

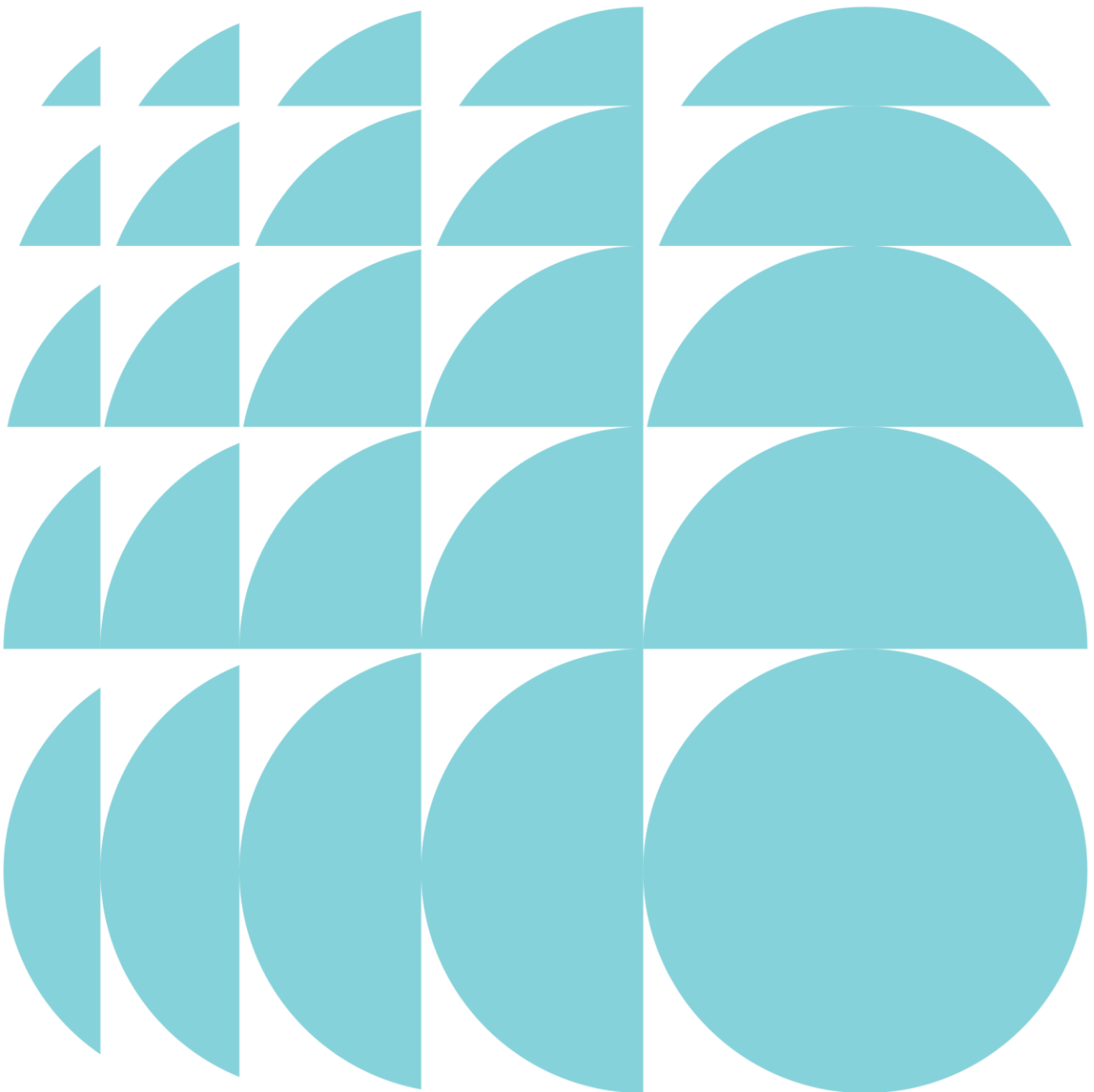
## Clause 4.6 Variation Request

Height of Buildings Development Standard

Bayview Golf Club  
Proposed Seniors Housing

Submitted to Northern Beaches Council  
On behalf of Waterbrook Bayview Pty Ltd

12 December 2017 | 17317



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VERSION NO.	DATE OF ISSUE	REVISION BY	APPROVED BY
1	12/12/2017		

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# Contents

1.0	Introduction	2
2.0	Development Standard to be Varied	4
2.1	LEP Clause 4.3 Height of Buildings	4
2.2	Nature of the Proposed Variation	6
2.3	Context to the Proposed Variation	8
3.0	Justification for Contravention of the Development Standard	10
3.1	Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard	11
3.2	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case	15
3.3	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard	19
3.4	Other Matters for Consideration	22
4.0	Conclusion	24

## Figures

Figure 1 – Extract of the height of buildings map	5
Figure 2 – Height plane diagram illustrating the proposed height variation (view from south-west boundary)	6
Figure 3 – Height plane diagram illustrating the proposed height variation (view from north-east boundary)	7
Figure 4 – Height plane diagram illustrating the proposed height variation (view from north boundary)	7

## Tables

Table 1 – Assessment against the Objectives of Clause 4.3 Height of Buildings (Pittwater LEP 2014)	11
Table 2 – Assessment against the objectives of the RE2 Private Recreation zone (Pittwater LEP 2014)	13

## Appendices

No table of contents entries found.

## 1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of Waterbrook Bayview Pty Ltd. It is submitted to Northern Beaches Council (the Council) in support of a Development Application (DA) for golf course upgrade works and seniors housing at Bayview Golf Club, specifically, the seniors housing component proposed on a portion of the golf course north of Cabbage Tree Road, Bayview.

In March 2017 a Site Compatibility Certificate (SCC) was issued by the Deputy Secretary of the Department of Planning and Environment (DPE) for the proposal under Clause 25(4)(a) of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004*. In issuing the SCC, the DPE found that the site was suitable for more intensive development and that the proposed concept was compatible with the surrounding land uses and environment. Accordingly, it is noted that no height limit applies to the site or the proposed development under the Seniors SEPP, and therefore, neither a SEPP 1 Objection nor a Clause 4.6 Variation Request is required to vary any development standards in the Seniors SEPP.

Clause 5(3) of the Seniors SEPP mandates that the SEPP prevails to the extent of an inconsistency with another environmental planning instrument (in this case the Pittwater LEP 2014), and therefore it is questionable as to whether a Clause 4.6 Variation is required in this instance to vary the LEP height limit. However, for abundant caution, this Clause 4.6 Variation Request has been prepared to vary the Pittwater LEP 2014 development standard for building height under Clause 4.3 given the proposed development seeks development consent for buildings of a height which exceed this standard.

Clause 4.6 of the *Pittwater Local Environmental Plan 2014* (LEP) enables a Consent Authority to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development. Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- 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 in which development is proposed to be carried out.

Assistance on the approach to justifying the contravention to a development standard is taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 request identifies the variation sought to the maximum building height development standard under Clause 4.3 of the LEP and establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances. It also demonstrates that there are sufficient environmental planning grounds to justify the contravention and provides an assessment of the matters the Secretary is required to consider before granting concurrence. In accordance with Clause 4.6 of the LEP, this written clause 4.6 request;

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 2.2**);

- demonstrates such that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the applicable land use zone (**Section 3.1**);
- establishes and justifies that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 3.2**);
- demonstrates that there are sufficient environmental planning grounds to justify the contravention (**Section 3.3**); and
- provides an assessment of the matters the Secretary is required to consider before granting concurrence (**Section 3.4**).

