

BENNELL & ASSOCIATES

Urban planning and environmental architecture

Variation Justification Report

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Proposal: Seniors Housing Development

Property: Land generally bounded by York Street, Arthur Street and San Francisco Avenue, Park Beach Lot 4, DP 1263001.

Prepared by: Rick Bennell

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Summary

This report provides a justification to a variation to the height development standard in relation to a development application for alterations and additions to an approved 'seniors housing' development, that originally comprised a 120 x bed residential care facility, 183 x self- contained dwellings and support facilities. The approval was granted on 24 August 2017 and has been subject to a number of amendments with the nett result, in terms of density, being an approved development now comprising a 120 x bed residential care facility and 159 x self- contained dwelling units. The original development consisted of 5 buildings (Buildings A, B, C, D and E) over the height limit; building E has since been deleted under an earlier modification.

This proposal is for an increase in the height of the independent living apartment Building B by four levels and a reduction in the height of Building A by 3 levels; the increase in height of Building B enables a reduction in height of Building A. The number of residential care beds remains at 120 and the number of self-contained dwellings increases by 4 to 163 dwellings but remains below the 183 originally approved. The table below shows the height changes from the originally approved development and the graphic below shows the height of the buildings relative to the 15.5m standard.

Building	Building height (m)	No. of Levels	Height Exceedance (m)	Height Exceedance %
Original A	26.11	6	10.61	68%
Original B	29.27	7	13.77	89%
Proposed A	11.86	3	Under Height	Under Height
Proposed B	38.81	11	23.3	150%

Original and proposed height changes

The height of Building B is 23.3m above the height standard, which represents a variation of 150%. The table below shows the change in heights of the approved (Original) Building A and B and the Proposed Building A and B under this development application.



Height standard relative to proposed Building A and B

The 15.5m height control in the R3 zone is aimed at achieving 4 storey residential buildings on top of a semi basement parking level. In the Park Beach area there are height controls of 22m and 40m, and residential buildings ranging up to 17 storeys.

The justification for the proposal has been considered in the context of the relative merits and a comparison with both a complying development and the approved development.

The increase in height of Building B and consequential reduction in height of Building A provides the following benefits when compared with the approved development and a complying development;

- a signature building statement that adds to the identity of the site and urban form of the Park Beach locality by creating a sense of arrival and point of difference at this unique location;
- improved streetscape outcomes with better transitioning of building form;
- a high quality designed contemporary development on one of the few large sites in the Local Government Area that can deliver a development of this scale;
- a development that provides an increased number of dwelling units with broad views of the hinterland and coastal zone from the new upper levels of the building (Building B);
- reduced travel distance for residents and visitors accessing on-site services and facilities within the complex; and
- improved open space areas for recreation activities with the changed footprint provided by having a taller building B.

The proposal has no significant impacts upon the nearby residential areas in terms of views, overshadowing and wind velocities and has an overall benefit in terms of streetscape and general urban form; the proposal will deliver a unique, well designed gateway and destination statement for the Park Beach area.



View of proposed development from Arthur Street

The past approvals for five buildings over the height standard demonstrate that the height standard is generally irrelevant to this contained site and that the height of buildings in the development of the site are more appropriately considered on merit rather than a generic fixed height control; the height control applying to the site has become irrelevant due to past approvals.

The proposal meets the objectives of the R3 Medium Density Residential zone and the objectives of the height standard, despite the non-compliance of Building B. The proposed development is in keeping with Council's endeavours to create a compact and vibrant Regional City and is in keeping with State and Regional Strategies aimed at increasing the quality and choice of housing in the region.



Enhanced open space



Improved Urban Design

There are sufficient environmental planning grounds to justify contravening the development standards for this proposal. The key grounds being that the height leads to an improvement in internal and functional amenity, particularly with the changes in building footprint and enhanced open space areas and improved urban design outcomes for the streetscapes of Arthur and York Streets and Park Beach Locality. Compliance with the development standard would result in an inferior development and poorer environmental planning outcomes and as such it would be unreasonable or unnecessary in the circumstances of the case to require adherence to these standards.

1. Introduction:

Background: This report provides a justification to a variation in the height development standard in relation to a development application for alterations and additions to an approved 'seniors housing' development, comprising a 120 x bed residential care facility, 183 x self- contained dwellings and support facilities. The approved development included five residential apartment buildings for independent living units (Buildings A, B, C, D and E), 21 townhouses and a residential care building. The approved development is on land generally bounded by York Street, Arthur Street, San Francisco Avenue and housing located at the eastern end of Pacific Avenue; the real property description is Lot 4, DP 1263001. The approval was granted on 24 August 2017 under Development Consent No. 0902/17DA. The development has commenced in accordance with the civil works construction certificate (No.0038/18CW) issued on 26 February 2018 and the site works include fencing, concrete slab, infrastructure works and footpaths. The plan in Figure 1 below shows the layout plan for the original proposal.



Figure 1: Original Proposal

The approval has been subject to five modifications and these are summarised as follows:

Modification No. 0067/18DM: This modification provided for the conversion of 10 single garages to double garages for 10 of the 21 townhouses in anticipation of a demand for such additional parking for this type of accommodation. The modification also involved minor changes to the configuration of some of the townhouses and a minor change to the road alignment to accommodate the changes to the townhouses. Approval for the modification was granted on 14 December 2017.

Modification No. 0184/18DM: This modification involved the removal of 3 of the townhouses served by internal road near York Street to make way for a community centre and a reconfigured pool area. The community centre was provided to serve as a gathering space and a social hub for residents and their visitors. The community centre is to be a single storey building with a gross floor area of 655m² and is to include a hall, kitchen, billiard room, gym, amenities, store and a management office. Approval for the modification was granted on 11 September 2018.

Modification 0090/19DM: This modification involved the deletion of Building E which was originally a four-storey apartment building, accommodating 24 self-care units and located on top of the north wing of the residential care facility. The deletion of this building enabled a reconfiguration of the residential care facility to convert some of the single rooms to double rooms (120 to 112 rooms) but retaining the 120 beds and expanding the facilities available to the residential care facility; these facilities included, inter alia, floor space for a café, socialising areas and a chapel. This modification was approved on 21 December 2018.

Modification 0018/20DM: This modification provided for a separate courtyard garden in a sunny location, to cater for aged care residents that are unable to access the specialist dementia garden or dementia day care garden; noting that his group of residents are the majority within the residential care facility. This modification also involved a minor reconfiguration of the residential care facility building ground floor north wing and some amendments to the building elevation. This modification was approved on 16 September 2019.

Modification 0123/20DM: This modification changed 9 apartments into 7 x 3=bedroom apartments and included a new residents car wash. This modification was approved on 23 March 2020.

The nett result of the modifications is that the approved development started with 120 x bed residential care facility and 183 x self- contained dwellings and with the modifications the self-contained dwellings were reduced to 153 x self- contained dwelling units as shown in Figure 2 below.

This proposal will result in no changes to the 120 x bed residential care facility, but a change in the number of self-contained dwellings to 163 dwellings (i.e. independent living units); made up of 72 x apartments in Building C/D, 18 x townhouses and 16 x apartments in Building A and 57 x apartments in Building B.

Park Beach Residences Pty Ltd is an entity approved by the Australian Government as an approved provider of residential, home and flexible care under the Aged Care Act 1997. Park Beach Residences Pty Ltd will have a long-term lease arrangement over the land with the landowner (Rowville Park Pty Ltd) and will be subject to bed allocation by the Government. The original consent (Development Consent No. 0902/17DA) provided for the construction of the 5 x apartment buildings (Buildings A, B, C, D and E) which exceeded the permitted height of 15.5m as shown in the table below.

Table 1 Approved Building Heights under Original Consent

Building	Existing ground RL	Top of building RL	Building height (m)	Height Exceedance (m)	Height Exceedance %
A	5.55	31.66	26.11	10.61	68%
B	5.65	34.92	29.27	13.77	89%
C	6.55	28.34	21.79	6.29	40%
D	5.70	31.66	25.96	10.46	67%
E	5.25	34.61	29.36	13.86	89%

Note: Apartment Building E has now been deleted from the project.

