

Clause 4.6 – Exceptions to Development Standards

Request to Vary Clause 4.3 of the Waverley Local Environmental Plan 2012

Address: 669-683 Old South Head Road, Vacluse

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, Vacluse ('the site').

Date: 26 September 2024

1. Introduction

This Statement has been prepared in accordance with the provisions of Clause 4.6 of the Waverley Local Environmental Plan 2012 (WLEP 2012). The statement sets out a request to vary the height of buildings development standard at Clause 4.3 of the WLEP 2012.

2. Site and Proposed Development

2.1. Site Description

The site is located at No. 669-683 Old South Head Road, Vacluse 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 4,345.03m² 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 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 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).

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.

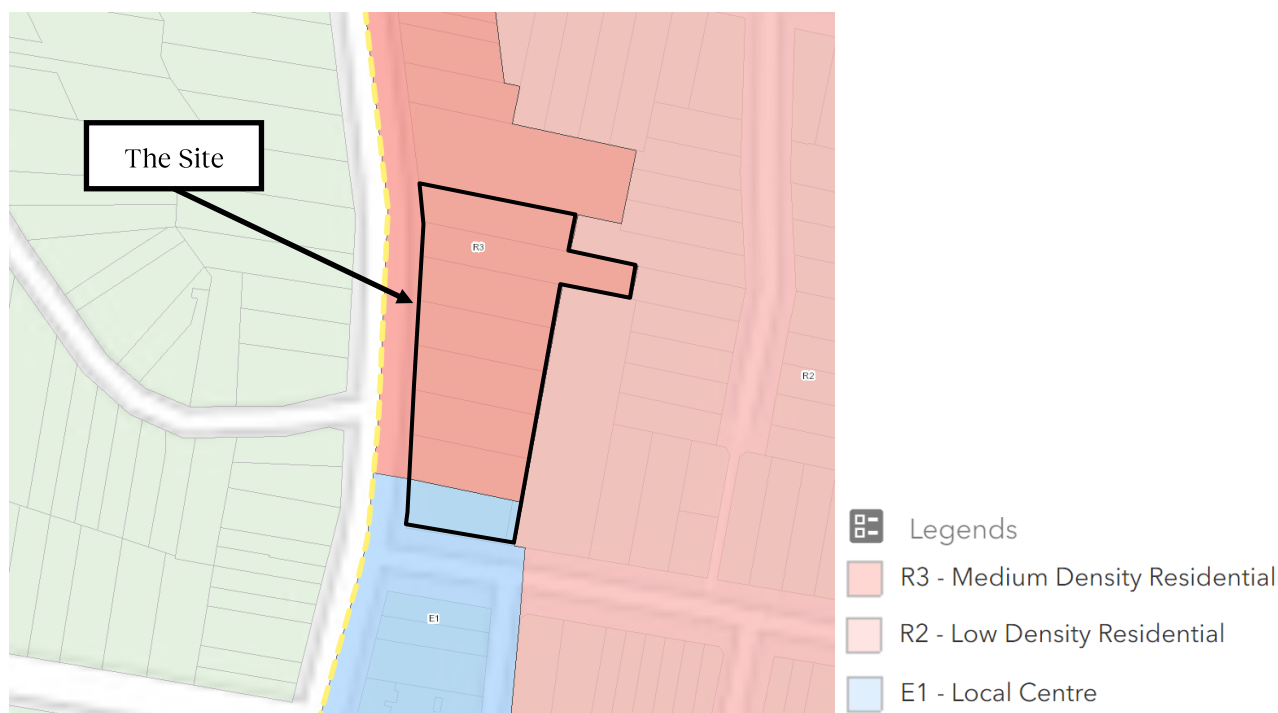


Figure 1: Extract of WLEP 2012 Zoning Map (Source: NSW Planning Portal Digital EPI Viewer)

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?

The WLEP 2012 is the relevant EPI and Clause 4.3 of WLEP 2012 specifies a maximum height of buildings for development at the site.

The objectives of Clause 4.3 of WLEP 2012 are as follows—

- (a) to ensure building heights preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,*
- (b) to accommodate taller buildings on land in Zone E2 Commercial Centre in the Bondi Junction Centre and establish a transition in scale between adjoining zones to protect local amenity,*
- (c) to maintain satisfactory solar access to existing buildings and public areas,*

(d) to establish building heights that are consistent with the desired future character of the locality

3.4. Type of development standard.

Clause 4.3 of the WLEP 2012 is a numerical development standard.

