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29th April 2022

Land and Environment Court Proceedings 2021/00362068
Clause 4.6 variation request - Clause 40(4)(a) SEPP HSPD
Proposed Seniors Housing
4 Alexander Street, Collaroy

1.0 Introduction

This clause 4.6 variation request has been prepared having regard to plans DA100(D), DA101(C) – DA103(C), DA200(C), DA201(C), DA300(C), DA301(A), DA504(C) - DA506(C) and DA532(A) prepared by PBD Architects.

Pursuant to clause 40(4)(a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP HSPD) the height of all buildings in the proposed development must be 8 metres or less.

Clause 3(1) of SEPPHSPD contains the following definition in relation to height:

> ***height*** *in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.*

There are no stated objectives for the clause 40(4)(a) SEPP HSPD standard. Accordingly, I have adopted the height of buildings objectives at clause 4.3(1) of Warringah Local Environmental Plan 2011 (WLEP) being the objectives applicable to permissible forms of development on the site namely:

(a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
(b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
(c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
(d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

In this regard, it has been determined that the upper level of the development breaches the 8 metre building height standard prescribed at clause 40(4)(a) of SEPP HSPD to the following extent as depicted in the building height blanket diagram at Figure 1 below:

North-eastern corner - 1.496m (18/7%)
North-western corner - 460mm (5.7%)
South- western corner - Compliant
South-eastern corner - 447mm (5.5%)