Buildings A and B were connected apartment buildings for independent living units that together formed a boomerang shaped building generally orientated to Arthur Street and York Street in the north eastern corner of the site. Building B was 7 levels and Building A was 6 levels under the original consent. Similarly, Buildings C and D are connected apartment buildings for independent living units that together also form a boomerang shape but are generally orientated to Arthur Street and San Francisco Avenue in the north western corner of the site.

This proposal is for a separation of Building A and B so that Building B will now be a separate 11 storey apartment building with 57 self-contained dwellings (i.e. independent living units) and Building A will be a separate 3 storey apartment building with 16 self-contained dwellings (i.e. independent living units). This represents an increase in the height of Building B by four levels and a reduction in the height of Building A by 3 levels; it being noted that the increase in height of Building B enables a reduction in height of Building A.

Planning Principles: This report provides for the justification for variation under the provisions of Clause 4.6 to the permitted height in the circumstances of this case. The report considers the planning principles established in the following cases concerning variations by the Land and Environment Court:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

Particular consideration is given to the following 5 part test referenced in *Wehbe v Pittwater Council* and outlined in the NSW Department of Planning “*Varying development standards: A Guide 2011*”:

- *that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard;*
- *that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;*
- *that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*

- *that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable: and*
- *that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary.*

It is to be noted that a development that satisfactorily meets one or more of the above tests for variation can be approved; a development does not have to meet all five parts to have merit. It should also be noted that these five tests are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most invoked ways.

Of note are the principles established in *Initial Action Pty Ltd v Woollahra Municipal Council* wherein it has been established that it is not necessary to demonstrate the relevant merits of the proposed variation to the merits of a complying development; the proposal simply needs to demonstrate *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.*

2. Proposal:

As stated above this proposal is for a separation of Building A and B so that Building B will now be a separate 11 storey apartment building with 57 self-contained dwellings (i.e. independent living units) and Building A will be a separate 3 storey apartment building with 16 self-contained dwellings (i.e. independent living units). This represents an increase in the height of Building B by four levels and a reduction in the height of Building A by 3 levels; it being noted that the increase in height of Building B enables a reduction in height of Building. The site plan and changes in building height and form are represented in Figures 2 and 3 below.

The density will still be below the density permitted under Coffs Harbour Development Control Plan (DCP) 2015 and the originally approved development; the development will still have 120 residential care beds and will now have 163 x self-contained dwelling units. The proposed changes to Building B will result in an increase in height for this building above the previously approved building's height and above the permitted height.

The proposal is described in the submitted Statement of Environmental Effects (SEE) by de Groot & Benson Pty Ltd and this variation report should be read in conjunction with this Statement of Environmental Effects.



Figure 2: Site Plan of Proposed Development

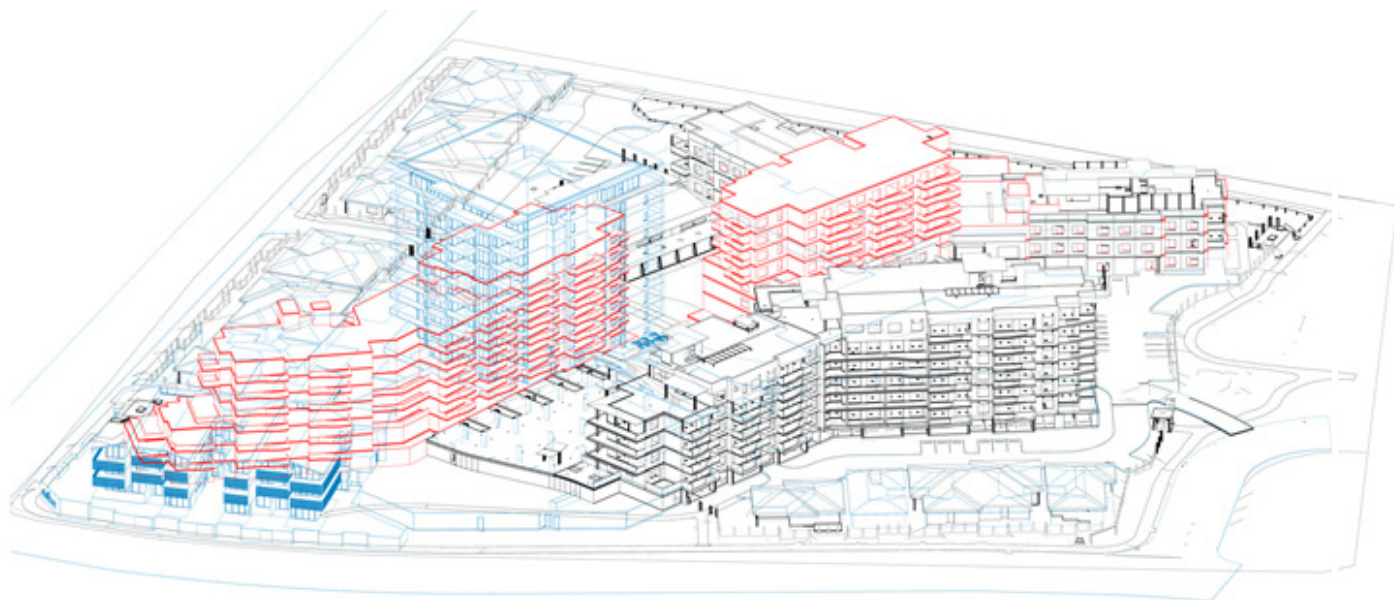


Figure 3: Massing Plan comparison between Approved and Proposed Development

3. Exceptions to Development Standards:

Under Clause 4.6 of LEP 2013 development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. The clause states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Moreover, the clause 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, and*
- *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*

This report represents the written request for variation.

Background to Standard: Before assessing the variation, it is important to understand the purpose and function of the clause. The clause purposely promotes flexibility in the application of numeric development standards in order to achieve overall better planning outcomes. Recent decisions in the Land and Environment Court (*Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90) indicate that it is no longer satisfactory to simply demonstrate the “general meeting of the underlying objectives”; the court has determined that the environmental planning grounds relied upon to justify the departure from the standard must be “particular to the proposed development on the site”.

The general and particular grounds for the variation to the standards are considered under the following headings:

- the Development Standard;
- the Extent of Variation to the Development Standard;
- the Objectives of the Zone;
- the Objective of the Standard; and
- Assessment (the Circumstances of the Case, the Environmental Planning Grounds and the Public interest).

The Development Standard: The development is subject to Clause 4.3 (2) Height of Buildings under Coffs Harbour Local Environmental Plan (LEP) 2013. This clause requires the height of a building on any land not to exceed the maximum height shown for the land on the Height of Buildings Map.

As can be seen by the height of buildings Map below the height limit is 15.5m. This height limit applies across the whole of the site and applies to the adjoining residential areas to the north, south and west and to the “Park Beach Plaza” shopping complex site to the west.

