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CLAUSE 4.6 VARIATION REQUEST

Height of Buildings

461-473 Pacific Highway,
Asquith

Prepared for

CHINESE AUSTRALIAN SERVICES SOCIETY LIMITED

4 August 2020

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1. INTRODUCTION

This Clause 4.6 Variation Request (the Request) has been prepared on behalf of the Chinese Australian Services Society (the Applicant) and accompanies an amended Development Application (DA) for the construction of a seniors living development at 461-473 Pacific Highway, Asquith (the site).

On 11 February 2019, the Sydney North Planning Panel (the Panel) considered a DA for a seniors living development on the site. At the request of the Applicant, the Panel deferred the DA to allow the Applicant and Council to resolve key issues with the application. This Request specifically responds to the Record of Deferral, which states that the Panel is not in a position to approve the application in the absence of a Clause 4.6 Variation Request in respect of height.

The Request seeks an exception from the height of buildings development standard prescribed for the site under clause 4.3 of *Hornsby Local Environmental Plan 2013* (HLEP 2013). The variation request is made pursuant to clause 4.6 of HLEP 2013.

This report should be read in conjunction with the Amended Statement of Environmental Effects (SEE) prepared by Urbis and dated August 2020.

The following sections of the report include:

- **Section 2:** description of the site and its local context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the HLEP 2013.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary of key findings and conclusion arising from the detailed assessment.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site comprises the amalgamation of seven existing lots to provide a consolidated development site with a total area of approximately 5,050m². The street address and legal description of each land parcel is outlined in **Table 1**. An aerial photograph is provided at **Figure 1**.

Table 1 - Site details

Street Address	Legal Description
461 Pacific Highway, Asquith	Lot 15 of DP14476
463 Pacific Highway, Asquith	Lots 16 of DP 1003192
465 Pacific Highway, Asquith	Lots 17 of DP 1003192
467 Pacific Highway, Asquith	Lots 18 of DP 1003192
469 Pacific Highway, Asquith	Lots 19 of DP 1003192
471 Pacific Highway, Asquith	Lot 1 of DP 1003107
473 Pacific Highway, Asquith	Lot 1 of DP120748

Figure 1 - Aerial photograph



Source: Urbis

Key characteristics of the site include:

- The site has a total frontage to the Pacific Highway of approximately 115m and a maximum width of approximately 48m.
- The site has an average fall of 6% (2.5m) from the eastern boundary to western boundary.
- Each allotment is currently occupied by a single storey detached dwelling. The dwellings are constructed of brick or weatherboard cladding and sit within garden settings surrounded by a number of large mature trees.
- Vehicular access is currently provided to each allotment by individual vehicular crossovers to the Pacific Highway.
- A 1.83m wide stormwater drainage easement traverses the site along the southern boundary of 471 Pacific Highway.
- The Pacific Highway road verge along the subject site frontage generally grades downwards from the edge of the bitumen towards the site boundary. The road verge includes an existing table drain which collects and conveys stormwater from the upstream catchment to a sag point outside 471 Pacific Highway.

2.2. SURROUNDING CONTEXT

The site is located at the transition between the high-density residential developments (zoned R4) recently constructed to the south of Mews Avenue and the lower-density residential environment (zoned R3) to the immediate north. Surrounding development includes the following:

- **North:** The adjoining property at 475-477 Pacific Highway comprises nine, recently completed townhouses (refer **Picture 1** overleaf). The townhouses are three storeys, with the upper level provided in an attic arrangement. Vehicle access to the basement of that development is adjacent to the common boundary with the subject site. Further north, properties including single storey detached dwellings facing the Pacific Highway.
- **East:** Immediately east of the site is the Pacific Highway and the railway corridor. The Pacific Highway is a state classified road under the control of Transport for NSW.
- **West:** To the rear of the site is Asquith Oval, comprising a sports oval, amenities block and playground. Further west is the residential suburb of Hornsby Heights.
- **South:** To the south of the site is a small bushland reserve at the corner of Pacific Highway and Mills Avenue, and car parking for Asquith Oval. Land on the southern side of Mills Avenue comprises five and six storey residential developments, including 457-459 Pacific Highway, 447-451 Pacific Highway and 48-50 Lords Avenue (refer **Picture 2** overleaf).