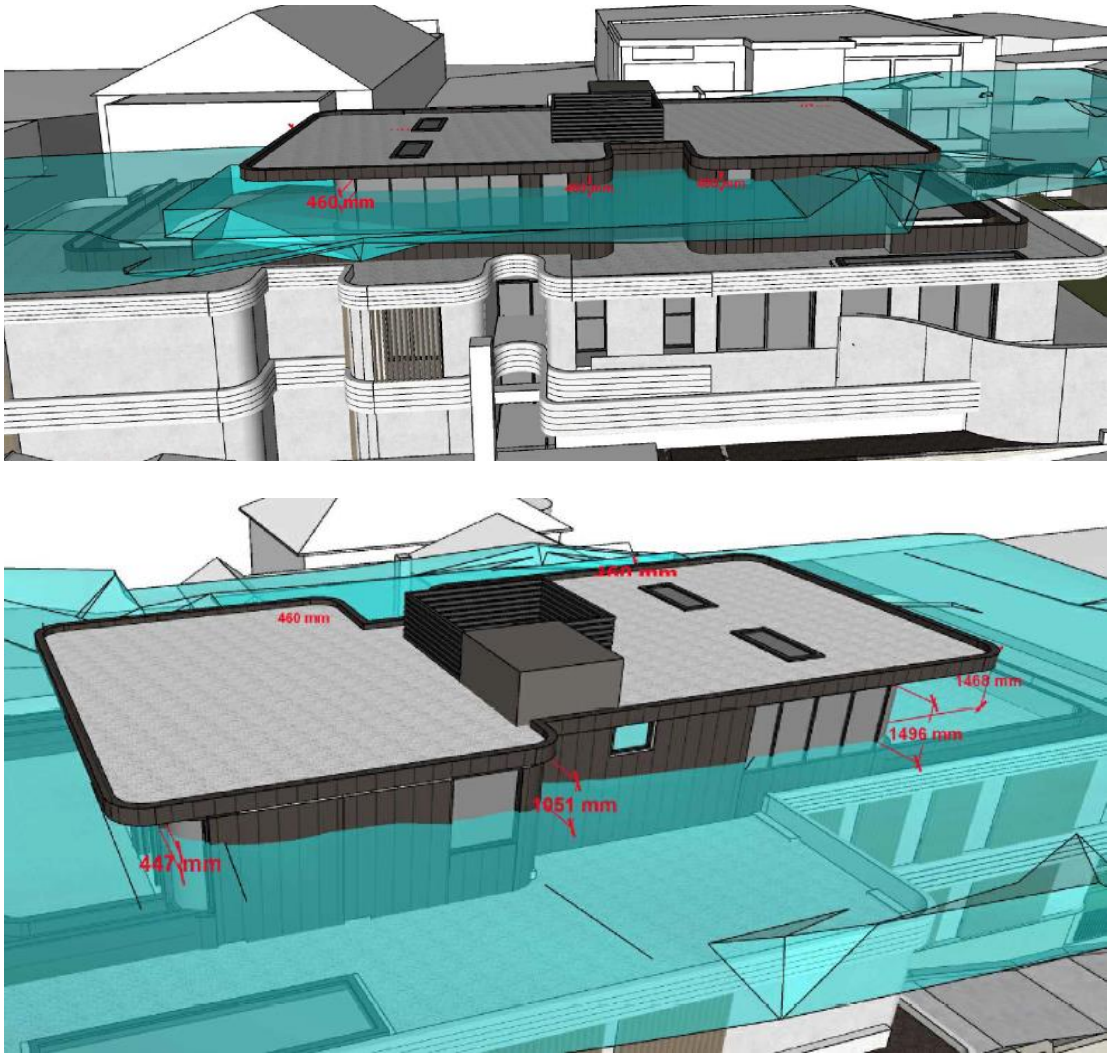


Figure 1 – Building height blanket diagram showing the building elements located above the 8 metre height of buildings standard prescribed at clause 40(4)(a) SEPP HSPD

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe)* at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney [2019]* NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

(1) The objectives of this clause are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The decision of Chief Justice Preston in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 ("Initial Action") provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal *in RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

> *"In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "achieve better outcomes for and from development". If objective (b) was the source of the Commissioner's test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test."*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of WLEP provides:

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

This clause applies to the clause 40(4)(a) height development standard contained within SEPP HSPD.

Clause 4.6(3) of WLEP provides:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development does not comply with the height of buildings standard at clause 40(4)(a) of SEPP HSPD which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Director-General has been obtained.

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]).
The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 64 of the *Environmental Planning and Assessment Regulation* 2000, the Secretary has given written notice dated 5th May 2020, attached to the Planning Circular PS 18-003 issued on 5th May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and
(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 40(4)(a) SEPP HSPD from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].

18. A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].

20. A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].

21. A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 40(4)(a) SEPP HSPD a development standard?

2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

    (a) compliance is unreasonable or unnecessary; and

    (b) there are sufficient environmental planning grounds to justify contravening the development standard

3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 40(4)(a) SEPP HSPD and the objectives for development for in the zone?

4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?

5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 40(4)(c) of SEPP HSPD?

4.0 Request for variation

4.1 Is clause 40(4)(a) SEPP HSPD a development standard?

The definition of "development standard" at clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

Clause 40(4)(1) of SEPP HSPD prescribes a height provision that relates to certain development. Accordingly, clause 40(4)(a) of SEPP HSPD is a development standard.

4.2A Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in Wehbe v Pittwater Council [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

<u>Consistency with objectives of the height of buildings standard</u>

An assessment as to the consistency of the proposal when assessed against the implicit objectives of the standard is as follows:

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment: Development within the site's visual catchment, which includes development within the B2 Local Centre/ 11 metre height zone to the north and east of the subject site and the R2 Low Density Residential/ 8.5 metre height zone to the south and west of the site is eclectic in nature with the residential zoned land occupied by 1, 2 and 3 storey dwelling houses interspersed by residential flat buildings and the Local Centre zone land currently in transition with a number of older 1 and 2 storey commercial and mixed use buildings having been replaced with more contemporary 3 and 4 level shop top housing building forms.

The height and scale of surrounding development is depicted in the following Figures.

Figure 2 - View looking east past subject site towards adjacent B2 Local Centre zoned land upon which an 11 metre height standard applies

Figure 4 - View looking west past subject site towards 1, 2 and 3 storey low and medium density residential development located upon R2 Low Density Residential/ 8.5 metre building height zoned land within the sites visual catchment

The consideration of building compatibility is dealt with in the Planning Principle established by the Land and Environment Court of New South Wales in the matter of *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*. At paragraph 23 of the judgment Roseth SC provided the following commentary in relation to compatibility in an urban design context:

> 22 *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

The question is whether the building height breaching elements contribute to the height and scale of the development to the extent that the resultant building forms will be incompatible with the height and scale of surrounding and nearby development. That is, will the non-compliant building height breaching elements result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate and jarring in a streetscape and urban design context.

