

Residential subdivision and housing development

Variation Request (revised) **Maximum Building Height** **for the residential flat building**



Lots 3 & 4 DP22392
86-92 Old Bar Road, Old Bar

Prepared for:
Oatrain Pty Ltd

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1 INTRODUCTION

1.1 The Land

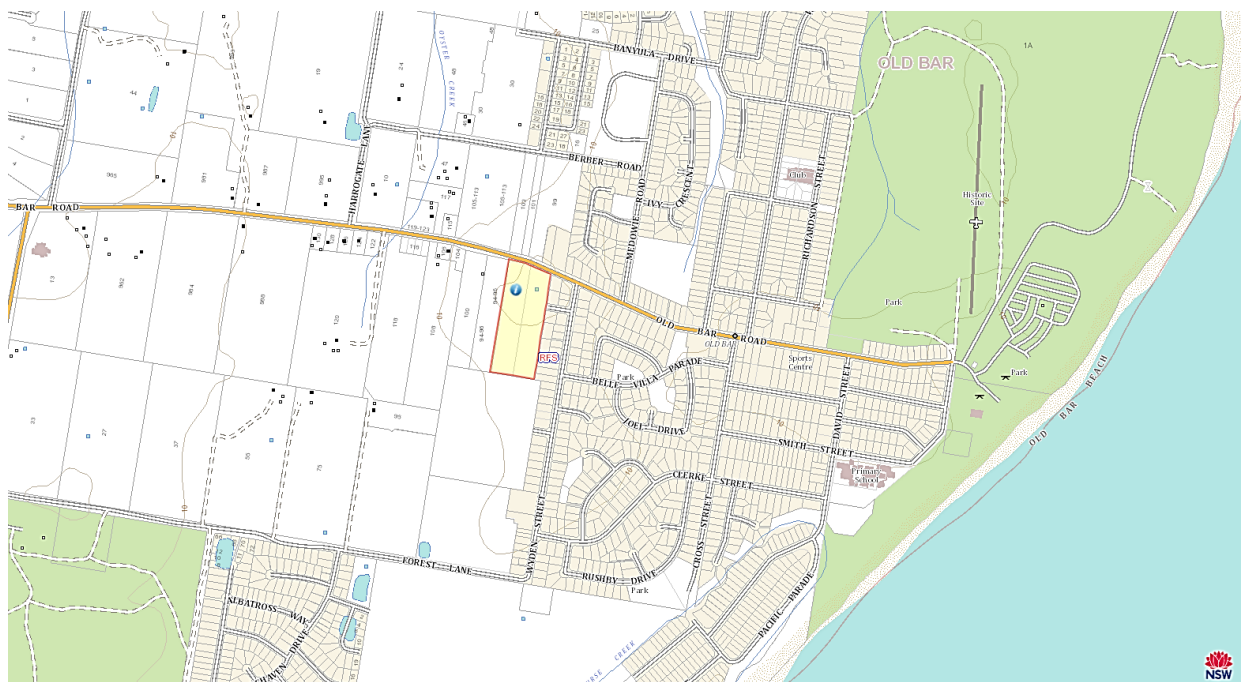
The land is described as Lots 3 & 4 DP22392 86-92 Old Bar Road, Old Bar. Lot 3 has an area of 1.648ha and Lot 4 an area of 1.586ha. This provides an overall site area of 3.234ha. The land also has frontage to Noroy Place. A copy of the DP and the recent survey of the land is included in the development application documentation.

The land is located on the southern side of Old Bar Road close to the western entry to the village. The land slopes from a high point northwest of Noroy Place with levels just above 22 m AHD. The low point of 13.75 m AHD occurs at the southwest corner of the land. The road carriageway in Old Bar Road has similar levels to the front boundary of the land around 21 m.

Erected on the land is a dwelling house close to Old Bar Road and a variety of small sheds with a large shed on the southern part of the land along the eastern boundary. The property has been sparsely landscaped with extensive open grass areas.

The neighbourhood has a range of housing types but mostly single dwellings and dual occupancies. There is a large new multi dwelling housing development to the south. The village centre is nearby with a Coles supermarket only 375 metres further east along Old Bar Road.

Site Locality Plan



(source: <http://maps.six.nsw.gov.au/#>)

1.2 Proposed development

Development Consent is sought to subdivide the land to create three development lots for a residential flat building and two multi-dwelling housing developments as well as eight (8) single dwelling/dual occupancy lots fronting an extension of Noroy Place.