Figure 2 – Photographs of Surrounding Development



Picture 1 – Townhouse development at 475-477 Pacific Highway



Picture 2 – High-density residential development south of Mews Avenue

3. PROPOSED DEVELOPMENT

This Request has been prepared to accompany an amended DA for the construction of a seniors living development. The amended proposal is a result of comprehensive consultation with Council and its urban design consultant, GMU.

A detailed description of the proposed development is provided in the SEE prepared by Urbis and dated August 2020. The proposal is also detailed within the architectural plans prepared by Calder Flower Architects that form part of the DA.

The proposed development comprises:

- Demolition of all existing structures on site.
- **Residential Aged Care Facility (RACF)**
 - Construction of a three-storey building providing 97 rooms with communal dining, lounge, treatment areas and open space.
 - Basement level accommodating 30 car parking spaces and one ambulance bay, laundry, kitchen, storage, garbage storage room and mechanical services space.
- **Independent Living Units (ILUs)**
 - Construction of a three-storey building comprising 11 ILUs (2 x one bedroom, 9 x two bedrooms), communal lounge and open spaces.
 - Basement level accommodating six car parking spaces, garbage storage space, and bulky goods waste storage.
- Removal of seven vehicle crossovers and construction of a single new vehicular access point from the Pacific Highway.
- Construction of an at-grade waste hardstand area located along Pacific Highway.
- Removal of 46 trees and site landscaping works.
- Relocation of the existing easement to adjacent the northern boundary of the site.

A numerical overview of the proposal is provided in **Table 2** and a perspective of the proposal as viewed from the south-east is provided in **Figure 3**.

Table 2 - Numerical overview

Element	Proposed Development
Site Area	5,050m ²
Total GFA	5,274m ²
Total FSR	1.03:1
Minimum Building Setbacks (Ground Level)	Pacific Highway (east): 7.51m North: 3.03m South: 3.07m West: 5.62m
Building Heights (maximum)	11.64m
Total Landscaped Area	2,720m ² (53.8%)

Element	Proposed Development
Total Deep Soil Zone	1,986m ² (39.3%)

Figure 3 – Perspective from Pacific Highway, looking north-west



Source: Calder Flower Architects

4. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. VARIATION TO HEIGHT OF BUILDINGS

This Request seeks to vary the maximum 10.5m building height standard prescribed within clause 4.3 of the HLEP 2013 and the associated Height of Building Map (refer to map extract at **Figure 4**).

