building height means the maximum building height permitted on the land under an environmental planning instrument, other than this Policy, or a development control plan*”.

Therefore, the provisions of section 87(2)(c) of the Housing SEPP allows a bonus 3.8m above these maximum building heights equating to 16.8m over the southern (E1 zoned) part of the site and 16.3m over the northern (R3 zoned) part of the site.

It is therefore demonstrable that other provisions in an EPI (i.e. the Housing SEPP and the WLEP 2012) provide development standards which allow greater building height than the height that is set by the non-discretionary development standards at s108(2)(a) and (b).

(Note: As previously stated, this request has been lodged for an abundance of caution only.)

### 3.6. What is the proposed numeric value of the development standard in the development application?

The southernmost lift overrun and rooftop plant (i.e. servicing equipment) on the Southern Building has an RL of 85.7. This element is 4.392 above the 9.5m height control at s108(2)(a) and 2.392m above the 11.5m height control at s108(2)(b)(iii).

A second (more central) lift overrun and plant area on the Southern Building has the same RL of 85.7 and exceeds the maximum 9.5m height control at s108(2)(a) by 4.059m and exceeds the height control at s108(2)(b)(iii) by 2.059m.

Additionally, the northernmost lift overrun and rooftop plant area on the Northern Building has an RL of 82.5. This element is 3.88m above the 9.5m height control at s108(2)(a) and 1.88m above the height control at s108(2)(b)(iii).

Further, the extreme northern end of the proposed Northern Building has a RL of 81 and exceeds the 9.5m height control at s108(2)(a) by 5.07m.

Importantly, it is noted that the buildings remain well under the maximum height allowable under the provisions of s87(2)(c) of the Housing SEPP (this is illustrated by the red line in the above extracts of the section drawing).

### ***3.7. What is the percentage variation (between the proposal and the environmental planning instruments)?***

The proposed building reaches a height of 14.57m above the ground level (existing) at the northern end of the northern building. This is 5.07m above the s108(2)(a) non-discretionary building height of 9.5m and represents a 53.37% variation to the standard.

The southern most lift overrun and plant area on the Southern Building results in a non-compliance of 4.392m with the 9.5m height control at s108(2)(a) which equates to a variation of 46.2%. The same lift overrun and plant area results in a non-compliance of 2.392m with the 11.5m height control at s108(2)(b)(iii) which equates to a variation of 20.8%.

The central lift overrun and plant area on the Southern Building results in a variation of 4.059m which equates to a 42.7% variation of the 9.5m height control at s108(2)(a) and results in a non-compliance of 2.059m with the 11.5m height control at s108(2)(b)(iii) which equates to a variation 17.9%.

The northern lift and plant area on the Northern Building results in a variation of 3.88m which equates to a 40.8% variation of the 9.5m height control at s108(2)(a) and results in a non-compliance of 1.88m with the 11.5m height control at s108(2)(b)(iii) which equates to a variation 16.3%.

It is again noted that all of the above building elements sit well below the height control set by the Housing SEPP which affords an additional 3.8m height bonus above the WLEP 2012 building control in accordance with the provisions of s 87(2)(c).

## **4. Justification of the Proposed Variation**

### ***4.1. Clause 4.6 Exceptions to Development Standards***

Clause 4.6 of WLEP 2012 establishes the framework for varying development standards in an Environmental Planning Instrument. Clause 4.6(3) outlines that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This written request has been prepared in accordance with the *Guide to Varying Development Standards*, published by the NSW Department of Planning and Environment in November 2023 and has regard to the following judgements:

- *Winten Property v North Sydney Council* (2001) NSW LEC 46;
- *Wehbe v Pittwater Council* (2007) NSW LEC 827;
- *Four2Five Pty Ltd v Ashfield Council* (2015) NSW LEC 90;
- *Randwick City Council v Micaul Holdings Pty Ltd* (2016) NSW LEC 7;
- *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSW LEC 118;
- *Initial Action Ltd v Woollahra Municipal Council* (2019) NSW LEC 1097;
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* (2019) NSWCA 130;

#### **4.2. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?**

The five common ways to establish whether compliance with the development standard is unreasonable or unnecessary have been summarised in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and are outlined as follows:

*Compliance with the development standard is unreasonable or unnecessary if the:*

1. *Objectives of the development standard are achieved notwithstanding the non-compliance*
2. *Underlying objective or purpose is not relevant to the development*
3. *Underlying objective or purpose would be defeated or thwarted if compliance was required*
4. *Development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard*
5. *Zoning of the land on which the development is proposed was unreasonable or inappropriate.*

This written request relies on the first and the second test described in *Wehbe* with regard to variation of the non-discretionary standards at s108(2)(a) and s108(2)(b) of the Housing SEPP.

