

## Assessment of the proposed clause 4.6 request for variation to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

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JRPP-16-03319

St Hedwig Seniors Housing Development

The proposal generally satisfies the maximum permitted building height of 8 m as required by clause 4.3 of State Environmental Planning Policy (SEPP) (Housing for Seniors or People with a Disability) 2004, with the exception of the Independent Living Units (ILUs) at the eastern portion of the site which has a height of up to 13.23 m. This is a variation of 5.23 m, being 65 %. The Residential Aged Care Facility (RACF), which is centrally located within the site, exceeds the height limit with a height of up to 11.73 m. This is a variation of 3.73 m, being 47%. The bell tower exceeds the height limit with a height of up to 9.63 m. This is a variation of 1.63 m, being 20%, which occupies an area of only 10.7 sqm.

The proposal also seeks to exceed the maximum of 2 storeys in height permitted where a building is adjacent to a boundary of the site, proposing up to 5 storeys for the ILUs and up to 4 storeys for the RACF.

Refer to the plans showing the proposed building height variation at **attachment 6**, which highlights the portions of the development which exceed the building height control. Consideration of the Applicant's request to vary this development standard is provided as follows.

### (a) Request under clause 4.6 to vary from the development standard

The applicant has submitted a request for variation to the building height development standard pursuant to clause 4.6 which is called up from the Standard Instrument. The objective of clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from the development by allowing flexibility in particular circumstances.

Clause 4.6 requires consideration of the following:

1. *Has the applicant submitted a written request 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.*
2. *Is the proposed development 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.*
3. *Has the concurrence of the Director-General been obtained.*

The applicant's written request has adequately justified that compliance with the height development standard is unreasonable and unnecessary in this instance.

There are sufficient environmental planning grounds to justify varying this development standard. A copy of the applicant's written request is provided at **attachment 8**.

The variation will not have unreasonable impacts on neighbouring properties or the character of the area. The proposal is also consistent with the objectives of the development standard and the R2 Low Density Residential zone.

In accordance with Clause 64 of the *Environmental Planning and Assessment Regulation 2000*, a consent authority, in this case the Sydney Planning Panel, has 'assumed concurrence' from the Secretary (formerly the Director-General) of the NSW Department of Planning and Environment.

**(b) Justification for the variation**

The Land and Environment Court has established the following 5-part test for a consent authority to take into consideration when deciding whether to grant concurrence to a variation to a development standard:

**1. The objectives of the standard are achieved notwithstanding non-compliance with the standard**

In the absence of objectives for the height of buildings in the SEPP, it is suitable to consider the variation in light of the objectives for height of buildings in clause 4.3 of Blacktown Local Environmental Plan (BLEP) 2015 as follows:

Height

The objectives of Clause 4.3 Height of buildings are as follows:

- (a) *to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings,*
- (b) *to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown,*
- (c) *to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities,*
- (d) *to ensure that sufficient space is available for development for retail, commercial and residential uses,*
- (e) *to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.*

- **Minimise the visual impact**

As viewed from Reservoir Road, the proposal offers a design which appears as 2 narrow developments at the building line which are visually broken up by a building separation which is generous and complemented by landscaping and modern building materials and finishes. This approach creates a building form which recedes away from the public domain and effectively minimises the visual impact of the development.

- **Minimise the loss of privacy**

The proposal is considered to suitably ameliorate potential visual and acoustic privacy impacts on nearby residential properties by providing suitable building setbacks, suitably orientated habitable windows and balconies, screening devices and landscaped screening.

The proposal provides an increased building separation to the adjoining residential properties when compared to the existing buildings on the site. The position of the walls, windows to habitable rooms and balconies for the Independent Living Units, which are in the vicinity of the adjoining residential properties, are suitably placed and orientated so as to protect the privacy and amenity of the neighbours.

- **Loss of solar access to surrounding development and public domain**

The proposal will result in additional overshadowing of the adjoining residential property to the south, 144 Reservoir Road. At midwinter, the additional overshadowing will overshadow approximately half of this residential property's rear private open space, and maintains solar access to at least 50 % of the rear private open space area of the neighbouring property for at least of 3 hours in midwinter. This is shown on the Shadow Diagram (June) Drawing No. 1508-11, provided at **attachment 5**.

The Applicant has demonstrated that there is no overshadowing impact on this adjoining residential property at the other periods of the year, as shown on Shadow Diagrams (March & September) and (December) Drawing Nos. 1508-12 and 1508-13, provided at **attachment 5**.

The Applicant has demonstrated that their community consultation process included direct contact with the owners and occupiers of 144 Reservoir Road, and they did not raise any objection. This property was also notified during our exhibition period, and no submission was received. In fact, the Applicant has spoken directly with the property owner of 144 Reservoir Road, the outcome of which was that he did not raise any objection to the development and would like to see his elderly mother and sibling placed within St Hedwig Village in due course when the time is right.

