



## **Clause 4.6**

### **Variation Request**

Residential Aged Care  
Facility


Seniors SEPP - Clause  
40(4)(a) – 8m Building Height

**No. 290 Avoca Drive, Kincumber**

Submitted to Central Coast Council  
On Behalf of Catholic Healthcare Limited

OCTOBER 2019

## REPORT REVISION HISTORY

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## TABLE OF CONTENTS

<b>1. Executive Summary .....</b>	<b>3</b>
<b>2. Introduction .....</b>	<b>4</b>
<b>3. Standard to be Varied .....</b>	<b>5</b>
<b>4. Extent of Variation.....</b>	<b>6</b>
<b>5. Unreasonable or Unnecessary .....</b>	<b>8</b>
5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.....	8
5.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; .....	13
5.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; .....	13
5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or.....	13
5.5. The zoning of the land is unreasonable or inappropriate.....	14
<b>6. Sufficient Environmental Planning Grounds .....</b>	<b>15</b>
<b>7. Public Interest.....</b>	<b>17</b>
<b>8. State or Regional Environmental Planning .....</b>	<b>20</b>
<b>9. Conclusion.....</b>	<b>21</b>

## FIGURES

Figure 1: Broader Brentwood Village Site and Context.....	3
Figure 2: Aerial image of subject site .....	4
Figure 3: Sectional elevations .....	6
Figure 4: Building height plane diagram viewed from the south-west.....	7
Figure 5: Building height plane diagram viewed from the south-east .....	7

## TABLES

Table 1: Achievement of Assumed Development Standard Objectives.....	8
Table 2: Achievement of SEPP Aims. ....	12
Table 3: Consistency with Zone Objectives. ....	17

## 1. EXECUTIVE SUMMARY

This is a formal written request in accordance with Clause 4.6 of the *Gosford Local Environmental Plan 2014*, to support a development application submitted to Central Coast Council for the construction of a Residential Aged Care Facility (RACF) at No. 290 Avoca Drive, Kincumber. The proposed RACF would comprise a multi-winged building ranging in height from part single-storey, to 3 and 4-storeys. The subject site forms part of the larger seniors housing development known as the 'Brentwood Village retirement precinct'.

The purpose of this Clause 4.6 request is to address a variation to Clause 40(4)(a) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP).

The numeric value of Clause 40(4)(a) 'Height in zones where residential flat buildings are not permitted' development standard is 8 metres. This maximum height control is measured from the ceiling of the topmost floor of the building to the ground level immediately below that point. The maximum proposed building height is 13.8 metres.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development. As the following request demonstrates, by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application, compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard. This request also demonstrates that the proposal will be in the public interest, as the proposed development will be consistent with the inferred objectives of the development standard and the zoning of the site.



Figure 1: Broader Brentwood Village Site and Context (Source: Sixmaps)



## 2. INTRODUCTION

This is a formal written request in accordance with Clause 4.6 of the *Gosford Local Environmental Plan 2014* (GLEP), to support a development application submitted to Central Coast Council. The DA is for the construction of a part single, 3 and 4-storey Residential Aged Care Facility (RACF) at No. 290 Avoca Drive, Kincumber.

The objectives of Clause 4.6 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.*

As the following request demonstrates, a better planning outcome will be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

This request has been prepared having regard to the Department of Planning and Environment's *Guidelines to Varying Development Standards* (August 2011) and various relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal (Court).

This request is structured to explicitly address the matters required to be addressed by the applicant under Clause 4.6(3) (a) and (b) for which the consent authority must be indirectly satisfied according to Preston J in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018. This request also addresses the matters in Sections 4.6 (4) and (5) regarding which the consent authority and delegate of the Secretary must directly form their own opinion of satisfaction.



Figure 2: Aerial image of subject site (Source: Nearmap)

### 3. STANDARD TO BE VARIED

The standard that is proposed to be varied is the 'Height in zones where residential flat buildings are not permitted' development standard which is set out in Clause 40(4)(a) of *State Environmental Planning Policy (Housing for Seniors or People with Disability) 2004* (Seniors SEPP), as indicated below:

*40 Development standards—minimum sizes and building height*

...

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

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

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

...

The numerical value of the development standard applicable in this instance is 8m.

For the avoidance of doubt, the development standard to be varied is not excluded from the operation of Clause 4.6 of the GLEP.