I note that the non-compliant building elements as viewed from Alexander Street have been setback behind the façade alignment of the compliant building elements below such that they are recessive elements as viewed from the street. The overall height, bulk and scale the building as viewed from the street frontage is consistent with that established by other development located both within the B2 Local Centre and R2 Low Density Residential zoning within the sites visual catchment. I note that the southern (rear) edge of the proposed roof form sits below the 8.5 metre building height standard which applies to permissible forms of development on the land as viewed from the properties to the rear of the site.

In this regard, I have formed the considered opinion that the non-compliant building elements will not contribute to the height and scale of the development to the extent that the resultant building form will be incompatible with the height and scale of surrounding and nearby development. That is, the non-compliant building height breaching elements will not result in a built form which is incapable of coexisting in harmony with surrounding and nearby development to the extent that it will appear inappropriate or jarring in a streetscape and urban design context.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council (2005) NSW LEC 191* I have formed the considered opinion that most observers would not find the height and scale of the development, notwithstanding the building height breaching elements, offensive, jarring or unsympathetic in a streetscape and urban context. In this regard, it can be reasonably be concluded that, notwithstanding the building height breaching elements, the development is capable of existing together in harmony with surrounding and nearby development.

Notwithstanding the building height breaching elements, the resultant development is compatible with the height and scale of surrounding and nearby development and accordingly the proposal achieves this objective.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment: In relation to visual impact, I note that the increased setbacks proposed to the non-compliant building elements ensure that the breaching elements are visual recessive as viewed from surrounding properties and in a streetscape context. Visual impacts have been minimised through the adoption of these increased setbacks. I also rely on the analysis provided in response to objective (a) to demonstrate that visual impacts have been minimised and the objective achieved in this regard.

Having identified potential public and private view corridors across the site I have formed the considered opinion that the non-compliant building height elements will not give rise to any public or private view affectation given the location of the breaching elements and their juxtaposition with surrounding development.

In relation to privacy, I am also satisfied that the building height breaching elements will not themselves give rise to unacceptable privacy impacts given the general compliance of the development with the 8.5 metre building height standard applicable to permissible forms of development on the site where the proposal adjoins the adjacent R2 Low Density Residential zoned land. The greatest area building height breach is located adjacent to the service area associated with the adjoining 11+ metre high cinema building to the east of the site.

The shadow diagrams at Attachment 1 demonstrate that the non-compliant building height elements will not result in non-compliant shadowing impacts to any adjoining residential property between 9am and 3pm on 21st June.

In this regard, I have formed the opinion that the design of the development has minimised visual impacts, disruption of views, loss of privacy and loss of solar access and accordingly this objective is achieved notwithstanding the building height breaching elements.

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment: The non-compliant building height elements will not be readily discernible as viewed from any coastal or bushland environments. In the event that the non-compliant building height elements are visible from Collaroy Beach and its immediate environs I am satisfied that the recessive nature of the non-compliant building height elements as potentially viewed along the Alexander Street frontage has ensured that any adverse impacts have been minimised.

In any event, notwithstanding the height building breaching elements, the height, bulk and scale of the building will not be perceived as inappropriate or jarring have regard to height of development located within the same visual catchment, with the building height breaching elements not giving rise to adverse impact on the scenic quality of Warringah's coastal and bush environments. This objective is achieved notwithstanding the building height breaching elements proposed.

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

Comment: To the extent that the non-compliant building height elements are visible from public places including Collaroy Beach, Alexander Street and Pittwater Road, for the reasons previously outlined I am satisfied that the height, bulk and scale of the building will not be perceived as inappropriate or jarring have regard to the height established by development located within the same visual catchment.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, in particular the building height breaching elements of the building, offensive, jarring or unsympathetic in a streetscape context. The building height breaching elements will not give rise to unacceptable visual impacts when viewed from any public places.