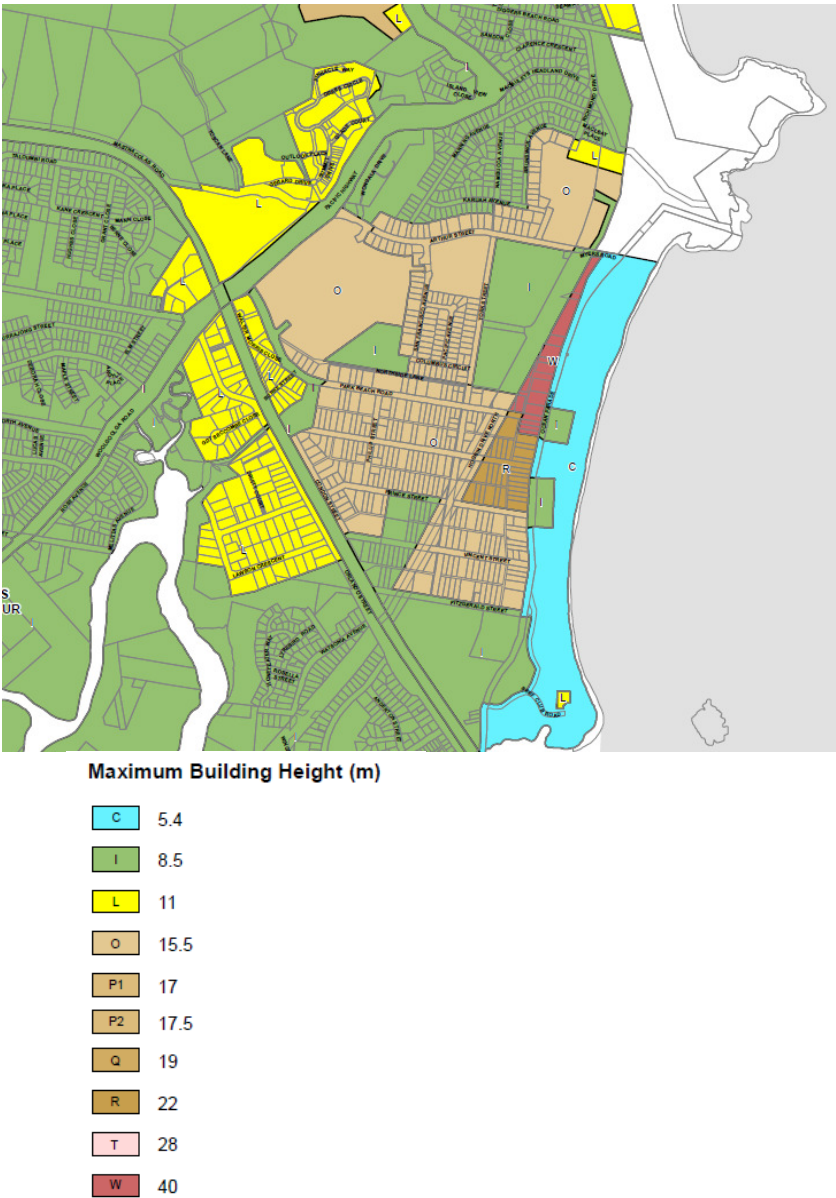


Figure 4: Maximum Building Height (Source: Coffs Harbour City Council GIS)

Building height is defined in LEP 2013 as follows:

***Building height** means the vertical distance between ground level (existing) and 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.*

The 15.5m height standard is derived from the planning work for the preparation of the City Centre Masterplan which was prepared during 2009-2010 and incorporated into Coffs Harbour City Centre LEP 2011 before being incorporated into LEP 2013. LEP 2011 applied to the City Centre and Park Beach area, whereas LEP 2013 applies to the whole of the Local Government Area.

The height control envisaged residential buildings up to 4 storeys high as shown table below which was included in the background material exhibited for Draft LEP 2012; Draft LEP 2012 ultimately became LEP 2013 when it was gazetted on 27 September 2013.

DRAFT COFFS HARBOUR LEP 2012 HEIGHT METHODOLOGY

MAXIMUM HEIGHT	STOREYS	CONFIGURATION	EXPOSED BASEMENT PARKING	ROOF	TOTAL
5.4m	1	1 x 3m residential	0	2m	5.0m
8.5m	2	2 x 3m residential	0.5m	2m	8.5m
11m	2	2 x 3.6 commercial / industrial	1.5m	2m	10.7m
	1	1 x 9m industrial shed / retail	0	2m	11m
15.5m	4	4 x 3m residential	1.5m	2m	15.5m
	4	1 x 3.6m retail + 3 x 3m residential	0	2m	14.6m
17m	4	4 x 3.6m retail / commercial / parking	0	2m	16.4m
	4	2 x 3.6m retail / commercial + 2 x 3m residential	0	2m	15.2m
19m	5	2 x 3.6m retail / commercial + 3 x 3m residential	0	2m	18.2m
22m	6	3 x 3.6m retail / commercial + 1 x 3m parking + 2 x 3m residential	0	2m	21.8m
	6	6 x 3m residential	1.5m	2m	21.5m
28m	8	3 x 3.6m retail / commercial + 1 x 3m parking + 4 x 3m residential	0	2m	27.8m
	8	1 x 5m supermarket + 2 x 3m parking + 5 x 3m residential	0	2m	28m
40m	12	4 x 3.6m retail / commercial + 4 x 3m residential / parking	0	2m	40.4m

Note Table above shows indicative number of storeys possible with different use configuration. It is provided as an example only.

The Extent of Variation to the Development Standard: The extent of variation to the height limit is shown in the drawing below. The table provides a comparison between the standard, the originally approved height for Building A and B under Development Consent No. 0902/17DA and the height now proposed in this alteration to the approved development.

Table 2 Original and Proposed Building Heights

Building	Building height (m)	No. of Levels	Height Exceedance (m)	Height Exceedance %
Original A	26.11	6	10.61	68%
Original B	29.27	7	13.77	89%
Proposed A	11.86	3	Under Height	Under Height
Proposed B	38.81	11	21.1	150%

As can be seen by the table the height of Building B is 23.3m above the height standard, which represents a variation of 150 %. The variation generally applies to the levels above level 4. Refer to Figure 5 below.



Figure 5: Elevation showing height of Building a and B relative to 15.5m standard



Figure 6: Detailed Elevation showing height of Building B relative to 15.5m standard

4. Assessment:

For this development to have sufficient merit to be approved it needs to satisfy the objectives of both the R3 zone and the development standard in relation to height of buildings.

The Objectives of the Zone: The land is zoned R3 Medium Density Residential; the objectives of this zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Zone Objectives: The means by which the development meets the R3 zone objectives are outlined as follows:

Table 3 Zone Objectives Criteria

Zone objective	Commentary
<i>to provide for the housing needs of the community within a medium density residential environment</i>	<p>The revised building height will provide for a taller, more compact building form that is more efficient for access for residents. The taller building will allow for a larger number of units to have improved views and outlook.</p> <p>The taller, less bulky building form provides for better access to sunlight for the townhouses within the complex.</p> <p>The proposal maintains the number of beds and provides 4 x additional dwelling units to meet the 'ageing in place' needs of the community.</p> <p>Considering the above, the proposal is better at meeting the <i>housing needs of the community</i> than the original proposal.</p>
<i>to provide for a variety of housing types and densities within a medium density residential environment</i>	<p>The proposal provides for two out of the three types of aged care housing described in SEPP (Seniors Living), in the form of residential care facility beds and self- contained dwellings; the overall proposal provides for single storey townhouses and multi-storey apartments.</p> <p>Housing options for residents include single bedroom apartments, various floor plans for 2 bed and 2 bed and study ILU apartments, different floor plans for single level living in the townhouses and various room sizes in the residential care facility.</p> <p>This revised proposal affords the opportunity to improve on the variety of living opportunities by providing a high- rise tower building (i.e. Building B) and a 3-storey apartment building (Building A) to add to the mix of dwelling types and densities.</p> <p>This variety of housing and densities meets the zone objective.</p>
<i>to enable other land uses that provide facilities or services that meet the day to day needs of the community</i>	<p>The proposal maintains the viability of the other day to day land uses associated with the complex, namely, café, community centre, pool, general recreation facilities and other ancillary services on site.</p> <p>The proposal is not incompatible with the other land uses supported on site.</p>
<i>to ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces</i>	<p>The design of both Building A and Building B meet Council's design excellence standards and provide an opportunity to improve on the urban design setting of the originally approved development, with greater variation in scale, reduced mass, increased recreation space, improved streetscape activation for both Arthur Street and York Street and a reduced building footprint.</p> <p>The proposal provides for a high visual quality in the presentation to the public realm.</p>

In light of the above, the proposal is in keeping with the objectives of the R3 zone.