## 4. EXTENT OF VARIATION

The numerical value of Clause 40(4)(a) 'Height in zones where residential flat buildings are not permitted' development standard is 8m. The Seniors SEPP defines height as the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. Ground level is defined as the level of the site before development is carried out pursuant to the SEPP.

The maximum variation requested is 5.8m, with a maximum proposed ceiling height of 13.8m. The variation primarily relates to the southern wing of the building, which faces (at a distance) the Scaysbrook Drive frontage.

As shown on the site survey, the site topography drops from RL 45.05 AHD at the Avoca Drive frontage to RL 32.05 AHD along Scaysbrook Drive.

Architecturally, the best approach to the layout of the building is to enable additional height in the southern wing, which effectively provides for a lower ground floor. In doing so, this enables level access across each wing of the building, ensuring disability access compliance can be achieved. In addition, the additional height enables level ground access to landscaped areas and avoids the need for extensive cut and fill across the site, which would ordinarily be required to address the slope from Avoca Drive to Scaysbrook Drive.

It follows that the proposed variation is largely a result of the natural contour differential of the site (approximately 12m) and the need to provide level access for the building occupants. The scope of the variation is shown in Figures 3-5 below.

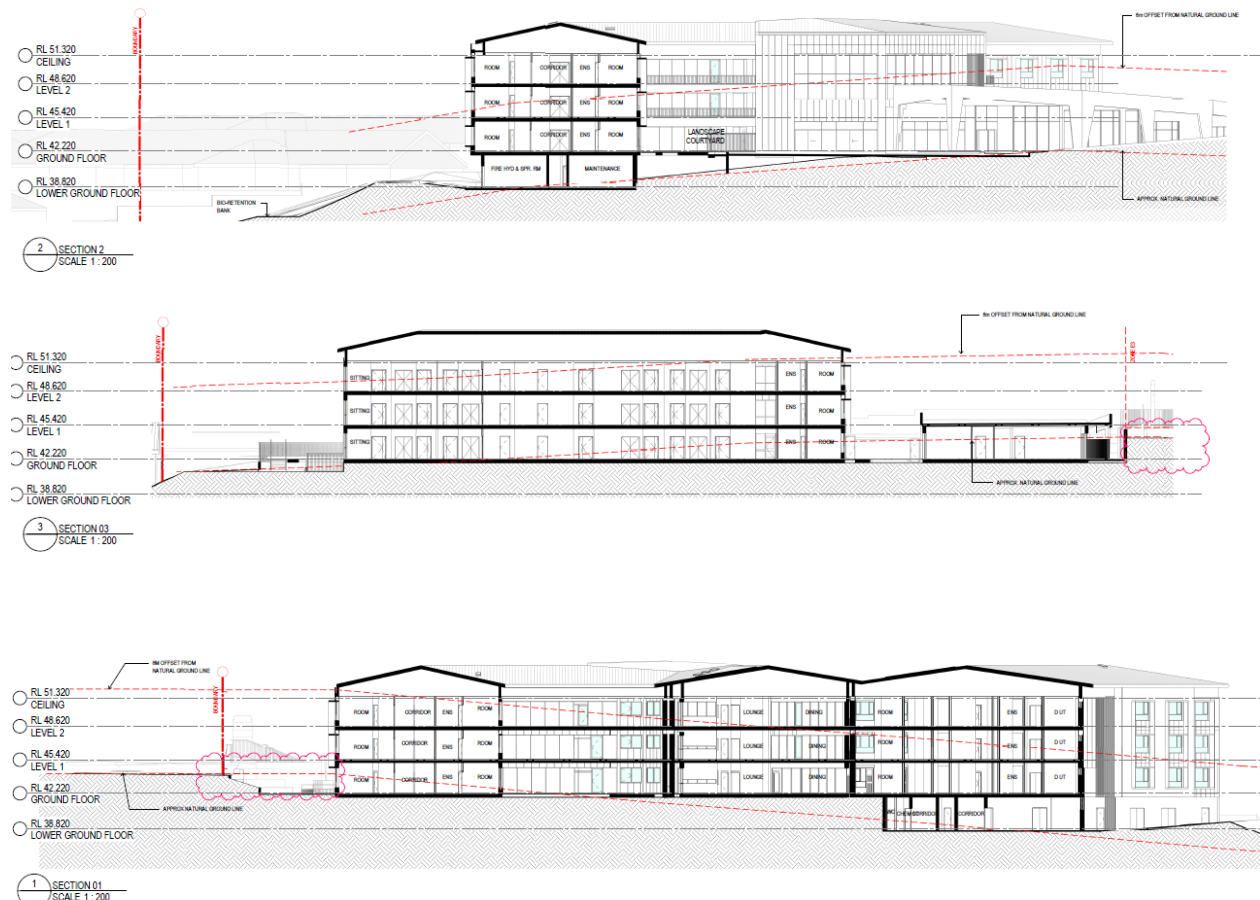


Figure 3: Sectional elevations with the natural ground levels and 8m height plane shown as red dotted lines.