Compliance with the non-discretionary building height development standards at s108(2)(a) and s108(2)(b) of the Housing SEPP is unreasonable and unnecessary as the objective of the development standard is achieved notwithstanding the non-compliance. Specifically, the object of the non-discretionary standards is at s108(1) and states the following:

“(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.”

Noting that other EPIs (the WLEP and section 87 of the Housing SEPP) set less (not more) onerous maximum building height standards for the proposed development, it can be said that the object of the standard is achieved.

Further, it can also be said that the purpose of the non-discretionary development standards at s108(2)(a) and s108(2)(b) are not relevant to the development because of the fact that WLEP 2012 and s87 of the Housing SEPP prescribe considerably less onerous building height development standards which apply to the subject development.

#### **4.3. Are there sufficient environmental planning grounds to justify contravening the development standards?**

It is considered that there are sufficient environmental planning grounds to justify contravening the development standards which are detailed as follows:

### **Consistency with other applicable Building Height standards**

The purpose of the non-discretionary development standards at s108(2)(a) and s108(2)(b) are redundant. The development is subject to, and consistent with, considerably less onerous building height development standards that are applicable to the proposal in accordance with the provisions of s87(2)(c) of the Housing SEPP and the WLEP 2012.

### **Contextual fit:**

The proposed four storey building are consistent with the height and scale of the adjacent development and the desired future character of the locality as envisaged with the WDCP 2022.

In that regard the non-compliant elements do not result in any inconsistency with the desired future character of the Rose Bay North Village Centre controls (at 3.1.11 of the WDCP 2022) and the “Building Design and Streetscape” and the “Site, Scale and Frontage” controls under C2 of the WDCP 2022.

Notwithstanding the breach in height, the proposed buildings achieve an appropriate scale and transition of height relative to surrounding contemporary and older buildings in the immediate vicinity of the site including the four storey developments at 2, 4 and 6 Oceanview Avenue and 687 Old South Head Road.

Notwithstanding the breach in height, the proposal satisfies other relevant controls and requirements including the Design Principles under Chapter 3, Part 5, Division 6 of the Housing SEPP, the Design Requirements under Chapter 3, Part 5, Division 5 of the Housing SEPP, the “Standards Concerning Accessibility and Usability for Hostels and Independent Living Units” under Schedule 4 of the Housing SEPP, and the relevant provisions of the WDCP 2022 and the Apartment Design Guide (ADG).

### **Existing approvals:**

The proposed height, scale and building envelope is consistent with the height and building envelope of existing approvals for the site.

Specifically, notwithstanding the breach in height, the proposal achieves a building height that is commensurate with the building height approved under the two previous recent approvals for the site (i.e. DA-455/2021 and DA-374/2020).

The proposal also achieves an FSR that is commensurate with the combined FSR of DA-455/2021 and DA-374/2020.

Importantly, and notwithstanding the non-compliance to the non-discretionary development standards, it can be demonstrated that the proposed development will result in a better planning outcome compared to the previous approvals at the site for the following reasons:

- The development proposes an overall scale and density commensurate with previous approvals for the site, however it replaces an approved residential flat building component at the corner of Old South Head Road and Oceanview Avenue, with seniors housing. This is considered to be a benefit to the local and broader community in providing a land use that is in demand in the area.
- The proposal delivers greater amenity and benefit to residents and the public through the synergies that will be achieved by delivering seniors housing across both sites (i.e. car parking, storage, use of open space and other facilities are able to be consolidated across the wider site). The synergies and improvements achieved through the consolidated approach include:
  - A more cohesive and higher quality urban design and architectural response to the prominent site. The proposal allows for a two-building solution to the site (similar to the previous



approvals) albeit with the separation of the buildings in a more favourable and appropriate location along Old South Head Road compared to the two approved buildings,

This results in a superior streetscape character through a reduction in the visual massing of the buildings along the Old South Head Road elevation. It also results in reduced overshadowing of the residential flat building to the east of the site at 2 Oceanview Avenue, because of the more northern placement of the building separation.

