



Amended Clause 4.6 Variation Request



Clause 6.9 - Lane Cove LEP 2009

**4-18 Northwood Road and
274-274A Longueville Road, Lane Cove**

Submitted to Lane Cove Council
On Behalf of Pathways Property Group

FEBRUARY 2021

REPORT REVISION HISTORY

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		Prepared by	Verified by
		Anthony Kazacos <i>Senior Associate</i>	Juliet Grant <i>Executive Director</i>
		Rebecca Gordon <i>Senior Associate</i>	
02	09/02/2020	Amended - Final	
		Prepared by	Verified by
		Elyse Kenny <i>Senior Project Planner</i>	Juliet Grant <i>Executive Director</i>
			

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1. EXECUTIVE SUMMARY

This formal written request has been prepared in accordance with Clause 4.6 of the *Lane Cove Local Environmental Plan 2009* (LCLEP) and accompanies a development application (DA) which has been submitted to Lane Cove Council in relation to 4-18 Northwood Road and 274-274A Longueville Road, Lane Cove ("the site").

The proposed development incorporates demolition, tree removal and site works followed by construction of a part 3 storey – part 5 storey mixed-use development including a 143 bed residential aged care facility (RACF) and commercial premises with basement parking and associated landscaping, retaining walls and public domain improvements. Subsequent development application(s) will be lodged for the future use of the commercial areas.

The subject site is zoned B4 Mixed Use under the LCLEP. Commercial premises and seniors housing are permissible uses with consent in the B4 zone.

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) also applies to the site. The proposed development satisfies the definition of "residential aged care facility" under the Seniors SEPP. Chapter 3 of the SEPP contains development standards that are applicable to DAs made pursuant to the Seniors SEPP. The height provisions in Clause 40(4) of the Seniors SEPP, however, apply only where a residential flat building (RFB) is not permitted. In this case, RFBs are permissible in the B4 zone and therefore Clause 40(4) is inoperable. As there are no other height standards for RACF in the Seniors SEPP, the applicable development standard for height is found in the LCLEP.

The site was subject to a site-specific planning proposal which was gazetted on 20 May 2020. The planning proposal originally proposed a height of 70.25 RL. The Department of Planning, Industry and Environment (DPIE), reduced the height limit to RL 66.25 prior to finalising the LEP amendment. As noted in the DPIE Finalisation Report, this reduction was made to facilitate a 3-storey street wall along Northwood Road. The proposed development is consistent with this vision for the site. Clause 6.9 of the LCLEP introduces site specific provisions in relation to development on the subject site. Under Clause 6.9(2)(a) the maximum height of any development on the land that is for the purposes of a RACF or a mixed-use development that includes a RACF, is not to exceed RL 66.25 metres.

While the majority of the building mass remains below or in line with the maximum height standard identified in Clause 6.9(2)(a), the maximum height of the proposed development is RL 68.65 which is a variation of 2.4 metres. The portions of the building that contravene the height standard are limited to the building's parapet, roof top services and the lift and stair overruns.

The proposed height exceedance has been created by a technicality as it would not exist if the development application relied on the Seniors SEPP. Under the Seniors SEPP, the height would be measured to the ceiling of the uppermost floor and would not include any roof top structures including the parapet, services or lift/stair overruns. However, given Clause 40(4) of the Seniors SEPP does not apply to this site (because RFBs are permissible in the B4 zone) the relevant controls contained in Clause 6.9 of the LCLEP apply. Consequently, the height is to be measured using the LCLEP definition, which is defined as "the vertical distance from the Australian Height Datum to the highest point of the building". This definition requires plant equipment and lift overruns to be included in the height measurement.

The portions of the building that exceed the LEP height standard do not comprise habitable space.. The services and lift/stair overrun (which exceed the standard to the greatest extent) have been located centrally on the roof to minimise visual impact from the public domain. The proposed parapet has been reduced in height. Together, these elements do not contribute to distinguishable bulk, scale, or density of the building.

To achieve full compliance with the LEP's development standard for height, the floor to floor heights would need to be lowered which would compromise the design and amenity of the resultant development.. The ground floor entry level has purposefully been given a generous floor to floor height to create high quality public domain spaces and facilitate the integrated view corridors. The proposed 3.2m floor to floor height on accommodation levels allow for a high level of internal amenity and is

required from an operational perspective to accommodate the high volume of air conditioning and mechanical services required for such a facility.

This request demonstrates that there are no environmental impacts as a consequence of this contravention of the maximum building height standard and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the objectives of the B4 Mixed Use zone and is in the public interest. Strict adherence to the height standard in this instance is therefore unreasonable and unnecessary.