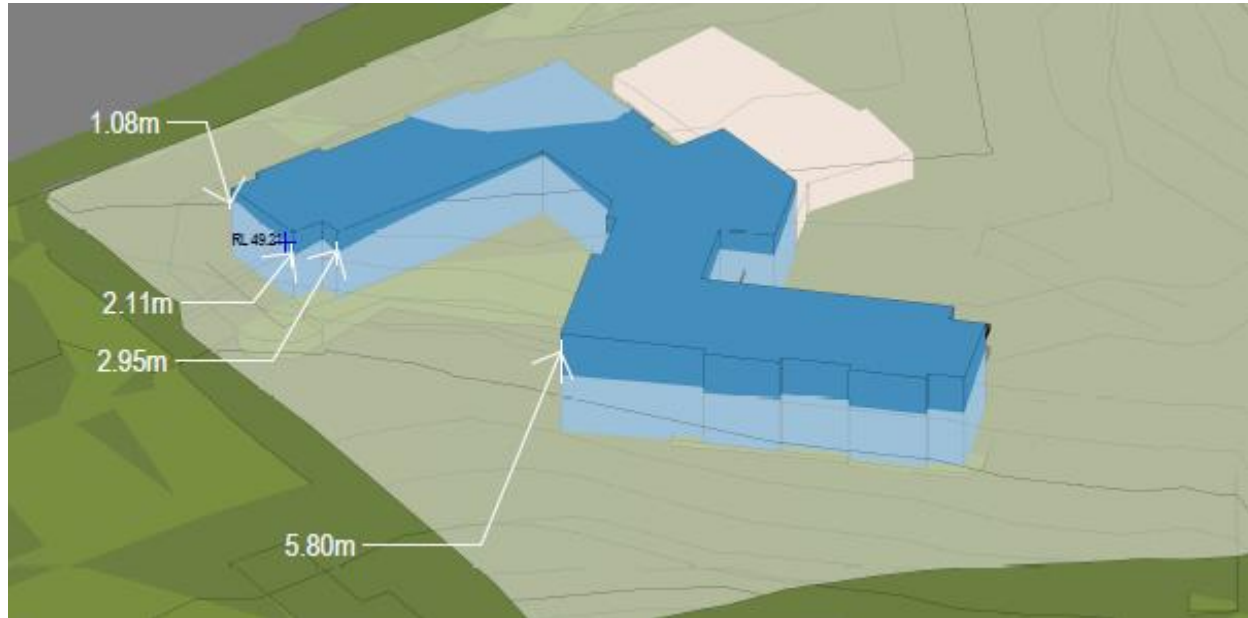


Figure 4: Building height plane diagram viewed from the south-west. The dark blue block massing identifies the encroachment through the 8m height limit. The light blue is representing that part of the new RACF building below the 8m height control. At its highest point, the variation is 5.8m above the control and this is in the far south-western corner of the new building, a distance of approximately 39m from the Scaysbrook Drive frontage and approximately 41m from the closest adjoining residential properties.



Figure 5: Building height plane diagram viewed from the south-east. The dark blue block massing identifies the encroachment through the 8m height limit. The light blue is representing that part of the new RACF building below the 8m height control. From this vantage point, the maximum variation is 5.01m above the control and this is in the far southern corner of the new building, a distance of approximately 28m from the Scaysbrook Drive frontage.



## 5. UNREASONABLE OR UNNECESSARY

In this section we demonstrate why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a) of the GLEP.

The Court has held that there at least five different ways, and possibly more, in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate

We have considered each of the ways as follows.

### 5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;

Compliance with Clause 40(4)(a) 'Height in zones where residential flat buildings are not permitted' development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in Table 1 (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the 8m standard.

