

PROPOSED THREE STOREY 'SENIORS HOUSING – RESIDENTIAL CARE FACILITY' ON LOT 20 DP 1123934, NO. 45 HILLVIEW STREET, WOY WOY (DA 53784/2018).

CLAUSE 4.6 (GOSFORD LEP 2014): REQUEST FOR CONTRAVENTION OF THE MAXIMUM PERMISSIBLE BUILDING HEIGHT DEVELOPMENT STANDARDS OF CLAUSES 40 (4) (a) – (c) OF STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004.”

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ATTACHMENT C: Comparative development footprint and elevation diagrams of the proposed residential care facility and the previously approved seniors housing (physically commenced) under Consent 30219/2006.

- Thrum Architects - Drawing DA-019 (Rev C); and**
- Thrum Architects - Drawing DA-020 (Rev B).**

1. INTRODUCTION.

(i) Development Standards of SEPP (Seniors Housing) able to be varied under Gosford LEP 2014 - Clause 4.6.

In *Pymble Villas Pty Ltd – v – Ku-ring-gai Council (2018) NSWLEC 1586* the Court found that development standards in Clauses 40 and 41 of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004* are amenable to variation under Clause 4.6 of a standard instrument LEP.

This finding is applicable to, and enables this request to be made for variation under Clause 4.6 of Gosford Local Environmental Plan 2014 of the maximum building height development standards contained within Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*.

(ii) **Clause 4.6** of Gosford Local Environmental Plan 2014 (LEP 2014) provides for an appropriate degree of flexibility in applying certain development standards to particular development and seeks to achieve better town planning outcomes by allowing flexibility in particular circumstances.

(iii) **Clause 4.6 (3)** of LEP 2014 provides that 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.

(iv) **Clause 4.6 (4)** provides that 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.

(iv) **Request for Exceptions to development standards:** This request for Central Coast Council to approve DA 53784/2018 in a manner which contravenes the maximum permissible building height development standards applicable to the proposed development addresses:

- the requirements of Clauses 4.6 (3) - (5) of LEP 2014; and

- the considerations set out in *Wehbe v Pittwater Council (2007) NSWLEC 827* and *Four2FivePtyLtd v Ashfield Council (2015) NSWLEC90*.

The proposed development of a *residential care facility* at No. 45 Hillview Street, Woy Woy is of 3 storeys and has a topmost ceiling height of 10.95m, thereby resulting in exceedence of the maximum 8m; two (2) storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*, in respect to development for the purpose of a ‘residential care facility’.

This request demonstrates that in respect to DA 53784/2018 any requirement for the proposed development to strictly comply with the maximum permissible building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*, would be unreasonable and unnecessary for the following reasons and that there are sufficient environmental planning grounds to justify contravening the development standards:

- the Objects of the Environmental Planning and Assessment Act 1979; the objectives of the *R2 Low Density Residential* zone of Gosford LEP 2014; and the purpose of the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, are achieved by the proposed development;
- any requirement for strict compliance with the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability)* would hinder attainment of the objects of the Environmental Planning and Assessment Act in relation to promotion of the orderly and economic use of land;
- any requirement for strict compliance with the applicable maximum building height development standards would hinder attainment of the aims of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* to increase the supply and diversity of housing that meet the requirements of ‘seniors’ or people with a disability and make efficient use of existing infrastructure and services; and
- any requirement for strict compliance with the maximum building height development standards of Clauses 40 (4) (a) – (c) would fail to have due regard to the unique dimensions and biophysical characteristics of the subject land; the high quality architectural design of the proposed *residential care facility*; and the comparative analysis provided in this request and in the accompanying Statement of Environmental Effects that demonstrate that the bulk and scale of the proposed three storey development is similar to that of the seniors housing development currently approved on the subject land under Consent 30219/2006 – Part 6, which has physically commenced.

2. SUBJECT LAND & PROPOSED DEVELOPMENT.

2.1 Subject Land.

The subject land is described as Lot 20 DP 1123934, No. 45 Hillview Street, Woy Woy. The following figures provided in the accompanying Statement of Environmental Effects (SEE) provide details of the contextual setting of the subject land and the proposed development:

- Figure 1 - Locality Plan;
- Figure 2 - Locality Aerial Photograph;
- Figure 3 - Site Aerial Photograph;
- Figure 4 - Detail Site Survey Plan; and
- Figure 5 - Zoning Plan (Gosford LEP 2014).

The subject land has an area of 1.166 ha; a frontage to Hillview Street of 156.11m; northern and southern side boundaries of 74.68m; and a rear (western) boundary of 156.11m.

The land is generally flat (at RL 4.10 m AHD) and has a slight fall from east to west at an average grade of 0.5%. It is partly occupied by remnant *Umina Coastal Sandplain Woodland*, which is contained within a designated bushland protection/conservation area of 6,647m².

The footprint of the proposed development is located within the lawfully cleared footprint of Seniors Living Housing (56 sole occupancy apartments – 2 storeys) approved under Development Consent 30219/2006, granted by the former Gosford City Council on the 14th May 2007. The cleared site development area is shown in the site photographs provided in **ATTACHMENT A**.

The site detail survey plan provided in Figure 4 of the accompanying Statement of Environmental Effects shows the extent of the previously approved and now proposed ‘development area’ and the ‘bushland protection/conservation’ area within the subject land, previously approved under Consent 30219/2006 (and shown on the land title), proposed to be retained under DA 53784/2018.

The subject land is located adjacent to the Everglades Golf Club, located on the eastern side of Hillview Street; Council recreation/drainage reserves adjacent to the southern and western boundaries; the St. John The Baptist School located to the west of the Council’s drainage reserve; and low density housing (4 detached dwelling houses) located adjacent to the northern site boundary (refer to the aerial photograph in **ATTACHMENT B**).

All urban services, including reticulated water and sewer, are available to the land.

2.2 Proposed Development.

A detailed description of the proposed development is provided in sections 4.1 – 4.5 of the accompanying SEE.