The proposal overshadows parts of the adjoining Harper's Bush Reserve to the south, however this is a minor increase above the overshadowing impacts of the existing buildings on the site.

The proposal also overshadows a small part of Reservoir Road from approximately 2 pm onwards.

The overshadowing generated by the non-compliant building height is not considered to be excessive and is acceptable in this instance.

- **Buildings that are compatible with the height, bulk and scale of the surrounding residential locality**

The surrounding residential locality consists of a multi dwelling development to the north of the site, however due to its layout there is only one dwelling which abuts the subject site, Unit 23/130 Reservoir Road, Blacktown. All other dwellings are separated from the subject site by their private access driveway or a child care centre known as 'Tina's Kindergarten.' There is also a single storey dwelling to the south, at 144 Reservoir Road, Blacktown.

The remainder of the surrounding locality consists of non-residential uses such as Council Reserves to the north, west and south, and schools to the east.

The proposal is not compatible with the surrounding 1 and 2 storey residential dwellings, however it is compatible considering the existing 3 storey buildings and land use on this site, and the context of the non-residential land uses in the immediate vicinity, including the schools and places of public worship. Furthermore, in the context of the 3 storey Travelodge Hotel and Workers Club located approximately 360 m to the south of the site, this scale of development is considered to be compatible.

We also consider the breach to the building height control to be appropriate to compensate for the portion of the site which is impacted by the 30 metre wide electricity easement, which does not permit any development and is not controlled by the Applicant.

Therefore, the development's range of building heights from 9.16 m to 13.535 m is considered to be acceptable within the site as well as within the general vicinity.

- **Servicing by public transport and supporting activities**

The site is well serviced by public transport and is in the general vicinity of retail, commercial and community facilities at Arndell Park and Blacktown. This is a suitable location for the continued operation of this Seniors Housing development, and its proposed expansion is a suitable development outcome.

The relevant objectives of the development standard are achieved as the amenity of the nearby existing residential properties are protected in terms of solar access to buildings and open space. Although an adjoining residential property to the south will be overshadowed at midwinter, this overshadowing is for a portion of their rear private open space areas only. The overall design of the development and associated design elements used throughout the development assist with enhancing the high quality urban form of the site and general streetscape. Therefore, this variation to building height is considered acceptable in this circumstance.

**2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary**

The purpose of the standard is still considered relevant to the proposal. However, 100% numerical compliance is not considered necessary in this circumstance given the existing land use and scale of up to 3 storey buildings already on this site.

Despite exceeding the numerical height requirement, the proposal satisfies the underlying objective or purpose of the standard.

**3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

The purpose of the development standard would not be defeated if compliance was required. However, 100% numerical compliance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standard, as outlined above, will still be achieved despite the variation.

The height variation is supported in this instance due to its unique characteristics, with the site being an existing aged care facility with buildings of up to 3 storeys, being surrounded on 2½ sides by bushland, and being affected by a 30 m wide electricity easement diagonally through the site.

Given these unique circumstances, compliance is unreasonable and the proposed height breach is considered to offer a better planning outcome by providing compensatory building height due to the electricity easement restricting the construction of buildings in that part of the site.

**4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable**

There are no sites in the immediate area which are the subject of a similar height variation. However, this height control was originally conceived as controlling the height of dwelling houses in this R2 Low Density zone. As discussed above, other places of public worship and community buildings in the general area are within the maximum permitted building height, however this proposal differs to other existing developments given the substantial size of the site, and also the larger scale operation of this proposal. In this instance, this proposal is considered to be a distinctive development set in unique surroundings with bushland on 2 and a half sides, a child care centre to the north and a school on the opposite side of Reservoir Road.

The development standard for building height has not been virtually abandoned or destroyed through the granting of consents departing from the standard.

**5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone**

Full compliance with the building height development control would be able to be achieved, however this is considered inappropriate given the height development control was mainly intended for dwelling houses, and does not take into account the special characteristics of this alternate form of residential development.

This particular parcel of land is of a substantial size, which offers substantial building separation between the proposed building and all nearby residential buildings. The provision of fencing and landscape screening at the boundaries of this site, and feature landscaping throughout the site, also assists with breaking up the height of the buildings when viewed from the public domain and nearby residential properties.

The continued use of the land for aged care purposes also requires that the development achieves a high level of access throughout each level of the buildings for residents with restricted physical mobility. Given this, the careful design of buildings with multiple storeys which displays a high level of direct access throughout is a reasonable outcome for this particular parcel of land.

The proposed seniors housing development is consistent with the scale of the existing 3 storey buildings on the site, is suitable as a continued use of the site and is permissible with consent in the R2 Low Density Residential zone. The strict application of the building height development standard for this proposed development is considered unreasonable in the circumstances.

Based on the above assessment, the requested variation under clause 4.6 is considered reasonable, well founded and is recommended for support.