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

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.

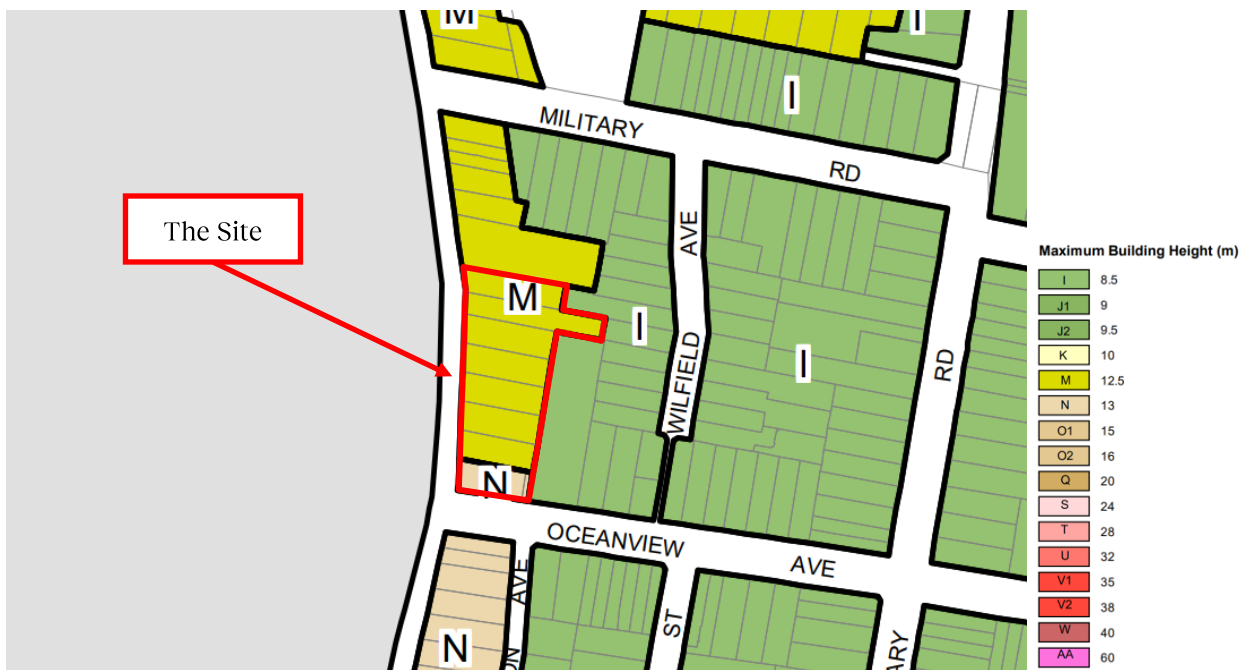


Figure 2: Extract of WLEP 2012 Height of Buildings Map

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 the WLEP 2012.

The development site has an area of 4,345.03m² and additional floor space proposed under the development is for the purpose of independent living units.

Therefore, the building height permitted under Clause 4.3 of WLEP 2012 is 12.5m and 13m over the southern and northern parts of the site, respectively.

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

The southern most lift overrun in the southern building has an RL of 85.7 and is 892mm above the 13m maximum height control (of the E1 zoned land) and 1195mm above the 12.5m maximum height control (of the R3 zoned land).

A second (more central) lift overrun has the same RL of 85.7 and exceeds the maximum 12.5m height control by 1059mm.

Additionally, the extreme northern end of the proposed northern building has a RL of 81 and exceeds the 12.5m height control by 2070mm.

The locations of the height exceedances are illustrated best in the section drawing number DA10.001, and the Building Height Plane drawing, with extracts provided below.