Having regard to the above, the non-compliant component of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject property is zoned Residential R2 Low Density Residential pursuant to WLEP. An assessment as to the consistency of the development against the zone objectives as follows:

- *To provide for the housing needs of the community within a low density residential environment.*

Response: The proposal provides housing which will meet the needs of seniors or people with a disability within the community within a low density residential environment. The proposal achieves this objective notwithstanding the building height variation proposed.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Response: Not applicable.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Response: The proposal provides a compliant quantum of landscaped area, as defined, with the proposed landscaping achieving a setting that is in harmony with the natural environment of Warringah. The proposal achieves this objective notwithstanding the building height variation proposed.

The non-compliant component of the development demonstrates consistency with the objectives of the R2 Low Density Residential zone and the implicit objective of the building height standard. Adopting the first option in *Wehbe* strict compliance with the height of buildings standard has been demonstrated to be is unreasonable and unnecessary.

4.2B Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

Sufficient environmental planning grounds

Sufficient environmental planning grounds exist to justify the variation to the height of buildings standard. Those grounds are as follows:

Ground 1 – Topography and flooding

The topography of the land falls approximately 4 metres across its surface in a north easterly direction. The ability to lower the development or provide a stepped floor plate to ensure compliance with the height standard is frustrated by localised flooding which occurs adjacent to the north eastern corner of the property. This has necessitated the raising of the ground floor apartment to achieve necessary flood mitigation outcomes with a corresponding increase in the floor levels of the apartments above.

The combination of site topography and flooding contribute to making strict compliance with the building height standard more difficult to achieve and to that extent are environmental planning grounds put forward in support of the extent of the building height breach proposed.

Ground 2 - Achievement of aims of SEPP HSPD

I note that the North District Plan indicates that there will be a 47% increase in the number of people aged 65 years and older in the next 15 years. In this regard, the proposal will meet a clear and increasing demand for seniors housing on the Northern Beaches enabling existing residents to age in place.

A variation to the building height standard facilitates approval of the development which will achieve the aims of SEPP HSPD being to encourage the provision of housing that will:

(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and

(b) make efficient use of existing infrastructure and services, and

(c) be of good design.

Ground 3 - Objectives (c) and (g) of the Act

Objective 1.3(c) of the Environmental Planning and Assessment Act 1979 is:

> *"to promote the orderly and economic use and development of land,"*

Compliance with the height of buildings standard would necessitate a significant reduction in floor space in circumstances where the site is ideally suited to this form of development given its immediate proximity to the Collaroy Beach Local Centre and the B-Line bus service.

Under such circumstances strict compliance would not promote the orderly development of land.

The building is of exceptional design quality with the variation facilitating a quantum of floor space that provides for contextual built form and streetscape compatibility, the maintenance of appropriate residential amenity in terms of views, privacy and solar access and the delivery of housing for seniors and people with a disability consistent with objective (g) of the Act.

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [202] NSW LEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

For the above reasons there are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 40(4)(c) of the SEPP HSPD and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in Initial Action (Para 27) described the relevant test for this as follows:

> *"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."*

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 5th May 2020, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and

- Variations to non-numerical development standards.

Notwithstanding that the Court can stand in the shoes of the consent authority and assume the concurrence of the Secretary, the Court would be satisfied that the matters in clause 4.6(5) are addressed because the contravention does not raise any matter of significance for regional or state planning given that the height breach does not result in a building form that will give rise to inappropriate or jarring streetscape or residential amenity consequences with the result that there is no public benefit in maintaining the standard in the particular circumstances of this case.