2. INTRODUCTION

This request has been prepared in accordance with Clause 4.6 of the *Lane Cove Local Environmental Plan 2009* (LCLEP) to justify a variation to the maximum building height standard, as specified under Clause 6.9 of the LCLEP, a site-specific provision applicable to the subject site at 4-18 Northwood Road and 274-274A Longueville Road, Lane Cove.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

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

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

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]-[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [Clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [Clause 4.6(3)(b)];
3. That 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 [Clause 4.6(4)]

This request also addresses the requirement for the concurrence of the Secretary as required by Clause 4.6(4)(b).

3. STANDARD TO BE VARIED

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) applies to the site. The proposed development satisfies the definition of "residential aged care facility" under the Seniors SEPP, with Chapter 3 of the SEPP containing development standards that are applicable to DAs made pursuant to the Seniors SEPP.

The height provisions in Clause 40(4) of the Seniors SEPP, however, apply only where an RFB is not permitted. In this case, RFBs are permissible in the B4 zone and therefore Clause 40(4) of the Seniors SEPP is inoperable. As there are no other height standards for RACF in the Seniors SEPP, the applicable development standard for height is found in the LCLEP.

The site was subject to a planning proposal which sought to increase the height and floor space ratio and permit "residential care facilities" on the site. Amendment 29 to LCLEP was gazetted on 20 May 2020. The amendment introduced a site-specific clause (Clause 6.9) which states:

6.9 Development at 4–18 Northwood Road and 274–274A Longueville Road, Lane Cove

(1) This clause applies to land at 4–18 Northwood Road and 274–274A Longueville Road, Lane Cove, comprising the following lots—

- (a) Lots 1 and 2, DP 857133,*
- (b) Lot 1, DP 663462,*
- (c) Lot 4, DP 321048,*
- (d) Lots A, B, C, D and G, DP 307899,*
- (e) Lots 1 and 2, DP 445348,*
- (f) Lots A, B and D, DP 370042.*

(2) Despite Clauses 4.3 and 4.4, the consent authority may grant development consent to development on land to which this clause applies for the purposes of a residential care facility or a mixed use development that includes a residential care facility that will have—

- (a) a height of any building on the land not exceeding RL 66.25 metres, and*
- (b) a floor space ratio for any building on the land that exceeds the ratio shown for the land on the Floor Space Ratio Map by not more than 0.85:1.*

(3) However, the consent authority must not grant development consent to a mixed use development to which subclause (2) applies that results in the commercial floor space ratio of buildings on land to which this clause applies being less than 0.35:1.

(4) In this clause:

commercial floor space ratio of buildings on a site means the ratio of the total floor area used for commercial premises or medical centres to the site area.

The proposed development is for a mixed-use development that includes a "residential care facility" and the numerical value of the development standard being varied in this instance is RL 66.25 metres.

The development standard to be varied is not identified under sub-clause 4.6(8) and therefore is not excluded from the operation of Clause 4.6 of the LCLEP.

4. EXTENT OF VARIATION

Under Clause 6.9(2)(a) of the LCLEP, the subject site has a maximum building height standard of RL 66.25 metres.

The proposed mixed-use development includes a residential aged care facility, and has the following maximum heights:

- Top of parapet: RL 66.65 which is a variation of 0.4 metres
- Top of lift overrun: RL 66.85 which is a variation of 0.6 metres
- Top of the services: RL 68.05 which is a variation of 1.8 metres
- Top of stair overrun: RL 68.65 which is a variation of 2.4 metres.

Given the height is associated with a site-specific clause in the LCLEP, the height has been measured using the LCLEP definition, which in relation to the RL of a building is defined as "the vertical distance from the Australian Height Datum to the highest point of the building". This definition requires roof top plant equipment and stair/lift overruns to be included in the height measurement.

The site slopes from west to east towards the rear of the site. While the majority of the building mass remains below or in line with the maximum height standard identified in Clause 6.9(2)(a), the maximum overall height of the proposed development is RL 68.65 to the top of the stair overrun which is a variation of 2.4 metres. The other portions of the building that contravene the height standard are the building's parapet, the lift overrun, and the roof top services.

The height exceedances are limited to minor elements of the overall built form. While the parapet, services, lift overrun and stair overrun propose minor height exceedances of 0.4m to 2.4m, the remainder of the building complies with the maximum building height standard at RL 66.25 metres.

The lift and stair overruns and adjacent services have been set back from the edges of the building and are therefore inconsequential when viewed from the adjacent public domain in terms of their visual perception to contributing bulk to the building. They are also located in the centre of the roof and occupy only a small portion of the total roof area. The top of the parapet is 2 metres lower than the top of stair overrun and adds visual interest to the top of the building.