- A reduction in on-site car parking from 64 to 49 spaces and thereby reduction in traffic generation.
- An increase in deep soil area.
- An increase in basement storage volume for residents.
- Reduction in overshadowing to the residential flat building at 2 Oceanview Avenue to a point that no openings in the western elevation of that building will be in shadow between 9am and 3pm in mid-winter.

Therefore, and notwithstanding the breach in height, in planning terms, the scale and density of the proposal is entirely consistent with the approved scale of two recent development approvals for the site but will result in a better planning outcome compared to those approvals.

### **Avoidance of impacts**

The variation to the building height control does not result in a development that will give rise to significant adverse overshadowing, privacy impacts, or view loss.

The non-compliant elements do not result in non-compliance with relevant solar access controls and do not result in adverse impacts to the amenity of existing adjacent residential development at 2 Oceanview Avenue and 687 Old South Head Road. Specifically, the proposal:

- The proposal complies with the provisions of Part 4A of the ADG and the Solar Access controls in the Waverley DCP for residential development; and
- The non-compliant building height components do not result in any additional overshadowing upon any openings of adjacent development including openings in the western elevation of the existing residential flat building to the east of the site at 2 Oceanview Avenue from 9am to 3pm in mid-winter.
- The proposal, and the non-compliant elements of the proposal, do not affect the sunlight to the living rooms or the primary private open spaces of the apartments at the residential flat building at 2 Oceanview Avenue in any way.
- The proposal (including the non-compliant building height components) will not result in overshadowing of any public park, reserve or the like

The non-compliant elements do not result in non-compliance with relevant privacy controls and do not result in adverse impacts to the amenity of existing adjacent residential development at 2 Oceanview Avenue and 687 Old South Head Road with regard to privacy. Specifically, the proposal:

- Complies with the Objective of Part 3F-1 of the ADG (Visual Privacy) and the Objectives and Controls of the Waverley DCP at Part 2.15 (Visual Privacy and Security) of Part C2 (Other Residential Development).
- Is separated by a distance of 12m or more from the western building wall of the RFB at 2 Oceanview Avenue in compliance with the Design Criteria at 3F of the ADG.

- Is setback by a minimum of 4.5m the northern boundary and the northern building wall has been designed so that any habitable rooms with north facing openings are provided with screening devices and are off-set against any openings within the southern building wall of the RFB at 687 Old South Head Road, with north facing private open space areas having screening devices and or including 1m deep planters to ensure a 1m setback to the northern edge of those balconies.

**Provision of a public benefit and provision of affordable housing (i.e., consistent with a strategic policy decision)**

The proposal will result in public benefit as it seeks to provide for seniors housing at the site within a development that is commensurate in terms of density and building height with previous approvals for the site, but that will be superior in a public benefit and planning sense in that it will reduce impacts for adjacent development, improve the streetscape and urban design outcomes and improve amenity for future residents in comparison to the previous approvals.

Additionally, the proposal is accompanied by a VPA which involves a monetary contribution that would allow for the realisation of affordable housing by Waverley Council. The extent of the contribution is reflective of the dwelling outcome which is only capable of being delivered with the proposed lift overruns and parapet that results in a height breach.

The VPA is to the value of the affordable housing (i.e. 4 dwellings) that would otherwise have been realised at No. 671-683 Old South Head Road in accordance with Development Consent 455/2021. Further, the VPA provides for additional monetary contributions relating to the additional GFA (and based upon Council's VPA Policy) that is in excess of the GFA envisaged by the development standard relevant to the southern part of the site, being 669 Old South Head Road.

Generally, there is public benefit in maintaining standards. However, there is also public benefit in maintaining a degree of flexibility in specific circumstances.

In this case, no public benefit would accrue in the circumstances of requiring strict numerical compliance with the building height development standard when it has been demonstrated that, despite the numerical non-compliance, the proposed development will achieve consistency development standard objectives.

**The proposal is in the public interest**

The proposal is in the public interest because, notwithstanding the numerical non-compliance with the standards, the development remains consistent with the objectives of the height of buildings standard (as set out above under section 4.2.1 of this Statement), the objectives for the E1 and R3 land use zones and with the Policy Principles of the Housing SEPP (as set out below).