5.0 Conclusion

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

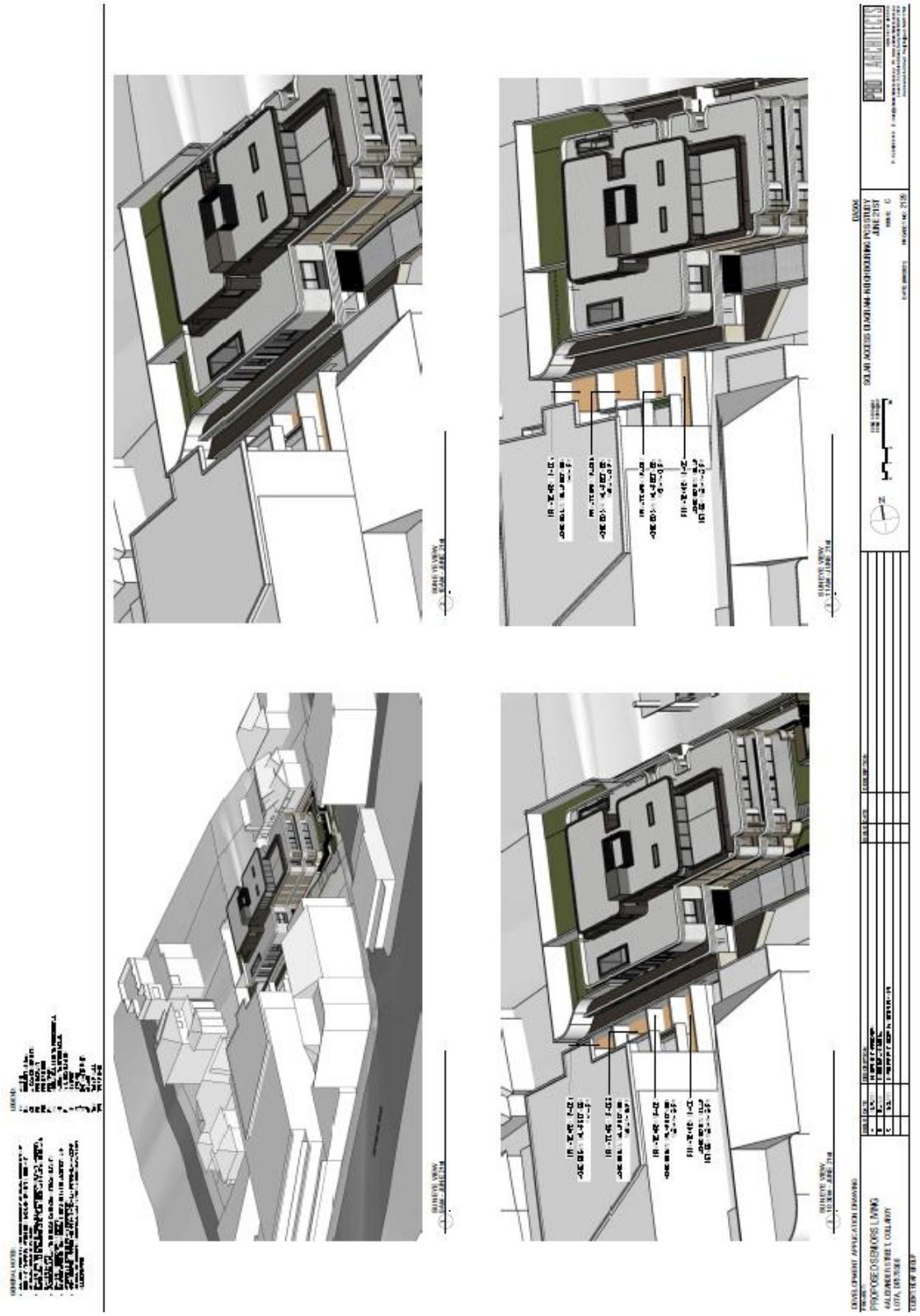
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

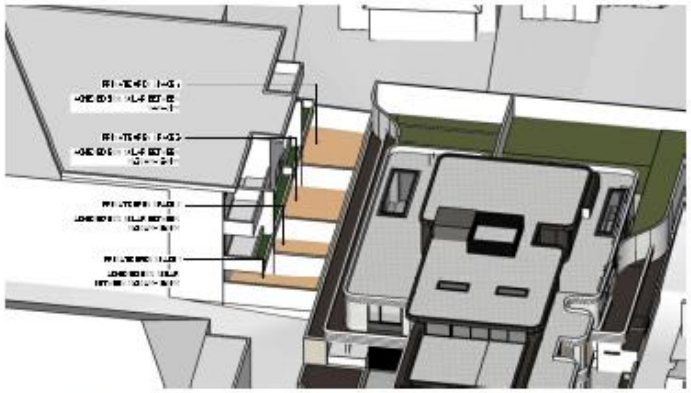
As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a height of buildings variation in this instance.