Accordingly, development consent may lawfully be granted to the proposal despite the proposed contravention of the development standard because pursuant to clause 4.6(4)(a), the consent authority can be satisfied that:

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

In summary, it is considered that the application of the development standard for height under the LEP to the proposed development is unreasonable as it is directly applicable to the RE2 Private Recreation zone, which does not anticipate this form of development. Notwithstanding this, the proposal is permissible through the Seniors SEPP, which does not provide a height standard, instead requiring a merit-based approach to the assessment of the height, bulk and scale of the proposal. Such an assessment has been undertaken in the Statement of Environmental Effects (SEE) submitted with the proposal, as well as this Clause 4.6 Variation Request, and finds:

- The built form is considered appropriate and responsive to the character of the locality given:
  - The development will remain largely unobtrusive amongst the heavily vegetated avenue of trees surrounding the site;
  - The 3-4 storey height is in keeping with the nearby the height of seniors housing developments in Bayview in the immediate vicinity;
  - It allows for the delivery of a critical mass of dwellings, proving a viable scheme whilst also permitting the continued operation of an 18-hole course;
  - The buildings appropriately respond to the topography of the site;
  - The built form will not have any amenity impacts on any adjoining residence (see Section 4.7 of the SEE);
- The adverse impacts which the height control is seeking to avoid (such as development which is completely out of character with the local area, development which is incompatible with the height and scale of surrounding and nearby development, the overshadowing of neighbouring residential land and significant impacts to views) will be avoided, despite the variation;
- The desired built form outcomes which the height control is seeking to achieve, will be achieved, in particular, development which, by virtue of its height and scale, is compatible with the height and scale of surrounding and nearby development and which responds to the natural topography of the land, and development which minimises adverse amenity impacts to neighbouring property, including shadow and view impacts in particular.

Accordingly, the proposed variation is considered acceptable, as discussed throughout this report.

## 2.0 Development Standard to be Varied

### 2.1 LEP Clause 4.3 Height of Buildings

The development standard that is sought to be varied as part of this application is Clause 4.3 of the LEP, relating to the maximum building height. Clause 4.3 of the LEP is reproduced below in its entirety, and an extract of the Height of Buildings Map, to which this clause applies, is reproduced in **Figure 1**.

#### **Clause 4.3 Height of Buildings**

(1) *The objectives of this clause are as follows:*

- (a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*
- (b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (c) to minimise any overshadowing of neighbouring properties,*
- (d) to allow for the reasonable sharing of views,*
- (e) to encourage buildings that are designed to respond sensitively to the natural topography,*
- (f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

(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.*

(2A) *Despite subclause (2), development on land:*

- (a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and*
- (b) that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map, may exceed a height of 8.5 metres, but not be more than 8.0 metres above the flood planning level.*

(2B) *Despite subclause (2), development on land:*

- (a) at or below the flood planning level or identified as “Coastal Erosion/Wave Inundation” on the Coastal Risk Planning Map, and*
- (b) that has a maximum building height of 11 metres shown for that land on the Height of Buildings Map, may exceed a height of 11 metres, but not be more than 10.5 metres above the flood planning level.*

(2C) *Despite subclause (2), development on an area of land shown in Column 1 of the table to this subclause and identified as such on the Height of Buildings Map, may exceed the maximum building height shown on the Height of Buildings Map for that land, if the height of the development is not greater than the height shown opposite that area in Column 2.*

<b>Column 1</b>	<b>Column 2</b>
<b>Area</b>	<b>Maximum height above the flood planning level</b>
Area 1	11.5 metres
Area 2	8.5 metres on the street frontage and 10.5 metres at the rear
Area 3	8.5 metres
Area 4	7.0 metres

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if:

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

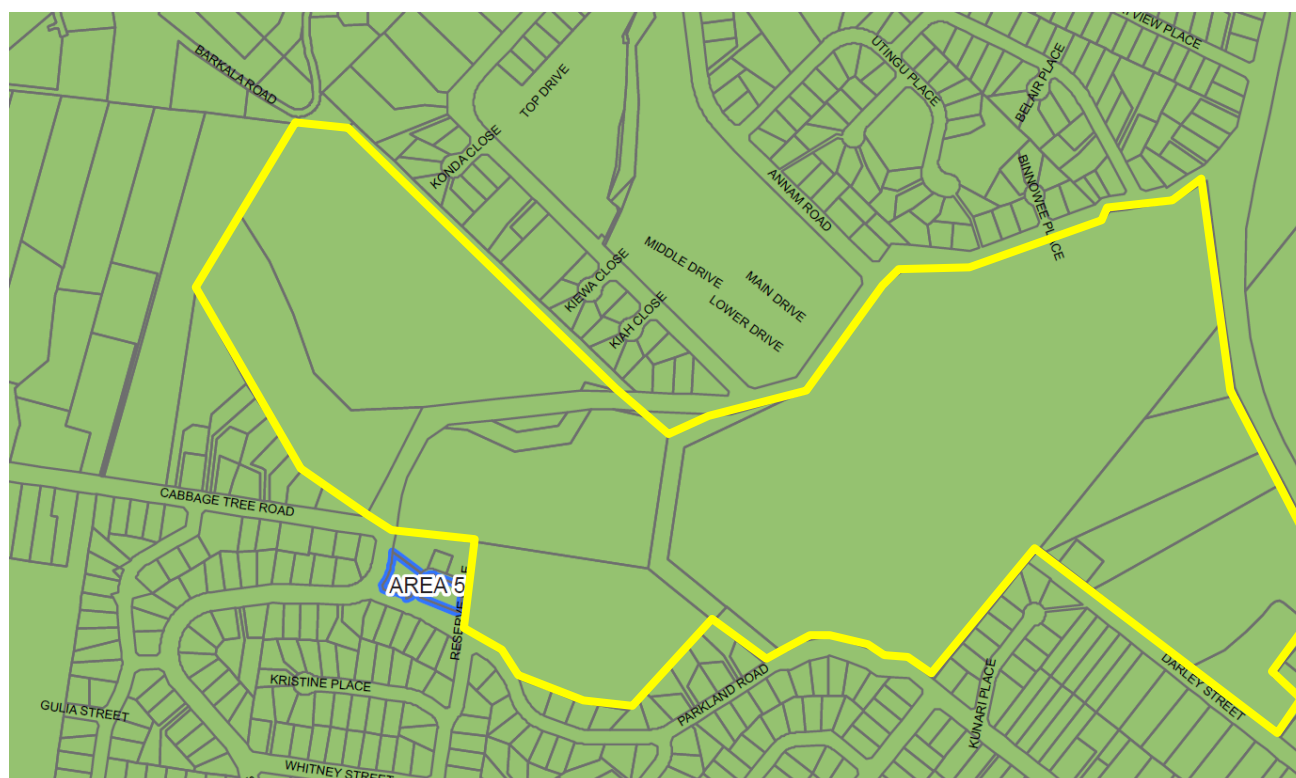
(2E) Despite subclause (2), development for the purposes of shop top housing on land identified as “Area 5” on the Height of Buildings Map may have a height of up to 10 metres if the top floor of the building is setback a minimum of 6 metres from the boundary to the primary street frontage.

(2F) Despite subclause (2), development on land identified as “Area 6” on the Height of Buildings Map must not exceed 8.5 metres at the street frontage.

(2G) In this clause:

**flood planning level** means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metres freeboard, or other freeboard determined by an adopted floodplain risk management plan.