Development consent is also sought to construct the residential flat building and multi-dwelling housing as follows:

Strata Plan Lot 1:

42 two storey, three (x40) and four (x2) bedroom townhouses. All have a two car garage and an area of private open space at ground level.

Strata Plan Lot 2:

13 two storey, three bedroom townhouses. All have a two car garage and an area of private open space at ground level.

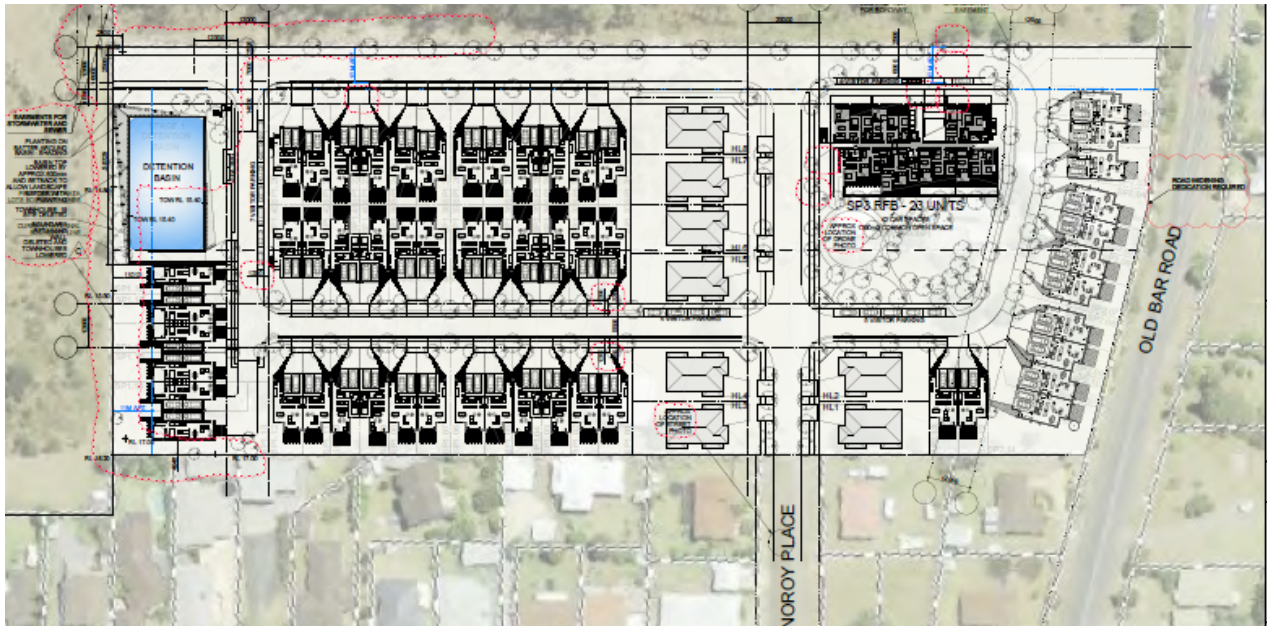
Strata Plan Lot 3:

23 two bedroom apartments in a building consisting of three levels (above basement parking). The proposal includes a large central landscaped area of shared open space.