The Objective of the Standard: The objectives for the Height of Buildings (Clause 4.3) are as follows:

- *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- *to ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections,*
- *to enable a transition in building heights between urban areas having different characteristics,*
- *to limit the impact of the height of a building on the existing natural and built environment,*
- *to encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.*

Objective 1: *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.*

The first objective of the height standard is concerned with character and amenity. The future desired urban character of the area can be derived from Council's DCP 2015 which has identified this site as a "Special Area" subject to the 'Arthur Street West Masterplan' described below. This Masterplan envisages a limited number of large buildings addressing the street and separated by green space that provides for deep soil zones and an improved amenity. The Masterplan also proposes a new road through the centre of the site.



Figure 7: Masterplan under DCP 2015

The stated objectives of the Arthur Street West Masterplan are:

- *To ensure that development within the Arthur Street West Precinct accords with the Coffs Harbour Arthur Street West Precinct Masterplan.*
- *To improve pedestrian access and connectivity in the Park Beach locality.*
- *To maximise deep soil zones*

This proposal delivers on the intent of the Masterplan in providing improved green space enabled by having a taller apartment building (i.e. Building B) and a means of activating the streets by having a lower apartment building (Building A) that addresses both York Street and Arthur Street by being closer to the street and providing improved street surveillance opportunities and pedestrian connectivity within the development complex when compared to the originally approved development.

This site planning and massing of buildings results in a better transition between the open space areas and the subject land compared to a complying development of all 3-4 storey apartments and the originally approved development. The provision of this taller building also allows for improved open space and space around the buildings.

The site is provided with a central road as envisaged in the Masterplan and this revised proposal adds visual emphasis and functional importance to this road's role in the street hierarchy.

The 15.5m height control in the R3 zone is aimed at achieving 4 storey residential buildings on top of a semi basement parking level. In the Park Beach R3 zone there are three residential flat buildings of 4 storeys; namely, Nos 10 and 18 San Francisco Ave (see image below) and 16 Arthur Street. There are numerous 2 storey flats and a few 3 storey flats as well.



Typical Urban Character within the precinct to the south



Typical Urban Character within the precinct to the north

Residential lands elsewhere in Park Beach have height controls of 22m and 40m, and residential buildings ranging to 17 storeys. This proposal is consistent with the urban character being developed in the Park Beach locality in providing for a mix of two storey buildings and taller buildings over 4 storeys. The large size of the site (i.e. 3.2 hectares) allows for the site to have its own sense of place and building form; many of the impacts (i.e. overshadowing, privacy and building form) associated with taller buildings are generally able to be contained within the site.

With street frontages in the order of 200m and 170m and an area of 3.2 hectares, the land is one of two large land parcels in the Park Beach R3 zone capable of supporting the intent of the R3 zone and capable of supporting buildings taller than conventional 3-4 storey multi dwelling housing originally anticipated in the zone. The area of the land is equivalent to approximately 20-40 typical allotments in the residential subdivision pattern surrounding the land. Accordingly, the dimensions of the land allow for an efficient implementation of the *appropriate urban character* intended for the R3 zone.

The character of the locality is intended to be a medium density residential area; it being noted that this proposal will result in no changes to the approved density on the land. The proposal is of such character, albeit restricted to the types of people permitted to occupy the buildings under SEPP (Seniors Living). The proposal is sympathetic to the streetscape by limiting height to 3 storeys on the frontages. Having the taller buildings located away from the frontages reduces the potential adverse impacts in terms of privacy, solar access and streetscape scale upon the neighbouring area.

Coffs Harbour City Council has prepared an updated Growth Management Strategy to guide development within the Local Government Area to 2036. The Strategy adopts a Compact City model where an emphasis will be to reduce urban sprawl and focus growth on infill development and renewal of existing urban areas to take advantage of urban consolidation benefits; urban consolidation provides savings in infrastructure and reduced environmental costs with a smaller urban footprint. This Strategy will inevitably lead to taller buildings and higher densities and in this context the proposal for a taller building on the site can provide a catalyst and an example for the future growth and development of the City generally and Park Beach in particular. This proposal is in keeping with the urban character expected in a Compact City scenario.

The urban character is also derived from the broader regional visions which are outlined in the North Coast Regional Plan. This Plan identifies Coffs Harbour as a "Regional City" which is earmarked to accommodate most of the population growth expected to the year 2036. The Regional Plan sees the urban character of Park Beach Area as an urban area with mixed residential and tourist development serviced by regional and local connections. The Urban Character outlined in the plan is tolerable of taller buildings that meet the strategic objective of housing for aged persons in an area with established infrastructure.



Figure 8: Extracts from Regional Plan

The Plan has two key Directions that are relevant to this seniors housing proposal, namely:

- *Direction 22: Deliver greater housing supply*
- *Direction 23: Increase housing diversity and choice*

The Plan has a specific action that promotes the encouragement of ‘ageing in place’ by the development of liveable homes that are easy to enter and navigate; responsive to the changing needs of occupants; and relatively easy to adapt (for injured, disabled or elderly residents).

This seniors’ living proposal provides for people to be able to ‘age in location’ with residential options provided for ‘all of life’ care as required. This proposal helps fill a large gap in the supply of aged persons housing and housing for those with a disability. This taller apartment building is critical to the viability of the development and will contribute to the diversity envisaged in the future urban character outlined in the Regional Plan. A complying development, consisting of a series of ‘walk up flats’ or four storey apartments, would not deliver the housing diversity enabled to be provided by this proposal. Moreover, the approved development will not deliver the improved views from the upper level areas; the proposal will significantly improve the quality of outlook for a number of units within Building B.

The proposal meets the first part of the height control objective of *ensuring that building height relate to the land’s capability to provide and maintain an appropriate urban character.*

The second part of the first objective relates to amenity. Amenity is concerned with the human relationship with an area and in an urban context is measured by feelings about built space, open space, sunshine and shade, privacy, noise, and fresh air that directly relate to the quality of life. Amenity for a development proposal can be considered in terms of the compliance with the planning controls, that seek to create a level of amenity, and the potential environmental impacts in terms of amenity.

The appropriate documented standard for provision of these qualities are:

- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004;
- State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development); and
- Coffs Harbour Development Control Plan 2015.

The Statement of Environmental Effects and the Architects SEPP 65 Design Statement adequately address these documents and these are not reiterated in this report; it is suffice to say that these documents demonstrate that the proposal is in compliance with the amenity considerations outlined in

the State Policies and the DCP. These reports demonstrate that the particular proposed height of Building B achieves compliance with amenity provisions such as solar and daylight access, natural ventilation, distances between buildings, overshadowing, privacy, private open space, apartment sizes, circulation, parking, acoustic privacy, responding to streetscape, landscaping and the like outlined in these planning controls.

Leaving aside the specific planning controls, the main issues to consider in terms of the impact upon the level of amenity from that part of the proposed development that exceed the height limit relate to views, overshadowing, wind and urban design.

Views: While there are several methods for determining view impacts, a simple methodology can be considered by following the rulings in the Land and Environment Court in the case of *Tenacity Consulting v Warringah Council* (NSW LEC 140: 7 April 2004). In this ruling there are four steps in determining view impacts, namely:

Step 1: Assessment of views to be affected.

Notes: Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.

Step 2: Consider from what part of the property the views are obtained.

Notes: For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

Step 3: Assess the extent of the impact.

Notes: This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating

Step 4: Assess the reasonableness of the proposal that is causing the impact.

Notes: A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

For this proposal the view impacts are appropriately considered in terms of the difference in impacts between the originally approved Building B and the proposed increase in height for Building B in this proposal. This is on the basis that the owners of the land can always proceed with the previous approval in the absence of the proposal under this application.

Views Affected: The land is part of the lower Coffs Creek floodplain and consists of flat parcel of land lying below the steep hills that extend above the flood plain further west and north of the subject land.

The land does not form part of any significant view corridor and there are no significant intrinsic or extrinsic views in this part of Park Beach affected by the proposal. The site is largely screened from the west by the Park Beach Shopping complex and the flat nature of the land to the south and east limits the opportunity for impacts upon views from these locations.