- *Principles of the State Environmental Planning Policy (Housing) 2021*

The Housing SEPP identifies the "Principles of the Policy" under Section 3. The proposed development is consistent with the Principles of the policy as detailed below:

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*

The proposal is primarily for the purpose of high quality seniors housing in a location with strong demand for seniors housing. The proposal will result in the provision of diverse housing and is consistent with this principle.

*(b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

The proposal is primarily for the purpose of high quality seniors housing in a location with strong demand for seniors housing. The proposal will result in the provision of housing for seniors and people with a disability and is consistent with this principle. In addition, the proposal is accompanied by a VPA which involves a monetary contribution that would allow for the realisation of affordable housing by Waverley Council.

*(c) ensuring new housing development provides residents with a reasonable level of amenity,*

The proposed seniors housing development is of a high standard and will result in a high level of amenity and this is reflected in the compliance of the development with the relevant sections of the ADG and DCP and the Seniors Housing development standards (under Schedule 4 of the SEPP). The lift overruns associated with the proposal will provide mobility for future residents throughout the development.

*(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

The proposed seniors housing development is located at the northern end of the Rose Bay North Village and thus is well located to take advantage of the existing services in that village. The site is also located with frontage to Old South Head Road, providing good access to public transport (bus) routes which can be accessed on Old South Head Road.

*(e) minimising adverse climate and environmental impacts of new housing development,*

The proposal is supported with BASIX certification, satisfies the applicable WDCP 2022 environmental sustainability requirements and is capable of achieving a NABERS Tenancy commitment agreement if required by Council. The proposal is consistent with the Policy Principle.

*(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

The proposal displays high architectural merit and will provide a positive addition to the streetscape at the northern end of the Rose Bay North Village. The proposal includes a pair of highly articulated buildings, one of which wraps around the corner of the prominent intersection of Old South Head Road and Oceanview Avenue. This building includes active uses at ground level and provides a skilful transition from the E1 zone into the R3 zone at the northern edge of the Village. Overall, the proposed buildings include high quality external finishes and a comprehensive landscape design.

Notwithstanding numerical non-compliance, the development will present a better urban design and street elevation outcome compared to the streetscape result that was approved under the previous consents for the site (being DA 374/2020 and DA 455/2021). This will be achieved by providing a more unified built form (compared to the two approved buildings that contain quite varied architectural styles).

The proposed design displays greater streetscape articulation and will lessen the visual massing along the Old South Head Road streetscape by positioning the building separation of the two buildings further north along Old South Head Road (compared to the situation approved under DA 374/2020 and DA 455/2021).

The proposal is consistent with the Policy Principle.

*(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

The proposal seeks to provide seniors housing in a location with demand for this type of residential accommodation. The proposal, although not providing short-term rental accommodation does not inhibit the delivery of such accommodation and is not inconsistent with the Policy Principle.

*(h) mitigating the loss of existing affordable rental housing.*

The proposal does not result in the loss of existing affordable housing. It is noted however that a previous approval for the site, being DA 455/2021 involved the inclusion of affordable housing at the site.

The applicant has therefore proposed a VPA which seeks to provide a monetary contribution for the provision of affordable housing. The VPA has been prepared in accordance with Waverley Council's Planning Agreement Policy.

The VPA involves a monetary contribution based upon market value of comparable residential apartments and thereby seeks to provide a similar positive affordable housing outcome as that which was previously approved under Condition No. 5 of DA-455/2021.

The proposal satisfies the Policy Principle.

- Objectives of the Zones

The proposal remains consistent with the objectives of the R3 Medium Density Residential and E1 Local Centre zones, despite the non-compliance with the building height standard as demonstrated in the assessment of the objectives below.