**floodplain risk management plan** has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government.



#### Maximum Building Height (m)

1	8.5
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**Figure 1 – Extract of the height of buildings map**

Source: LEP + Ethos Urban



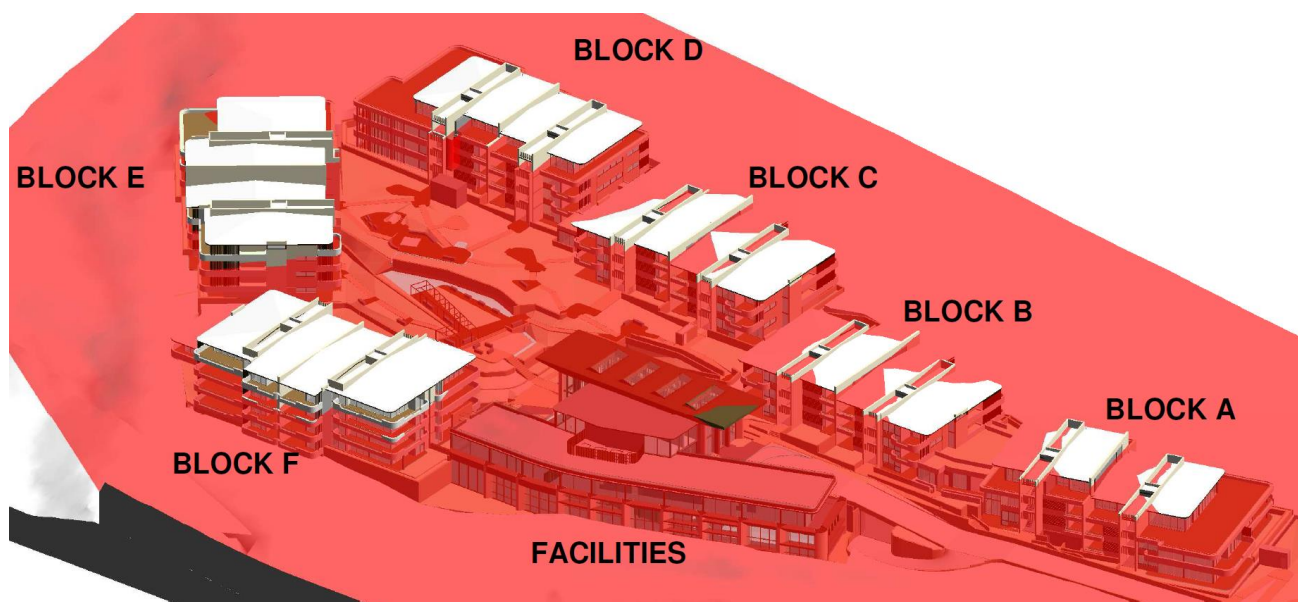
## 2.2 Nature of the Proposed Variation

In accordance with the definition of 'building height'<sup>1</sup> in the LEP, the proposed development has a maximum building height of 13.99m (RL 27.19) being the tallest point of the roof of Building F, which is a variation of 5.49m to the LEP development standard. This height has been determined based on an existing ground level of RL 13.20 at that point.

It is noted that no height limit applies to the site or the proposed development under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* ('Seniors SEPP'), and therefore, neither a SEPP 1 Objection nor a Clause 4.6 Variation Request is required to vary any development standards in the Seniors SEPP.

The figures below are height plane diagrams illustrating the extent of the proposed variation to the LEP height limit. The height plane diagrams demonstrate that for the majority of the development, the exceedances are very minor and arise primarily due to steep cross falls in the land. Those elements of the proposed buildings which exceed the 8.5m LEP height control are:

- The majority of the 4<sup>th</sup> storey floor plates of Buildings E and F;
- Minor roof elements of Buildings A to D; and
- A very minor portion of the Facilities Building roof.



**Figure 2 – Height plane diagram illustrating the proposed height variation (view from south-west boundary)**

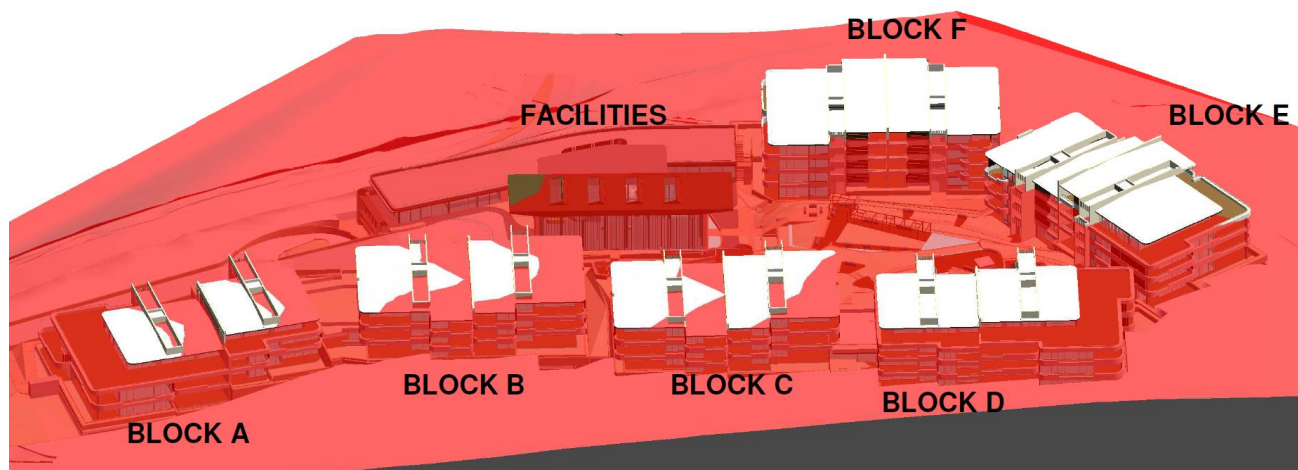
Source: Marchese Partners

<sup>1</sup> Height is defined in the LEP as: **building height** (or **height of building**) means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

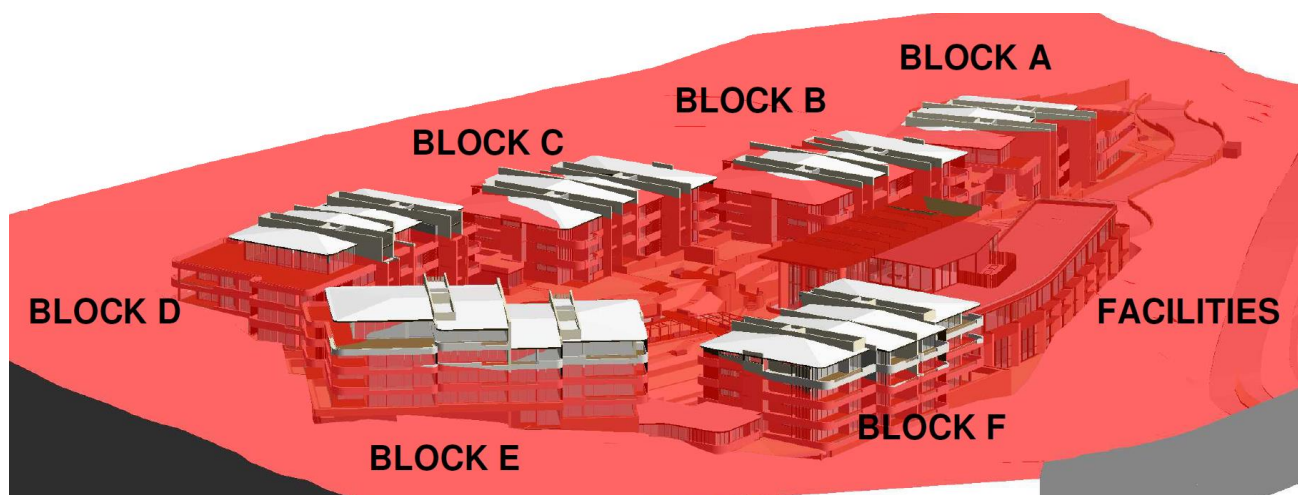
(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.





**Figure 3 – Height plane diagram illustrating the proposed height variation (view from north-east boundary)**

*Source: Marchese Partners*



**Figure 4 – Height plane diagram illustrating the proposed height variation (view from north boundary)**

*Source: Marchese Partners*

## 2.3 Context to the Proposed Variation

On 27 March 2017, the Department of Planning and Environment (DPE) issued a Site Compatibility Certificate (SCC) for the proposed seniors housing development under Clause 24 of *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004* (Seniors SEPP). The issuing of the SCC provides permissibility and therefore a planning pathway for the proposed seniors housing development at Bayview Golf Club, in accordance with the Seniors SEPP, which would not otherwise be available under the zoning and planning controls of the LEP.