The main view shed areas that could be impacted by the increase in height of Building B are the lands to the north west that form the "Summit" development in the vicinity of Gerard and Summit Drives and the lands to the north in the vicinity of Manning Drive. These areas have views towards the ocean; it is expected that these ocean views are important to residents in these areas. The most valued views from these areas consist of distant views of the ocean and the ocean horizon line generally between Macauleys Headland and Park Beach and views towards Mutton Bird Island. The beach itself is obscured by the dunal and foreshore vegetation and the ocean views are interrupted by the tall apartment buildings that front Ocean Parade and its environs. The area has distant views of the surrounding hills to the west and south west, but these are not as significant with the views of the ocean prized by most people

The views from Manning Avenue and Nepean Close area are provided for the elevated dwellings generally east of Nambucca Avenue. The orientation of these roads make the significant ocean views from the dwellings fronting these roads to be generally focussed to the north east of the subject lands and as such the proposed change in building form under this proposal will have no significant impact upon the coastal views of these properties. There will be some interruption to the mid ground views and skyline of the urban area to the south and surrounding hills, but these views are not considered significant and in no case result in a significant obscuring of the more dramatic background ridgeline views westwards of these lands.

The views from the Summit development are generally orientated towards the subject land and could potentially be impacted. The views from residences in Summit Drive, Glade Court and the lower part of Dress Circle are generally obscured by the vegetation that extends along the Pacific Highway Road Reserve. The views from Aspect Drive and the upper part of Dress Circle are potentially impacted. The photomontage shown below shows the before and after views from this area; refer to photos below. The most significant views from these areas are distant views of the ocean and views of the ocean horizon. As can be seen by the photomontage the proposed Building B sits within a mid- ground of urban development and does not interrupt the significant background views of the ocean, Mutton Bird Island, the Harbour and Corambirra Point and its connecting break-wall.

Parts of property where views are obtained: The properties have varying outlook opportunities, but all obtain views to the property in a southward and eastward direction. The views are from decks, living areas and other rooms to the south and east of these properties. As stated above the main potential impact relates to residences in the Summit estate.

Extent of Impact: The photomontages of the original approved development and the proposed development with Building B highlighted show the potential impact in terms of views upon the summit area and Manning Avenue area. As can be seen by these figures the views of the ocean and prominent landmarks are not significantly impacted and the building generally falls within the surrounding urban areas.

The building will obscure some views of the York Street playing fields but these are not considered to be important in the context of this setting; it is to be acknowledged that Building A and B of the approved development obscured views of these playing fields to some extent. It is to be noted that the views from the coast towards the site are too distant to have any significant impact.

The photos below show the existing views and a photomontage of the views with the proposed development in place.



Existing View from Manning Avenue



Views from Manning Avenue with Building B superimposed



Existing view from Summit Estate



Views from Summit Estate with Building B superimposed



Existing view from Nepean Close



Views from Nepean Close with Building B superimposed

Reasonableness of Impact: The proposed Building B will change the views from the surrounding elevated areas. At present the views from the surrounding area are a mix of views of urban lands with mixed building forms, views of extensive greenfield areas associated with the York Street Playing Fields and undeveloped lands north of Arthur Street and views of the natural assets associated with the coastline. The views of the coastline, while disrupted by a number of taller buildings in Ocean Parade, are considered the most important views. The proposal will change the views of the mid- ground when looking towards the ocean but it will have minimal impact in terms of the ocean horizon views and the views of the main attractors in the area, namely, Mutton Bird Island, the Harbour and Corambirra Point and associated break-wall.

As can be seen by the montages, the view impacts are not significant as they do not significantly penetrate the important and highly valued ocean views; the views mainly impacted are those views upon the urban lands to the south and east and the York Street playing fields which are secondary to the ocean views.

There are no views of the beach, headlands, surrounding islands, important landmarks or any culturally important icons impacted by the proposal.

The potential view loss from the elevated residential areas near the Summit and Manning Avenue are not significantly adversely impacted by the revised proposal, with Building B increased by 4 storeys and Building A reduced by 3 storeys, compared to the originally approved proposal. The view impacts would be best described as falling into the category of 'negligible' to 'minor' impact.

Overshadowing: The development has been designed to maintain sunlight within the surrounding urban area. The graphics below show the likely shadow impacts from the proposed development.

As can be seen by the graphics below the proposal has no significant impacts upon the adjoining lands in terms of overshadowing. The shadows cast for most daylight hours fall within the confines of the subject land. In the worst case at 3pm during the winter solstice the shadows fall upon part of York Street and the Playing Fields, but this is not considered significant and is of a similar impact that was accepted with the originally approved development; refer to [Figure X below](#).

It should also be noted that the proposal comfortably meets the DCP standard for solar access described as follows;

Development is to be designed to allow for at least two hours of sunshine upon indoor living areas and private open space (both within the same site and on adjacent land) between 9.00am and 3:00pm on the 21 June of any given year.

It is to be noted that the proposal has no impact upon the access to sunlight of the dwellings adjoining the southern boundary in the standard nominated times.

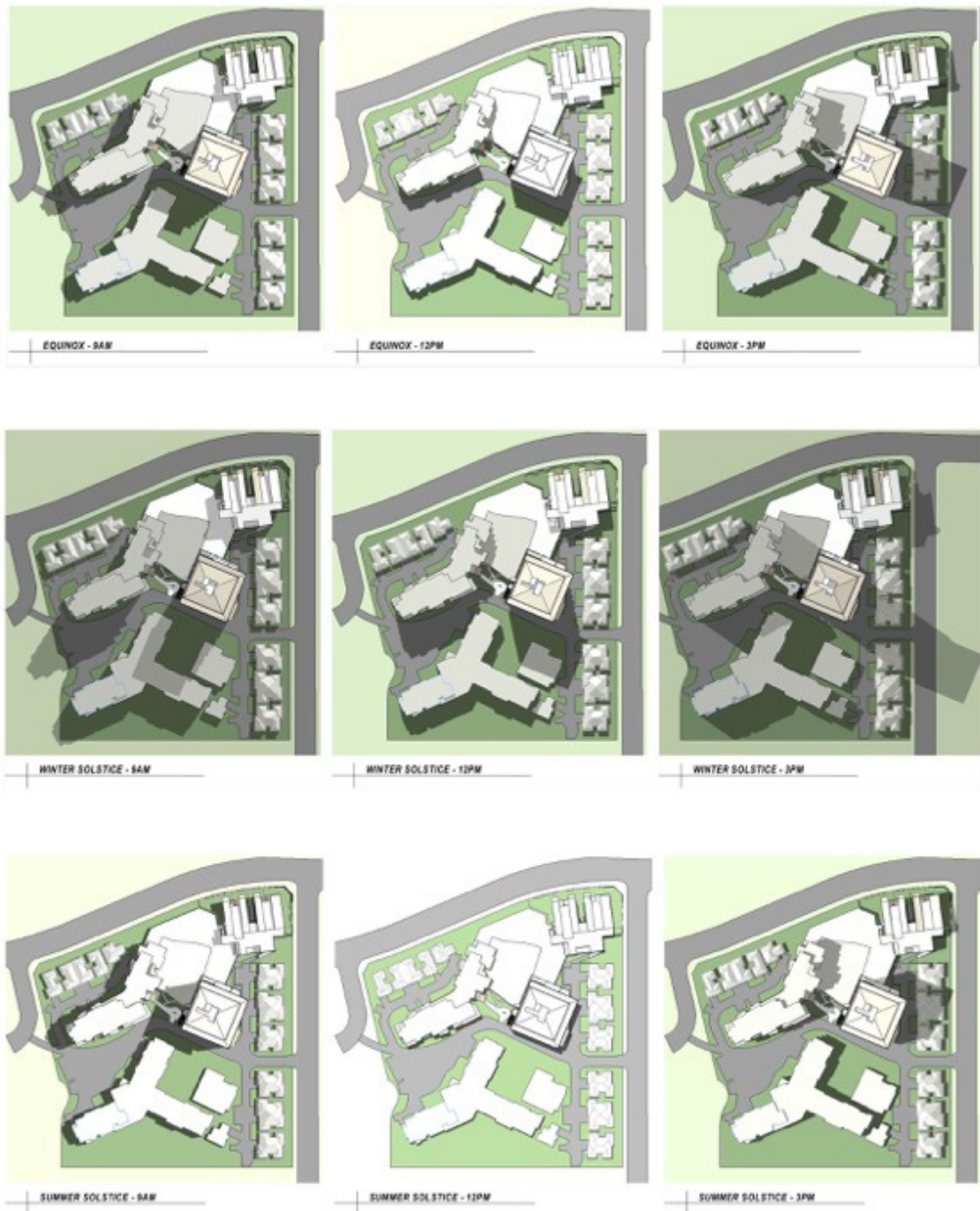


Figure 9: Shadow Diagrams 9am, 12 noon and 3pm

Note: Shadows are for summer and winter solstice and equinox



Figure 10: Shadow of approved and proposed development 3pm, 21 June (winter Solstice)