The accompanying Architectural & Site Analysis Report prepared by Thrum Architects (3rd October 2018) presents an overview of the development application which involves:

- construction of a three (3) storey *Residential Care Facility* for seniors as defined by Clause 10 (a) of SEPP (Housing for Seniors or People with a Disability) 2004, providing 160 nursing home beds in 152 rooms, including a dementia wing of 20 rooms;
- internal room sizes ranging from 25m² for a typical single king bed and ensuite bathroom, up to 36m² for the largest twin bed suites with ensuite;
- the building being generally divided into two sectors per level, being the south wing and the north wing;
- provision for a variety of common activity and recreational spaces;
- provision of 52 basement car parking spaces, together with one ground level accessible car space and one ground level ambulance bay; and
- 67% of the site being allocated to deep soil remnant vegetation (*Umina Coastal Sandplain Woodland*) located within the 'dedicated' bushland conservation area.

The following site calculations are provided comparing the *residential care facility* proposed by this development application with the currently approved seniors housing (56 sole occupancy apartments) under Consent 30219/2006 – Part 6, which has physical commencement:

	Consent 30219/2006	Proposed Development
Seniors Housing	56 sole occupancy apartments	160 aged care beds
Existing Conservation Bushland (per Bushland Management Plan)	6,647 m ²	6,647m ² (no change)
Building Footprint	3,164m ²	2,958m ² (- 206m ²)
Building Height	2 storeys	3 storeys
Area of soft landscaping	901m ²	842m ² (-59m ²)
Hard surfaced open space	948m ²	1,213m ² (+265m ²)
Car Parking	76 spaces	53 spaces (- 23 spaces) (inc. 3 accessible spaces)
Ambulance Bay	1	1 (no change)
Gross Floor Area	6,427.40m ²	9,164m ² (+ 2, 737m ²)
Floor Space Ratio	0.55:1	0.79:1 (+ 0.24:1)

Comparative development footprint and elevation diagrams of the proposed *residential care facility* under DA 53784/2018 and the seniors housing (56 sole occupancy apartments) development previously approved (and physically commenced with early works) under Consent 30219/2006 are provided in **ATTACHMENT C**.

3. DEVELOPMENT STANDARDS PROPOSED TO BE VARIED - (Clause 40 (4) (a) – (c): Maximum Building Height).

This request is made in respect to the proposed *residential care facility*'s exceedence of the maximum 8m (topmost ceiling height); two (2) storey; and single storey building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*:

“40 Development standards—minimum sizes and building height

(1) General

A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.

(2) -----.

(3) -----

(4) Height in zones where residential flat buildings are not permitted.

If the development is proposed in a residential zone where residential flat buildings are not permitted:

(a) the height of all buildings in the proposed development must be 8 metres or less, and

Note. *Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).*

(b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Note. *The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.*

(c) a building located in the rear 25% area of the site must not exceed 1 storey in height.”

The Policy provides that “***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”.

As such, the Policy expects that there will be some pitched roof forms and architectural building elements exceeding the 8m (top most ceiling height).

Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004* relate to maximum permissible building height on sites where residential flat buildings are not permitted. As the subject land is located within the *R2 Low Density Residential zone* under Gosford Local Environmental Plan 2014, where residential flat buildings are not permitted, the building height development standards contained in Clauses 40 (4) (a) – (c) are applicable to the subject land and the proposed *residential care facility*.

The proposed *residential care facility*:

- has a topmost ceiling **height of 10.95metres** (RL15.05m AHD) above natural ground level (RL 4.10), thereby exceeding the maximum permitted 8 metre building height development standard of Clause 40 (4) (a); and
- is **three (3) storeys in height**, thereby exceeding the maximum permitted two storey building height development standard of Clause 40 (4) (b) and single storey development standard of Clause 40 (4) (c).

Where development could, but for a development standard, be carried out under the Act, the person intending to carry out that development may make a development application in respect to that development, supported by a written request that strict compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case and justifying contravention of the development standard.

As the proposed three storey *residential care facility* does not strictly comply with the maximum (8m; two storey; and single storey) building height development standards of Clauses 40 (a) - (c) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability)2004*, DA53784/2018 is accompanied by this written request made pursuant to Clause 4.6 (3) of Gosford Local Environmental Plan 2014 demonstrating:

- that compliance with the applicable maximum 8m topmost ceiling height; two storey; and single storey building height development standards is unreasonable or unnecessary in the circumstances of the case - Clause 4.6 (3) (a); and
- that there are sufficient environmental planning grounds to justify contravening the applicable maximum building height development standards – Clause 4.6 (3) (b).

This written request demonstrates that the consent authority's insistence on strict compliance of the proposed *residential care facility* with the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*:

- would be inconsistent with the aims of Clause 4.6 of Gosford Local Environmental Plan 2014 to provide for flexibility in the application of planning controls where site specific circumstances warrant;

- would hinder attainment of Objects 1.3 (a), (b), (c), (e), (g) and (h) of the Environmental Planning and Assessment Act 1979 in relation to the proper management of land resources and the orderly and economic use of land; and
- would hinder attainment of the aims of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* to increase the supply and diversity of housing required to meet the needs of seniors or people with a disability and to achieve the efficient use of existing infrastructure and services.

Having regard to the matters addressed in section 4 of this request, Council is requested to approve the proposed *residential care facility's* contravention of the maximum 8m; two storey; and single storey development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* so as to permit the proposed development:

- having a topmost ceiling height of 10.95metres (RL15.05m AHD) above natural ground level; and
- to be three (3) storeys in height.

4. CONSIDERATION AS TO WHETHER THE PROPOSED CONTRAVENTION OF THE APPLICABLE MAXIMUM BUILDING HEIGHT DEVELOPMENT STANDARDS IS REASONABLE IN THE CIRCUMSTANCES AND SATISFIES THE REQUIREMENTS OF CLAUSE 4.6 OF GOSFORD LEP 2014.

4.1 Objectives of Clause 4.6 of Gosford LEP 2014.

The objectives of Clause 4.6 (1) of Gosford LEP 2014 are:

- (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.*

The proposed *residential care facility's* contravention of the applicable maximum permissible building height development standards achieves these objectives as it:

- is consistent with the aims of Clause 4.6 of Gosford Local Environmental Plan 2014 to provide for flexibility in the application of planning controls where site specific circumstances warrant. This request demonstrates that unique site characteristics and the nature of the existing approved seniors housing development on the site (56 sole occupancy two storey apartments) provide sufficient environmental planning grounds to justify contravening the maximum building height development standards in this case;
- attains Objects 1.3 (a), (b), (c), (e), (g) and (h) of the Act in relation to the proper management of land resources and the orderly and economic use of land; and

- attains the aims of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* to increase the supply and diversity of housing to meet the needs of seniors or people with a disability and to achieve the efficient use of existing infrastructure and services.