The SCC process re-affirms the objectives of the Seniors SEPP, in that it aims to encourage the provision of housing “that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability” by 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 the SEPP. The SCC process legislatively gives effect to this aim by permitting seniors housing in particular circumstances<sup>2</sup> where the Secretary of the DPE is of the opinion that:

- (a) the site of the proposed development is suitable for more intensive development, and
- (b) development for the purposes of seniors housing of the kind proposed in the development application is compatible with the surrounding environment having regard to (at least) the criteria specified in clause 25 (5) (b) [of the Seniors SEPP].

The SCC process involved the assessment of the proposal’s appropriateness and compatibility in the locality, where it was deemed by the Deputy Secretary of the DPE that provisions (a) and (b) were satisfied by the proposal.

### 2.3.1 Relationship of SCC Process and LEP Provisions

Clause 5(3) of the Seniors SEPP mandates that the SEPP prevails to the extent of an inconsistency with another environmental planning instrument (in this case the Pittwater LEP 2014). Notwithstanding this, Clause 4.6(2) of the Pittwater LEP 2014 (LEP) also enables a variation to a development standard:

*(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.*

Whilst it is questionable whether a Clause 4.6 Variation is required, for abundant caution, a Clause 4.6 Variation Request to vary the LEP development standard for building height under Clause 4.3 has nonetheless been prepared, given the proposed development seeks development consent for buildings of a height which exceed this standard.

It is noted however that the circumstances surrounding the variation to the development standard are driven by the SCC process under the Seniors SEPP, which functions outside the LEP with regards to providing permissibility for a proposal which in the opinion of the Secretary of the DPE satisfies the requirements of Clauses 24 and 25 of the Seniors SEPP. Accordingly, the need for the variation to the height limit has arisen because the local LEP height control is associated with the RE2 Private Recreation zoning of the site, which does not contemplate the SCC process.

It is also noted that one of the primary tests of the SCC assessment process (Clause 24(2)(b)) is that of the compatibility of the proposal with the surrounding environment. A Planning Principle for ‘compatibility’ has been established by the NSW Land and Environment Court in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, and it has been demonstrated in Section 4.6 of the SEE how the proposal is consistent with this principle. In summary the proposal is consistent with this principle because:

<sup>2</sup> When:

- (a) the development is proposed to be carried out on any of the following land to which this Policy applies:
  - (i) land that adjoins land zoned primarily for urban purposes,
  - (ii) land that is within a zone that is identified as “special uses” under another environmental planning instrument (other than land on which development for the purposes of hospitals is permitted),
  - (iii) land that is used for the purposes of an existing registered club, or
- (b) the development application involves buildings having a floor space ratio that would require the consent authority to grant consent under clause 45.

- No impacts will occur to the adjacent golf course or surrounding residential land uses given substantial setbacks and the substantial screening of existing (and proposed) vegetation.
- The proposal will not result in an unacceptable physical impact on the surrounding natural environment, given the mitigation measures to be implemented related to flooding and ecology.
- The design, siting, scale, and materiality result in an overall development with an appearance which will exist together in harmony with its immediate and wider environment.
- Harmony is achieved between the proposed development and surrounding land uses, as well as the character of the locality through sympathetic heights, bulk and scale, which is not substantially greater than the heights, bulk and scale of development in the locality, particularly existing seniors developments.
- Harmony is also achieved as the siting and relationship of the proposed built form to surrounding space being of a lesser or consistent footprint compared to other buildings in the locality, particularly nearby seniors housing developments.
- The proposal includes building tones and materials which are harmonious with the surrounding landscape and area.
- The built form proposes a predominant height of 3-4 storeys, which is considered to be compatible in its context given its footprint is consistent with surrounding development (particular existing seniors housing), and the proposed height, whilst taller than the 2-3 storey heights of surrounding development, is not significantly taller.
- The proposed development's setbacks both from Cabbage Tree Road and the neighbouring golf course are substantial. As the site is currently part of the golf course, there is no uniform building line and therefore, the proposal has adopted generous setbacks from existing fairway tree lines to ensure it is compatible in its natural setting

This Clause 4.6 Variation Request demonstrates that the proposed development, with the height variation, results in a better planning outcome than if the proposal were to comply with the development standard.

### 3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Pittwater LEP 2014 (LEP) provides that:

#### 4.6 Exceptions to development standards

- (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.*

Further, clause 4.6(4)(a) of the LEP provides that:

- (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.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council [2007] NSW LEC 827; and*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009.*

The relevant matters contained in clause 4.6 of the Pittwater LEP 2014, with respect to the height of buildings development standard, are each addressed below, including with regard to these decisions.

### 3.1 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

The proposed development, including with the proposed variation to the Pittwater LEP 2014 height of buildings development standard, is in the public interest because it is consistent with the objectives of the building height development standard as well as the objectives for development within the zone in which the development is proposed to be carried out (RE2 Private Recreation zone). To this end:

- The variation will directly result in the provision of additional and much needed seniors housing, as discussed in the Market Assessment report in Appendix GG of the SEE;
- The adverse impacts that the height control is seeking to avoid will be avoided, despite the variation to the height of buildings development standard in this instance; and
- The desired built form outcomes the height control is seeking to achieve will be achieved, despite the variation, as discussed below.

In order to demonstrate the above, an assessment of the proposal against the objectives of the development standard and the zone is provided in **Table 1** and **Table 2**.

#### 3.1.1 Consistency with objectives of the development standard

The objectives of the maximum height of buildings development standard (under clause 4.3 of the Pittwater LEP 2014) are set out in **Table 1** below, along with an explanation of how these objectives are met notwithstanding the variation to the standard.

**Table 1 – Assessment against the Objectives of Clause 4.3 Height of Buildings (Pittwater LEP 2014)**

Clause 4.3 Objective	Comment
<i>(a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality</i>	<p>The desired future character of the locality must take into account a number of factors, including, but not limited to, the height controls which apply to individual sites. Also relevant in determining the desired future character of the locality are the zone objectives, and in the circumstances of the Bayview locality, other factors must be considered, such as any Site Compatibility Certificate (SCC) which has been issued, the aims and objectives of the LEP and the aims and objectives of the Seniors SEPP which are applicable to the site and the proposal.</p> <p>Accordingly, the proposed buildings, by virtue of their height and scale are consistent with the desired future character of the locality:</p> <ul style="list-style-type: none"> <li>• Because they are enabled by the Seniors SEPP and the issue of the SCC for the land. The desired future character must be understood by reading the LEP in combination with the Seniors SEPP, as well as LEC precedence, particularly because it is the provisions of the Seniors SEPP which have envisaged, through the SCC process, that seniors housing of the kind proposed would be carried out on land of this kind. This is clearly evidenced: <ul style="list-style-type: none"> <li>– through the wording of Clause 25(5)(iv), which makes provisions for seniors housing, through the SCC assessment process, "...in the case of applications in relation to land that is zoned open space or special uses"; and</li> <li>– because the Seniors SEPP aims to increase the supply and diversity of residences for seniors (Cl. (1)(a)) by setting aside local planning controls that would prevent the development of seniors housing that meets the criteria and standards set out in the Policy (Cl. (2)(b)).</li> </ul> </li> <li>• Because they are consistent with the intention in the Pittwater DCP 21 that the desired character of future development in the Mona Vale Locality 'maintain a building height limit below the tree canopy and minimise bulk and scale'. The proposed buildings are also consistent with the following desired character elements of the DCP: <ul style="list-style-type: none"> <li>– "Existing and new native vegetation, including canopy trees, will be integrated with the development.</li> <li>– Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment.</li> <li>– Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance.</li> <li>– Development will be designed to be safe from hazards."</li> </ul> </li> <li>• Because they are consistent with the development concept the subject of the SCC issued by the Secretary of the DPE, which contemplates a seniors housing development of the height and scale proposed, including 3-4 storey buildings. The SCC addressed the issue of compatibility and it was</li> </ul>