R3 Zone Objectives	Comment
<i>To provide for the housing needs of the community within a medium density residential environment</i>	The proposal will result in the construction of 30 new independent living units for seniors, including ancillary facilities to accommodate their needs. The proposed development is of a land use, scale and density that is commensurate with a medium density residential environment.
<i>To provide a variety of housing types within a medium density residential environment</i>	The proposal results in a diverse dwelling mix across the site to accommodate a variety of housing types for seniors and the proposal also results in the addition of seniors housing to the locality and thereby increasing the variety of housing types available in the medium density zone.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i>	The proposal accommodates ancillary facilities to the seniors housing which are generally located within the Lower Ground Level of the development. The retail/business premises on the southern extent of the site will create additional services following its establishment.
<i>To maximise public transport patronage and encourage walking and cycling</i>	The site is within close proximity to public transport routes (i.e. bus routes) along Old South Head Road immediately in front of the site. The site proposes to accommodate 38 bicycle parking spaces in the Basement 1 Level to provide opportunities for cycling to and from the site. Section 7 of the Traffic and Parking Assessment

	<p>prepared by TTPA includes a Green Travel Plan to encourage sustainable transport outcomes by way of encouraging active transport options. It is also noted that the proposal involves less on-site car parking compared to the previous approvals for the site (i.e. there will be a reduction in vehicular trip generation from the site when compared to the previous approvals).</p>
<i>To increase or preserve residential dwelling density</i>	<p>The site currently accommodates seven (7) detached dwellings, which will be replaced with a seniors housing development that provides a total of 30 independent living units, thereby increasing residential dwelling density.</p>
<i>To encourage the supply of housing, including affordable housing, that meets the needs of the population, particularly housing for older people and people with disability</i>	<p>The supply of independent living units will provide housing for older people and mobility impaired people and therefore contribute to the housing needs of the population.</p> <p>It is noted that the current proposal is not subject to the requirements of the former Seniors Housing SEPP, which required the provision of affordable housing places in order to achieve bonus floor space.</p> <p>Notwithstanding, the applicant has submitted a VPA to Council seeking to provide a monetary contribution for the purpose of the provision of Affordable Housing and has been prepared in accordance with Waverley Council's Planning Agreement Policy 2014.</p> <p>The VPA seeks to provide similar positive affordable housing outcomes as that which were previously approved under Condition No. 5 of DA-455/2021.</p>
<i>To provide development that is compatible with the desired future character and amenity of the surrounding neighbourhood</i>	<p>The proposal is consistent with the desired future character of both the Rose Bay North Centre and the medium density residential zone as set out within Parts C2 and E3 of the WDCP 2022. The proposed massing and design of the development, which is similar to that which was approved under DA-455/2021, will continue to make a valuable (if not improved) contribution to the streetscape and one that is consistent with the relevant provisions of the WDCP 2022.</p>
<i>To promote development that incorporates planning and design measures that reduce the urban heat island effect</i>	<p>The proposal incorporates building design measures to improve sustainable development outcomes, which also includes a comprehensive tree planting schedule to support the canopy coverage of the proposal.</p>
<i>To improve the urban tree canopy by providing high levels of deep soil planting and additional landscaping</i>	<p>Reference is made to the Landscape Plans prepared by NBLS. The proposal will result in an increase in deep soil coverage for the site above what was approved under DA-455/2021 and DA-374/2020. The proposal is consistent with the provisions of deep soil and landscaped area</p>

provisions of the Housing SEPP as they apply for seniors housing and also the relevant provisions of the ADG.

Table 2: Medium Density Residential Zone Objectives Assessment Table

E1 Zone Objectives	Comment
<i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area</i>	The proposed seniors housing development incorporates a retail/business premises component on part of the ground floor, thereby providing a mix of uses that cater to the local community and activating the street level at the intersection of Oceanview Avenue and Old South Head Road.
<i>To encourage investment in local commercial development that generates employment opportunities and economic growth</i>	The development will create employment within both the seniors housing component and the retail/business premises component of the southern building. The proposal will also generate short-term employment growth by way of the construction of the proposed development and will also provide long-term employment through the ongoing jobs created by the retail component and the operation and management of the seniors housing development.
<i>To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area</i>	<p>The part of the site that is identified within the E1 Local Centre zone contains independent living units above the ground floor level. The design of the residential accommodation creates visual interest and strong articulation on the corner of Old South Head Road and Oceanview Avenue which will promote vibrancy for the area.</p> <p>The proposal to provide seniors housing across the site is consistent with Waverley Local Housing Strategy. In particular it is noted that within Part 6.4 of the Strategy, there is identified an ongoing need and increasing demand (and potential ongoing shortfall) for seniors housing. The proposed development will assist in meeting the identified demand through the provision of high quality seniors housing within the LGA.</p>
<i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings</i>	The proposal will include a retail/business premises on part of the ground floor level of the southern building that is within the E1 Local Centre zone.
<i>To strengthen the viability of Waverley's existing business centres as places of vitality for investment, employment and cultural activity</i>	The nature and scale of the proposed retail/business premises use on the ground floor level, while relatively small, will nonetheless add to the commercial offering within the Rose Bay North Village and strengthen its viability.
<i>To maximise public transport patronage and encourage walking and cycling</i>	The proposal will satisfy this objective in the same manner as the public transport patronage objectives identified for the R3 Medium Residential zone.