A view of the apartment building site



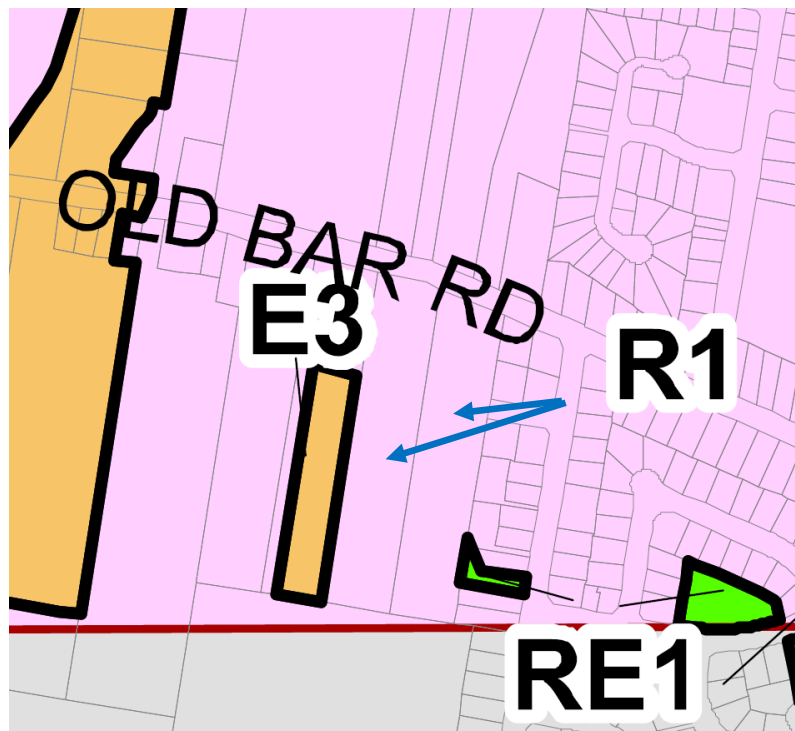
Extract of site plan



1.3 LEP Provisions

Greater Taree Local Environmental Plan 2010 applies to the land. The land is within R1 General Residential.

Plan 4.2 LEP Zone map



Source: <http://www.legislation.nsw.gov.au>

Clause 4.3 of Greater Taree Local Environmental Plan 2010 provides:

4.3 Height of buildings

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

- (a) *to ensure that the height of a building is appropriate for the site,*
- (b) *to ensure that the height of a building complements the streetscape or rural character of the area in which the building is constructed.*

(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.*

The land is mapped as having a maximum building height of 8.5m (I2) as shown by the two blue arrows in the extract of the map over the page.

Greater Taree LEP 2010 Height of Buildings Map



The relevant definitions are:

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.*

ground level (existing) means the existing level of a site at any point

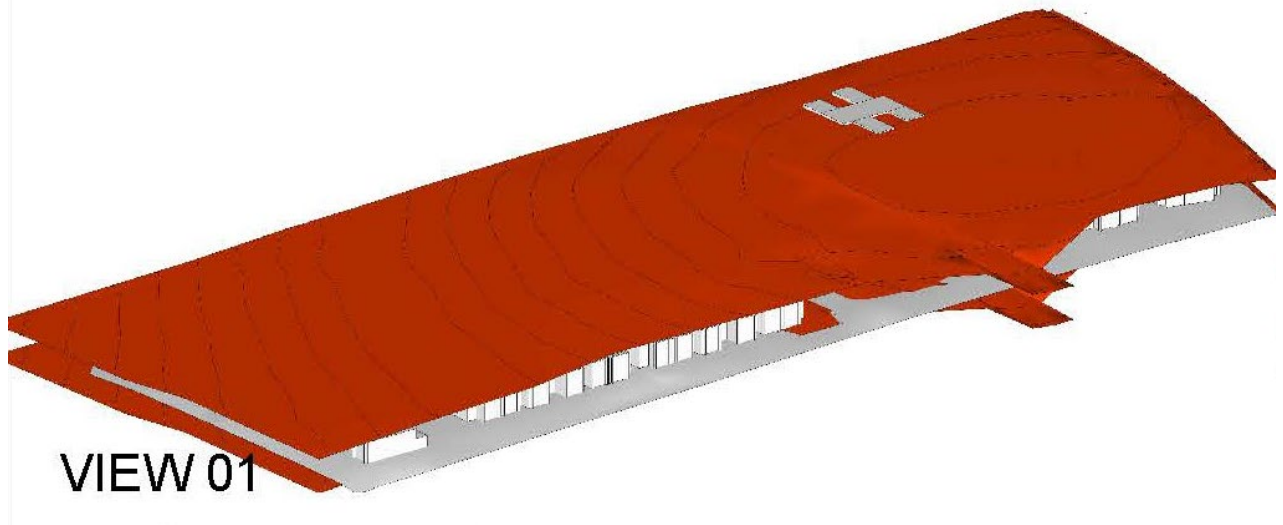
The height of the residential flat building has been lowered by 2.04 metres which makes the parking full basement parking. Nearly two thirds of the roof is now below the 8.5m building height limit and only the architectural feature roof “pop-ups”, integrated with the lift over run are above the height limit.

The area of roof above the height limit is 348.5 sqm. The entire roof surface is 1027.7 sqm. Therefore 33.9% of the roof is above the height limit.

