

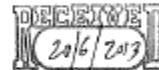
Attachment A – Department of Planning and Environment



Planning &
Infrastructure

Contact: Louise Wells
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Ms Elaine Treglown
Director
TCG Planning
PO Box 7163
GWYNNEVILLE NSW 2500



Dear Ms Treglown

I refer to your letter on behalf of Warrigal Care regarding a proposed modification to a development consent for a retirement village at Lot 8210 DP 1153225 Harbour Boulevard, Shell Cove. You have asked for advice on whether Clause 4.6 of the Shellharbour Local Environmental Plan 2013 (LEP) can be used to vary a development standard identified in Clause 40(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP).

I note Shellharbour City Council has advised that the amended development, as proposed, is substantially the same development; with no changes to height, Floor Space Ratio, or the number of beds/units; and that it is therefore appropriate to pursue the proposed amendments to the layout under Section 96(2) of the Environmental Planning and Assessment Act 1979 (EP & A Act).

I can confirm that Clause 4.6 of the LEP can be used to vary development standards identified in Clause 40(4) of the Seniors SEPP. As you highlighted in your letter, Clause 4.6 allows development consent to be granted for development that 'would contravene a development standard imposed by this or any other environmental planning instrument', provided the development standard is not expressly excluded from the operation of the clause. I note that the development standard identified in Clause 40(4) of the Seniors SEPP is not expressly excluded.

However, you may wish to seek legal advice on whether it is necessary to seek a variation to the development standard in this case, given that the modification of a development consent is not the granting of a development consent. Clause 40(4) of the Seniors SEPP refers to granting 'consent to a development application' and Clause 4.6 of the LEP similarly refers to granting development consent. Neither of these Clauses mention an application to modify an existing approval. So, while it is clear that a new development application for the proposed development would trigger clause 40(4) of the Seniors SEPP, thereby requiring a variation under Clause 4.6 of the LEP, it could be argued that a modification under Section 96 of the EP & A Act does not.

If you would like to discuss this matter, please contact Louise Wells, of the Department's Southern Regional office on 4224 9463.

Yours sincerely

A handwritten signature in black ink that reads 'Brett Whitworth'.

Brett Whitworth
Regional Director, Southern Region

16 May 2013

Southern Region

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