

Table 7 – LLEP 2008, clause 4.6 – Exception to development standards - **HEIGHT**

LLEP 2008, clause 4.6	Compliance
1) The objectives of this clause are as follows: (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	<p>✓ Flexibility is appropriate in this instance given that:</p> <ul style="list-style-type: none"> – The DA is made pursuant to SEPP HSPD which measures height to the ceiling (8m height standard) – Flood levels, existing buildings, easement to drain water and the foreshore building line standard limit the available building footprint – The proposal is well below the SEPP HSPD FSR standard (1:1 permitted and 0.64:1 proposed) therefore the development is a modest one – Compliance with the height standard (while still addressing the FBL standard and flood risk planning) would necessitate reduced setbacks and the impact on adjoining residences in terms of loss of privacy, loss of solar access and visual impact would be greatly increased. <p>Given this, the proposal achieves a better outcome than a complying development.</p>
(2) Development may contravene a standard	<p>✓ The height standard is not excluded from the clause.</p>
(3) Written request required that seeks to justify the contravention of the by demonstrating: (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, (b) that there are sufficient environmental planning grounds to justify contravention.	<p>✓ Compliance with the 8.5m height standard in LLEP 2008 is unreasonable as:</p> <ul style="list-style-type: none"> – The DA is made pursuant to SEPP HSPD which measures height to the ceiling (8m height standard) – Flood levels, existing buildings and the foreshore building line standard limit the available building footprint – The departure will not be visible from Epsom Road as proposed Building D is sited in the southern portion of the site which does not have a frontage to Epsom Road – A minimum setback of 13.5m and 14.2m is proposed to the adjoining dwellings at 209-217 Epsom Road minimising the loss of privacy, loss of solar access and visual impact – The shadow studies show that a two storey scheme (complying with 8.5m height standard and complying the Council's setback controls) would have a comparable shadow impact to the proposal – The maximum height of 14.5m occurs over a small section of the building, where the site falls steeply towards Council Reserve Road and the River – This maximum height does not have an interface with the adjoining dwellings and is not visible from Epsom Road (see DA06, Appendix B and SEPP 1 objection Appendix C) – A portion of the proposal with a height greater than 8.5m is an architectural roof feature, which pursuant to clause 5.6 of LLEP 2008 may exceed the height standard (see Table 6).
(4) Development consent must not be granted unless: (a) the consent authority is satisfied that: (i) the written request addresses subclause (3), (ii) the proposed development is in the public interest	<p>✓ Subclause 3 has been adequately addressed (see above).</p> <p>✓ The proposal is in the public interest as it satisfies the height of buildings standard objectives at cl. 4.3 of LLEP 2008 as follows:</p> <p>(a) <i>to establish the maximum height limit in which buildings can be designed and floor space can be achieved,</i> The proposal does not utilise the site's FSR potential under SEPP HSPD.</p> <p>(c) <i>to permit building heights that encourage high quality urban form,</i> A high quality urban form is proposed, as explained in the design statement</p>

LLEP 2008, clause 4.6	Compliance
(consistent with the objectives of the standard and the zone),	<p>(Appendix B).</p> <p>(d) <i>to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,</i></p> <p>The houses to the east of the site will receive uninterrupted solar access until sometime after 1pm. In midwinter, there will be an increase in shadows after around 1pm. The shadow increase at this time is comparable to a complying two storey scheme (see DA51 and 52, Appendix B).</p> <p>(d) <i>to nominate heights that will provide an appropriate transition in built form and land use intensity.</i></p> <p>The siting of proposed Building D is such that it will not be visible from Epsom Road (see DA05, Appendix B). The minimum setback of 13.5m and 14.2m and existing and proposed trees will also minimise the visual impact to 209-217 Epsom Road.</p> <p>The proposal is in the public interest as it satisfies the Zone R3 objectives by adding to the variety of housing types and meeting the community's need for additional aged care beds.</p>
(b) the concurrence of the Director-General has been obtained.	The need for concurrence from the Director-General is noted, but may not be relevant to this DA as the application is made pursuant to SEPP HSPD.
(5) The Director-General must consider:	Noted
(a) whether contravention raises matters of significance for State or regional planning,	The height non-compliance does not raise any issues of State or regional planning (other than the planning merits of providing improved and additional aged care beds).
(b) public benefit of maintaining standard	
(c) other matters.	
(6) N/A	N/A
(7) Consent authority must keep a record of matters in subclause (3).	Noted
(8) This clause does not allow contravention of:	N/A
(a) complying development standard,	
(b) BASIX commitment	
(c) clause 5.4 matters.	

Table 8 – LLEP 2008, clause 4.6 – Exception to development standards - **FSR**

LLEP 2008, clause 4.6	Compliance
1) The objectives of this clause are as follows: (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	✓ Flexibility is appropriate in this instance given that: – The DA is made pursuant to SEPP HSPD and the proposal is well below the SEPP HSPD FSR standard (1:1 permitted and 0.64:1 proposed) – A reduction in the FSR to achieve compliance (-1,189m ²) would reduce the number of additional RCF beds proposed and jeopardise the financial viability and therefore commencement of the proposal. Given this, the proposal achieves a better outcome than a complying development.
(2) Development may contravene a standard	✓ The FSR standard is not excluded from the clause.
(3) Written request required that seeks to justify the contravention of the by demonstrating: (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, (b) that there are sufficient environmental planning grounds to justify contravention.	✓ Compliance with the 0.5:1 FSR standard in LLEP 2008 is unreasonable as: – The DA is made pursuant to SEPP HSPD which sets a 1:1 FSR standard for RCFs (the proposal has a FSR of 0.64:1 using the definition of GFA in SEPP HSPD) – As the development complies with the SEPP HSPD FSR standard, FSR cannot be used as a ground for refusal.
(4) Development consent must not be granted unless: (a) the consent authority is satisfied that: (i) the written request addresses subclause (3), (ii) the proposed development is in the public interest (consistent with the objectives of the standard and the zone),	✓ Subclause 3 has been adequately addressed (see above). ✓ The proposal is in the public interest as it satisfies the FSR standard objectives at cl. 4.4 of LLEP 2008 as follows: (a) <i>to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,</i> The proposal extends an existing RCF and its associated support infrastructure and the traffic generation is minimal (see Traffic Report, Appendix E). (b) <i>to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,</i> The existing and future low to medium density residential character of the area will be preserved. (c) <i>to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,</i> The impacts of the proposal on the adjoining properties is minimal and reasonable (see Section 6.2). (d) <i>to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,</i> The existing and future low to medium density residential character of the area will be preserved.

LLEP 2008, clause 4.6	Compliance
	<p>(e) <i>to provide an appropriate correlation between the size of a site and the extent of any development on that site,</i></p> <p>The site has a large area (1.537ha) and can adequately accommodate the proposed additional GFA.</p>
(b) the concurrence of the Director-General has been obtained.	The need for concurrence from the Director-General is noted, but may not be relevant to this DA as the application is made pursuant to SEPP HSPD.
(5) The Director-General must consider:	Noted
(a) whether contravention raises matters of significance for State or regional environmental planning,	The FSR non-compliance does not raise any issues of State or regional planning (other than the planning merits of providing improved and additional aged care beds).
(b) public benefit of maintaining standard	
(c) other matters.	
(6) N/A	N/A
(7) Consent authority must keep a record of matters in subclause (3).	Noted
(8) This clause does not allow contravention of:	N/A
(a) complying development standard,	
(b) BASIX commitment	
(c) clause 5.4 matters.	