It is noted that the Seniors SEPP provides no instruction on the purpose of the height controls in Clause 40(4)(a) and does not otherwise nominate any objectives to underpin the intent of the various height controls. It is therefore necessary to assume what the purpose of the standard might be, and then to evaluate whether a variation to the control would be consistent with these objectives.

In the following table we have considered whether the elements which contravene the development standard prevent the assumed objectives for the development standard being achieved.

Table 1: Achievement of Assumed Development Standard Objectives.

Assumed Objective	Discussion
<i>To ensure that the development does not dominate the streetscape by virtue of its scale and bulk</i>	<ul style="list-style-type: none"> <li>▪ The built form is visually broken up so that it does not appear as one large building from key aspects, including the adjoining residential properties and the public domain. Rather, the design seeks to provide an innovative 'Z' shaped design solution that ensures the new RACF appropriately and respectfully addresses both Avoca Drive and Scaysbrook Drive. In doing so, the development seeks to maintain a residential address to both frontages whilst ensuring the bulk of the building, positioned towards the centre of the site, is contextually appropriate to its immediate environs.</li> </ul>

Assumed Objective	Discussion
	<ul style="list-style-type: none"> <li>▪ The building's proposed low pitched roof is recessive and further assists in minimising the overall bulk and scale of the building.</li> <li>▪ Further to the above, a single-storey front of house or administration wing has also been positioned on the eastern side of the RACF building. This single-storey element further assists in minimising the scale and massing of the RACF when viewed from Avoca Drive.</li> <li>▪ In addition, the stepped building alignment effectively serves to articulate the façade's massing, define the street edge and contribute to the landscape setting of buildings.</li> <li>▪ The inclusion of a number of courtyards between the wings of the RACF building also serves to visually 'break up' the building's apparent bulk, thereby ensuring the roofline around the buildings outer edge does not unreasonably intrude into the streetscape or the skyline</li> <li>▪ Taller building elements have been expressly located in the centre of the site to minimise the visual scale of the building. This design approach also has the following added benefits:             <ul style="list-style-type: none"> <li>▫ Effectively assists in reducing potential adverse amenity impacts on neighbouring residential development;</li> <li>▫ Enables larger setbacks and areas for enhancement deep soil landscaping;</li> <li>▫ Largely retains the natural contours of the land; and</li> <li>▫ Retains a streetscape to both the Scaysbrook Drive and Avoca Drive frontages that will be dominated by a sustainable bio-rich landscape.</li> </ul> </li> <li>▪ The building is proportionally articulated encompassing a number of indentations along the northern and southern facades. These, combined with the careful application of a variety of external materials, colours and finishes, will accentuate the RACF architectural design elements whilst assisting in reducing its apparent bulk and scale.</li> <li>▪ Extensive building setbacks have been provided to the Scaysbrook Drive site frontage, ranging from 28m to 39m. Moreover, the nearest residential development along Scaysbrook Drive is located approximately 41m from the site boundary. The extensive setback along this alignment has been designed to reduce the visual impact of the southern wing and allow for 50% of the site to be landscaped area. This is graphically shown in Figures 6 - 8 below.</li> <li>▪ The proposed building has been setback over 10m from Avoca Drive, thereby ensuring views to and from Avoca Drive, from the subject site and adjoining lands are maintained and a suitable area is provided for landscaping. A single-storey front of house building element has also been included to the RACF at this frontage, which corresponds with the established building envelopes on immediately adjoining lands.</li> <li>▪ Views across the site are currently obtained from Avoca Drive, which is elevated at approximately RL45 AHD. In comparison, the ground floor of the building is located at RL 42.2 AHD. With a combination of good design and favourable contours, the new</li> </ul>