The extent of the height exceedance is shown in the following figures.

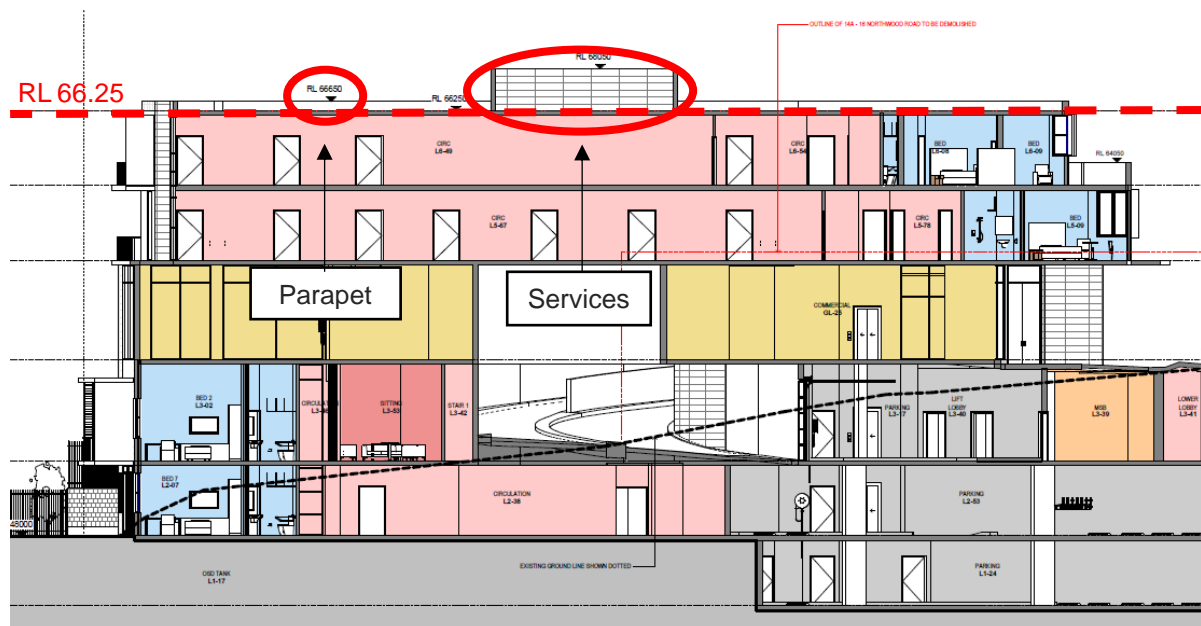


Figure 1: Extract from Section Plan, with maximum height limit highlighted with red dotted line (Source: Morrison Design Partnership)