4.2 Clause 4.6 (3) (a) – Compliance with the development standards is unreasonable or unnecessary in the circumstances of the case.

Clause 4.6 (3) (a) requires that 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 contravention of the development standard by demonstrating that “*compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*”.

In *Wehbe v Pittwater Council* Preston CJ outlines the ways in which it may be established that compliance with a development standard is not necessary.

In respect to the subject land and the proposed development, it is considered that any requirement for the proposed development to strictly comply with the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, would be unreasonable or unnecessary in the circumstances of this development application because:

- the objectives of the *R2 Low Density Residential zone* are achieved by the proposed development (refer to section 4.4 (iv) of this request).
- The proposal provides for the growing housing needs of the Peninsula community. There are currently a high proportion of older residents (i.e. the over 60 age cohort) residing in the Peninsula area and consequently there is a high demand within the community for *residential care facilities* which allow for aging in place.

The limited availability of flat accessible land on the Woy Woy Peninsula necessitates that facilities of this type make the most efficient use of scarce land resources. The proposed development provides much needed additional capacity for high care nursing home accommodation on the Woy Woy Peninsula at a density (FSR) permitted under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

- As demonstrated in the accompanying Statement of Environmental Effects, the proposed development is consistent with the existing and desired character of the locality. The subject site presents unique site characteristics that enable the proposed three storey construction to be generally screened from the public domain by the ‘bushland protection area’ occupying most of the site; the proposed development maintains an extensive setback (46 metres) to the only adjoining low density residential development (located adjacent to its northern boundary); the proposed three storey development occupies substantially the same building footprint as the currently approved two storey ‘seniors housing’ on the land; and the comparison elevations provided in **Attachment C** show that the elevation dimensions of the proposed three storey development are not radically different from the currently approved building elevation (two storeys + steep roof profile).

- The height, bulk and scale of the proposed development is appropriate on the site as the building will provide additional residential aged care beds without adversely impacting adjacent low density residential development. The proposed third building level approximates the roof-ridge height of the currently approved senior's housing development on the subject land.
- The proposed development is of high quality architectural design and includes site landscaping. The on-site surrounding 'bushland protection area', provides an effective visual screen to both the public domain and existing low density residential development located adjacent to the northern property boundary, without adversely impacting the amenity of neighbours or the scenic/visual character of the locality generally.
- The proposed development will be compatible with the desired future character of the locality and will not have unreasonable amenity impacts on neighbouring dwellings (refer to sections 5.4.1; 5.4.2; 6.2.2; 6.2.10; and 6.2.11 of the accompanying Statement of Environmental Effects);
- The proposed development is consistent with applicable State, regional and local planning strategies for the locality (refer to sections 5.1; 5.2; 5.3; and 5.4 of the accompanying Statement of Environmental Effects); and
- Having regard to the unique environmental characteristics of the subject land and as no planning purpose is served by strictly applying the maximum building height development standards of Clauses 40 (4) (a) – (c), the strict application of these development standards to the proposed development would be unreasonable and unnecessary in the circumstances: **Wehbe at (43)**.

As demonstrated further in section 4.6.1 (i) of this request ('Wehbe five part test'), any requirement for the proposed *residential care facility* to strictly comply with the 8m and two storey building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* would be unreasonable or unnecessary in the particular circumstances because the objectives/intent of the development standard are achieved, notwithstanding the proposed numerical non-compliance with the development standards.

4.3 Clause 4.6 (3) (b) – Environmental Planning Grounds to justify contravening the development standards.

Clause 4.6 (3) (b) requires the applicant to demonstrate that there *are sufficient environmental planning grounds to justify contravening the development standard*.

There are sufficient environmental planning grounds in this case to justify the proposed *residential care facility's* contravention of the applicable maximum 8m; two storey; and single storey maximum building height development standards.

Having regard to the unique site characteristics and the varied character of surrounding development, it is considered that the design height, bulk and scale of the proposed development is compatible with the intention of the building height development standards to

provide for development of an appropriate scale relative to the surrounding low density residential development and related streetscape, for the following reasons:

- The subject land is a large site of 1.166 hectares comprising a large area of remnant perimeter 'Bushland Conservation Area' of 6,647m² and a currently approved central site 'development area' of 5,013m² under Development Consent 30219/2006 (for 56 two storey seniors living sole occupancy apartments with a steep pitched roof form).
- The three storey residential care facility now proposed under DA 53784/2018 occupies the same 'development area' as the two storey development seniors housing development currently approved and cleared under Consent 30219/2006;
- As indicated in the locality aerial photograph provided in **Attachment B**, the subject land only adjoins low density residential development (4 dwelling houses) at its northern boundary. On the eastern side of Hillview Street is the Everglades Golf Club; to the west is a Council drainage Reserve and thence the St. John The Baptist School; and to the south, on the opposite side of Veron Road, is the Brisbane Water Secondary College;

Consequently, the proposed development has substantial separation distances to any adjoining low density residential development. The building setback to the nearest residences (four (4) dwelling houses) located along the northern site boundary, is 46 metres, where the existing remnant bushland vegetation within the subject land (protected within the protected 'Bushland Conservation Area') provides a visual screen between the northern 'side' elevation of the proposed development and the neighbouring dwellings; the separation distance to the school buildings located to the west is 49 metres; the separation distance to buildings to the south is 64 metres; and the separation distance to houses to the east is 465 metres;

- The rear (western building elevation) of the proposed development does not adjoin any low density residential development. Rather, the rear of the building adjoins a Council drainage reserve and thence the St. John the Baptist School (separation to school buildings – 49 metres). Consequently, the three storey character of the proposed development at that location does not result in any abrupt change in the scale of development adjacent to a low density residential environment;
- The proposed development will not be visually prominent as it will be screened from neighbouring development by the retention of remnant native vegetation within the site's 'Bushland Conservation Area' (an area of 6,647m²) and the maximum three storey building height will sit below the prevailing canopy height of the surrounding retained bushland vegetation which has an overall height of 18m – 19m above natural ground level;
- The currently approved development has two feature roof elements that are at RL 15.920, which is 11.920 metres above ground level. These two roof features are 280 mm higher than the predominant roof line of the proposed *residential care facility* under DA 53784/2018. Only in one central localised position does the proposed development have a small pitched roof element that is higher (at RL 17.194) than the corresponding localised peak of the current DA approved development (at RL 16.914) – refer to elevation comparison diagram in **Attachment C**;

