

Planning

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**Clause 4.6 Exception to Development
Standard for Height of Building**

**Proposed alterations and extension to
Residential Care Facility**

Property:
120 Redhead Road, Redhead
Lot 1938 and DP704459

Applicant:
The Whiddon Group

Date:
October 2017



Project Management • Town Planning • Engineering • Surveying
Visualisation • Economic Analysis • Social Impact • Urban Planning

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Document Control Sheet

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1.0 Introduction

1.1 PURPOSE OF THE REPORT

This submission has been prepared in support of a development application ("DA") which seeks the approval of the Joint Regional Planning Panel to carry out additions and an extension to an existing residential care facility at 120 Redhead Road, Redhead and described as Lot 1938 DP 704459.

This report is submitted pursuant to Clause 4.6 of the Lake Macquarie Local Environmental Plan (LEP) 2014.

Written justification is provided to demonstrate that compliance with development standard Clause 4.3 Height of Buildings is unreasonable or unnecessary in the circumstances of the proposed aged care facility.

This report specifies the grounds of the objection and has been prepared in accordance with:

- Clause 4.6 of the LEP; and
- Varying development standards: A Guide August (2011) (The Guide).

A maximum building height development standard of 8.5m applies across the site. A variation is requested to the maximum building height development standard. This variation is permitted through the application of clause 4.6 Exception to Development Standard for Height of Building, set out within the LEP.

This report is submitted in support of the proposed variation and should be read in conjunction with the prepared Statement of Environmental Effects and development plans and associated reports.

1.2 DESCRIPTION OF EXISTING DEVELOPMENT

The Redhead Gardens Retirement Village is located on the site and comprises an existing 2 storey 60 bed residential aged care facility (RACF) building located toward the northern site boundary and 30 centrally located independent living units (ILU's). The bulk of the existing development was constructed in 1991, with additions to the RACF building carried out in 2001.

The land on which the development is sited is Crown Land leased to the operator, The Whiddon Group.

The site has an area of 5.292ha.

1.3 DESCRIPTION OF PROPOSED DEVELOPMENT

The proposed development of the site will consist of two parts:

- A 2-storey extension to the south of the existing RACF building providing 24 new beds, with further internal renovations of the existing building, including reconfiguration to move the new main entry to the south side; and

- A new 80-bed, 2 storey RACF building on the western part of the site. The new building is configured in two stepped wings, cut into the slope on the western side, and curved to follow the site contours.

The lower floor of the south wing will contain kitchen and laundry facilities for both RACF buildings on the site.

The overall aim of the site redevelopment is to significantly increase the accommodation provision for seniors on the site while improving the amenity and presentation of the RACF and ILU buildings and surrounding landscape.

The general character and scale of the site will be maintained, but upgraded to represent a more modern and accessible community facility. The site planning utilises the existing central ring road to form the main public route around the site, addressed by the public entry points for both RACF buildings.