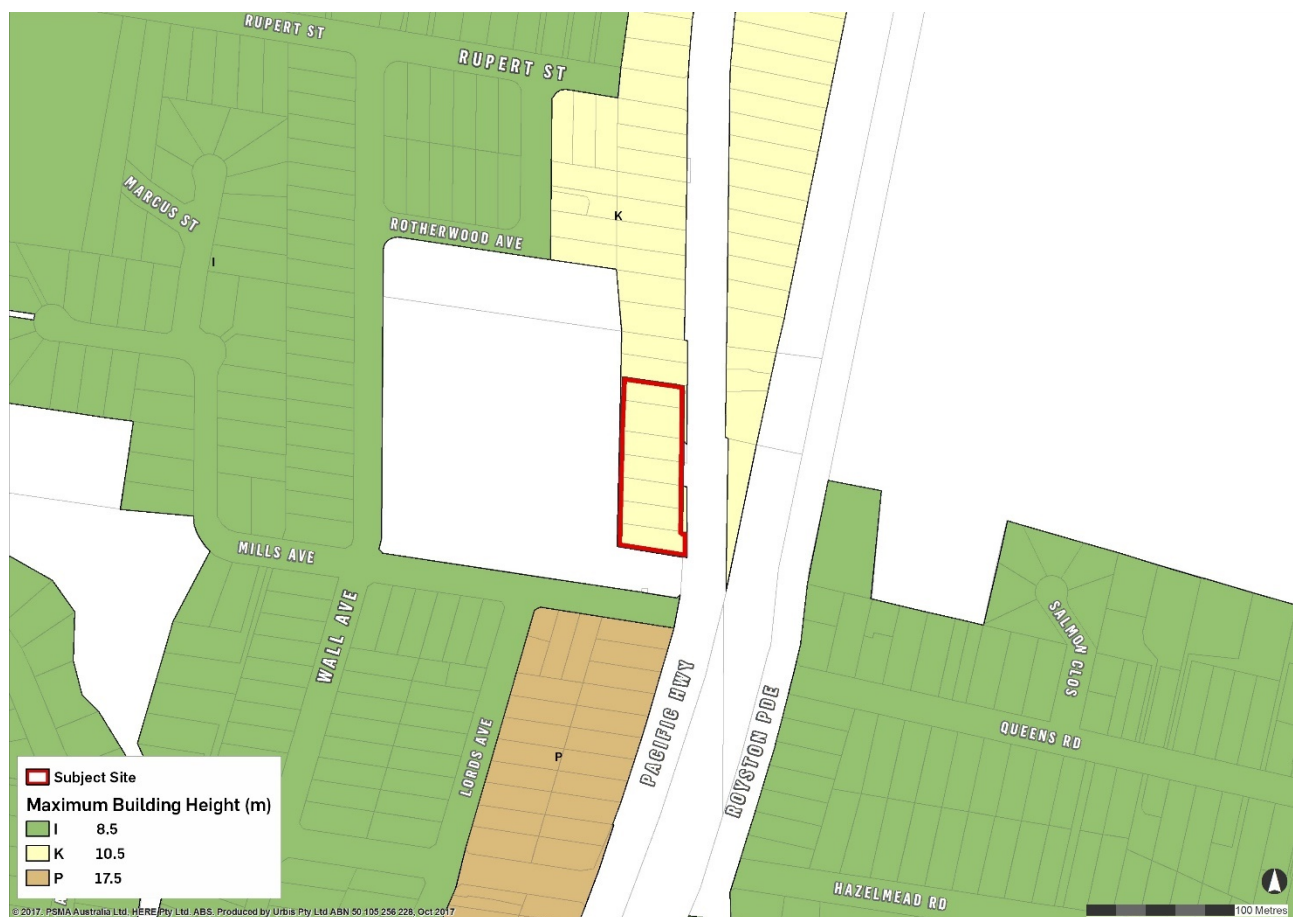
The LEP Dictionary defines building height as follows:

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 4 – HLEP 2013 height of buildings map extract



Source: Urbis

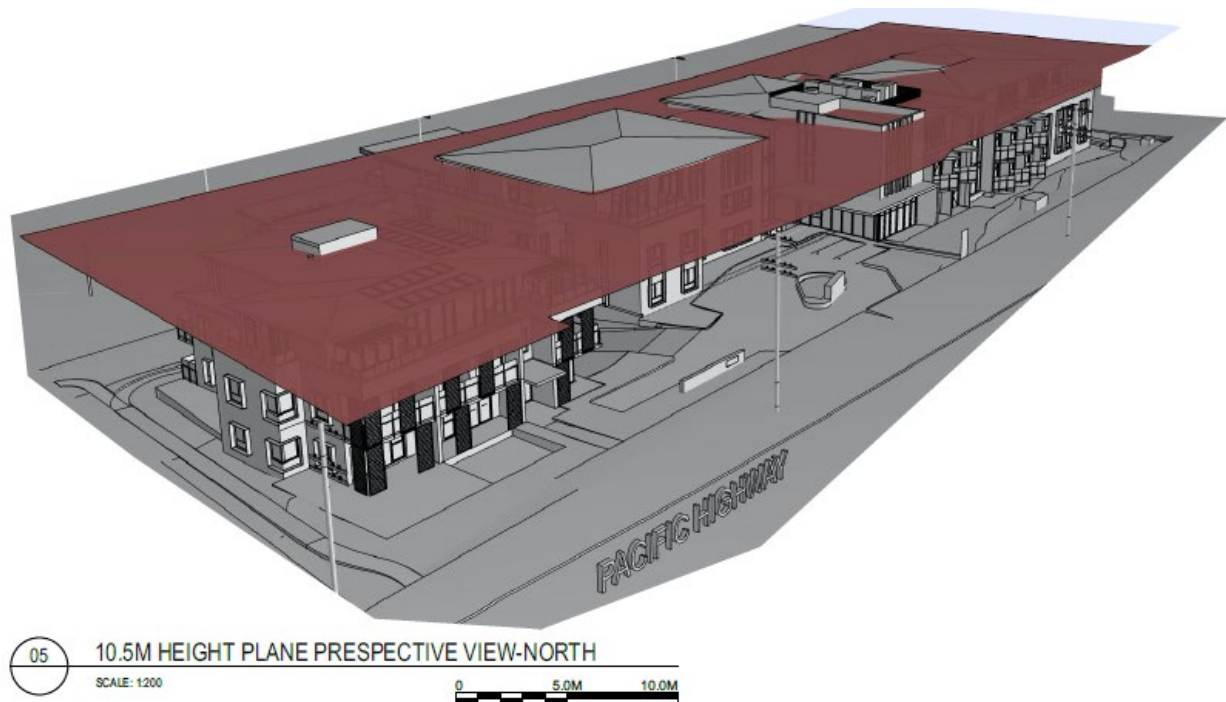
4.2. PROPOSED VARIATION TO CLAUSE 4.3(A) OF HLEP 2013