- Mathematically, the proposed height of the three storey *residential care facility*, in comparison with the currently approved development on the site (i.e. 2 storeys with pitched roof), means that the proposed building is only increasing in height from 70% of the predominant height of the surrounding on-site tree canopy, to 71% of the predominant height of the surrounding on-site tree canopy;
- The existing remnant bushland streetscape of Hillview Street provided by the subject land is retained intact and provides for visual screening of the proposed development from the public domain. The proposed driveway entry/exit is located in the same position as the existing cleared driveway entry/exit approved under the current development consent No. 30219/2006;
- The proposed three storey built form does not have any sunlight access impacts, nor cause any overshadowing on any neighbouring residence;
- The proposed three storey built form does not result in the loss of any scenic view available from any neighbouring property, or from the public domain generally, due to the maximum height of the proposed development being set below the prevailing canopy height of the on-site screening remnant perimeter bushland vegetation;
- The proposed three storey built form will not significantly increase adverse impacts associated with shadowing of the retained surrounding vegetation (refer to the accompanying *Flora and Fauna Assessment Report - Conacher Consulting – October 2018*);
- The proposed development complies with the maximum 1:1 floor space ratio permitted under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* for a residential care facility, having a floor space ratio of 0.79:1; and
- The proposal is consistent with the applicable planning objectives of the *R2 Low Density Residential* zone of Gosford Local Environmental Plan 2014, for the reasons provided in section 4.4 (iv) of this request.

The bulk and scale of the proposed development is consistent with the implied objectives of the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* notwithstanding the proposed development's numerical exceedence of these development standards.

It is demonstrated above that there are sufficient environmental planning grounds in this case to justify the proposed *residential care facility's* contravention of the applicable maximum 8m; two storey; and single storey maximum building height development standards

4.4 Clause 4.6 (4) (a) (ii) – Consistency with the Objects of the Act; the Aims of SEPP (Seniors Housing); the objectives of the standards; and the objectives of the R2 zone.

Clause 4.6 (4) (a) (ii) requires the consent authority to be satisfied that 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 within which the development is proposed to be carried out.

(i) Consistency with the Objects of the EPA Act, 1979.

Notwithstanding the numerical exceedence, the proposed contravention of the maximum 8m and two storey building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* attains the following relevant objects of section 1.3 of the Environmental Planning and Assessment Act, 1979:

“1.3 Objects of Act

(cf previous s 5)

The objects of this Act are as follows:

(a) to promote the social and economic welfare of the community and a better [environment](#) by the proper management, [development](#) and conservation of the State's natural and other resources,

(b) to facilitate [ecologically sustainable development](#) by integrating relevant economic, [environmental](#) and social considerations in decision-making about [environmental](#) planning and assessment,

(c) to promote the orderly and economic use and [development](#) of [land](#),

(d).....,

(e) to protect the [environment](#), including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

(f) -----,

(g) to promote good design and amenity of the built [environment](#),

(h) to promote the proper construction and maintenance of [buildings](#), including the protection of the health and safety of their occupants,

(i)-----,

(j)-----.

The proposed *residential care facility* attains the relevant objects of the Act:

- the proposed development properly manages the ‘bushland conservation area’ identified within the subject land by public positive covenant on land title (Object (a));

- the proposed development facilitates ecologically sustainable development by suitably integrating economic, environmental and social considerations in decision making (Object (b));
- the proposal promotes the orderly and economic use of land (Object (c));
- the proposal protects the environment by properly managing the ‘bushland conservation area’ identified on land title (by public positive covenant) within the subject land (Object (e));
- the architectural design of the proposed development promotes good design (Object (g)); and
- the proposed development promotes the proper construction and maintenance of buildings, including the protection of the health and safety of occupants (Object h)).

(ii) Aims of SEPP (Housing for Seniors or People with a Disability) 2004.

This development application is made pursuant to the provisions of *State Environmental Planning Policy (Housing for Seniors or people with a Disability) 2004*.

Aims of the Policy: Clause 2 provides:

“(1) This Policy aims to encourage the provision of housing (including residential care facilities) 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.*

(2) These aims will be achieved by:

- (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
- (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
- (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.”*

The proposed three storey *residential care facility* achieves the aims of the Policy in that it will increase the supply and diversity of seniors housing; it provides for the efficient use of existing infrastructure and services; it will be of high quality architectural design, responding to the characteristics of the site and locality generally; and it will provide the necessary support services for residents.

(iii) Objectives of the Height of Building Development Standards (SEPP Seniors Housing).

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 does not stipulate specific objectives for the maximum building height development standards contained in Clauses 40 (4) (a) – (c).

However, an explanatory note to Clause 40 (4) (b), limiting the height of a building adjacent to the boundary of a site to two (2) storeys, indicates that *‘The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.’* As such, the stated intent of the maximum building height development standards is to ensure that senior’s housing development in areas where residential flat buildings are not permitted, are of an appropriate scale relative to the surrounding low density residential development and the related streetscape.

Having regard to the unique site characteristics and the varied character of surrounding development, it is considered that the design height, bulk and scale of the proposed development is compatible with the intention of the building height development standards to provide for development of an appropriate scale relative to surrounding low density residential development and the related streetscape:

- for the reasons previously stated in section 4.3 above; and
- the following extract of the accompanying Architectural and Site Analysis Report (3rd October 2018), prepared by Thrum Architects, illustrates that the bulk and scale of the proposed three storey development in comparison to the currently approved two storey development under Consent 30219/2006 will not have any significant visual exposure to/from the public domain and will not adversely impact neighbouring residential properties:

“9. VISUAL EXPOSURE.

The subject building will have very little visual exposure from the street and surrounding properties.

The substantial vegetation of the woodland surrounding the site will offer at most, just intermittent very narrow partially obstructed sightlines through the vegetation. From many angles, there will be no visual exposure at all, as the sightlines are blocked all together by the vegetation.