Assumed Objective	Discussion
	<p>building on this part of the site has only a minor height encroachment. The variation along this north-west corner is 1.0m and the RACF will be contextually appropriate when viewed from this aspect.</p> <ul style="list-style-type: none"> <li>▪ The careful positioning of the RACF building also ensures that the majority of existing mature vegetation along Scaysbrook Drive will be retained. The existing landscaped setback contains a number of structural layers, and this assists in providing an effective soft 'green screen' to this frontage. The retained trees (i.e. those located in the south-west section of the site) along with the proposed landscaping treatment (inclusive of tall tree forms), will serve to obscure and soften the bulk and scale of the proposed built form when viewed from Scaysbrook Drive. In particular, an earthen bund is proposed along the southern façade of the building, which is proposed to be landscaped with a number of structural vegetation layers, including trees and low bushes. This assists in providing a more complex, 'layered' landscaping effect which serves to further soften and screen the building's bulk, giving the appearance of an approximately 2-storey building when viewed from the street (at least 29m away).</li> <li>▪ The existing street trees to be retained along the southern frontage will be enhanced with the provision of a large garden bed. This will enable further 'layering' of this frontage to the site to increase its biodiversity values and complexity. Native groundcover, shrubs and bushes will be established in the new garden beds.</li> </ul> <p>These soft and hard design elements together will assist to further soften the view of the new RACF building, thereby ensuring the development fits appropriately within its context and does not dominate the streetscape by virtue of its bulk and scale.</p>
<p><i>To ensure compatibility with the streetscape and site context</i></p>	<p>The subject site is within an established urban area with its built form generally defined by 1 to 2-storey free-standing residential dwellings; the large Brentwood Village precinct (mostly comprising medium-density independent living units – 'ILUs'); and a number of scattered retail and commercial businesses. The site is also located on Avoca Drive, a busy thoroughfare which has a road reserve in excess of 20m in width. To the east, there is a transition to lower-density, E3 zoned land with a more 'bushland / rural' character.</p> <p>Having regard to the environment in the locality, it is considered that the proposal will sit comfortably, and be compatible with its context for the following reasons:</p> <ul style="list-style-type: none"> <li>▪ The built form is visually broken up so that the RACF will not appear as one large 'block' building from key aspects. The different sections of the building are separated by generous breaks and extensive areas of landscaping;</li> <li>▪ The design largely preserves existing site characteristics, including visually prominent vegetation elements and its natural topography, which together assist in reducing the visual dominance of development;</li> </ul>

Assumed Objective	Discussion
	<ul style="list-style-type: none"> <li>▪ The proposed architectural form and materials have been chosen with care and sensitivity to the site's context;</li> <li>▪ Residential window types and balconies have been provided to break up the facade and impart a sense of habitation in a "residence" as opposed to an "institution";</li> <li>▪ The proposed setbacks reduce the perception of height and scale; and</li> <li>▪ The single-storey element on the building's eastern façade allows for a visual 'stepping down' and respectful transition towards the fully-retained bushland areas of the E3 zoned portion of the site.</li> </ul> <p>In light of the above, the streetscape can be viewed as a mixture of low to medium-density development and commercial development, transitioning to vegetated open spaces towards the east. When understood within this context, the proposed increase in building height is not considered to result in a development that is incompatible with the streetscape and site context.</p>
<p><i>To not cause unreasonable amenity impacts on adjoining developments</i></p>	<p>There are potential adverse impacts associated with the proposed increased height that could diminish the amenity currently enjoyed by the adjoining residents. These were matters that guided the design process and are discussed separately below:</p> <p><b>Solar Access and Overshadowing</b></p> <p>The external envelope of the proposed RACF building has been designed and sited to ensure no undue overshadowing will occur to the public domain or to any neighbouring residential dwellings. Shadows from the proposal are contained within the property from 10am-3pm. Consequently, the proposed development does not create any significant overshadowing impact on adjoining properties.</p> <p><b>Privacy</b></p> <p>The design of the proposed building ensures that no parts of the development above the height standard are likely to cause any loss of privacy or increased overlooking to adjoining properties.</p> <p>The siting and placement of the 'Z' shaped building optimises the separation of buildings within the site and on adjoining land. Visual privacy is further enhanced through the positioning of suitable screening devices and landscape plantings to provide effective screening.</p> <p><b>Acoustic</b></p> <p>There are no areas of the building above the height standard where noise generating activities are to occur. It is also considered that by its very nature, the RACF development is not considered to be a high noise output development. The development is unlikely to emit decibel levels that exceed the existing background ambient noise levels of the area.</p> <p><b>Views</b></p> <p>The proposed variation of the standard will not result in the loss of any significant views to or from surrounding properties. The proposed new</p>