The proposed buildings generally comply with the building height standard, with the exception of the roof plant and lift overruns, and a limited area of the RACF building roof form. The extent to which the various building elements exceed the 10.5m building height standard is identified in **Table 3**. Height plane diagrams are provide at **Figure 5** and **Figure 6**.

Table 3 – Variation to building height standard

Building Element	Maximum Height (m)	Departure from Standard
ILU Building – Top Lift Overrun	11.52m	1.02m (9%)
RACF South Building – Top Ridgeline	11.4m	0.9m (8%)
RACF North Building – Top Lift Overrun	11.81m	1.31m (12.4%)
RACF North Building – Main Entry Component	11.52m	1.02m (9%)
RACF Roof Plant	11.24m	0.74m (7%)

Figure 5 – 10.5m height plane – view from south east



Source: Calder Flower Architects

Figure 6 – 10.5m height plane – view from north west



Source: Calder Flower Architects

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of HLEP 2013 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of HLEP 2013 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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that 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 which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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 concurrence of the Secretary can be assumed to have been granted for the purpose of this Request in accordance with the Department of Planning *Circular PS 18–003 Variations to development standards*, dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This Request demonstrates that compliance with the maximum building height prescribed for the site in clause 4.3 of HLEP 2013 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the maximum height of buildings development standard be varied.

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standard relating to the maximum building height in accordance with clause 4.3 of HLEP 2013.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of the report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The maximum building height prescribed by clause 4.3 of HLEP 2013 is a development standard capable of being varied under clause 4.6(2) of HLEP 2013.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of HLEP 2013.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish whether a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard be achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary*”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the building height standard as specified in clause 4.3 of HLEP 2013 are detailed in **Table 4** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 4 – Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
<p><i>To permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.</i></p>	<p>The site is located at the transition between the higher density 5-6 storey residential buildings to the south of Mews Avenue (zoned R4) and the medium density residential environment to the north (zoned R3). The desired future character of the site as described in the <i>Hornsby Development Control Plan</i> (HDCP) is “<i>medium density housing development comprising two storey buildings in a landscaped setting where additional floor space is contained wholly within the roofscape.</i>”</p> <p>It is noted that the operational requirements of seniors living facilities, which are a listed permissible use within the R3 zone under HELP 2013, necessitate a built form that by nature is not ‘fine grain’. In particular, the required internal floorplate configuration for the building typology necessitates a long and modular form for operational purposes. Notwithstanding this, the amended proposal has been designed to comprise three distinct building forms with a recessive upper level that incorporates increased setbacks and light-weight building materials. Whilst not an attic arrangement as envisaged by the DCP, the proposed building forms will sit comfortably within the medium density context and will deliver a successful transition between the higher built form at the south to the lower built forms to the north of the site.</p> <p>The proposal also responds appropriately to the sloping character of the site, which has a fall of approximately 2.5m from the eastern boundary to western boundary. The minor height non-compliance accounts for this site constraint and allows the development to achieve the level internal floor requirement for a RACF proposal. The main area of non-compliance relates to the roof form of the northern RACF building and responds to the recommendation from GMU for “<i>the part of the building that links to the glass connector be reconsidered as a taller form to further emphasise the subservient nature of the glass connector. This will also have the added benefit of integrating the lift core into the overall façade as part of the roof feature.</i>” This deliberate height increase will create a more pronounced roof feature that accentuates the entry to the building and provides a varied skyline along the Pacific Highway.</p> <p>The non-compliant rooftop plant on the RACF is sited behind the main parapet and is not readily visible from the public domain and as such will not detract from the overall design of the development. It will not contribute to perceivable building bulk and these elements that breach the height standard do not erode the ability to achieve high-quality built form on the site.</p> <p>The amended development has been pulled in from the property boundaries to ensure the proposal complies with the setback requirements of the HDCP. This ensures that a large portion of the mature vegetation within the site can be retained and will allow the proposed built forms to sit comfortably within its established and proposed landscaped setting. The site benefits from having only one sensitive interface to the north and therefore overshadowing, visual, acoustic and privacy issues have been appropriately managed through the design response.</p>