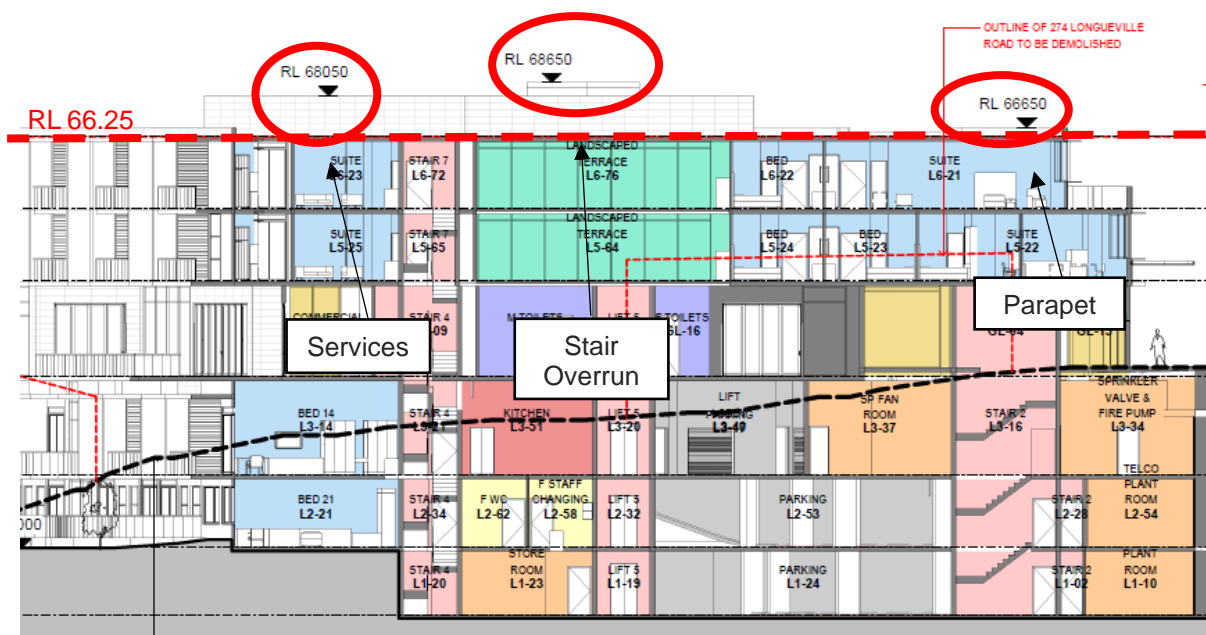


Figure 2: Extract from Section Plan, with maximum height limit highlighted with red dotted line (Source: Morrison Design Partnership)

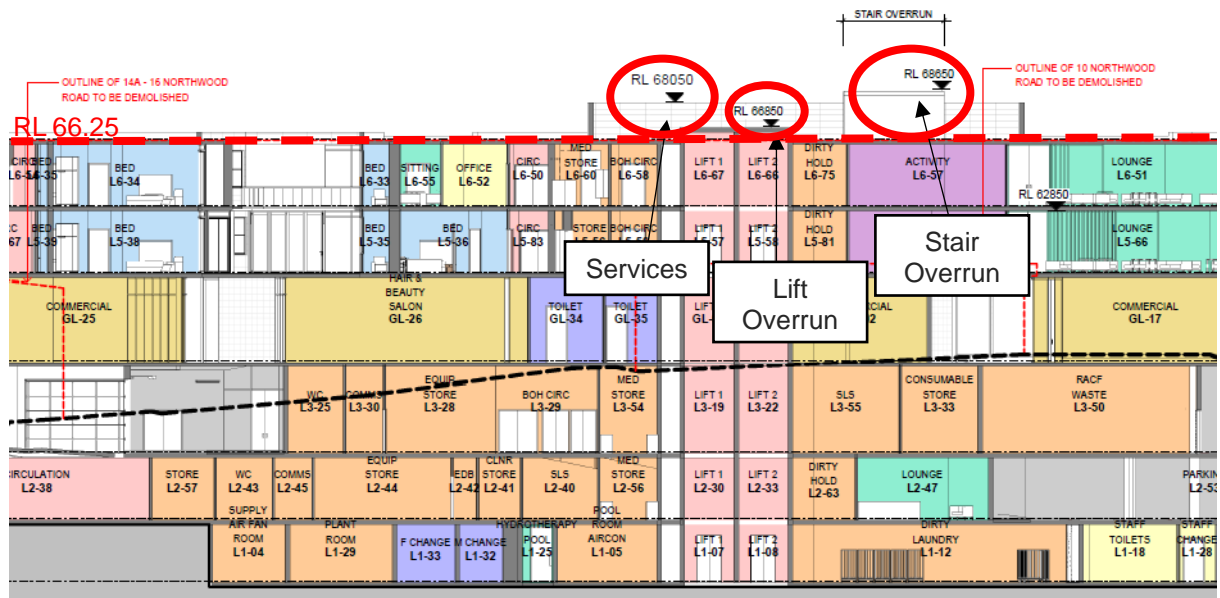


Figure 3: Extract from Section Plan, with maximum height limit highlighted with red dotted line (Source: Morrison Design Partnership)

