

Clause 4.4 - Floor Space Ratio

There is no FSR control applicable to the subject site under this clause of the Warringah LEP.

Clause 4.6 - Exceptions to Development Standards - Clause 40(4)(b)

The proposal seeks a variation to the requirements of Clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Notwithstanding that the variation is to a provision of a SEPP, it is now accepted practice that a submission pursuant to Clause 4.6 of the LEP applicable to the relevant Local Government Area, is the appropriate mechanism for seeking such a variation.

The following variation is therefore proposed by the subject application.

Clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 states that:

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

The proposal does not strictly comply with this requirement as detailed on Architectural Plan A210, in that parts of the proposed basement areas extend in part more than 1m above ground level constituting a storey and resulting in a part 3 storey building being located adjacent to a boundary of the site.

It is noted that the proposal is provided with generous setbacks from all boundaries of the site.

The following Clause 4.6 submission has been prepared having regard to recent judgments of the Land & Environment Court of NSW.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 and the enabling SEPP.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause and justified in the circumstances of this particular case.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 40(4)(b) of the SEPP is contained within Part 4 of the SEPP and which is titled Development Standards to be complied with. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 40 does not contain a provision which specifically excludes the application of Clause 4.6 or the former SEPP No.1.

On this basis it is considered that Clause 40(4)(b) is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that strict compliance with the requirements of Clause 40(4)(b) of the SEPP is unreasonable in the circumstances of this case for the following reasons:

- a. The section of building comprising of 3 storeys has a ceiling height which complies with the 8m maximum ceiling height as required by Clause 40(4)(a) of the SEPP.
- b. The section of building which creates the third storey is limited to non-habitable portions of the building identified for use as basement, storage areas and ancillary spaces.
- c. The area in question will not present as a storey and will appear as part of the sub-floor area of the building.

In addition to the above it is submitted that:

- a. The non-compliance is directly attributable to the sloping nature of the site and which falls more than 28m from front to rear.
- b. There will be no detrimental impacts directly attributable to the non-compliant section of building. This is particularly the case in relation to overshadowing and a loss of privacy.

In addition to the above the proposal is also considered to be consistent with the general aims of the SEPP and which are:

- (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
 - (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
 - (b) *make efficient use of existing infrastructure and services, and*
 - (c) *be of good design.*

The proposal will provide for a total of 94 residential aged care facility beds and 60 serviced self-care dwellings specifically designed for older or disabled people which will be provided with on-site services and transport. The proposal is also considered to provide for a design outcome which is of good design.

On this basis and as detailed below, it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case, given that the aims and objectives of the SEPP together with the underlying objectives of the standard are met notwithstanding the variation sought.

4. Are there sufficient environmental planning grounds to justify contravening the development standard.

It is considered that a contravention of the development standard in the circumstances of this case is justified given that:

- The subject development site is a sloping allotment of land having a fall of 28m from front to rear and given that the non-compliance is directly attributable to the slope of the land.
- The proposal will not result in any unreasonable impacts as a result of the non-compliance, and
- The proposal will result in the provision of a total of 94 residential aged care beds and 60 independent living dwellings specifically designed for older people or people with a disability in a manner which will not result in any unreasonable impacts.

5. Is the proposed development 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.

It is my opinion that the proposal is in the public interest for the following reasons:

- i. The proposal provides for a built form which is consistent with the underlying objectives of the provision.
- ii. The proposal will not result in any unreasonable impacts upon adjoining properties.
- iii. The proposal seeks to provide for a needed form of housing which is specifically designed for the areas older and disabled population in a built form which does not result in any unreasonable detrimental impacts.
- iv. The proposal is considered to be consistent with the objectives of the RU4 zone in that:
 - It will provide for a form of development compatible with surrounding land uses.
 - It will minimise conflict with adjoining and nearby land uses.
 - It will not result in any adverse visual or view impacts.
 - The proposal will enhance the natural landscape including vegetation.
 - The proposal will following its completion and implementation of the landscape strategy proposed maintain the rural and scenic character of the land.
- v. In addition to the above the proposal is also considered to be consistent with the general aims of the SEPP and which are:

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

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

The proposal will provide for a total of 94 residential aged care facility beds and 60 serviced self-care dwellings specifically designed for older or disabled people which will be provided with on-site services and transport. The proposal is also considered to provide for a design outcome which is of good design.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in requiring strict compliance with the development standard as it would require a significant reduction in the number of dwellings provided upon the site which have been specifically designed for older or disabled persons and which in my opinion will not result in any unreasonable impacts.

It is also considered that the proposal provides for a high quality architectural outcome for the site and which will make a positive contribution to the locality.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of Clause 40(4)(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is appropriate in this instance.

Clause 5.10 - Heritage Conservation

The subject site is not heritage listed and is not located adjacent to a heritage item or within a heritage conservation area. A search of the AHIMS Web Services (Aboriginal Heritage Information Management Systems) did not identify any aboriginal sites or places recorded in or near the subject site.

Clause 6.1 - Acid Sulfate Soils

The subject site is not identified on Council's Acid Sulfate Soils Map as containing acid sulphate soils and as such is not subject to the requirements of this provision.