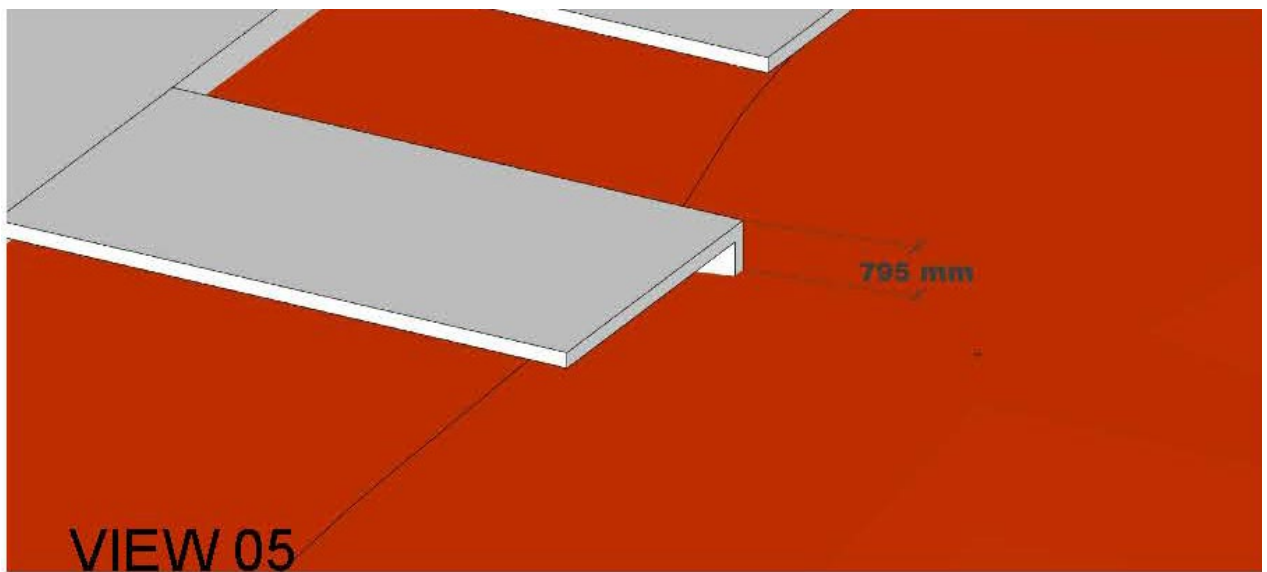
In terms of this clause the ***ground level (existing)*** is the ground level prior to the proposed excavation. Therefore, the height of the building above the ***ground level (existing)*** will be 9.295 metres. The building exceeds the maximum building height by 0.795 metres. This represents a quantitative 9% increase in height above the maximum permitted height.

The following extracts of the architectural plans show the overall height exceedance of the development and also the specific height exceedance.

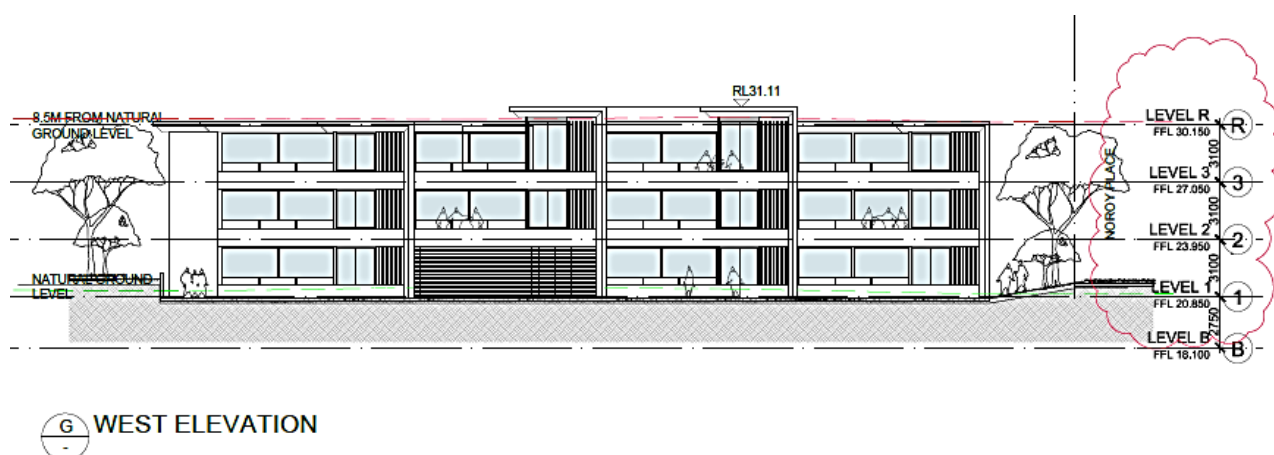
Overall development height exceedance



Detail of the apartment building height exceedance



Western elevation measurements for apartment building height exceedance



2. CLAUSE 4.6 VARIATION REQUEST – CLAUSE 4.3

Clause 4.6 of the *Greater Taree Local Environmental Plan 2010* permits exceptions to development standards.