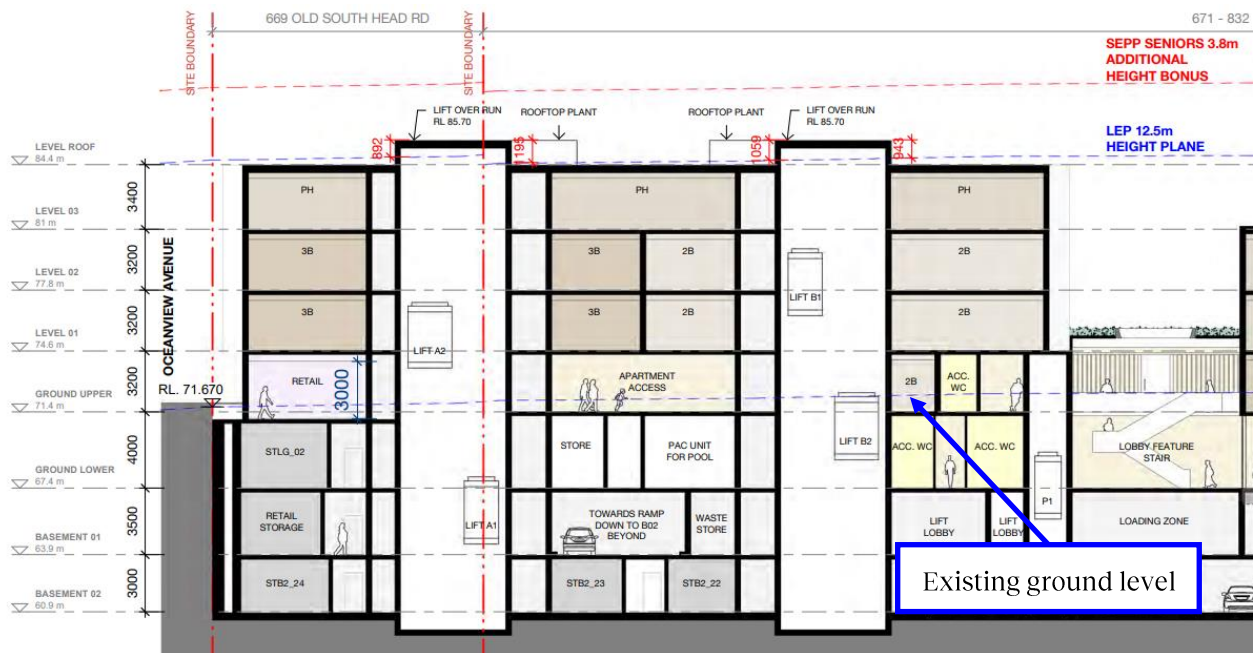


Figure 3: Extract of the southern end of section drawing DA10.001

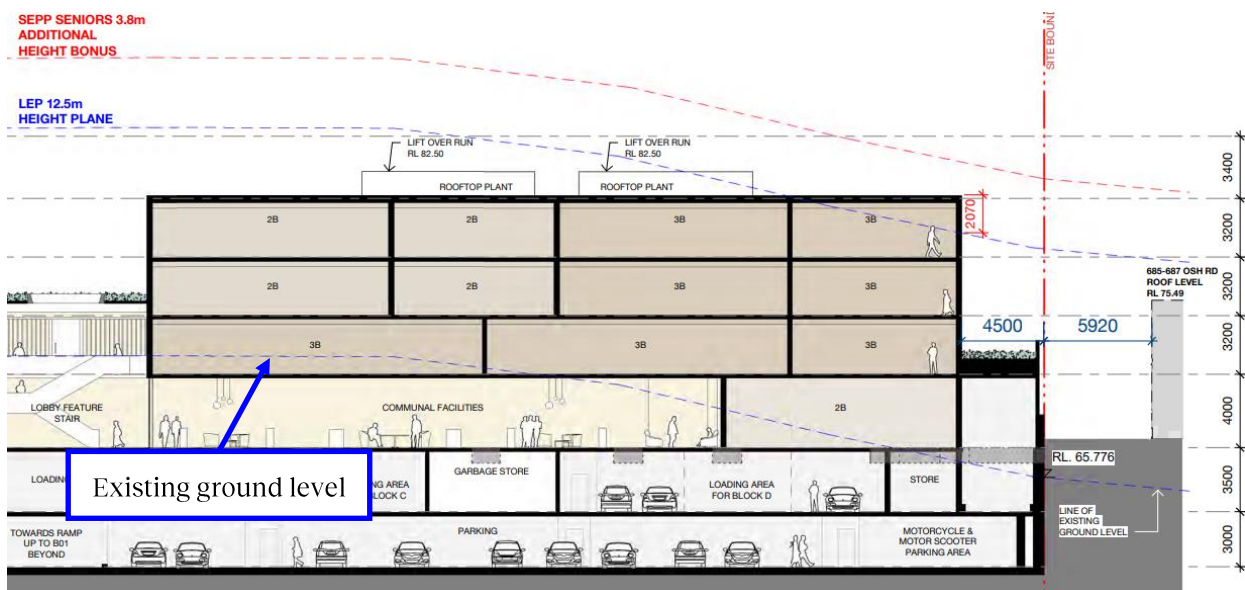


Figure 3: Extract of the northern end of section drawing DA10.001



Figure 4: Extract of Building Height Plane (Page 13 of DA RFI Design Response prepared by Bates Smart) - non-compliant elements illustrated in grey.

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 2.07m above the WLEP maximum building height of 12.5m and represents a 16.56% variation to the WLEP height standard.

The southern most lift overrun results in a non-compliance with the 13m height control of 892mm which equates to a variation of the 13m height control of 6.86% and a variation to the 12.5m height control of 1195mm or 9.56% (i.e. the lift straddles the zone and building height boundary).

The central lift overrun results in a variation of 1059mm which equates to an 8.47% variation of the 12.5m height control.

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 test described in *Wehbe* with regard to the variation of Clause 4.3 of WLEP 2012.

Compliance with the Height of Buildings development standard at Clause 4.3 of WLEP 2012 is unreasonable and unnecessary because it can be demonstrated that the development achieves the objectives of the Clause 4.3 of WLEP 2012 Height of Buildings standard as set out within the SEE submitted with the amended DA and highlighted below in this Statement under section 4.2.1.

The following sections set out how the proposal achieves the objectives of the WLEP 2012 Building Height standard.

4.2.1 Objectives of the Height of Buildings Standard

The proposal remains consistent with the objectives of the height of buildings standard outlined in Clause 4.3 of WLEP 2012 despite the non-compliance, as demonstrated below:

a) to ensure building heights preserve the environmental amenity of neighbouring properties and public spaces and, if appropriate, the sharing of views,

The proposed development is of an appropriate height and scale within the context of the site and locality. The new building responds to the height of surrounding development as well as the height that is anticipated for development at the site by the WLEP.

The amended DA has been designed to minimise any potential impacts upon the environmental amenity of neighbouring properties and public spaces in terms of overshadowing, visual privacy, and views.