Wind: The most common winds within the Park Beach area are the strong southerly winds and north easterlies. At street level winds can be exacerbated by buildings with tall sheer walls; urban areas that are canyon like can create unpleasant conditions for pedestrians and cyclists. The provision of building podiums can elevate the wind above the street level and the changes in the wallscape of buildings can further mitigate wind tunnelling effects at the ground level. The proposal avoids wind channelling by careful site planning with the lower townhouse buildings located on the periphery of the site, having juxtaposed taller buildings in the centre and providing podiums for large parts of the development.

The change from two long boomerang shaped buildings reduces tunnelling effect as the tunnel is no longer formed. The design of the development with lower buildings on the periphery prevent wind tunnelling that can be experienced for isolated taller buildings. The proposal will have neutral impact in terms of wind when compared to the previously approved development.

Urban Design: Urban design is concerned with the built environment, landscape treatments and the relationships between the public and private domain. High quality urban design will provide for streetscape treatments that add to the urban fabric of an area and the sense of place provided by an area. At present Park Beach is a mix of low scale and high scale buildings set within a loose grid network of streets. The subject land is located on the main link road that services the eastern and southern parts of Coffs Harbour.

The subject land sits within a unique setting as it lies between the expansive York Street playing fields and the Park Beach Shopping Complex. The site is appropriately identified as a 'Special Area' under Council's DCP as it is a site that is tolerable of a signature development that can deliver a unique gateway and destination statement for the Park Beach area.



Streetscape view corner of York and Arthur Streets

The development provides for a better transitioning in building heights compared to the approved development. The reduction in height of Building A, afforded by the increase in height of Building B, will provide an improved streetscape appeal; the development will have a better transitional step up from the street level for both York Street and Arthur Street and provide a better celebration of this important gateway corner location.

The maintenance of a low-medium density ambiance along York Street and part of Arthur Street with the single storey townhouses and stepping of the building form for Building A, together with the taller buildings set further back and forming a backdrop to these, provides for a better urban design outcome.

The overall building form provides for a sensitive stepping of the buildings to create a foreground mid ground and background view to the playing fields and a transitional view on the approach from the east towards the site.



Stepping of Building form: view from north

The block graphic below shows the overall bulk and massing of the development compared to the approved development and a complying development that met the 15.5m height control. As can be seen by the graphic below the proposal provides for a more interesting building form and streetscape transitions, increased open space areas and a building form statement that will deliver a better sense of arrival for the Park Beach Area; the proposal will add to the legibility of the area. This proposal achieves more positive urban design outcomes than both the originally approved development and a complying development.



Figure 11: Block Graphic of Approved Development



Figure 12: Block Graphics of Proposed Development

The SEE has provided the assessment in terms of the details of design excellence for the development.

Having regard for the main urban design issues, it is concluded that the proposal provides for a wider range of urban design benefits than both the approved development and a development that complied with the height control.

The subject land has the capability to accommodate the taller apartment building while maintaining an appropriate urban character and level of amenity.

Objective2: to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities.

Park Beach, and the subject land, is a locality within the larger urban district that is Coffs Harbour (the district also encompasses the City Centre, Jetty, Park Beach). Park Beach is a highly structured urban area well serviced by urban support facilities. Urban structure is evident by legible grid street patterns, flat easily walkable grades, clearly defined land use, increased density of development, available transport, infrastructure and the range of the built environments and expansive open space areas. In fact, some of the tallest development permitted in Coffs Harbour LGA is at Park Beach, across the York Street playing fields from the land.

Highly structured urbanised areas are characterised by densities greater than low density areas, and include other land uses to support the residential population (i.e. commercial, business, industrial, community and recreational land uses). These characteristics are evident in the Park Beach locality. Urban support facilities that support taller development on the land, in this case development in the form of aged care housing, include;

- transport network in the form of public bus and taxi;
- a road network that permits direct and easy movement and connection to the Pacific Highway, collector and distributor roads and local roads;
- connection to City Centre, railway, airport, public base hospital, university, emergency services and the wider community services within Coffs Harbour;
- adjoining and nearby regional and neighbourhood retail facilities such as 'Park Beach Plaza', 'Northside' on Park Beach Road, Park Beach 'Homebase' large bulky goods centre and medical and dental facilities at Park Beach Plaza;
- financial service providers at the retail centres and on Park Beach Road;
- active and passive recreational facilities and social spaces such as Park Beach Bowling Club, 'Park Beach Surf Club', beachfront reserve, 'Hoey Moey' Hotel;
- open space in the form of York Street playing fields, beach reserves and parks;
- employment lands to the south and west of the land;
- restaurants and cafes in the local streets and retail centres;
- a wide array of tourist accommodation for supporting distant families visiting aged care residents;
- all necessary services and daily needs are available;
- adequate utilities networks.

Aged care is a valid and highly appropriate use of the land and suitable for an area with urban support services such as Park Beach. Taller development accommodating aged care housing can be located on this large land parcel, not simply because the land is a large parcel, but because the land is adequately serviced by urban support facilities.

The desired future character of Park Beach, expressed by the LEP, envisages development generally taller than existing predominantly 1-2 storey, occasionally up to 4 storey, residential development through Park Beach, with height controls ranging from 15.5m to 40m. It is good planning practice to permit taller development closer to those urban support facilities, where the benefits of urban consolidation can be realised.

The particular height of this proposed development is not so high that the urban support facilities cannot support the height; taller development is permitted within 200m of the land.

The capacity limitations of the urban support services are not related to height of buildings but are related to population accommodated in buildings. There are sufficient urban support services for the proposed aged care residences (approximately 300) expected under the overall development for the land. This proposal will not increase the number of beds or dwellings previously approved and as such will have a neutral impact upon the capacity of urban support services. As outlined above the urban structure at Park Beach is tolerable of this proposal for an increase in height for Building B and a decrease in height for Building A.

The proposal is in keeping with this objective.

To ensure that the height of future buildings has regard to heritage sites and their settings and their visual interconnections.

There are no heritage sites in the vicinity of the land. The nearest heritage sites are 1.6-2km from the land. Other heritage sites are more distant and disconnected visually from the land. The quantity of treed vegetation throughout the urban area and the topography obscure the development from heritage sites, except perhaps from the upper floor of the Coffs Harbour Primary School, where the proposal's upper floors might be visible at a 2km distance.

The proposed height for Building B will not dominate any heritage sites or their settings, hence there is no adverse impact on heritage sites. The visual interconnections are of no consequence to the nearest potentially impacted site 2km away.

The objective of the development standard is achieved notwithstanding the non-compliance of height with the development standard. It is sufficient to say that the distance of the land from the listed heritage sites is sufficiently great that the underlying purpose of this objective is not relevant to the development; hence compliance with the height control is unnecessary for this particular development.

The absence of environmental impact from the proposed development onto heritage sites is sufficient to justify contravening the height of buildings development standard in this particular case.