Regarding the level of visual separation provided around the subject building refer also to the following Annexure drawing:

- *Drawing DA-024 Rev B: Photos of Site Vegetation From 9m Altitude.*

The images on this drawing show that when looking outwards from the location subject building, the degree to which sightlines are very substantially obstructed by the woodland vegetation.

Each of the photos, were taken looking horizontally from a camera located at 9m above ground line. This height was calculated to be the most applicable for assessing sightlines angles to the proposed new top floor of the subject building, and the level of the actual visual impermeability of the existing vegetation of the tree canopies.

Refer also to the following Annexure drawing which shows the general extent of the tree

canopies surrounding the subject site, and generally an approximation of the visual separation relationships involved:

- *Drawing DA-025 Rev B: Precinct Birdseye Perspective Images.*

10. Height Comparison.

A comparison of the height the current DA approved building and that of the proposed new building shows the following:

- *The current DA approved building has two prominent high roof elements that are at RL 15.920, which is 11.920m above the median existing ground line of the site.*
- *Those two approved prominent roof elements are 280mm higher than the main horizontal roof line of the subject nursing home building.*
- *Only in one central localised position, is there a small pitched roof element proposed on the nursing home that has its ridge higher (at RL 17.194) than the corresponding localised peak of the current DA approved building (of RL 16.914).*
- *This represents a height difference of only 290mm, which is confined to a very small single localised position only.*
- *The average height of the surrounding tree canopies of the woodland, is approximately 3m to 4m higher than even the highest localised peak of the subject building.*

The following comparison observations are provided:

- *In the context of the main tree canopies of the woodland having an overall height of 18m to 19m above ground level, the negligible effect of having the localised overall height of the subject building increase from a DA approved height of 12.940m above ground to 13.194m above ground level, is utterly benign.*
- *Mathematically, the effect is miniscule. It means the height of the subject building is merely increasing from being 70% of the height of the surrounding tree canopy, to being 71% of the height of the surrounding tree canopy.*

For the above reasons, and the fact that the building is only increasing in height from 70% to 71% of the height of the surrounding trees, it is therefore conclusive that 'height' should not be a determining factor.

Regarding the comparison of Heights of the subject building with that approved, refer to the following Annexure drawing:

- *Drawing DA-019 Rev C: Plans and Elevations Comparison Diagrams"*

(iv) Objectives for development within the R2 Low Density Residential Zone (Gosford LEP 2014).

Clause 2.3 (2) of Gosford LEP 2014 provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect to land within the zone.

The following assessment demonstrates that the proposed *residential care facility* is consistent with the applicable objectives of the *R2 Low Density Residential* zone applying to the subject land:

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

Consistent: Whilst the proposed development itself does not comprise a low density residential development, it is demonstrated in this Clause 4.6 request and in the accompanying Statement of Environmental Effects that the design height/bulk and scale of the proposed *residential care facility*, providing for the housing needs of the community, is compatible with the surrounding low density residential environment, having regard to the unique site characteristics and extensive building separation distances to neighbouring properties.

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

Not Applicable: The proposed development does not provide facilities or services meeting the day to day needs of residents.

- ***"To ensure that development is compatible with the desired character of the zone"***.

Consistent: As demonstrated in the accompanying Statement of Environmental Effects and in this Clause 4.6 request, the proposed *residential care facility* is compatible with the desired character of the zone.

- ***"To encourage best practice in the design of low density residential development"***.

Consistent: The proposed *residential care facility* is of high quality architecturally design.

- ***"To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford"***.

Consistent: As demonstrated in the accompanying Statement of Environmental Effects, the proposed *residential care facility* is ecologically, socially and economically sustainable.

- ***"To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing"***.

Not Applicable: The proposed development does not involve a non-residential use.

In summary, the proposed *residential care facility* is consistent with the objectives of the R2 Low Density zone for the following reasons:

- The proposal provides for the growing housing needs of the Peninsula community. There are currently a high proportion of older residents (i.e. the over 60 age cohort) residing in the Peninsula area and consequently there is a high demand within the community for residential care facilities which allow aging in place. The limited availability of flat accessible land on the Woy Woy Peninsula necessitates facilities of this type making the most efficient use of the scarce available land resource. The

proposal will provide significant additional high care nursing home accommodation on the Woy Woy Peninsula;

- As demonstrated in the accompanying Statement of Environmental Effects, the proposed development is consistent with the existing and desired character of the locality. The subject site presents unique site characteristics that enable the proposed three storey construction to be generally screened from the public domain by the 'bushland protection area' occupying most of the site; the proposed development maintains an extensive setback to the only adjoining low density residential development (4 dwellings located adjacent to its northern boundary); and the proposed three storey development occupies substantially the same building footprint as the already approved two storey seniors housing on the land;
- The height and scale of the development is appropriate as the building will provide additional residential aged care beds without adversely impacting adjacent low density residential development and the proposed third floor level approximates the roof ridge height of the currently approved development; and
- The proposed development is of high quality architectural design and includes suitable landscaping treatments. The surrounding 'bushland protection area', will provide an effective visual screen to both the public domain and existing low density residential development located adjacent to the northern property boundary, without adversely impacting the amenity of neighbours or the scenic/visual character of the locality generally.

4.5 Clause 4.6 (5) (a) – (c): Matters for consideration by the Secretary.

Clause 4.6 (5) (a) – (c) requires that 'the Secretary', in deciding whether to grant concurrence under Clause 4.6 (4) (b) to the proposed contravention of the building height development standard, 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.*

The following assessment demonstrates that the proposed contravention of the building height development standards does not raise any matter of significance for State or regional planning:

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

It is demonstrated in the accompanying Statement of Environmental Effects and in this request, that the proposed *residential care facility* is consistent with State, regional and local planning policies seeking to increase the supply and diversity of 'seniors housing' of good design and to achieve the efficient use of infrastructure and resources.

Approval of the proposed residential care facility and the proposed contravention of the applicable maximum permissible building height development standards in this particular case would not raise any matter of significance for State or regional planning.

- ***"The public benefit of maintaining the development standard".***

The accompanying Statement of Environmental Effects demonstrates that the proposed contravention of the maximum building height development standards does not have any significant adverse scenic/visual impacts, or amenity impacts on either the public domain or neighbouring properties.

It is demonstrated in this Clause 4.6 request that the underlying purposes of the maximum building height development standards contained in Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* are achieved by the proposed development. Any requirement for strict compliance with those maximum building height development standards would hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979 and the aims of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* to increase the supply and diversity of housing for seniors or persons with a disability. This request for contravention of the maximum building height development standards is considered to be well founded in the particular circumstances.