The architectural drawings (including the shadow diagrams) submitted with the DA demonstrate that the development (including the non-compliant building height components) will not result in additional overshadowing upon any 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 (this is demonstrated in the Shadow Diagrams and Sun Eye Diagram prepared by Bates Smart and submitted with the DA). It is also noted that all the openings in the western and northern elevations of 2 Oceanview Avenue are to bedrooms and are not to living rooms.

It can also be stated that in terms of the preservation of amenity (with respect to solar access), a test for acceptable solar access amenity, as provided for in Part 4A of the ADG (and the Waverley DCP), is a minimum 2 hours solar access to internal living rooms and private open spaces for residential apartments between 9am and 3pm in mid-winter. In that regard the proposal fully complies such that overshadowing from the proposal does 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.

Further, and importantly, the proposed development as amended will result in greater solar access to the western openings of the residential flat building at 2 Oceanview Avenue when compared to the developments approved under DA-455/2021 and DA-374/2020. In that regard, it can be stated that the proposal will not only preserve amenity, but will improve it.

The proposal (including the non-compliant building height components) will not result in overshadowing of any public park, reserve or the like and will not inhibit important or significant existing views to or from a public place.

Having regard to amenity relating to visual privacy, the proposed development 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).

Specifically, the rear (eastern) building wall of the proposed buildings within the development are setback by 6m (or more) from the southern boundary, consistent with the ADG Design Criteria at 3F.

It is also noted that the eastern building wall of the proposed buildings are 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.

Having regard to the only other boundary that adjoins residential development, the northern side boundary, it is noted that the proposed building wall is setback by a minimum of 4.5m. This is greater than the minimum 3m for required under the ADG for non-habitable rooms (for buildings up to 4 storeys).

It is noted that the northern building wall of the proposed amended development 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.

Further, the private open space areas at the northern end of the proposed development (i.e. balconies to serving Units UG.01, Apt 01.01 and 2.01) have been designed to include screening devices to their respective northern edges and or include 1m deep planters which ensure a 1m setback to the northern edge of those balconies.