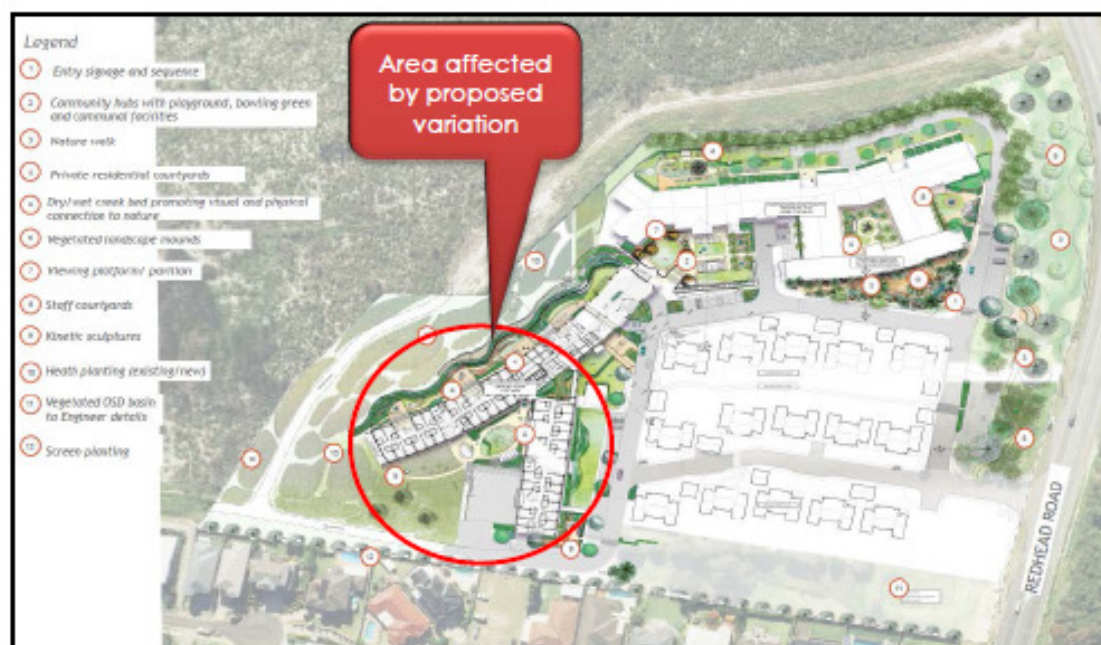


Figure 1: Site plan.

2.0 Variation to Development Standards

2.1 METHODOLOGY

The mechanism that permits the determining authority to consider a variation to a Development Standard is clause 4.6 of the LEP. The relevant components of this clause are detailed as follows:

4.6 Exceptions to development standards

- (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.
- (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.
- (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.
- (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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.

2.2 LAND AND ENVIRONMENT COURT – ‘FIVE PART TEST’

The Land & Environment Court has over the years, developed a basis for the consideration of objections to development standards, initially in the context of SEPP 1 and then more recently with the introduction of Clause 4.6 in standard template LEPs.

Pursuant to the Guide, there are five (5) considerations when assessing a variation to a standard, based on Land and Environment Court (LEC) cases. Each of these considerations has been addressed as part of this request for variation to a development standard, as detailed below.

Five Part Test	Compliance
1. Objectives of the standard are achieved notwithstanding non-compliance with the standard;	As demonstrated in this report the proposed development is consistent with the objectives of the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary;	It is argued that as the proposed development is close to achieving the standard the purpose of the standard is generally met.
3. The underlying objective of the purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;	The non – compliance with the standard is small and if compliance was required, a less efficient design outcome would be achieved on the site.
4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the stand and hence compliance with the standard is unnecessary and unreasonable;	Not argued.
5. The compliance with 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.	Not argued.

This report is structured to present the relevant planning background and context in the first instance and then addresses the relevant Clause 4.6 considerations.

3.0 Variation Sought

The standard to which exception is sought under clause 4.6 of the LEP is established by Clause 4.3.

Clause 4.3 reads as follows:

4.3 Height of buildings

- (1) The objectives of this clause are as follows:
 - (a) to ensure the height of buildings are appropriate for their location,
 - (b) to permit building heights that encourage high quality urban form.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

An extract from the Height of Buildings map is shown below. The maximum height of buildings for the subject site is 8.5 metres.

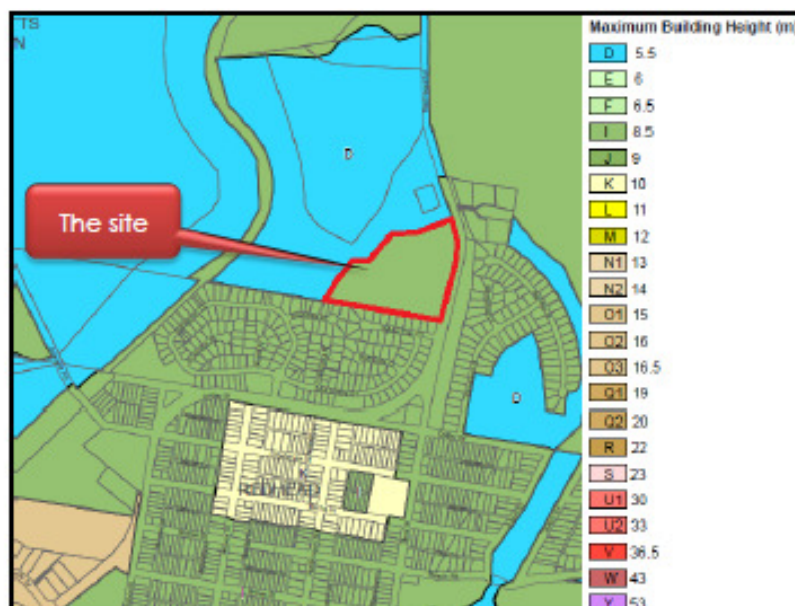


Figure 2: Lake Macquarie Height of Buildings Map.