Strict application of the maximum building height development standards of clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* would not give appropriate recognition to the unique biophysical characteristics of the subject land and the substantially similar comparative bulk and scale of the seniors housing development currently approved on the subject land under operational Consent 30219/2006 – Part 6.

No planning purpose or public benefit would be served in this case by strictly applying the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

- ***"Any other matters required to be taken into consideration by the Director-General before granting concurrence."***

There are no other matters currently specified to be taken into consideration by the Director-General before granting concurrence.

4.6 Considerations arising from 'Wehbe' and 'Four2Five Pty Ltd'.

4.6.1 'Wehbe' five part test.

Preston CJ in *Wehbe v Pittwater Council* (2007) NSWLEC 827 identified five ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary in a particular case.

The proposed *residential care facility* (DA 53784/2018) invokes the first way to establish that any requirement for strict compliance with the applicable building height development standards is unreasonable or unnecessary in the particular circumstances:

(i) “*The 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.*”

Comment: As demonstrated in section 4.4 (iii) above, the proposed development achieves the objective/intent of the 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, notwithstanding its numerical non-compliance with those standards.

Having regard to the consistency of the proposed contravention of the building height development standards with both the objectives of the development standards and the objectives of the *R2 Low Density Residential Zone* and in consideration of the environmental planning grounds addressed in section 4.3 above, it is demonstrated that any requirement for strict compliance with the 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*, would be unreasonable or unnecessary in the particular circumstances.

(ii) “*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.*”

Comment: In relation to the proposed residential care facility, the underlying objective or purpose of the 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* are considered to be relevant to any assessment of the proposed development and consequently this second way to establish that compliance with the standard is unreasonable or unnecessary, is not applicable in the particular circumstances of the proposed development.

(iii) “*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.*”

Comment: While the objectives of the building height development standard would not be thwarted if strict compliance with the development standard was required, the objectives of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* to provide for the increased supply and diversity of housing for seniors or persons with a disability would not be optimised if the proposed contravention of the building height development standard was not approved in this particular case.

Consequently this third way to establish that strict compliance with the maximum building height development standards is unreasonable or unnecessary is not applicable in the particular circumstances of the proposed development.

(iv) “A fourth way is to establish that 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.”

Comment: Whilst it is not strictly the case that the maximum building height development standards for *residential care facility*’s has been virtually abandoned or destroyed by the Council’s own actions, the degree of the proposed contravention of the building height development standard in relation to the proposed *residential care facility* is commensurate with the decision taken by the Council/JRPP to approve a three storey residential care facility within the R2 Low Density Residential zone (Consent 50925/2016) at Nos. 85 & 91 Poziers Avenue, Umina Beach.

(v) “A fifth way is to establish that the zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.”

Comment: In relation to the subject land, the *R2 Low Density Residential zone* is appropriate to the locality and consequently the fifth way to establish that compliance with the maximum permissible building height development standards is unreasonable or unnecessary, is not applicable to the particular circumstances of the proposed development.

4.6.2 Additional considerations arising from *Four2Five Pty Ltd*.

The following additional considerations arise from *Four2Five v Ashield Council (2015) NSWLEC 90* in relation to the operation of Clause 4.6:

(i) *Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP*’.

Comment: It is demonstrated in sections 4.1 – 4.5 of this request for contravention of the 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* that the proposed variation to the standards satisfies the particular requirements of Clause 4.6 of Gosford LEP 2014.

(ii) *That there are sufficient environmental planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may occur to similar development on the site or in the locality).*

Comment: It is demonstrated in section 4.3 of this request that there are sufficient environmental planning grounds in relation to the particular circumstances of the subject land and the proposed development to justify contravening the 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

(iii) That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs.

Comment: Whilst it is demonstrated in this request that the design height of the proposed development is consistent with the objectives/intent of the building height development standard; the aims of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* to provide for the increase supply and diversity of housing for seniors and people with a disability; and the objectives for development within the *R2 Low Density Residential zone*, this request demonstrates in section 4.3 that there are also sufficient environmental planning grounds to support the proposed contravention of the applicable maximum building height development standards and that the strict maintenance of the development standards would be unreasonable and unnecessary in the circumstances of the case.

5. CONCLUSION.

The proposed exceedence of the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* in respect to the proposed development of a three storey *residential care facility* having a maximum building (top most ceiling) height of 10.95 metres on Lot 20 DP 1123934, No. 45 Hillview Street, Woy Woy, in the manner proposed by DA 53784/2018:

- satisfies both the objectives of the *R2 Low Density Residential zone* and the purpose of the maximum building height development standards of Clause 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*; and
- is demonstrated in the accompanying Statement of Environmental Effects and supplementary information provided to Council to be compatible with the desired future character of the locality.

This request, made pursuant to Clause 4.6 of Gosford Local Environmental Plan 2014 demonstrates that:

- any requirement for strict compliance with the 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* would be unreasonable or unnecessary in the circumstances of the case (refer to section 4.2 of this request); and
- there are sufficient environmental planning grounds to justify contravening the applicable building height development standards (refer to sections 4.3 and 4.4 of this request).

Granting consent to the proposed development's exceedence of the 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*:

- raises no adverse matters of significance for State and regional environmental planning;
- achieves the aims of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* to increase the supply and diversity of housing to meet the needs of seniors or people with a disability and make efficient use of existing infrastructure and services;
- would not undermine planning objectives for the locality and would not result in an abrupt change in the scale of development in the streetscape;
- would not cause unreasonable amenity impacts on neighbouring land uses;
- would generate positive social and economic benefits by providing additional well-serviced high care nursing home accommodation in a location well served with infrastructure and services, in a manner which ensures the continuing protection of the remnant woodland vegetation - *Umina Coastal Sandplain Woodland*) present on the subject land;
- would result in a development of low visual/scenic impact as it is effectively screened by the surrounding bushland vegetation retained within the site and retains the existing bushland streetscape of the subject land's Hillview Street frontage; and
- no planning purpose or public benefit would be served in this case by strictly applying the maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