Objectives	Assessment
	The proposal will deliver a development in a location that has existing access to trunk infrastructure and essential services. In addition, the stormwater drainage easement has been adjusted to align parallel to the northern and western boundaries of the site as requested by Council. As outlined in the amended Traffic Impact Assessment, the proposed development will not have an unreasonable impact on the surrounding road network.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

- **The burden placed on the community (by requiring strict compliance with the standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Strict compliance with the building height development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community.

If the proposed building height was to be reduced unnecessarily, this would reduce the number of beds able to be provided within the site for seniors housing. This, in turn, will reduce the capacity for the development to support the well-being of the community by providing for the housing needs of its seniors.

The proposed variation will enable the development to:

- Accommodate a range of seniors housing within the site by providing beds within a RACF to cater for seniors who are in need of a high level of care and ILUs catering to seniors living independently.
- Provide various built forms that will sit comfortably within a medium density context and provide a successful transition between the higher and lower built forms to the south and north of the site respectively.
- Accommodate a RACF building in an appropriate and accessible location that will not adversely impact on the scale and character of the low density residential areas in the LGA.
- Minimise impacts on the amenity of the adjoining residential property to the north.

Overall, it is considered that strict compliance with the development standard is unreasonable as an alternate scheme which complied with the height standards would result in an inferior outcome for the site and result in the significant loss of accommodation for seniors within the locality.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering whether there are sufficient environmental planning grounds to justify a variation from the development standard. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in

the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposal satisfies the general objectives in section 1.3 of the *Environmental Planning and Assessment Act 1979* in that it promotes the orderly and economic use and development of land and promotes good design and amenity of the built environment.
- The proposal is consistent with the relevant objectives of the R3 Medium Density Residential Zone;
- The desired future character of the locality is still achieved as the proposed built forms adopt recessive upper levels and have been pulled in from the property boundaries to retain mature vegetation and the established landscaped setting.
- The proposal is consistent with aims and provisions of the *State Environment Planning Policy (Housing for Seniors or People with a Disability) 2004*, in accordance with which the DA has been submitted.
- The proposed variation results in more and diverse residential accommodation for seniors in need of a high level of care or those residents who prefer to live independently but with support available.
- The elements of the buildings which exceed the height standard are generally limited to minor rooftop elements which do not increase the floorspace and will not result in an increased scale of development that might otherwise result in adverse outcomes for the capacity of infrastructure and services.
- The main non-compliance of the roof form will provide visual interest and a varied building façade and scale to the main entry to the RACF, helping to differentiate the built elements and respond to the DCP requirement for well-articulated building forms.
- The proposed variation will not result in any unacceptable environmental impacts on the site, the adjoining public open spaces or the adjoining residential property.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed clause 4.3 building height non-compliance in this instance.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the Applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including a detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

Consistency of the development with the objectives of the development standard is demonstrated in **Table 4** above. The proposal is also consistent with the land use objectives that apply to the site under HLEP 2013.