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.*

The applicant, in subclause 4.6(3) must satisfy the consent authority that:

- (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.*

The consent authority must then be satisfied in subclause 4.6 (4)(a)(ii) that:

- (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*

I make reference to Land and Environment Court decision in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. Justice Preston sets out in his judgement the correct approach for dealing with Clause 4.6 variations to development standards.

Justice Preston at Paragraph 24 states the following:

24 The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The required information is set out in detail below. This information is "sufficient" in the circumstances of the case and covers the matters espoused by Justice Preston above. In particular Drawings A115-B and A212-C clearly set out the variation to the development standard.

Justice Preston further states at Paragraph 26 and 27 the following:

26 The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).

27 The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

I advise the following regarding consistency with the objectives of Clause 4.3 and the objectives the zone objectives for development.

A. Consistency with the objectives of the standard

(a) *to ensure that the height of a building is appropriate for the site,*

The proposed apartment building is appropriate for the site in that:

- There is a unique opportunity to design a building on a large lot of land that suits the proposed development rather than trying to locate such a building on a small existing lot,
- The opportunity to design the site as a whole will result in the surrounding proposed development designed to transition to the slightly higher building,
- The adjoining access driveways and the large area of open space to the east allows the building to sit into the site with surrounding landscaping,
- The breech allows a development that provides an increased number of apartments with broad views of the hinterland and coastal area from the upper floors of the building,
- In the middle of winter the increased shadow created by the increase height does not encroach into the land to the west or any of the proposed sites in the development, and
- Being located on the flat knoll there are no properties higher that will have their views impacted.

(b) to ensure that the height of a building complements the streetscape or rural character of the area in which the building is constructed.

The elements of the building that exceed the height limit will not be discernible the passerby in Noroy Place due to the transitioning from the surrounding two storey townhouses.

The photomontage below has been produced by Kane Sullivan of *Lucid Metal Architectural Imaging Pty Ltd*. It shows that the higher residential flat building isn't obvious or incompatible in the finished streetscape when surrounded by the future dwellings, townhouses and landscaping. The communal open space plays a key role in helping to mute any impacts of the taller building.