Central Coast Council is requested to exercise its discretion under Clause 4.6 (2) of Gosford Local Environmental Plan 2014 to grant consent to DA 53784/2018 for a three (3) storey *Residential Care Facility* on Lot 20 DP 1123934, No. 45 Hillview Street, Woy Woy, even though the proposed development would contravene the applicable 8m; two storey; and single storey maximum building height development standards of Clauses 40 (4) (a) – (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

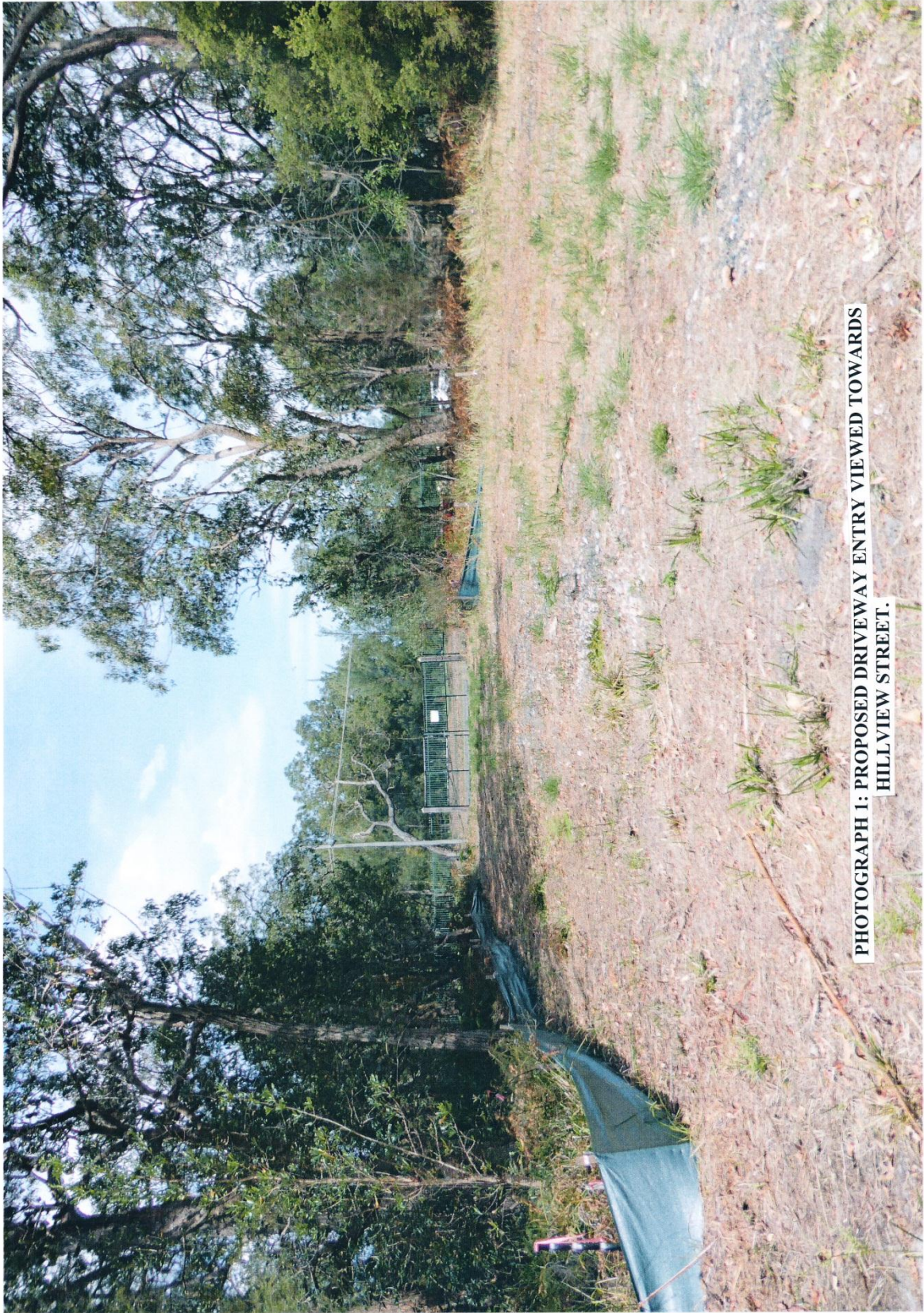
The consent authority has broad discretion to decide that a request made pursuant to Clause 4.6 of Gosford Local Environmental Plan 2014 should be upheld. Central Coast Council is therefore requested to:

- grant consent to the proposed development of a three storey *residential care facility* on Lot 20 DP 1123934, No. 45 Hillview Street, Woy Woy, in the manner detailed in the Architectural Drawings prepared by Thrum Architects, dated 3rd October 2018; and
- consequently, approve the proposed development so that:
 - it has a topmost ceiling **height of 10.95metres** (RL15.05m AHD) above natural ground level (RL 4.10), thereby exceeding the maximum height development standard of 8 metres under Clause 40 (4) (a) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*; and

- it is **three (3) storeys in height**, thereby exceeding the maximum building height development standards of two (2) storeys under Clause 40 (4) (b) and single (1) storey under Clause 40 (4) (c) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

Doug Sneddon
24th January 2019.

ATTACHMENT A: Photographs - Cleared development site.



PHOTOGRAPH 1: PROPOSED DRIVEWAY ENTRY VIEWED TOWARDS
HILL VIEW STREET.



PHOTOGRAPH 2: PROPOSED DRIVEWAY ENTRY - VIEW WEST.