Clause 4.3 Objective	Comment
	<p>found by the Secretary that the proposal was compatible with the surrounding environment.</p> <ul style="list-style-type: none"> <li>Because, when viewed from the public domain (along Cabbage Tree Road), the perceived height of the proposal is of a development which complies with the height limit, as the buildings which are closest to Cabbage Tree Road are largely compliant with the height limit (only a minor portion of the roof of Building A and the facilities building exceeds the height limit, refer to <b>Figure 2</b>). The non-compliant aspects of the proposal are to that part of the development that might only be readily viewed from the west, where there are few opportunities to view the development). As alluded to in the SEE, a View Analysis and shadow impact analysis have been undertaken, which find that the environmental impacts of the additional height are non-existent.</li> </ul>
<i>(b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development</i>	<p>An assessment of the compatibility of the proposal with neighbouring land and the character of the locality is discussed at length in Section 4.6 of the SEE. The proposed buildings are compatible with the height and scale of surrounding and nearby development because:</p> <ul style="list-style-type: none"> <li>Their perceived height from the public domain is consistent with the neighbouring locality and the height limit, as the lower scale components of the development are located nearest to the road frontage, yet still substantially set back from the road and aligned to the sloping nature of the site.</li> <li>They have been designed to respond sympathetically to the height, scale and built form of the existing area, which is characterised by buildings of 2-3 storeys. The buildings respond sympathetically because; <ul style="list-style-type: none"> <li>They are located a substantial distance from nearby buildings;</li> <li>The upper storeys are recessed, particularly with Buildings E and F;</li> <li>Their design, siting and materiality result in an overall development with an appearance which will exist together in harmony with its immediate and wider environment, being the adjacent golf course and areas of natural environment, residential and existing seniors housing in the surrounding area. This is particularly the case because the design has sought to emphasise the desired elements of the character of Bayview (significant landscaping, a generally sensitive scale of development and minimised site coverage).</li> </ul> </li> <li>Their siting and relationship to surrounding space constitute a lesser or consistent footprint compared to other buildings in the locality, particularly nearby seniors housing developments (refer Section 4.6.1 of the SEE).</li> <li>The SCC issued by the Secretary of the DPE in support of the proposal determined that the proposed concept was compatible with the surrounding environment and land uses, having regard to a number of criteria set out in Clause 24 of the Seniors SEPP.</li> </ul>
<i>(c) to minimise any overshadowing of neighbouring properties,</i>	<p>The proposed buildings do not cause any overshadowing of neighbouring properties, as evidenced by the shadow diagrams and discussed in Section 4.7.1 of the SEE.</p>
<i>(d) to allow for the reasonable sharing of views,</i>	<p>The proposed buildings allow for the reasonable sharing of views, as they do not impede upon or impact on existing views enjoyed by residential properties in the area. This is discussed in Section 4.7.3 of the SEE and is visually demonstrated by the photomontages in the View Analysis in Appendix D of the SEE, which are taken from key points in the vicinity of the site and from or adjacent to neighbouring residential properties. As is demonstrated in the View Analysis, the buildings are barely visible from surrounding residential receivers and from the public domain, due to the substantial screening provided by the existing (and proposed) vegetation which forms a perimeter to the development.</p>
<i>(e) to encourage buildings that are designed to respond sensitively to the natural topography,</i>	<p>The proposed buildings have been designed to respond sensitively to the natural topography of the site, which slopes steeply from west to east and south-east, as clearly demonstrated in <b>Figure 2</b> to <b>Figure 4</b>. The proposed buildings step down with the site's topography, with some of the building 'blocks' stepped to meet the landform in order to minimise excessive height, scale and cut / fill.</p>
<i>(f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.</i>	<p>As is clearly demonstrated in Section 4.7.3 of the SEE and the View Analysis in Appendix D of the SEE, the proposed development has been designed to minimise any adverse visual impacts on the natural environment in its immediate surrounds. This is achieved primarily by the building heights, which are generally below the heights of existing trees, and through the retention of a significant number of trees which form a 'perimeter' to the development.</p> <p>Other proposed features of the proposal work in tandem with the proposed building heights and building placement to ensure a minimal visual impact from the proposal on the natural environment, including the proposed substantial landscaping concept, and the building materiality, which have been selected to complement the heavily landscaped character of the site and its surrounds.</p> <p>There are no conservation areas or heritage items in the vicinity of the site.</p>

### 3.1.2 Consistency with objectives of the zone

The objectives of the RE2 Private Recreation zone of the LEP are set out in **Table 2** below, along with an explanation of how these objectives are met notwithstanding the variation to the standard.

**Table 2 – Assessment against the objectives of the RE2 Private Recreation zone (Pittwater LEP 2014)**

Zone Objective	Comment
<ul style="list-style-type: none"> <li>• <i>To enable land to be used for private open space or recreational purposes.</i></li> </ul>	<p>The proposed development enables the long-term continuance of the RE2 Private Recreation zoned land associated with the golf course for recreational purposes, irrespective of the variation to the height control. The golf course will remain an 18-hole course, with the proposed development assisting in securing the club's long term financial future.</p>
<ul style="list-style-type: none"> <li>• <i>To provide a range of recreational settings and activities and compatible land uses.</i></li> </ul>	<p>The proposed development is not inconsistent with the second objective of the RE2 Private Recreation zone in that it will contribute to providing a <i>range of recreational settings and activities and compatible land uses</i> (emphasis bold). The proposed development is considered a 'compatible land use' with the RE2 Private Recreation zoned land given the Seniors SEPP operates to deem development of this type as such, in particular through Clause 25(5)(iv).</p> <p>The proposed seniors housing development is also considered compatible with the permissible land uses in the RE2 Private Recreation zone, which relevantly include community facilities, kiosks, recreation facilities (indoor), and registered clubs, which would logically provide a further level of service to future residents and would be unlikely to cause significant land use conflict.</p> <p>The proposed variation to the height control does not hinder the achievement of this objective.</p>
<ul style="list-style-type: none"> <li>• <i>To protect and enhance the natural environment for recreational purposes.</i></li> </ul>	<p>The proposed development is consistent with this objective as it will <i>protect and enhance</i> the natural environment of the site, which forms part of the golf course and is used for recreational purposes, in particular through the vegetation regeneration strategy and additional landscaping to occur as part of the proposed seniors housing development. As discussed in Section 4.13 of the SEE, the DA involves the overall net gain of 8.43ha of native vegetation across the golf course site.</p> <p>The provision of seniors housing, including its substantial communal open space areas and services building will provide continued recreational opportunities for seniors on the site in line with the intent of the zone.</p>
<ul style="list-style-type: none"> <li>• <i>To allow development of a scale and character that is appropriate to the nature of its recreational use and is integrated with the landform and landscape.</i></li> </ul>	<p>Whilst the proposal does not seek approval for a recreational land use, it is considered that the scale of the proposal is appropriate to the nature of the recreational use of land immediately adjacent, being the golf course. Nor will the proposal impact on the operation of the golf course.</p> <p>The golf course reconfiguration has occurred in association with the proposed development, with a professionally designed configuration, hole and fairway placement, tree, hazard and tee box locations. The proposed buildings are set back from the course and appropriately screened by vegetation and other devices to not impact on the golf course's operations. The proposed variation to the height control does not hinder the achievement of this objective.</p> <p>As above, the character of the proposal is does not conflict with the nature of the recreational use of the golf course adjacent, given:</p> <ul style="list-style-type: none"> <li>• its relative visual obscurity from behind the perimeter of existing and proposed vegetation;</li> <li>• its separation from the golf course fairways and playing areas;</li> <li>• the proposed building heights are sensitive to the desired character of the area which promotes building heights which are generally below the heights of the tree lines; and</li> <li>• the use of building tones and materials which are harmonious with the surrounding landscape and area.</li> </ul> <p>As already established in the SEE (Sections 3.3.4 and 3.3.7) and this report, the proposed development is proposed to be integrated with the landform and landscape of the site and its surrounds, with a stepped built form which follows the contours of the land, and a substantial landscaping concept, which has been designed to reflect the character of the area, by incorporating significant plantings of native species whilst retaining tall trees surrounding the development and along the golf course, screening the development from view.</p> <p>To the extent that this proposed development could be interpreted to be inconsistent with this objective, the objective is set aside by the operation of the Seniors SEPP, as per Clause 2(2)(a) of the SEPP, which states that the aims of the Seniors SEPP will be achieved by "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".</p>



### **3.1.3 In the Public Interest: Conclusion on Clause 4.6(4)(a)(ii)**

As discussed in the tables above, the proposed development is 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 it is proposed to be carried out. The proposal therefore is in the public interest because:

- The variation will directly result in the provision of additional and much needed seniors housing, as discussed in the Market Assessment report in Appendix GG of the SEE;
- The adverse impacts which the height control is seeking to avoid (such as development which is completely out of character with the local area, development which is incompatible with the height and scale of surrounding and nearby development, the overshadowing of neighbouring residential land and significant impacts to views) will be avoided, despite the variation; and
- The desired built form outcomes which the height control is seeking to achieve, will be achieved, in particular, development which, by virtue of its height and scale, is compatible with the height and scale of surrounding and nearby development and which responds to the natural topography of the land, and development which minimises adverse amenity impacts to neighbouring property, including shadow and view impacts in particular.