<i>To encourage the provision of affordable housing</i>	<p>We note that there is no requirement under the relevant parts of the current LEP or Housing SEPP to provide affordable housing on-site.</p> <p>It is noted that the current proposal is not subject to the requirements of the former Seniors Housing SEPP, which required the provision of affordable housing places in order to achieve bonus floor space.</p> <p>Notwithstanding, the applicant has submitted a VPA to Council, seeking to provide a monetary contribution for the purpose of the provision of Affordable Housing. The VPA has been prepared in accordance with Waverley Council's Planning Agreement Policy.</p> <p>The VPA seeks to provide similar positive affordable housing outcomes as that which were previously approved under Condition No. 5 of DA-455/2021.</p>
<i>To provide for a range of other uses, including light industrial, that serve the surrounding neighbourhood without impacting on the amenity of the adjoining uses</i>	<p>The proposal does not include uses that will adversely impact the amenity of adjoining land. The seniors housing is a type of residential accommodation that is consistent with land uses at adjacent sites to the north and east. The proposed ground floor retail/business space over the E1 zoned land is consistent with the site's zoning and with the approved retail/business land that has operated at the site for a considerable time.</p>
<i>To ensure development is of a height and scale that achieves the desired future character of the neighbourhood</i>	<p>The height and scale of the proposal is commensurate with the height and scale of development previously (recently) approved on the site. The design and visual interest created by the proposal will help to positively develop the future character of the neighbourhood. The proposal will not result in adverse view loss, visual privacy or overshadowing and is consistent with the desired future character of the Rose Bay North Village Centre controls (at 3.1.11 of the WDCP 2022) and the "Building Design and Streetscape" and "Site, Scale and Frontage" controls under C2 of the WDCP 2022.</p>
<i>To promote employment growth by giving preference to commercial development over residential development</i>	<p>The proposal is primarily for the purposes of seniors housing, with the retail/business premises use serving an ancillary function on part of the ground floor level of the southern building.</p> <p>The proposal will nonetheless provide a contemporary new commercial space and will activate the ground floor at the prominent corner site. The proposal will provide a rational transition between the E1 Local Centre Zone and the immediately adjacent R3 Medium Density Zone in terms of land uses.</p> <p>This approach is consistent with the previous approvals for the site and was supported by Council as part of the pre-DA</p>

	process. It is considered that the proposed function of the parcel of land within this zone better serves the needs and amenity of the local community over a dominant commercial land use.
<i>To provide active ground floor uses to create vibrant centres</i>	As defined by Clause 6.5 of WLEP 2012, the proposal includes an active ground floor use with the retail/business premises facing Old South Head Road. The design of the proposal and its prominent corner location will create vibrancy along the street.

Table 3: E1 Local Centre Zone Objectives Assessment Table

## 5. Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the non-discretionary building height development standards at section 108(2)(a) and 108(2)(b) of the Housing SEPP. It is noted that this request for an exception to the non-discretionary standards at s108 of the Housing SEPP has been provided for an abundance of caution.

As demonstrated in this submission, it would be unreasonable and is unnecessary for strict compliance with the height of buildings standards to be enforced in this instance.

It has been demonstrated that the non-discretionary height standard at s108(2)(a) and s108(2)(b) of the Housing SEPP are not relevant to the proposal and that in any event, the object of the non-discretionary standards at s108 are achieved.

For the reasons set out in detail under section 4.3 of this Statement, it has also been demonstrated that there sufficient environmental planning grounds to justify contravening the development standards in this instance.

The non-compliance is not considered to result in any precedents for future development within the locality or broader LGA, given the site circumstances and surrounding pattern of development, and particularly as the proposed development is of a similar height, scale and density (FSR) as that which has recently been approved for the site through the issue of Development Consents DA-455/2021 and DA-374/2020.

It is concluded that the variation to the development standards is well founded.