By including these devices, the amended design ensures that there will be no direct overlooking opportunities from the proposed northern units into or over internal living spaces or private open spaces of units located at 687 Old South Head Road.

In summary therefore, the proposed development is considered to preserve the environmental amenity of the adjacent residential properties, having regard to solar access and privacy, to a level that is appropriate and reasonably expected under the applicable planning provisions when compared with a fully compliant height proposal.

Further, the proposal is considered to result in a better environmental amenity outcome for the adjacent residential properties when considered against the impacts of the developments that have been recently approved for the site, particularly having regard to overshadowing and visual privacy.

The proposal retains similar setbacks as that which was approved under DA-374/2020 and DA-455/2021, which produces a relatively similar built form envelope. It is considered that the proposal will not result in any detrimental view impacts in addition to what has been previously approved.

The non-compliant building height elements of the proposal, being the lift overruns and the northern edge of the northern building, does not impact the development from achieving compliance with Objective (a).

(b) to accommodate taller buildings on land in Zone E2 Commercial Centre in the Bondi Junction Centre and establish a transition in scale between adjoining zones to protect local amenity,

Not applicable. This objective relates to development in the Bondi Junction Centre. The proposal is not within an E2 zone or within the Bondi Junction Centre.

(c) to maintain satisfactory solar access to existing buildings and public areas,

As outlined under the discussion under Objective a) above, the proposal complies with the relevant solar access controls within the WDCP and the ADG as they relate to solar access for existing buildings and this is demonstrated within the Shadow Diagrams and Sun Eye Diagram submitted with the DA.

Further, it is noted that the proposed design (including the non-compliant building height components) will not result in additional overshadowing upon any 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 (this is demonstrated in the Shadow Diagrams and Sun Eye Diagram prepared by Bates Smart and submitted with the DA). It is also noted that all the openings in the western and northern elevations of 2 Oceanview Avenue are to bedrooms and are not to living rooms.

The proposal will not result in overshadowing of any public park, reserve or the like.

The proposal maintains satisfactory solar access to existing buildings and public areas. The non-compliant building height elements of the proposal, being the lift overruns and the northern edge of the northern building, do not result in non-compliance with the applicable solar access controls and the height non-compliance does not impact the development from achieving compliance with Objective (c).

(d) to establish building heights that are consistent with the desired future character of the locality.

The site is located at the northern end of the Rose Bay North Centre as identified in the WDCP 2022. The E1 zoned land sits within the Centre and the R3 zoned land sits immediately adjacent to the Centre. The Desired Future Character Objectives for the Centre are as follows:

- (a) To ensure an integrated approach and consistent treatment to the conservation of buildings of historic character.*
- (b) To maintain and improve the continuity of awnings over the footpath.*
- (c) To maintain Old South Head Road as the primary streetscape in the village with side streets as secondary frontages.*
- (d) Maintain a good distinction between the mixed use sections of Old South Head Rd and residential side streets.*
- (e) To maintain a clean and attractive environment, with waste disposal managed discreetly and efficiently.*
- (f) To ensure that the centre provides universal access to all users.*
- (g) To promote well-maintained mid-rise buildings of varying styles which form a consistent street frontage of ground floor shop fronts and upper storey residential.*
- (h) To ensure new buildings are well designed and responsive to existing built form with appropriate street frontage heights.*
- (i) To maintain and encourage a diverse range of shops and services.*

In addition to the above objectives, the desired future character for the site are set in part by the objectives for “Site, Scale and Frontage” elements for medium density development as set out in Part 2.1, C2 of the WDCP 2022 . Those objectives are detailed below:

- (a) To ensure lot size and dimension are able to accommodate the appropriate building envelope, landscaping and service requirements.*
- (b) To ensure development sites have adequate street frontage to meet side setback and building requirements.*
- (c) To ensure lot sizes and building forms are appropriate to the streetscape.*
- (d) To provide guidance on the appropriate scale of development to complement the FSR controls within the WLEP.*
- (e) To encourage amalgamation of allotments to provide for improved design outcomes.*
- (f) To prevent the isolation of sites*

The SEE submitted with the amended DA outlines that the proposal is consistent with the desired future character objectives of the Rose Bay North Centre as well as the objectives of Part 2.1 of C2 of the WDCP 2022.