Assumed Objective	Discussion
	<p>RACF building will not unduly intrude into the skyline, nor will it impede existing vistas or view corridors.</p> <p><b>Bulk and scale</b></p> <p>The proposal has been designed to ensure that the development is not visually dominant as viewed from the street and surrounding properties. The visual bulk of the development has been minimised through the skilful stepped building design, the inclusion of several seasonally orientated internal courtyards, and retained vegetation elements. The tallest part of the building is located centrally on the roof form and is not highly visible from the surrounding properties or the public domain.</p> <p>Notwithstanding its single, 3 and 4-level design, the building has been sited so that its bulk and scale is not easily discernible from outside the boundaries of the site. The new RACF building is essentially sunken into the site and surrounded by a 'green ring' of dense landscaping. From both street frontages, the new RACF building will sit comfortably and confidently in the streetscape, generally appearing consistent with the bulk and scale of surrounding development.</p>

In addition to the above assumed objectives, the proposed variation should also be considered as to whether it is consistent with the Seniors SEPP aims pursuant to Clause 2(1) - Aims of the Policy, which are outlined below:

*"This Policy aims to encourage the provision of housing (including residential care facilities) that will:*

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design"*

The proposal is consistent with and achieves the aims of the policy as outlined in Table 2 (below):

Table 2: Achievement of SEPP Aims.

Objective	Discussion
<i>(a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability;</i>	<p>The proposed development will assist in providing additional diversity in housing and accommodation types for a specific sector of our community. Its design is a result of an in-depth evidence-based design process. The outcome will be the development of a new state-of-the-art RACF providing a home with 108 beds, inclusive of 36 dementia care beds.</p>
<i>(b) make efficient use of existing infrastructure and services, and</i>	<p>This application seeks to redevelop an area within the existing Brentwood Village precinct to provide additional beds which directly achieve the aims under Clause 2(1)(a) and (b). The existing precinct is provided with all the necessary utility services to support seniors housing.</p> <p>The additional demands associated with the extra accommodation are not expected to be beyond the capacity of the existing utility services, which will be augmented as necessary to meet the requirements of relevant service providers.</p>

Objective	Discussion
(c) <i>be of good design</i>	<p>The proposed development comprises a modern, efficient and high-quality design that responds sympathetically to the site's constraints and opportunities. It has been designed to fit comfortably within the local context and streetscape and ensures impacts upon neighbouring development is appropriately minimised and mitigated.</p> <p>Further to the above, the proposal is considered to be consistent with the principles outlined in <i>PC No 5 (Wombarra) Pty Ltd v Wollongong City Council</i> [2003] NSWLEC 268 based on the following:</p> <ul style="list-style-type: none"> <li>▪ The built form is visually broken up so that it does not appear as one large visually dominant building from key aspects. The different sections of the building are separated by generous breaks, setback, façade articulation and extensive areas of landscaping;</li> <li>▪ The design largely preserves existing site characteristics, including vegetation and topography, which assist in reducing the potential visual dominance of development;</li> <li>▪ The proposed built form and materials have been chosen with care and sensitivity to the site context; and</li> <li>▪ The design is considered to be visually compatible and contextually appropriate with regards to the existing streetscape.</li> </ul>

As demonstrated in Tables 1 & 2 above, the assumed objectives of the development standard and overarching aims of the SEPP are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC, therefore, compliance with the development standard is demonstrated to be unreasonable or unnecessary on this aspect alone.

## **5.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;**

On this occasion we do not believe that the underlying objective or purpose is not relevant to the development and therefore we do not rely on this reason.

## **5.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;**

We do not consider the objective would be defeated or thwarted if compliance was required, even though we have demonstrated above that the objectives of the standard are also achieved by the elements that do not comply with the development standard. In this regard we do not rely on this reason.

## **5.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; or**

We do not rely on this reason.

### **5.5. The zoning of the land is unreasonable or inappropriate.**

We do not consider the zoning of the land is unreasonable or inappropriate and therefore we do not rely on this reason.

## 6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In this section we demonstrate that there are sufficient environmental planning grounds to justify contravening the 'Height in zones where residential flat buildings are not permitted' development standard as required by Clause 4.6(3)(b) of the LEP.