The site is located within the R3 Medium Density Residential Zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 5** below.

Table 5 - Assessment of compliance with land use zone objectives

Objective	Assessment
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	The RACF and ILUs will increase the supply of seniors housing within the locality, which is a housing type with a demonstrated need within the Hornsby LGA. The proposal will provide high-quality seniors housing within an attractive landscaped setting and proximate to public transport and services.
<i>To provide a variety of housing types within a medium density residential environment.</i>	<p>The site is at the transition between the high-density residential buildings to the south and medium density residential properties to the north comprising townhouses and detached dwellings.</p> <p>The proposal will further increase the provision and diversity of housing within the area through the combination of a RACF and ILUs, allowing senior members of the Asquith community to 'age in place'. The various building forms proposed within the site will sit comfortably within the medium density context and provide a transition in building heights along the Pacific Highway from the higher density zone to the south.</p> <p>The RACF building does not reflect a typical RACF layout, with its scale and form designed to complement the character of the medium density zone. This is achieved through separation of the RACF building into two distinct forms, with a lightweight glazed link between, to enhance its appearance as two separate buildings rather than a single building. Indeed, the increased building height above the entrance to the RACF emphasises a change in building scale and massing to contribute to the building's appearance as differentiated building elements.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	Not applicable, although the ancillary services (doctor and hairdresser) proposed within the site will meet the needs of future ILU and RACF residents.

Table 4 and Table 5 demonstrate that the proposed development will be in the public interest notwithstanding the proposed variation to the maximum building height standard as 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.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

Concurrence of the Secretary to the variation can be assumed in accordance with Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by the Sydney North Planning Panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the building height standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) – is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the building height standard and the land use zone objectives despite the technical non-compliance.

It is considered that the strict maintenance of the standard in this instance is not in the public interest as the proposal will result in public benefit by the delivery of high-quality seniors housing, including residents requiring a high level of care. It is further noted that the proposal will directly generate employment within the locality.

The assessment provided in the SEE has identified no adverse environmental impacts arising as a result of the proposal.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the Request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the maximum height of building contained within clause 4.3 of HLEP 2013 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the building height standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal achieves the objectives of the development standard as provided in clause 4.3 of HLEP 2013 and is consistent with the objectives for development within the R3 Medium Density Residential Zone.
- The proposal is compatible with the existing site context and is consistent with the desired future character of the site and locality.
- The proposal provides an appropriate transition in building scale between the five storey residential buildings to the south of Mews Avenue and the three storey townhouses to the immediate north.
- The increased building height at the entrance to the RACF building provides variation in the building form, helping to break the massing of the RACF building in two, so that it reads as distinct building elements rather than the traditional design of a RACF building which is long and regular. This design element directly responds to the recommendation from GMU to the character of the R3 Medium Density Zone and.
- The main area of non-compliance relates to the roof form of the northern RACF building and responds to the recommendation from GMU for *“the part of the building that links to the glass connector be reconsidered as a taller form to further emphasise the subservient nature of the glass connector. This will also have the added benefit of integrating the lift core into the overall façade as part of the roof feature.”* This deliberate height increase will create a more pronounced roof feature that accentuates the entry to the building and provides a varied skyline along the Pacific Highway.
- The additional height does not result in the loss of amenity to neighbouring properties by way of visual impact, overshadowing or loss of privacy.
- The proposal will deliver significant public benefits, including increased provision of seniors housing, allowing seniors members of the Asquith community to ‘age in place’.

To avoid any breach of the height control would cause a loss of one building level and/or unworkable floor plates, the consequences which would be a reduction in the number of seniors living beds. Importantly, such adverse outcomes from strict compliance with the height standard would not be counterbalanced by achieving any improved environmental outcomes, as the part of the buildings which exceed the height standard have been shown to have no increase in negative impacts on amenity to adjacent sites.

For the reasons outlined above, the Request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds to warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the building height standard should be applied.

8. DISCLAIMER

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