### 3.2 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class. While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Pittwater LEP 2014 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).
- 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 (Fourth Method).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the **First Method** (refer to **Section 3.2.1** below). However, compliance with the development standard is also considered unreasonable or unnecessary for the following reasons:

- The height limit being developed for recreational uses on the site, and not seniors housing of the kind proposed (**Section 3.2.2**). The control does not apply to the application of a seniors housing development under the Seniors SEPP.
- The aims of the Pittwater LEP 2014 are better achieved by the proposed development in comparison to a compliant development (**Section 3.2.3**).
- The aims of the Seniors SEPP are better achieved by the proposed development in comparison to a compliant development (**Section 3.2.4**).
- The proposed number of dwellings is required in order for the services and amenities proposed to be viable, which cannot be appropriately achieved through compliance with the height limit (**Section 3.2.5**).
- The severity of the burden placed on members of the community who require seniors housing (by requiring strict compliance) would be disproportionate to the consequences attributable to the proposed development with the variation to the height limit (**Section 3.2.6**).

#### 3.2.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

As discussed at length in **Section 3.1.1** of this report, the proposed development is consistent with the objectives of the development standard. Compliance with the development standard is therefore considered unnecessary.

#### 3.2.2 Relevance of the 8.5m height control to the seniors housing proposed

Compliance with development standard is considered unreasonable as the height limit for the site has been developed for the RE2 Private Recreation zone and therefore, specifically for the uses permitted in that zone. It therefore follows that the expectation for the zone is that the 8.5 metre height limit can (and should) readily accommodate development for the following land uses, which are permissible in the zone:

- Community facilities
- Environmental facilities
- Kiosks
- Marinas
- Recreation areas
- Recreation facilities (indoor)
- Recreation facilities (outdoor)
- Registered clubs

Accordingly, the 8.5m LEP height limit is not readily adapted to a seniors housing development, envisaged by the State Policy and the resultant “services-rich” environment contemplated by the proposed development. The variation is required in this instance in order to provide the critical mass of development needed to viably deliver the services and amenities proposed to future residents, respectfully of the receiving environment and context.

The proposed variation will ensure that the required yield can be accommodated whilst minimising the site coverage (and therefore the environmental impacts) of the proposal, and also providing an outdoor environment which is in keeping with the character of the locality. This is discussed in greater depth in **Section 3.2.5** below. Requiring compliance with the height limit and maintaining the required yield would result in a development with:

- Greater site coverage (45% site coverage is currently proposed<sup>3</sup>), in order to accommodate any units which contain elements exceeding the height limit. Increased site coverage would result in a sub-optimal outcome;
- Reduced deep soil (18.8% of the development footprint area<sup>4</sup> is currently proposed as deep soil, which is above the 15% desired by the ADG for large sites); and
- Reduced landscaped area (35.4% of the development footprint area<sup>5</sup> is currently proposed as landscaped area in accordance with the definition in the Seniors SEPP, outperforming the 30% requirement).

Accordingly, it is clear that the 8.5m height limit is not relevant to a seniors housing development that provides the critical mass and type and quantum of onsite services contemplated. Therefore, compliance with the standard in this instance is unreasonable.

### 3.2.3 Achievement of the aims of the Pittwater LEP 2014

Compliance with the LEP height limit is unreasonable in the circumstances, as the aims of the Pittwater LEP 2014 would be better achieved by the proposed development with the variation proposed (in comparison to a development which would comply). This is particularly relevant to the aims of the Pittwater LEP 2014 set out in Clause 1.2(f) and Clause 1.2(j) and included below:

#### 1.2 Aims of Plan

...

(2) *The particular aims of this Plan are as follows:*

...

*(f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*

...

*(j) to protect and promote the health and well-being of current and future residents of Pittwater.*

With regards to the aim of the LEP in Clause 1.2(f):

- The proposed development, with the variation proposed, will provide for additional seniors housing which provides for the needs of the ageing community into the future, in a location which is recognised as having a demand which by far outstrips supply (refer to pg. 30-31 of the Market Analysis in Appendix GG of the SEE). It is identified that, based on current population projections and assumed retirement village take up rates, there

<sup>3</sup> This calculation is based on a development footprint area of 18,791.8m<sup>2</sup>, which is significantly less than the site area, as discussed in Section 2.3.1 of the SEE.

<sup>4</sup> As above.

<sup>5</sup> As above.

will be a shortfall of approximately 2,900 retirement village dwellings through to 2036. The proposed development therefore better achieves the aim set out in Clause 1.2(f) of the LEP than would a compliant development on the site, which would ultimately require a reduced yield on environmental grounds.

With regards to the aim of the LEP in Clause 1.2(j):

- The proposed development, with the variation proposed, will provide more opportunities for ageing residents in the community to transition to seniors living care in the locality in which they currently reside, thereby better promoting the health and well-being of current and future residents of the former Pittwater LGA than would a compliant development, which would ultimately require a reduced yield on environmental grounds.

Accordingly, strict compliance with the height limit is considered unreasonable in the circumstances.

### 3.2.4 Achievement of the aims of the Seniors SEPP

Compliance with the LEP height limit is unreasonable in the circumstances, as the aims of the Seniors SEPP would be better achieved by the proposed development with the variation proposed (in comparison to a development which would comply). This is particularly relevant to the aims of the Seniors SEPP set out in Clause 2(1)(a) and Clause 2(1)(b) and included below.

#### **2 Aims of Policy**

*(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*

...

With regards to the aim of the Seniors SEPP in Clause 2(1)(a):

- The proposed development, with the variation proposed, will increase the supply and diversity of residences that meet needs of seniors, to greater effect than would a compliant development, which by necessity would require a reduced yield.

With regards to the aim of the Seniors SEPP in Clause 2(1)(b):

- The proposed development, with the variation proposed, better achieves this aim of the Seniors SEPP as it would more efficiently make use of existing infrastructure and services which will support the future seniors housing development, compared to a compliant development with fewer units.
- The proposal will make more efficient use of the public transport facilities which service the site, as well as the services provided by nearby town centres and for which access will be readily available from the site, in accordance with Clause 26 of the Seniors SEPP.
- Compared to a compliant scheme, the proposal would also take greater advantage of the significant amenity provided by the site and its surrounds in terms of its landscaped setting, by providing additional high amenity housing, and also take greater advantage of the recreational facilities which surround the development site.

Accordingly, strict compliance with the height limit is considered unreasonable in the circumstances.

### 3.2.5 Viability of the proposed services and amenities

A significant justification for the increase in height of the proposed development above the LEP height limit is that a critical mass of dwellings is required in order for the provision of services and amenities proposed to be viable delivered. As per the findings of the Market Analysis report in Appendix GG of the SEE, at communities of approximately 100 seniors living units, there is sufficient scale to distribute the cost of the services proposed to ensure it remains affordable for residents, and in many cases, a much better option than residing in a residence in the broader community where support is often limited.