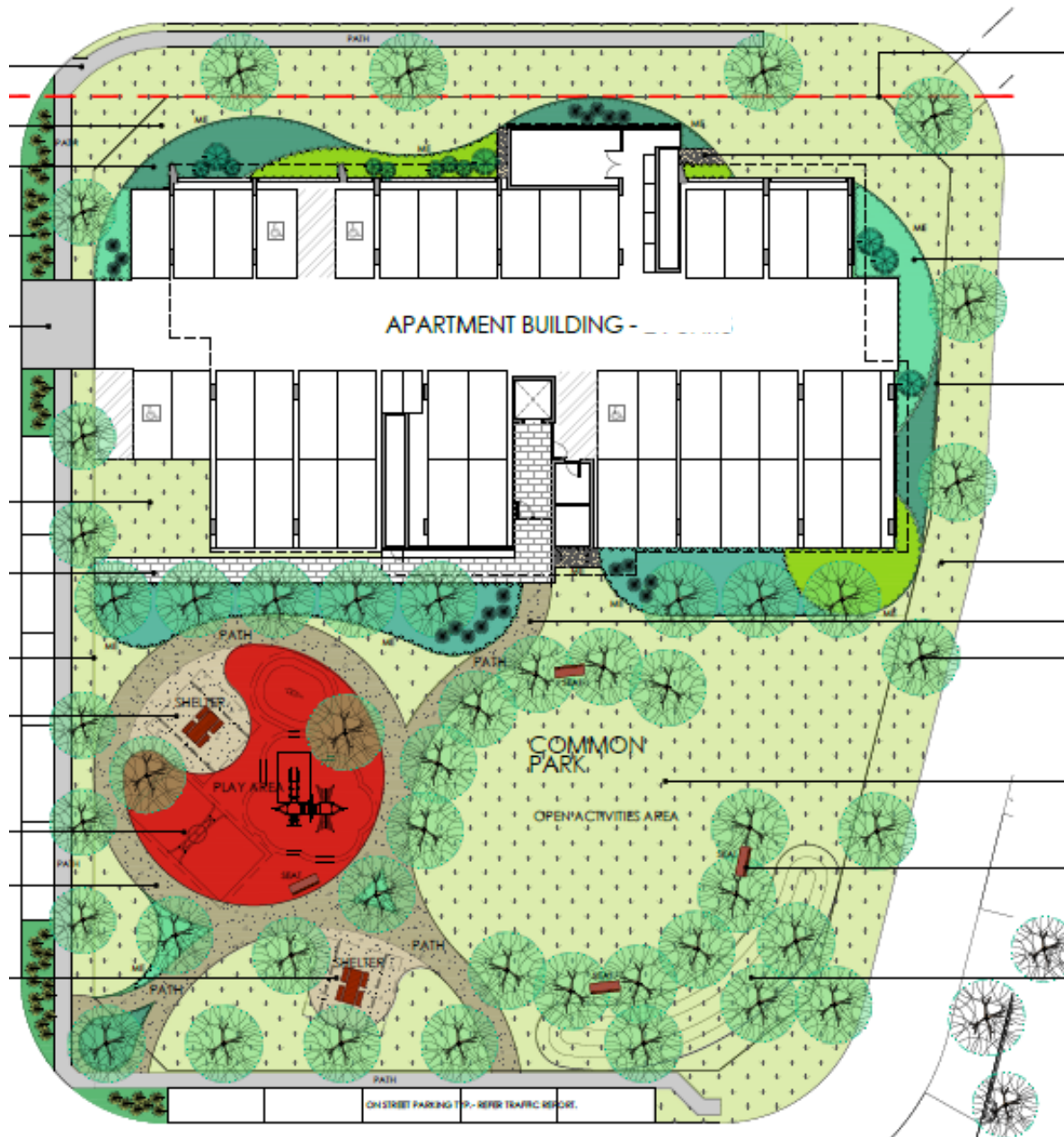


The Residential Flat Building cannot be view from Old Bar Road adjacent to the site.

The increased height also provides the opportunity to provide a more compressed footprint. This smaller footprint allows for an improved open space area to the east

of the building. Not only does this provide for enhanced recreation activities for the future residents but also improves the streetscape with the large block of landscaping in the middle of the new residential area. This large landscaping block will be apparent from Old Bar Road and the extension of Noroy place. The context of the building with the large area open space is shown in the extract of the landscaping plan below.

Extract of the apartment open space landscape plan



B. Consistency with the objectives of the Zone

Regarding consistency with each of the zone objectives I advise as follows:

- *To provide for the housing needs of the community.*

The taller apartment building provides the opportunity for apartment living with a pleasant outlook but also with access to a large area of shared communal open space.

- *To provide for a variety of housing types and densities.*

The small proposed variation to the height increases housing choice in the locality. Apartment living with a view that is not otherwise readily available in the locality. There is the opportunity to provide such a housing choice without the impacts a taller building may have if proposed on an existing lot in Old Bar.

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

This objective is not relevant to the development.

Justice Preston in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at Paragraph 44 defines unnecessary and unreasonable as:

unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)

Therefore, in terms of the criteria in Clause 4.6(3) the compliance with the maximum building height control in Clause 4.3 is unnecessary as the objectives of the development control and zone can be met in this particular case with the development occurring as part of a larger residential development where the increased height impacts can be muted while providing for a superior planning outcome.

Compliance with the development standard is unreasonable in the circumstances as *no purpose would be served* in requiring compliance. Compliance with the development standard would result in a residential development with:

- Reduced housing choice,
- Apartments with a lower amenity, and
- The loss of an opportunity to provide a large block of landscaping in the middle of this new residential development.

Further there are *sufficient environmental planning grounds to justify contravening the development standard* in that it allows a superior planning outcome. If this variation was not granted the objective of maximising housing choice will be lost.

4. CONCLUSION

Sufficient information has been provided above in terms of Clauses 4.6(3). Further the development *will be in the public interest for the purposes of* Clause 4.6(4)(a)(ii) as it is consistent with the objectives of the development standard and the objectives for development of the zone. The development will still comply with the respective objectives of the development standards and the zones.

For further information, or clarification of any matter raised by this variation request please contact Chris Pratt on 0437859959 prior to determination of the application.

Chris Pratt
Land Use Planner