Boston Blyth Fleming Pty Limited

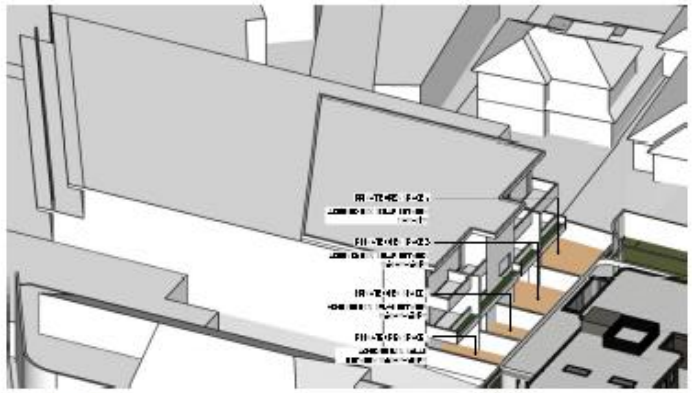
Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

Attachment 1 Shadow diagrams





SUN EYE VIEW
1 12PM - JUNE 21st



SUN EYE VIEW
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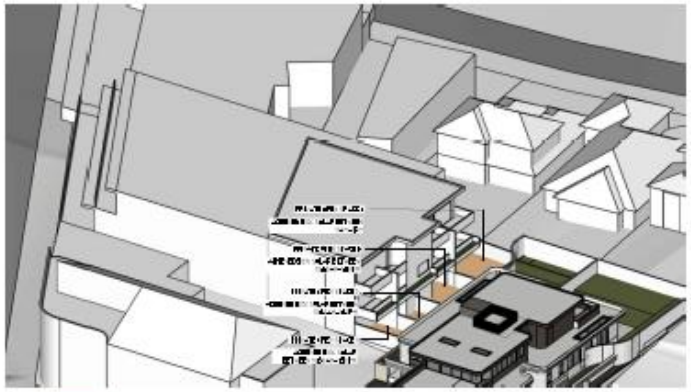
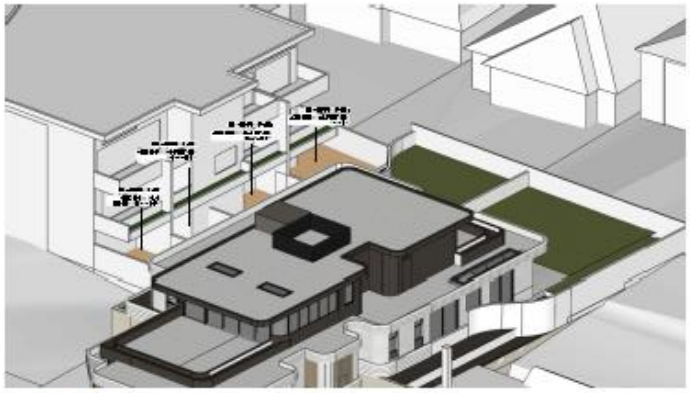


SUN EYE VIEW
3 1:30PM - JUNE 21st



SUN EYE VIEW
4 2PM - JUNE 21st

DEVELOPMENT APPLICATION DRAWING

PROJECT
PROPOSED SENIORS LIVING
44 ALEXANDER STREET, COLLAROY
LOTA, 0957000

CLIENT REAP GROUP

ISSUE	DATE	DESCRIPTION	ISSUE	DATE	DESCRIPTION
A	17.11.21				
B	9.12.21				
C	14.2.22				

DA005
SOLAR ACCESS DIAGRAM-NEIGHBOURING PROPERTY
JUNE 21ST
ISSUE: C
DATE: 28/02/22 PROJECT NO: 2126

PBD ARCHITECTS

GENERAL NOTES:

LEGEND:

SUN EYE VIEW
3PM - JUNE 21st

DEVELOPMENT APPLICATION DRAWING

PROJECT:
PROPOSED SENIORS LIVING
4 ALEXANDER STREET, COLLAROY
LOTA, DP575306

CLIENT: HEAF GROUP

ISSUE	DATE	DESCRIPTION	ISSUE	DATE	DESCRIPTION
A	[illegible]	[illegible]			
B	[illegible]	[illegible]			
C	[illegible]	[illegible]			

DA506

SOLAR ACCESS DIAGRAM-NEIGHBOURING POS STUDY
JUNE 21ST

ISSUE: C

DATE: [illegible] PROJECT NO: 2120

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