We note that in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

We also note that in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

Specific environmental grounds to justify the variation of the standard are summarised as follows:

- A compliant height design for the development could be achieved on site through provision of a significantly larger building footprint and substantially reduced setbacks to the eastern and western boundaries. This, however, would require more extensive tree removal, increased cut and fill and potentially lead to increased adverse privacy and amenity impacts on adjoining residences and the public domain. In comparison, support of the proposed variation enables an extensive, generally at-grade building setback along Scaysbrook Drive (29+m) and Avoca Drive (10m). Consequently, the proposed variation effectively provides for:
  - An architecturally innovative design that sensitively responds to the change in topography across the site, providing for a partial lower ground floor level that incorporates centralised back of house facilities, whilst also enabling level access throughout upper levels of the building;
  - Substantially reduced cut and fill across the site, increased retention of mature native vegetation and increased provision of enhancement landscaping (50% of site area) that complements the adjoining E3 zoned land;
  - The proposed variation of the development standard will reduce potential adverse amenity impacts on neighbours, particularly in relation to overshadowing, visual privacy and acoustics; and
  - The proposed variation of the development standard will not lead to any perceptible adverse loss of views or overshadowing of adjoining properties over and above that associated with a compliant development.
- The proposed accommodation will not be beyond the capacity of the existing and future planned utility and transport network services infrastructure provision in the area. Therefore, the additional development can be sustainably accommodated on the site.
- The proposed building has been located centrally within the broader site. Importantly, the built form has been setback significantly from the site's boundaries and the neighbouring residential uses, with the extent of overshadowing from the proposal contained within the subject site between the critical hours of 10am to 3pm at June 21 (refer Figures 6-8 above).
- The closest neighbouring properties would be the existing remaining Brentwood Village ILUs to the north-western corner of the site (17m) and new low-density residential lots in the south-eastern corner (50m). The building layout and design have been carefully designed to ensure significant separation distances and limited windows / balconies face out onto these properties.
- All large open communal areas will be located away from nearby residential receptors. All plant, equipment and associated servicing rooms will be centrally located and respectfully separated from all adjoining residential properties. Minimal adverse noise impact is expected to occur in this regard.
- The proposal has been found to be consistent with the relevant aims and objectives of the applicable environmental planning framework, including relevant local and State based environmental planning instruments. The proposed land use is socially appropriate and contextually compatible, and the site does not encompass any prohibitive environmental or physical constraints.



- The proposed variation enables a built form response that meets the special circumstances associated with the development of a contemporary RACF. Specifically, the development provides for internal accessibility and large level floor plates, suitable sight distances from centralised nursing stations and the need for a certain number of beds for operational and commercial viability. The combination of these specialist-built form requirements generally leads to multi-storey development. When combined with a sloping site this can increase the non-compliance, as in this case. Accordingly, the proposed variation enables a built form that meets the identified needs of future occupants whilst also enabling the preservation of the natural site features.

In light of the above, the proposed development achieves the overarching aims and objectives of the standard as well as being consistent with the planning controls. In this respect, the objection is well founded. Strict compliance in the circumstances of this case is unnecessary and unreasonable to achieve the specified objective of the standard.

## 7. PUBLIC INTEREST

In this section we explain how 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, as required of the consent authority by Clause 4.6(4)(a)(ii) of the GLEP.

In section 5 it was demonstrated that the objectives of the development standard are achieved notwithstanding the variation of the development standard.

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 3: Consistency with Zone Objectives.

Objectives of R2 Low Density Residential Zone	Discussion
<i>To provide for the housing needs of the community within a low-density residential environment.</i>	<p>The RACF is designed to be at the forefront of aged care facilities and services to provide for a modern, caring, supportive and safe environment which creates a sense of community and fosters social inclusiveness. The new RACF will ensure completeness and connectedness to the existing Brentwood Village creating opportunities for seniors to 'age in place', provide enhanced choices for independent living while providing a full suite of healthcare services for more needing residents.</p> <p>The proposal provides additional specifically designed housing for the needs and requirements of the local area, and specifically for addressing the local market demand for seniors housing. The proposed variation of the standard will assist in enabling this objective to be achieved.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<p>The proposed development incorporates a limited range of ancillary uses and services including a café, hair salon and chapel.</p> <p>The retail space on the Ground Floor is modest and is proposed to accommodate a café / seating area (52m<sup>2</sup>), hairdresser (33m<sup>2</sup>) and consulting rooms (22m<sup>2</sup>). The retail spaces will be ancillary to the main purpose as a RACF servicing residents and visitors. Pedestrian access will be via a level access walkway from internal rooms, lifts and the northern Avoca Drive and southern Scaysbrook Drive pedestrian entries.</p> <p>The anticipated trading hours are 8am - 5pm, five days per week. A chapel and vestry on the Level 2 will be provided for future residents and will be ancillary to the main purpose as a RACF.</p> <p>The small scale and internalised location of the ancillary uses will ensure they do not adversely affect the residential amenity of the surrounding area.</p>
<i>To ensure that development is compatible with the desired future character of the zone.</i>	<p>The variation of the standard does not result in an inconsistency with this objective. The existing character of the area is comprised of a mixture of medium density and low-density residential dwellings, institutional buildings and retail premises, transitioning to lower-density, E3 zoned land with a more 'bushland / rural' character. Within this context, the proposed</p>