To enable a transition in building heights between urban areas having different characteristics.

Park Beach is an urban area with differing characteristics of land use, height and density. Within Park Beach the height controls are 8.5m, 11m, 15.5m, 22m and 40m. A 15.5m height control broadly applies to most of the residential and business land east of the Highway, with a strip of taller height controls applying along the beachfront. Lower height controls of 8.5m apply to the open space and low- density residential land to the north of the subject land beyond Arthur Street.

It is clear from the height of buildings map that there is a gradation of height along Ocean Parade (the beachfront) from 40m to 22m to 15.5m to 8.5m running from north to south along the beach. The height controls in the north-south direction further west from the beach reveal a much flatter profile with a constant height control of 15.5m flanked by an 8.5m height limit to the north and south of the 15.5m height control.

There is a gradation of height controls both east-west and north-south on axes passing through the land. An east-west axis has a height control of 40m at the beachside strip, dropping to 8.5m at York Street playing fields and stepping to 15.5m between York Street and the Pacific Highway then 11m west of the Pacific Highway until the railway line, then 8.5m in low density residential areas west of the railway. West of the railway is sufficiently far away to have no impact from the proposed development.

A north-south axis through the land reveals 8.5m height control for low density residential land north of properties along Arthur Street, stepping up to 15.5m along Arthur Street and extending south for the full extent of the urban areas, until the step back down to 8.5m at the Park Beach Caravan Park approximately 1 km south of the land. South of the York Street playing fields there is a pocket of land with a 22m height standard.

As stated above, the development provides for the maintenance of a low-medium density ambience along York Street and part of Arthur Street with the townhouses fronting these streets and the taller buildings forming a backdrop to these. A careful transition from the townhouses near the corner of Arthur Street and San Francisco Avenue to the taller Buildings B and C towards York Street where large open space areas are provided to transition to the York Street playing fields.

The overall building form provides for a sensitive stepping of the buildings to create a foreground, mid ground and background view to the playing fields and a transitional view on the approach from the east towards the site which adds to the legibility of the area and site. The proposal is superior to the approved development in this respect with a better transitioning with the reduced height for Building A allowing for a stepping up to Building B.

The urban areas west of the subject land support commercial uses and a regional retail centre. The additional height of Building B has no adverse impact on the function and use of the commercial land. The character of land immediately east of the site is open space used as playing fields. Shadow diagrams demonstrate minimal impact from the particular height of the proposed development on the open space land. Immediately east of the playing fields are taller residential buildings with a 40m height control. Good urban design practice would allow a transition in height from the 40m beachside strip to the 15.5m commercial lands to create a sense of arrival and departure within the precinct.

The objective of the development standard is achieved notwithstanding the non-compliance of height with the development standard.

To limit the impact of the height of a building on the existing natural and built environment.

The impacts of the proposed development on the natural and built environment in relation to those parts of Building B that exceed the 15.5m height control are assessed in the SEE. This assessment demonstrates that the impacts are manageable within the controls and requirements in the various relevant planning documents. The content of those assessments is not repeated here but is found through the SEPP Seniors Living, Seniors Living Policy, SEPP 65, Apartments Design Guide, LEP 2013, DCP 2015 assessments in the SEE.

All relevant planning controls and guidelines can be met. It is concluded that the particular height of these buildings has an impact that can be managed or that meets the controls and requirements expressed in the relevant Environmental Planning Instruments and DCP 2015.

The objective of the development standard is achieved notwithstanding the non-compliance of height with the development standard.

To encourage walking and decreased dependency on motor vehicles by promoting greater population density in urban areas.

The land is ideally located within the urban area of Park Beach which is flat and readily walkable, the streets are legible in a grid pattern, and daily shopping needs are 'right across the road' from the site, at the Park Beach Plaza shopping centre. The land is ideal for aged care housing due to the urban character of the location and access to services and facilities.

Walking around the land is directly encouraged, as the proposed development includes an internal walking 'trail' with appropriate fitness features for the aged resident population. By proposing taller development, with a smaller footprint upon the land, there is a greater open space component on the site. Residents can feel safer walking within the site as an option to walking in the public streets. One of the principal drivers for this proposal is to provide for better access for residents within the development site.

The proximity of the land to transport, medical, retail, financial and social services encourages walking rather than motor vehicle use. The development is close to the maximum permitted density providing a population that can enjoy such proximity benefits.

A height compliant design would result in a larger building footprint upon the land, thus impacting on open space, deep soil zones and recreation opportunities. Although there is room for pathways, there is a greater feeling of intrusion and reduction in amenity if buildings are more densely packed upon land, thus the incentive for walking would be diminished relative to the provision of a lower building form on the land.

The proposal will not alter the approved density of the development. In approving the original proposal Council was satisfied that the development promoted greater population density.

The resident population will have health benefits from a more active lifestyle with the land gradients providing an easy walk to facilities. This provides for better social connection and longer-term sense of belonging that may not be achieved in a more remote area located away from facilities or on undulating topography. The non-compliance of height does not prevent these outcomes.

The proposal addresses this objective in a positive way. Proximity to facilities and walkable grades will reduce the dependency on motor vehicle use. Taller development as proposed with improved open space on the land will encourage greater walking and less motor vehicle use, thus achieving the objective of the height control. The proposal adds to the creation of a more compact city which fosters walking and decreased dependency on motor vehicles.

The objective of the development standard is achieved notwithstanding the non-compliance of height with the development standard. In light of the above, the proposal meets all the height of buildings objectives.

5. The Circumstances of the Case:

The following considers the five-point test outlined in *Wehbe v Pittwater Council*:

Test 1: *that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard:*

Response: Compliance with the development standards for height would be unreasonable and unnecessary in this case as the objectives are better met by the variations associated with this proposal; this has been demonstrated above. In considering the issue of unreasonableness it is also appropriate to consider the outcomes from a complying development.

A complying development that had a 15.5m building height over the whole of the site would result in the following adverse outcomes:

- increased overshadowing of adjoining lands;
- loss of significant entry statement to Park Beach locality;
- a canyon effect along the York Street and Arthur Street streetscapes provided by a monotonous building form;
- an unremarkable urban form that would not help signify the regional role and function of the City;
- an increased building footprint and inferior open space areas;
- a development that afforded no significant views of the surrounding area, particularly the coast from the units on the higher levels;
- a likely change in the land use mix, with the viability of the development being significantly compromised; without the additional height the proposal misses out on the economies of scale provided by the development;
- a lost opportunity to provide for a large-scale seniors housing project in a highly urbanised area and potential loss of capital investment employment and multiplier benefits to the local economy.

As stated above the objectives of the height standard are better met by this proposal than a complying development and the approved development. Compliance with the height control in this circumstance would be unreasonable.

Test 2: *that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

Response: This is not applicable to this circumstance.

Test 3: *that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

Response: This is not applicable to this circumstance.

Test 4: *that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Response: The originally approved development provided for 5 buildings in excess of the height standard; refer to Figure 9 below. The This proposal will result in 3 buildings in excess of the height standard; refer to Figure 9 below.

The subject land is a unique, large parcel of land (i.e. 3.2hectares) that can tolerate a different planning approach to the surrounding lands which generally support conventional sized allotments. The subject land is large enough to contain impacts associated with overshadowing and privacy and is in a unique setting with a large expanse of green space to the east (i.e. York Street Playing Fields, a major shopping complex to the west (i.e. Park Beach Shopping Centre) and is encircled by roads on three boundaries. This setting provides the circumstances for a flexible approach to building heights.

The past approvals demonstrate that the height standard is generally irrelevant to this contained site and that the height of buildings in the development of the site are more appropriately considered on merit rather than a generic fixed height control; the height control applying to the site has become irrelevant due to past approvals.