The proposed variations are detailed below.

- From foyer level to East-West Wing Roof Ridge level: 9890mm
- From ground level to East-West Wing Roof Ridge level: 9040mm
- From ground level to services exhaust: 9550mm
- From basement level to South Wing Roof Ridge level: 9440mm

It is relevant to note the following:

- The 8.5 metre height limit applies to land to the south and east of the site;
- Land to the north and west of the site has a maximum building height of 5.5m. This land is Crown Land and due to its E2 Environmental Conservation zoning and given that it is well vegetated, is unlikely to be developed in the foreseeable future;
- Topographically, the site falls toward the south east away from the adjacent Crown land;
- The new 80-bed RACF building is designed as a linear form in two wings that step down with the site topography. The building is shaped to follow the contours of the hillside and cut in to minimise the extent to which variation is required to the 8.5m building height; and
- The building form maximises northern exposure for many bedroom units and communal areas, while offering other bedrooms ocean views to the south from the higher levels.

4.0 Relevant Planning Context

4.1 ZONING

The subject site is zoned R2 Low Density Residential under the LEP (see Figure 3). This is the same zoning as land to the south and east of the site.



Figure 3: Zoning extract from the LEP.

The Objectives of R2 Low Density Residential zone are:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development that is sympathetic to the scenic, aesthetic and cultural heritage qualities of the built and natural environment.

The proposed development will increase opportunities for accommodation for seniors on the site while improving the amenity and presentation of the RACF and ILU buildings and surrounding landscape. The general character and scale of the site will be maintained, but upgraded to represent a more modern and accessible community facility, sympathetic with site topography and making use of materials that complement the surrounding landscape.

Non-compliance with the development standard will not be inconsistent with the zone objectives.

5.0 Matters for Consideration under Clause 4.6

The relevant matters to be dealt with under Clause 4.6 of the LEP for the purpose of the variation are addressed below. The response seeks to justify the contravention of the development standard.

5.1 DEVELOPMENT STANDARD

The objective of the Clause 4.3 Height of Buildings is to:

- | | |
|-----|---|
| (a) | to ensure the height of buildings are appropriate for their location, and |
| (b) | to permit building heights that encourage high quality urban form. |

The height of the proposed building is considered as being appropriate for the location. The proposed built form is consistent with and enhances existing development across the site. The building design responds to the slope of the site which contributes to the marginal encroachment of the building height.

Based on the above, it is considered that the proposal does not compromise the objectives of the clause.

5.2 MATTERS FOR CONSIDERATION

Clause 4.6 of the LEP allows the consent authority to consider a contravention to a development standard providing the following can be demonstrated:

- | | |
|-----|--|
| (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 contravening the development standard, |
| (c) | 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, |
| (d) | whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and |
| (e) | the public benefit of maintaining the development standard. |

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (clause 4.6(3))

The site is a relatively large in area with approximately 12 metres of fall from west to east. The level of the building height plane therefore varies across the site.

Compliance with the development standard in this instance is unnecessary because the extent of the exceedance of the standard is minor and will not have any significant impact.

The proposal provides additions and extension to an existing aged care facility will provide essential services and housing for seniors. The design recognises the topography of the site and its relationship to neighbouring residential development and aims to minimise

impacts on surrounding development whilst providing a high level of amenity to residents of the aged care facility.

The quality of the built form will make a positive contribution to the visual amenity and local character, making appropriate use of the site and utilising existing infrastructure.

Building Height

The exceedance to the building height limit occurs at various locations across the new building as shown in Figures 4 - 8. The variations arise due to the slope on the northern and western sides, flattening out in the area occupied by the Independent Living Units and towards Redhead Road. The area where the new 80-bed facility is to be located has a slope of approximately 1:10, falling from RL54 at the north-western boundary to RL42 at the internal roadway.

The following figures show relevant building heights.