### 3.2.6 Reduced supply of seniors housing

Compliance is considered unreasonable in the circumstances of the proposed development as the severity of the burden placed on members of the community (by requiring strict compliance with the standard and therefore a reduced number of dwellings) who might require seniors housing would be disproportionate to the consequences attributable to the proposed non-compliant development. This principle is consistent with the findings of the Court of Appeal in *Botany Bay City Council v Saab Corp* [2011] NSWCA 208 (at Paragraph 15), where the consequences of requiring compliance with the standard in this instance would be:

- A reduction of potential seniors housing dwellings that would likely be of benefit to the existing ageing population in the locality and LGA who wish to age in place in well-serviced and affordable seniors housing, in an area where they have existing community ties and connections; and
- A seniors housing development which is not able to viably provide the level of services and amenities to its residents, as a result of the critical mass required to deliver the economies of scale needed to provide an affordable housing offer.

These consequences are disproportionate to any minor and imperceptible bulk and scale impacts resulting from the variations to the height limit, which in the circumstances of the proposal, relate only to the 4th storey of Buildings E and F; minor roof elements of Buildings A to D; and a very minor portion of the Facilities Building roof. Further, the variations do not result in any unacceptable impacts, as demonstrated in Section 4 of the SEE and discussed throughout this report.

### 3.2.7 Unreasonable or Unnecessary: Conclusion on clause 4.6(3)(a)

As illustrated above, compliance with the development standard is considered unreasonable or unnecessary in the circumstances because:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**Section 3.2.1**).
- The height limit has been developed for recreational uses on the site, and not seniors housing of the kind proposed (**Section 3.2.2**) and as permissible under the Seniors SEPP.
- The aims of the Pittwater LEP 2014 are better achieved by the proposed development in comparison to a compliant development (**Section 3.2.3**).
- The aims of the Seniors SEPP are better achieved by the proposed development in comparison to a compliant development (**Section 3.2.4**).
- The proposed number of dwellings is required in order for the services and amenities proposed to be viable, which cannot be appropriately achieved through compliance with the height limit (**Section 3.2.5**).
- The severity of the burden placed on members of the community who require seniors housing (by requiring strict compliance) would be disproportionate to the consequences attributable to the proposed development with the variation to the height limit (**Section 3.2.6**).

### 3.3 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

#### 3.3.1 Ground 1: No additional environmental impacts result from the proposed variation

The proposed variation to the height control does not result in adverse impacts relating to overshadowing or visual impact, as discussed in Section 4.7.1 and Section 4.7.3 of the SEE. In summary:

##### Shadows

Shadow diagrams have been prepared by Marchese Partners and are included in Appendix A of the SEE, which show the relevant impacts during the worst-case scenario (midwinter) resulting from the proposed development. The shadow diagrams identify that the proposed buildings do not cast shadow on the residential properties on the northern side of Cabbage Tree Road, being those properties located at 54-76 Cabbage Tree Road, and which abut the channel alongside the southern boundary of the 7th hole, at any time in midwinter. Therefore, the proposal is acceptable with regards to overshadowing impacts.

##### Visual Impacts

The proposed development has been designed and sited to allow for a building mass, bulk and scale that is appropriate for the site, which is consistent with the surrounding locality and that will have minimal visual impact when viewed from the public domain along Cabbage Tree Road, and from residential properties in the vicinity. The view analysis identifies that the visual impact of the proposal is as follows:

- The proposed built form, by virtue of the substantial screening which the avenue of existing trees which surround the seniors housing provides, results in a visual impact of negligible to nil in the majority of circumstances. This screening also includes proposed vegetation, which has been modelled in the in a 5-year scenario in the View Analysis.
- In most circumstances, the proposed built form is only marginally discernible through the dense foliage of the trees which surround the development;
- The proposed development is not visible from Annam Road to the north;
- The built form is not visible from the entrance road and roundabout along Cabbage Tree Road as a result of the angle of the road and substantial vegetative screening along the Cabbage Tree Road frontage;
- The proposal is barely discernible from camera positions 3, 8, 9 and 10, taken from the nearest residential properties to the north and north-east at Kiah Close, Kiewa Close, and Konda Close (all cul-de-sacs which are accessed directly from Annam Road).

Accordingly, the proposed variation is within the environmental capacity of the site as it will not result in adverse impacts relating to overshadowing or visual impact.

#### 3.3.2 Ground 2: Provision of the economies of scale required to provide the proposed services and amenities

The proposed variation to the height limit is a better planning outcome as it results in the environmentally sustainable delivery of the number of dwellings (and therefore the economies of scale) required to:

- ensure the proposed services can be delivered affordably to residents over the long term; and
- ensure the development meets the market need for seniors housing independent living units by providing the highest level of service, and thereby, continue to provide an attractive and diverse proposition to current market offerings.

Accordingly, the non-compliant development is considered a better planning outcome than a compliant development given a compliant development would result either in an unviable service model, or a development with increased environmental impacts. As discussed in **Section 3.2.6**, the consequences of requiring compliance with the standard in this instance are disproportionate to the perceived consequences resulting from the variation to the height limit. This is especially the case when it is understood that the 8.5m LEP height limit is not readily adapted to a seniors housing development that provides the services-rich environment contemplated by the proposed development and the Seniors SEPP, as discussed in **Section 3.2.2**.

With retirement villages of approximately 100 units, there is sufficient scale to distribute the cost across the community and ensure it remains affordable for people and (in many cases) a much better option than staying in a home in the broader community where support is often limited. This is confirmed in the Market Assessment included in Appendix GG of the SEE.

As discussed in **Section 3.2.2**, requiring compliance with the height limit and locating the dwellings which exceed the height limit in an additional building would result in a sub-optimal environmental outcome, as such an outcome would result in significantly greater site coverage, reduced deep soil, reduced landscaped area, increased impervious area and potentially further tree loss. The current proposal is currently outperforming the guidelines for these controls.

As confirmed in the Market Analysis report, where villages are too small, they become challenging to operate as the cost per unit (apportioned to each resident for the provision of services and amenities) cannot generate enough revenue and long-term maintenance funds to deliver ongoing service and maintain infrastructure to preserve the value of the development. At 100 units, a village can have very good facilities and a level of skilled staffing to operate a village with excellent services that is also maintained to an outstanding level. This has a profound impact on the value proposition for existing residents and is therefore highly attractive to prospective buyers when they sell.

Waterbrook has developed an operating budget for the proposed community at Bayview. Based on the service offer outlined earlier in the Market Assessment report:

- Costs to residents on a per week basis are in the order of \$350 per week on average for the proposal with 95 units. This covers all maintenance and capital replacement to comply with requirements of the Retirement Villages Act, but also to ensure residents have a service that is highly valued and promotes a lifestyle that is superior to staying at home, or other villages in the region.
- By way of example, a village of 75 units would see the costs escalate considerably to a point that no matter what the service offer was, the resident community would see the cost as excessive (75 units would see a weekly charge in the range of \$440 per dwelling on average). This is an increase per annum of almost \$10,000.

Therefore, whilst a seniors housing development of a lesser scale could be accommodated environmentally on the site, it would not be able to sustain the degree of services and in this location, would result in a sub-optimal outcome. The location requires a services-rich environment, but a certain degree of critical mass is required to deliver those proposed services and amenities in a viable manner into the future.

### 3.3.3 Ground 3: Better achievement of the aims of the Pittwater LEP 2014 and Seniors SEPP

As discussed in **Section 3.2.3** and **Section 3.2.4**, the proposed non-compliant development is a better planning outcome than a compliant development, as it better achieves the aims set out in Clause 1.2(f) and 1.2(j) of the Pittwater LEP 2014 and Clause 2(1)(a) and 2(1)(b) of the Seniors SEPP. This is the case because:

- The non-compliant development better provides for the needs of the community now and into the future than a compliant development by providing additional housing in an appropriate location (LEP Cl. 1.2(f));
- The non-compliant development will more effectively protect and promote the health and well-being of current and future residents of Pittwater than a compliant development, by providing more ageing residents with the opportunity to access services and aged care facilities with a high level of service, in their existing community (LEP Cl. 1.2(j));
- The non-compliant development will more readily increase the supply and diversity of residences that meet the needs of seniors or people with a disability than a non-compliant development, which would accommodate less dwellings and a more expensive (and compromised) service offering (SEPP Cl. 2(1)(a));
- The non-compliant development will make more efficient use of existing infrastructure and services, compared to a compliant development with fewer units, by capitalising on the opportunity to provide additional seniors housing units on a site with public transport access, in close proximity to community and recreational facilities and with high levels of amenity (SEPP Cl. 2(1)(b)).