The proposed building envelope and building scale is also consistent with the envelope and scale of development approved at the site under the two recent approvals (i.e. DA-455/2021 for No. 671-683 Old South Head Road, Vacluse and DA-374/2020 for No. 669 Old South Head Road, Vacluse).

The proposed non-compliant building height elements, being the lift overruns and the northern edge of the northern building, do not result in a building that is inconsistent with the stated desired future character of the locality. The non-compliant elements are minor in nature and do not result in a change in the overall scale of the development (i.e. it remains a four storey building) and do not adversely affect the buildings relationship with adjacent existing buildings or diminish the streetscape character of the development.

The proposed development is of an appropriate bulk and scale within the context of the site and locality. The new buildings respond to the height of existing surrounding development (such as the four storey residential flat buildings located at 2, 4 and 6 Oceanview Avenue and the 3 and four storey building at 687 Old South Head Road) and emerging development along Old South Head Road and within Oceanview Avenue.

The new building responds to the height of surrounding development and has been designed to minimise any potential overshadowing, visual privacy, or view impacts. It is noted that the design of the amended development will maintain existing solar access achieved by the property to the east at 2 Oceanview Avenue, while also reducing solar access impacts upon the residential flat building at 2 Oceanview Avenue compared to the combined impacts of developments approved under DA-455/2021 and DA-374/2020.

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 Building Height standard

Notwithstanding the non-compliance with the WLEP 2012 building height development standard, the proposed buildings remain well under the maximum height allowable under the provisions of s87(2)(c) of the Housing SEPP.

The development responds to site topography

The elements of the proposed buildings that are non-compliant with the height standards relate to lift overruns and some rooftop plant areas, which will provide access for mobility impaired residents and visitors throughout the proposed buildings and services that will significantly enhance the amenity of future senior residents. The other non-compliant element is the northern end of the northern building which is located directly above a significant fall in the topography of the site.

Specifically, there is a significant drop in the topography at the north end of the site which involves an approximate 2.6m fall from the north west corner down to the north east corner of the site and an approximate fall of 6.3m from the centre of the site down to the north end of the site (as confirmed in the Survey Plan submitted with the DA).

The non-compliant northern building element sits above the area of the site where the fall in topography is most pronounced.

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.

Contextual fit

The proposal is consistent with the density, height and scale of the adjacent development and the desired future character of the locality as envisaged with the WDCP 2022.

The non-compliant building does not result in a scale that is out of context with adjacent development and development with the North Rose Bay Village, such that the proposed density results in a four storey building, consistent with adjacent development to the immediate north and east of the site and with the scale of development to the south in the commercial area of the Rose Bay Village.

The development 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 the “Site, Scale and Frontage” controls under C2 of the WDCP 2022, despite the non-compliance with the FSR standard.

Notwithstanding the breach of FSR, 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 FSR, 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).

Contextually, the proposal is of a height, bulk and scale and density that fits with immediately adjacent development, and development in the wider North Rose Bay Village setting.

Existing approvals

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

Specifically, notwithstanding the breach in building height, the proposed building height 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).

Further, the proposal achieves a FSR that is commensurate with the combined FSR of DA-455/2021 and DA-374/2020, i.e. 1.43:1.

Importantly, and notwithstanding the non-compliance to the development standard, 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 building height, in planning terms, the height, 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.

Provision of affordable housing

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 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.

In providing affordable housing through the proposed VPA the proposal achieves consistency with Objective (d) of the EP&A Objective (d) under Section 1.3 which states:

"The objects of this Act are as follows—

.....

(d) to promote the delivery and maintenance of affordable housing,"

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) and the objectives for the E1 and R3 land use zones.

- **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

	<p>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 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>

To improve the urban tree canopy by providing high levels of deep soil planting and additional landscaping

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 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>	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. 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.
<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>	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.
<i>To ensure development is of a height and scale that achieves the desired future character of the neighbourhood</i>	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.
<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</p>

	<p>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 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.</p>
<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

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 and the land use zone objectives.

5. Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the Building Height standard at Clause 4.3 of WLEP 2012.

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

Notwithstanding the non-compliance with the Building Height standard, it has been demonstrated that the proposal achieves the objectives of Building Height development standard at Clause 4.3 of WLEP 2012.

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 density (FSR), height, scale and 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 standard is well founded.