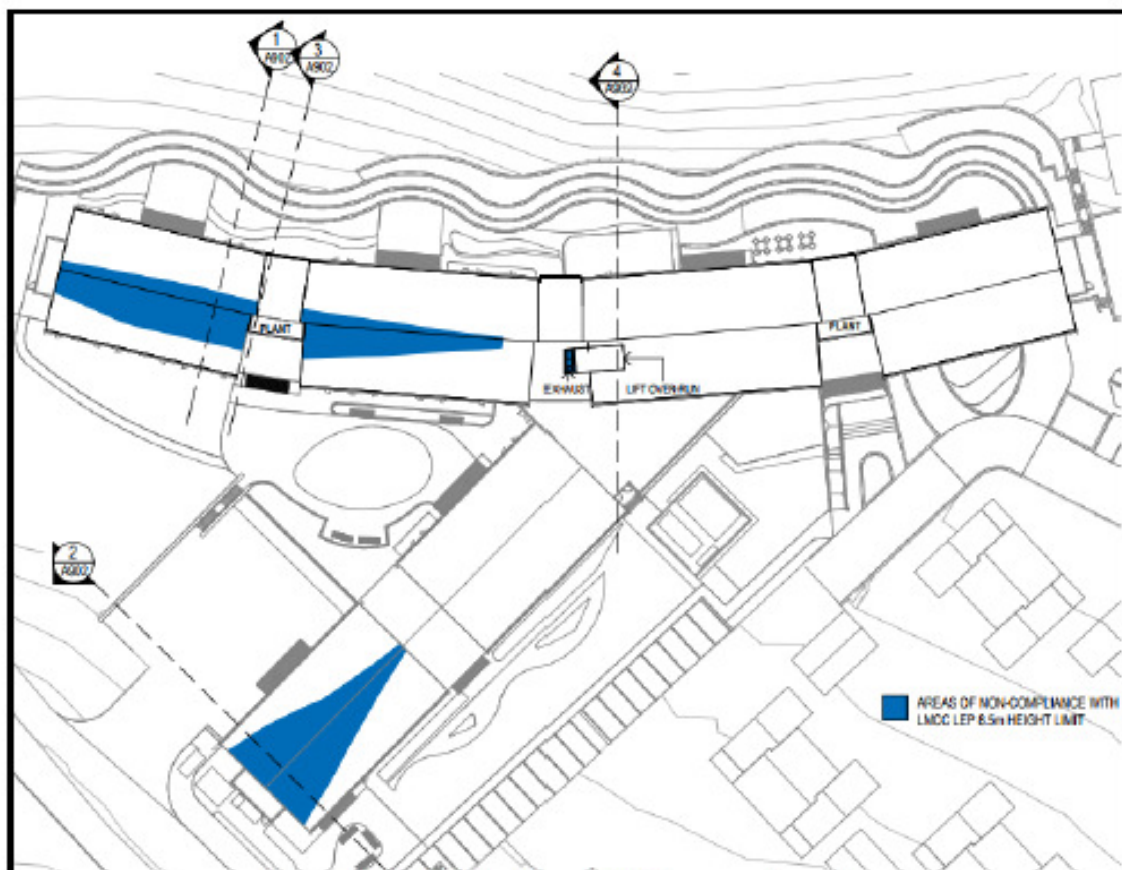


Figure 4: Extent of building height encroachments.

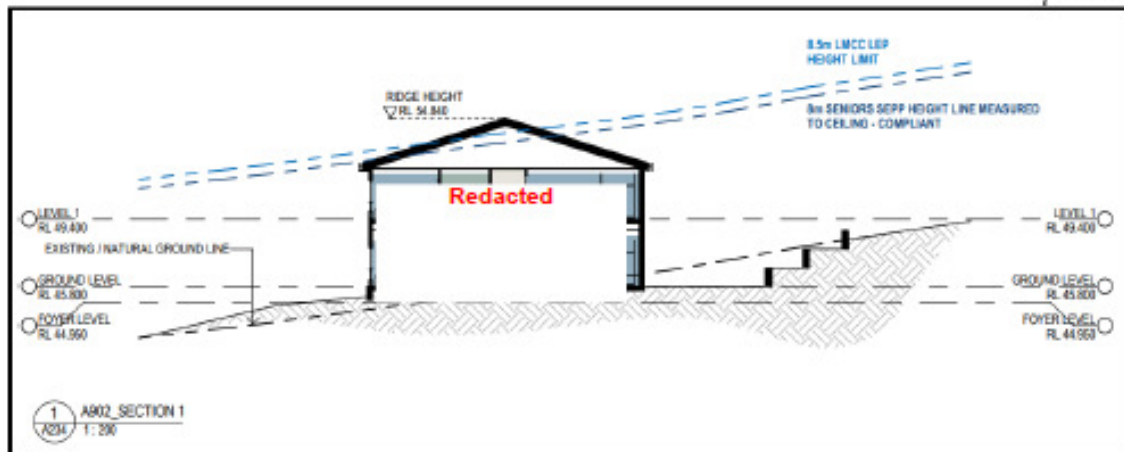


Figure 5: Section Drawing 1.