Nor is it inconsistent with the aims of the LEP:

- (a) to promote development in Pittwater that is economically, environmentally and socially sustainable,



- *(b) to ensure development is consistent with the desired character of Pittwater's localities,*
- *(c) to support a range of mixed-use centres that adequately provide for the needs of the Pittwater community,*
- *(d) to retain and enhance land used for employment purposes that is needed to meet the economic and employment needs of the community both now and in the future,*
- *(e) to improve access throughout Pittwater, facilitate the use of public transport and encourage walking and cycling,*
- *(f) to encourage a range of housing in appropriate locations that provides for the needs of the community both now and in the future,*
- *(g) to protect and enhance Pittwater's natural environment and recreation areas,*
- *(h) to conserve Pittwater's European and Aboriginal heritage,*
- *(i) to minimise risks to the community in areas subject to environmental hazards including climate change,*
- *(j) to protect and promote the health and well-being of current and future residents of Pittwater.*

Therefore, whilst a seniors housing development of a lesser scale could be accommodated environmentally on the site, it would result in a sub-optimal planning outcome on the basis that the achievement of the aims of the LEP and Seniors SEPP – as they relate to the provision of a range of housing into the future for current and future residents and the enhancement of their health and well-being – would be better achieved by the proposed non-compliant development.

### **3.3.4 Environmental planning grounds: Conclusion on clause 4.6(3)(b)**

As illustrated above, there are sufficient environmental planning grounds to justify the proposed variation to the development standard in the circumstances. The environmental planning grounds include;

- The proposed variation will not result in unacceptable environmental impacts, and is therefore within the environmental capacity of the site.
- The proposed variation to the height limit is a better planning outcome as it results in the environmentally sustainable delivery of the number of dwellings (and therefore the economies of scale) required to:
  - ensure the proposed services can be delivered affordably to residents over the long term; and
  - ensure the development meets the market need for seniors housing independent living units by providing the highest level of service, and thereby, continue to provide an attractive and diverse proposition to current market offerings.
- The proposed non-compliant development is a better planning outcome than a compliant development, as it better achieves the aims set out in Clause 1.2(f) and 1.2(j) of the Pittwater LEP 2014 and Clause 2(1)(a) and 2(1)(b) of the Seniors SEPP.

### 3.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (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.*

These matters are addressed in detail below.

#### 3.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the height development standard does not raise any matter of significance for State or regional planning. As discussed in **Section 3.3.3**, the proposed development will result in a better planning outcome and will better achieve the aims of the Seniors SEPP, which is a State Policy, particularly as the development as proposed will increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and make efficient use of existing infrastructure and services.

The proposal is consistent with the most recent metropolitan plan for Sydney, *A Plan for Growing Sydney*, the *Draft Greater Sydney Region Plan* and the *Draft North District Plan* in that it:

- provides accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- Improves housing choice to suit different needs and lifestyles;
- Contributes to building communities that are healthy, resilient and socially connected;
- Contributes to ensuring housing is more diverse and affordable;
- Provides services and social infrastructure to meet people's changing needs; and
- Fosters healthy, creative, culturally rich and socially connected communities.

#### 3.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the proposed non-complying development results in a better planning outcome as it results in the provision of the economies of scale required to provide the proposed services and amenities, and as it better achieves the aims of the Pittwater LEP 2014 and the Seniors SEPP.

As discussed in **Section 3.3.1**, whilst a seniors housing development of a lesser scale could be accommodated environmentally on the site, it would not be able to sustain the degree of services and in this location, would result in a sub-optimal outcome. The location requires a services-rich environment, but a certain degree of critical mass is required to deliver those proposed services and amenities in a viable manner into the future.

Finally, there is no public benefit in maintaining the development standard as the SEE in Section 4 and this report has demonstrated that the proposed variation to the height limit does not result in any unacceptable impacts, and results in a development which is compatible with the surrounding land uses and is compatible with the character of the local area.

### **3.4.3 Clause 4.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.**

In addition to the matters already mentioned, it is worth noting that the proposed variation to the maximum height development standard will not set an undesirable precedent in the area and the circumstances of the variation are unique to the project given the planning pathway which applies to the site through the SCC.

The proposed variation will facilitate the orderly and economic development of the site for the purposes of a seniors housing, contribute to accommodation choice for seniors in the Northern Beaches LGA and the achievement of the strategic objectives of *A Plan for Growing Sydney* and the objectives of the Seniors SEPP.

There are no other matters for consideration. The relevant consent authority and Secretary can therefore be satisfied that:

- compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; and
- there are sufficient environmental planning grounds to justify the proposed variation to the development standard.

## 4.0 Conclusion

This Clause 4.6 Variation Request has been prepared to support a proposal for the development of Seniors Housing at Bayview Golf Club. The assessment in this report demonstrates that compliance with the height of buildings development standard contained in Clause 4.3 of the Pittwater LEP 2014 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded.

Clearly the height control anticipates the suite of uses permissible in the zone under the Pittwater LEP 2014, however does not anticipate the proposed development as permitted under the Seniors SEPP.

In accordance with Clause 4.6 of the Pittwater LEP 2014, this written Clause 4.6 variation request:

- Has demonstrated that the proposed development is 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 it is proposed to be carried out, and because:
  - The adverse impacts which the height control is seeking to avoid (such as development which is completely out of character with the local area, development which is incompatible with the height and scale of surrounding and nearby development, the overshadowing of neighbouring residential land and significant impacts to views) will be avoided, despite the variation; and
  - The desired built form outcomes which the height control is seeking to achieve, will be achieved, in particular, development which, by virtue of its height and scale, is compatible with the height and scale of surrounding and nearby development and which responds to the natural topography of the land, and development which minimises adverse amenity impacts to neighbouring property, including shadow and view impacts in particular.
- Establishes and justifies that compliance with the development standard is considered unreasonable or unnecessary in the circumstances because:
  - The objectives of the standard are achieved notwithstanding non-compliance with the standard.
  - The height limit being developed for recreational uses on the site, and not seniors housing of the kind proposed.
  - The proposed number of dwellings is required in order for the services and amenities proposed to be viable, which cannot be appropriately achieved through compliance with the height limit.
  - The aims of the Pittwater LEP 2014 are better achieved by the proposed development in comparison to a compliant development.
  - The aims of the Seniors SEPP are better achieved by the proposed development in comparison to a compliant development.
  - The severity of the burden placed on members of the community who require seniors housing (by requiring strict compliance) would be disproportionate to the consequences attributable to the proposed development with the variation to the height limit.
- Demonstrates that there are sufficient environmental planning grounds to justify the proposed variation to the development standard in the circumstances. The environmental planning grounds include;
  - The proposed variation will not result in any unacceptable environmental impacts, and is therefore within the environmental capacity of the site.
  - The proposed variation to the height limit is a better planning outcome as it results in the environmentally sustainable delivery of the number of dwellings (and therefore the economies of scale) required to:
    - ensure the proposed services can be delivered affordably to residents over the long term; and
    - ensure the development meets the market need for seniors housing independent living units by providing the highest level of service, and thereby, continue to provide an attractive and diverse proposition to current market offerings.
  - The proposed non-compliant development is a better planning outcome than a compliant development, as it better achieves the aims set out in Clause 1.2(f) and 1.2(j) of the Pittwater LEP 2014 and Clause 2(1)(a) and 2(1)(b) of the Seniors SEPP.

- Provides an assessment of the matters the Secretary is required to consider before granting concurrence.

Therefore, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Pittwater LEP 2014.