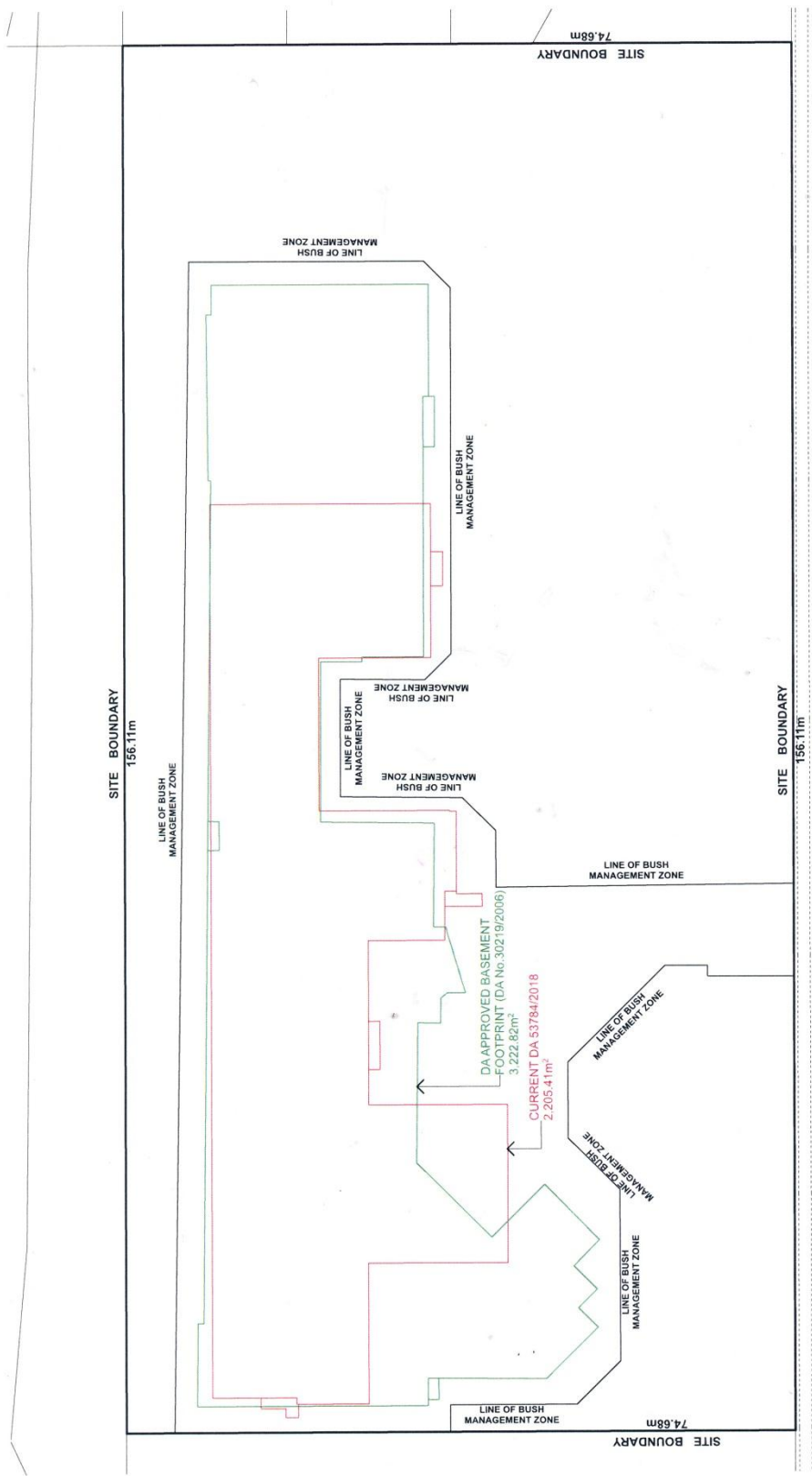
PHOTOGRAPH 3: CLEARED APPROVED/PROPOSED SITE
DEVELOPMENT AREA LOOKING NORTH.

ATTACHMENT B: Locality Aerial Photograph.



ATTACHMENT C: Comparative development footprint and elevation diagrams of the proposed residential care facility and the previously approved seniors housing (physically commenced) under Consent 30219/2006.

- Thrum Architects - Drawing DA-019 (Rev C); and**
- Thrum Architects - Drawing DA-020 (Rev B).**



BASEMENT FOOTPRINT COMPARISON

SCALE 1:200

NOTE:
THE BASEMENT FOOTPRINT COMPARISON IS BASED ON THE LATEST APPROVED DA. THE SIZE OF THE BASEMENT IS SET BY THE NEW DA.

HILLVIEW STREET

MULTI-LEVEL NURSING HOME FACILITY
45 HILLVIEW STREET
WOY WOI, NSW

BASEMENT FOOTPRINT COMPARISON

16017

DA-03 Rev B

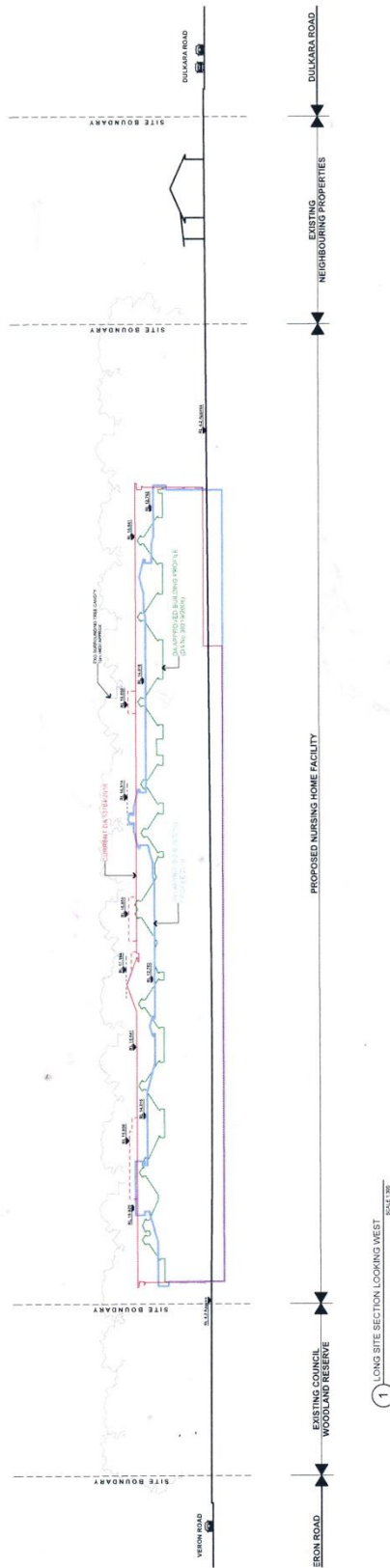
Wednesday, 3 October 2018

Scale: @ A1

Client: THOMPSON HEALTH CARE

thrum

NOT FOR CONSTRUCTION



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NOT FOR CONSTRUCTION

Client: THOMPSON HEALTH CARE	MULTI-LEVEL NURSING HOME FACILITY 45 HILLVIEW STREET WOY WOY, NSW	LONG SECTION @ A1 Wednesday, 3 October 2018	16017 DA-026 rev B
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