Figure 6: Section Drawing 2.

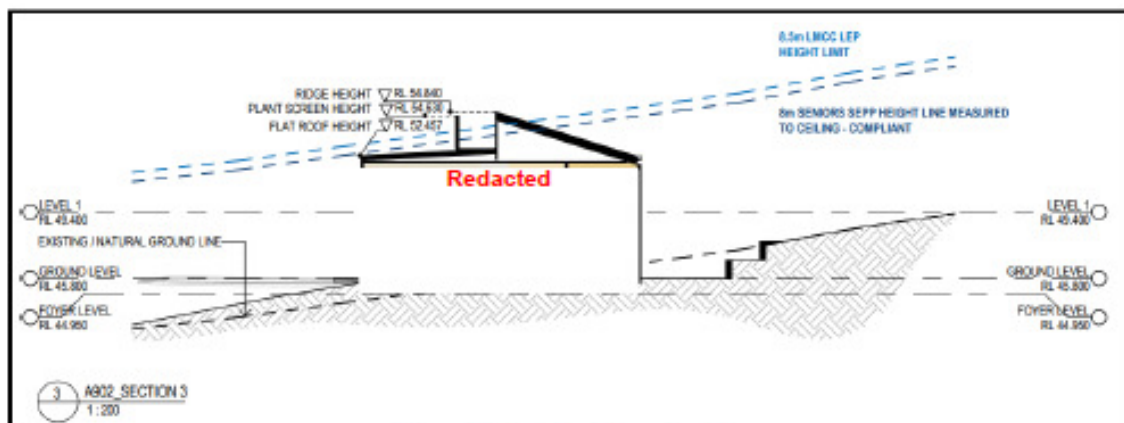


Figure 7: Section Drawing 3.

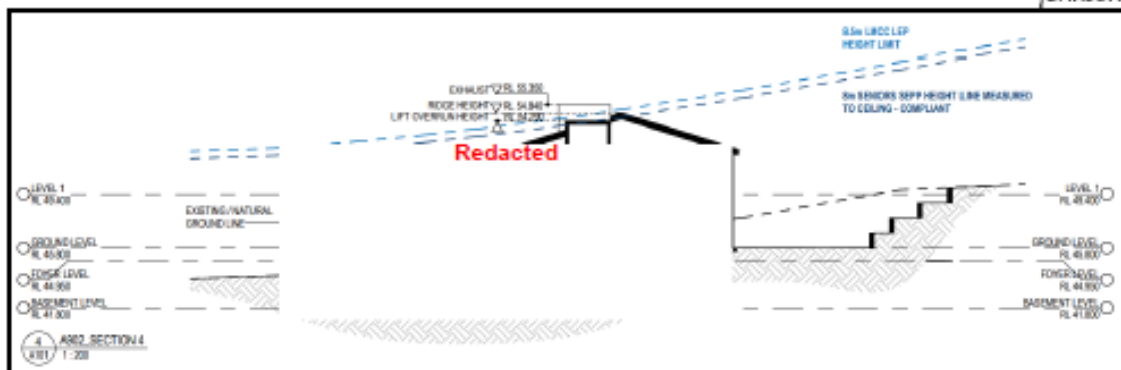


Figure 8: Section Drawing 4.

Overshadowing

Shadow diagrams has been prepared and form part of the architectural drawing package prepared by DWP. This study highlights the proposed overshadowing resulting from the proposed variation and clearly indicate that the development will not result in any overshadowing to neighbouring residents.

Privacy

The development is designed to minimise overlooking to neighbouring residents, through the provision of generous building line setbacks (19m at its closest point); orientation of bedroom windows away from adjoining properties; and extensive landscaping along the southern site boundary.

Streetscape

The new building is setback behind the existing ILU's which will provide substantial screening when viewed from Redhead Road. Extensive landscaping is proposed along the road frontage which will further enhance the street presentation of the overall development.

View Corridors

The proposed development will not impact on view corridors, as the development is designed to be sympathetic with the topography of the site.