Objectives of R2 Low Density Residential Zone	Discussion
	<p>development is not inconsistent with the desired future character and densities of the area.</p>
<p><i>To encourage best practice in the design of low-density residential development.</i></p>	<p>The proposed new RACF will be in the form of a 'Z' shaped part single, 3 and 4 storey building containing 108 beds.</p> <p>As discussed earlier, the proposed design also seeks to preserve much of the site's visually prominent natural attributes. This includes large areas containing mature vegetation associations and its undulating topography. Combined, the positive benefits in minimising disturbance in these areas results in a building that will be largely shielded from view from surrounding residential homes and the public domain. This design embraces a low visibility philosophy, to complement the established built form of its immediate environs.</p> <p>Additionally, the proposed fenestration pattern, external materials, colours and textures have been selected with care and sensitivity to the site context, ensuring a sense of 'domesticity' to the building.</p>
<p><i>To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.</i></p>	<p>The proposed development is considered to promote ecologically sustainable development as it makes adaptive use of a brown-field site for seniors care and accommodation in close proximity to an existing operational retirement village. Any environmental impacts of the proposal would be appropriately minimised and mitigated; impacts upon adjacent E3-zoned land are avoided; and the proposed compensatory landscaping regime will provide alternative habitat for local fauna as well as providing amenity benefits.</p> <p>Importantly, the proposal has been found to be consistent with the relevant aims and objectives of the applicable environmental planning framework, including relevant local and State based environmental planning instruments.</p> <p>The provision of a new innovative RACF will assist in delivering positive social outcomes for the residents of the development in the provision of a new purpose designed high-level aged care and 24/7 dementia care facility.</p> <p>The new RACF will increase housing opportunities for seniors and / or people with a disability in the local community. Those new opportunities will be offered in line with the most recent best practice standards and to a high level of amenity.</p> <p>The new RACF will also offer opportunities for long term local residents to age in their community, thereby maintaining important networks and relationships with family and friends in a familiar community.</p> <p>The proposal's immediate economic impacts are also viewed as being positive in that it will provide on-going local employment opportunities for civil works contractors and the like during the construction phase. Similarly, the long-term economic benefits are also positive in that this proposal is intended to assist with the delivery of a future RACF at the site. It will provide additional</p>

Objectives of R2 Low Density Residential Zone	Discussion
	employment opportunities in range of occupations including in the health care, social services, food and beverage, and maintenance sectors. Lastly, the facility will generate demands for the provision of goods and services provided by local companies and suppliers. Approximately 40 staff would be employed permanently at the site on any given day.
<i>To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.</i>	The variation of the standard will not compromise this objective. As noted previously, the only non-residential land uses proposed as part of the RACF is a small café, chapel and hairdressers that will be largely patronised by residents and their families. These small non-residential land-uses are located towards the centre of the site near the front-of-house building. Due to their nature, size and location, it is considered that the future use of these minor non-residential spaces will not have any undesirable consequences.

As demonstrated in Table 3, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard.

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the development standard and hence there are no public disadvantages. Conversely, non-compliance with the development standard would allow for the consolidation of seniors housing in a single location (rather than ad-hoc piecemeal seniors development), whilst retaining significant views and vegetation and not having any unreasonable environmental impacts. Moreover, the proposal will provide additional seniors accommodation and care for the community in an area highly serviced by suitable retail, medical services and public transport. Therefore, the advantages of the proposal outweigh the disadvantages.

According to Clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.



## **8. STATE OR REGIONAL ENVIRONMENTAL PLANNING**

In this section we consider whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by Clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting the concurrence of the Secretary required by Clause 4.6(4)(b).

## **9. CONCLUSION**

This Clause 4.6 variation request demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of R2 Zone.
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional significance.

On this basis, therefore, it is appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.