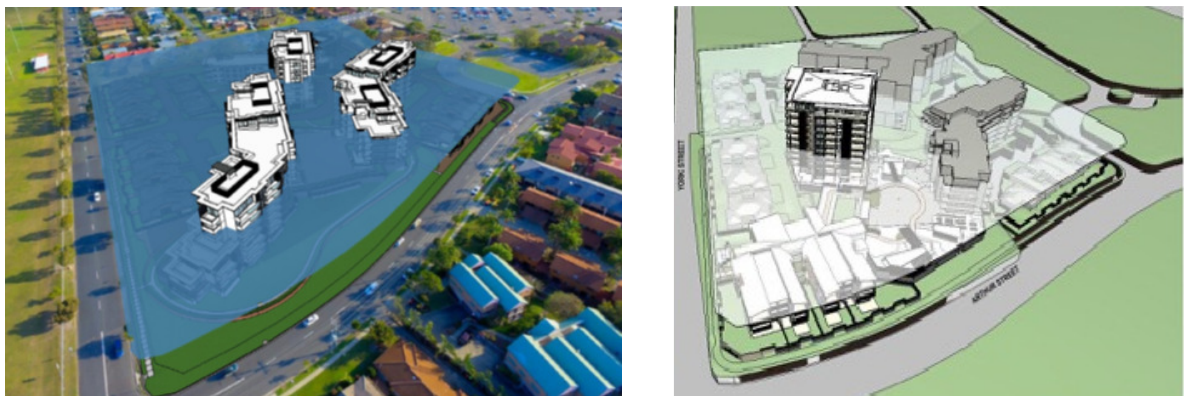


Figure 13: Height Exceedance of Approved and Proposed Developments

Test 5: *that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.*

Response: This is not relevant to this circumstance.

6. Environmental Planning Grounds:

The environmental planning grounds should appropriately relate to the broad definition of the environment as contained within the Environmental Planning and Assessment Act 1979 and is defined as follows;

“environment includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings.”

Having regard to this definition, it is appropriate to consider the broadest view of the environment which includes the social, physical, economic and cultural environment. This proposal delivers several specific benefits that would not be achievable with strict compliance with the 15.5m height standard. The main specific benefits include;

- a signature building statement that adds to the identity of the site and urban form of the Park Beach locality by creating a sense of arrival and point of difference at this unique location;
- an improvement in open space areas with the changes in the building footprint;
- improved streetscape outcomes with better transitioning of building form;
- a high quality designed contemporary development on one of the few large sites in the Local Government Area that can deliver a development of this scale;
- a development that provides an increased number of dwelling units with broad views of the hinterland and coastal zone from the new upper levels of the building (Building B); and
- reduced travel distance for residents and visitors accessing on-site services and facilities within the complex.

The graphics below show the reconfigured footprint of this proposal compared to the approved development and the improved open space areas as a result of the changes in the footprint that are achieved with allowing for an increase in height for Building B.



Figure 14: Building Footprint Comparison



Enhanced Opens Space

This proposal also provides several broad environmental planning benefits including;

- improved streetscape outcomes with better transitioning of building form with a stepping of Buildings A and B;
- positive urban design outcomes through modern building design excellence and improved public amenity;
- improvement to the regional attractiveness of the Coffs Harbour; and
- an opportunity for people to age in place/locality with all of life care and support.

There are also a number of other more specific benefits in relation to the detailed design issues of the proposal as compared to a compliant proposal and the approved development as outlined in the SEE.

The environmental planning grounds listed above justify contravention of the development standard in this particular case.

7. Strategic Issues:

NSW Department of Planning and Infrastructure “*Varying development standards: A Guide 2011*” states that:

In deciding whether to approve a development application and associated application to vary a standard, council is to consider whether non-compliance with the development standard raises any matter of significance for State and regional planning, and the public benefit of maintaining the planning controls adopted by the environmental planning instrument. As part of the consideration, council should examine whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and, in particular, the underlying objective of the standard. Council is also required to consider:

The Guide also requires Council to consider *how would strict compliance for the development hinder the attainment of the objects specified in Section 5(a) (i) and (ii) of the Environmental Planning and Assessment Act 1979.*

State and Regional Planning objectives: The principal State and Regional Planning objectives are embodied in the North Coast Regional Plan. Under the Plan Coffs Harbour is nominated as a Major Regional Centre and these Centres are to accommodate the majority of regional population growth and employment opportunities. Coffs Harbour is expected to serve the Coffs Harbour, Bellingen, and Nambucca sub region for government administration, transport, health, tertiary education and tourism.

The plan states that the Regional Cities will be core civic employment and service hubs. Under the ‘Regional Cities Action Plan’ opportunities to attract additional investment in the regional cities and growth precincts will be identified, such as infrastructure and public domain projects to support new development. The Plan suggests that there is scope to increase the range of compatible land uses in each growth precinct to promote economic viability and vitality. The vision for the North Coast under the North Coast Regional Plan is as follows:

The best region in Australia to live, work and play thanks to a spectacular environment and vibrant communities.

To achieve this vision, four goals have been set: under the Plan, namely:

- The most stunning environment in NSW;
- A thriving interconnected community;
- Vibrant and engaged communities; and
- Great housing choice and lifestyle options.

The Plan has a focus of increasing employment opportunities and promoting growth in the City Centres. The two strategic directions particularly relevant to this development proposal that are listed under the fourth goal are:

- *Direction 22- Deliver greater housing supply; and*
- *Direction 23- Increase housing density and choice*

As detailed earlier the proposal increases the choice and quality of housing within the site with a density that is commensurate with the land’s environmental capacity. This proposal delivers on the major Directions, Goals and Vision outlined in the North Coast Regional Plan; these would not be achieved as well by a development that adhered to the height standard. The viability of the development is assisted by the increase in height proposed which in turn helps deliver the significant benefits in terms of employment and aged care accommodation in the Park Beach locality.

The proposed development is consistent with the State, Regional and Local planning objectives for the locality.

Objectives under the Act: In terms of the objectives of the Act, under Section 5(a) (i) and (ii) the objectives are:

to encourage:

- *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- *the promotion and co-ordination of the orderly and economic use and development of land,*

The proposal provides for development within an urbanised area that is well supported by physical and social infrastructure services. The proposal will directly promote the social and economic welfare of the community through the provision of seniors housing and housing for people with a disability and will deliver economic benefits from capital investment and employment and environmental benefits outlined above.

The proposal has a minimal environmental impact upon natural resources and will help promote the City and improve the socio- economic welfare of the community. The proposal delivers a better environmental outcome than the approved development and a development that complied with the standards.

As stated above the orderly economic use and development of the land would suggest that taller buildings should be located in the more urbanised areas such as Park Beach. The creation of walkable cities, the promotion of vibrant cities and the delivery of legible cities are supported by planning practice that allows for greater heights and densities in such localities. The existing 15.5m (i.e. 3- 4 storey) height standard that applies to the subject land works against the orderly development of the land for its best and highest economic use; a signature seniors housing development could not be achieved on the land under the height standard. Accordingly, the variation proposed is justified in this circumstance to avoid hindering the objectives of the Act as detailed above.

8. The Public Interest:

The public interest is best served by developments that meet the stated objectives for the standards and the zone and have an overall community benefit; developments that deliver positive environmental planning outcomes with minimal environmental costs have an overall community benefit.

The objectives for the standards and the zone are important because they reflect the community values and aspirations. Compliance with the objectives of the R3 zone and the height objectives have been demonstrated above.

The potential environmental costs relate to the matters addressed above and include potential impacts on views, overshadowing, urban design and wind. The assessment has demonstrated that the proposal for variation to the height standard will have either a positive or neutral impact in relation to these matters.

The potential community benefits have been addressed above. When these benefits are balanced with the potential environmental costs it is clear that the proposal for variation to the height will have an overall community benefit compared to a complying development and the approved development.

In summary, there are sufficient environmental planning grounds to justify contravening the development standards for this proposal. The proposed development is consistent with the objectives of the standards and zone as set out above. Compliance with the development standard would result in an inferior development and poorer environmental planning outcomes and as such it would be unreasonable or unnecessary in the circumstances of the case to require adherence to the standard.

BENNELL & ASSOCIATES