Acoustic Amenity

The proposed design meets required acoustic standards and sufficient separation to the neighbouring occupants is provided. The design ensures appropriate noise attenuation is achieved.

Is there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is consistent with the objectives of both the R2 Low Density Residential zone and clause 4.3 Height of buildings, in that it provides a development that is sympathetic with the topography and scenic qualities of the site and provides a high quality urban form, specifically designed to meet the needs of seniors with provision for high quality residential care.

The new building will sit behind the existing aged care facility and independent living units that are already located on the site and when supplemented with high quality landscaping along the site boundaries and road frontage, will substantially screen the development when viewed from identified viewing corridors available from Redhead Road to the west, and White Cap Close, to the south.

The negligible exceedance in building height proposed will not be discernible when viewed from a distance.

At its closest point, the development will be setback 19. from the southern site boundary, offering excellent separation distance to neighbouring residents to the south. Bedroom windows are oriented away from the southern boundary to avoid impacts on privacy and additional landscaping along the southern boundary will ensure that the amenity of neighbouring residents is maintained.

Overshadowing will not occur to neighbouring properties as a result of the minor building exceedance. This is demonstrated in the shadow diagrams that are included in the DA design package.

Given the minor nature of the non-compliance, there are considered to be planning grounds to support the contravention of the development standard.

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.

It is considered in the public interest to encourage the expansion of an aged care facility of the site as proposed and a minor exceedance of the height limit for part of the building is considered justified having regard to the development outcomes to be achieved.

Further, the development will provide additional seniors housing offering specialised care, meeting the needs of this sector of the community, as well as providing additional employment opportunities in the locality.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

Contravention of the development standard does not raise any matter for State or regional planning. The proposal will achieve efficient delivery of additional housing for seniors, offering essential specialised care to residents and a high quality of amenity through improved living spaces and outdoor areas. The proposed development satisfies zone objectives.

The public benefit of maintaining the development standard.

There is no significant public benefit in maintaining the development standard given the negligible impact of the non-compliance. It is considered in the public interest to encourage the expansion of an aged care facility of the site as proposed.

6.0 Conclusion

The proposed development is appropriate for the zone. Given the limited impact of the minor non-compliance with the development standard, the contravention of the development standard is considered justified.

This objection to the development standards satisfies the matters of consideration under clause 4.6 of the LEP. While the proposed development does not strictly comply with the height of building control in clause 4.3, it does:

- Satisfy the stated and underlying objectives of that development standard;
- Satisfy the objectives of the R2 Low density residential zone;
- Is consistent with the vision provided through the Lifestyle 2030 Strategy;
- Attain the objects of the EP&A Act and the LEP; and
- Meet the LEC five-part test.

Furthermore, this document has demonstrated that the variation to the height control is appropriate in the circumstance of the site.

The proposal constitutes an appropriate form of development which is consistent with the character of the area. Compliance with the identified standard is considered to be unreasonable and unnecessary in the circumstances of the case.

The proposal provides for a high-quality development that recognises the topography of the site and responds to relevant site constraints without detrimentally impacting on the amenity of surrounding residential development. The quality of the built form will make a positive contribution to the visual amenity and character of the streetscape, making appropriate use of this accessible site and utilising existing infrastructure.

The proposed departure from the development standard is relatively minor and Clause 4.6 of the LEP provides for a degree of flexibility in applying certain development standards to particular development; and to achieve better outcomes for design and from development by allowing flexibility in particular circumstances.

The scale and nature of the non-compliance does not give rise to any matters of state or regional significance. The development is in the public interest as it provides essential housing for elderly people as part of a residential care facility, contributing to demand for specialised aged care. Impacts arising on residential properties with regard to overshadowing and privacy are considered acceptable.

Compliance with the development standards is, therefore, unnecessary and unreasonable in the circumstances of the case.

As the objection is well founded, it is recommended that pursuant to Clause 4.6 (2) of the LEP, that the proposed variation to the development standard be supported.

Appendix A

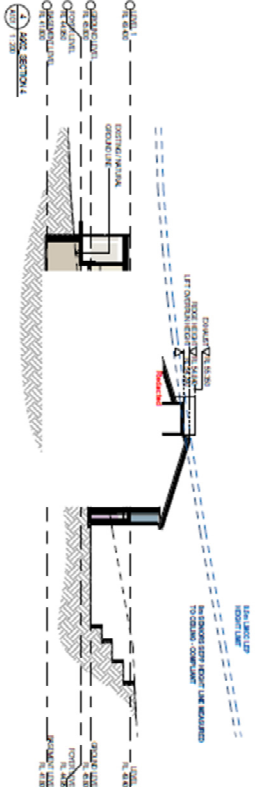
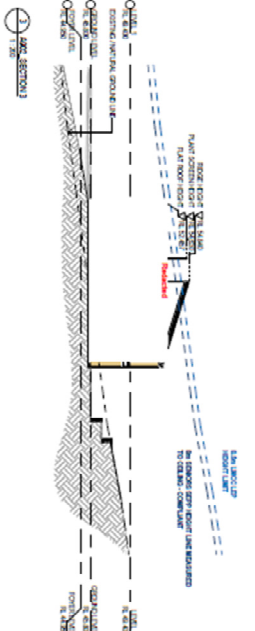
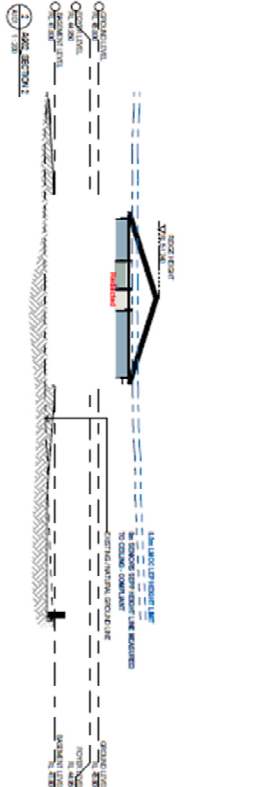
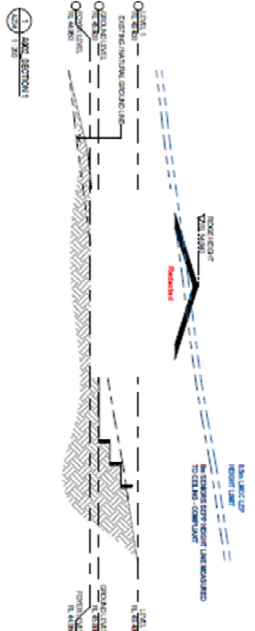
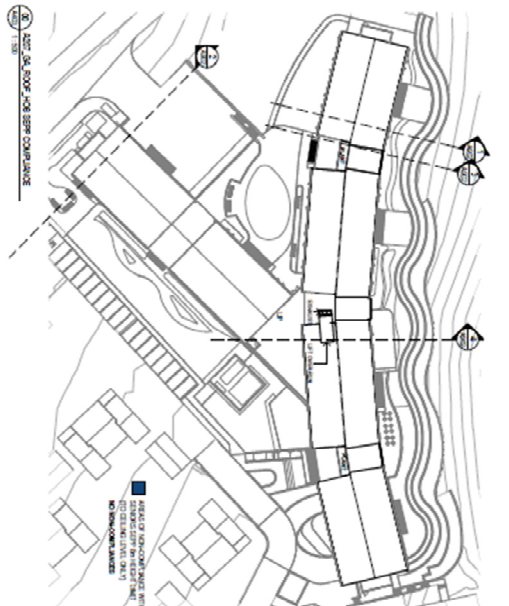
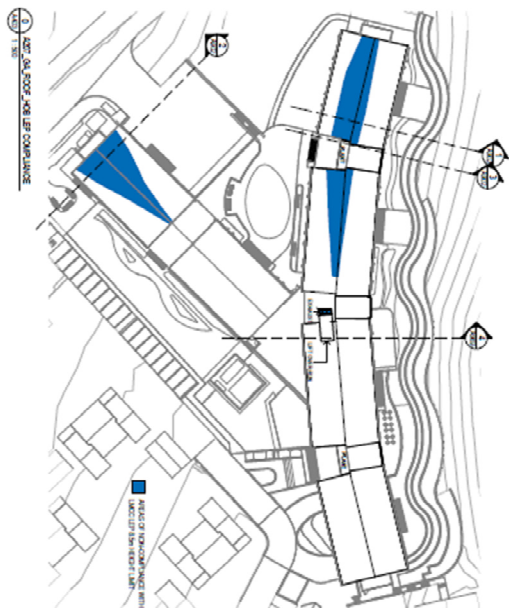
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