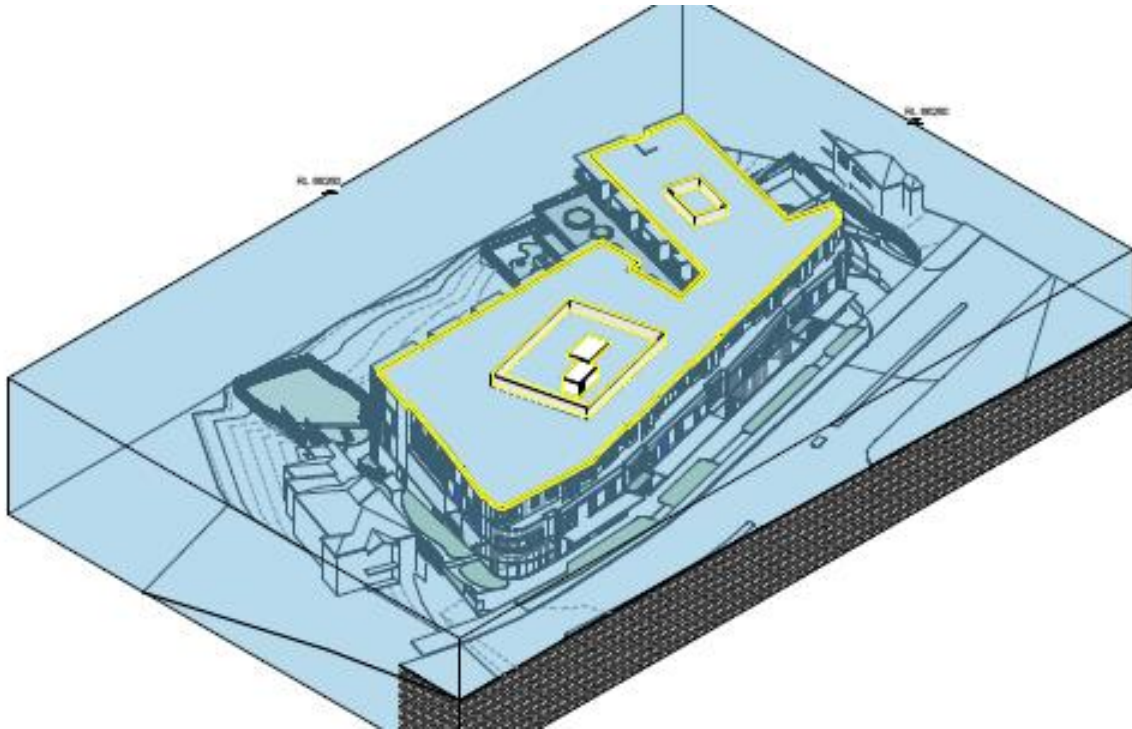


Figure 4: Height Plane – Aerial North West, with the elements shown in yellow representing the portions of the building exceeding the RL 66.25m height plane (shown blue) (Source: Morrison Design Partnership)

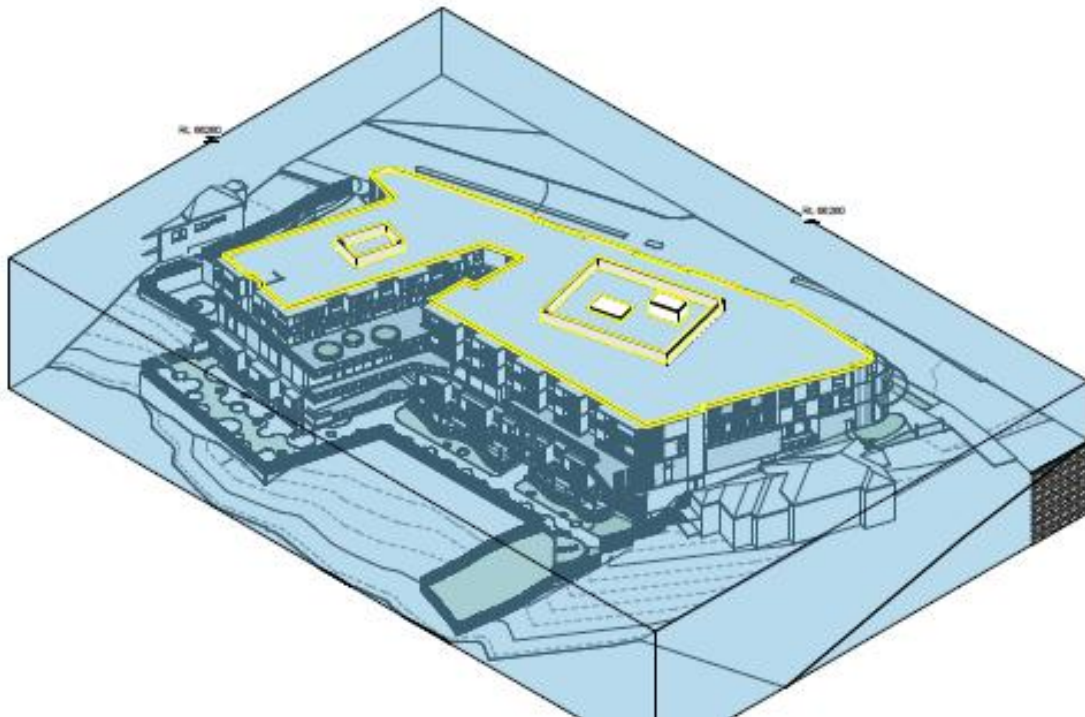


Figure 5: Height Plane – Aerial North East, with the elements shown in yellow representing the portions of the building exceeding the RL 66.25m height plane (shown blue) (Source: Morrison Design Partnership)

5. UNREASONABLE OR UNNECESSARY

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

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827).

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

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

It is sufficient to demonstrate only one of these ways to satisfy Clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

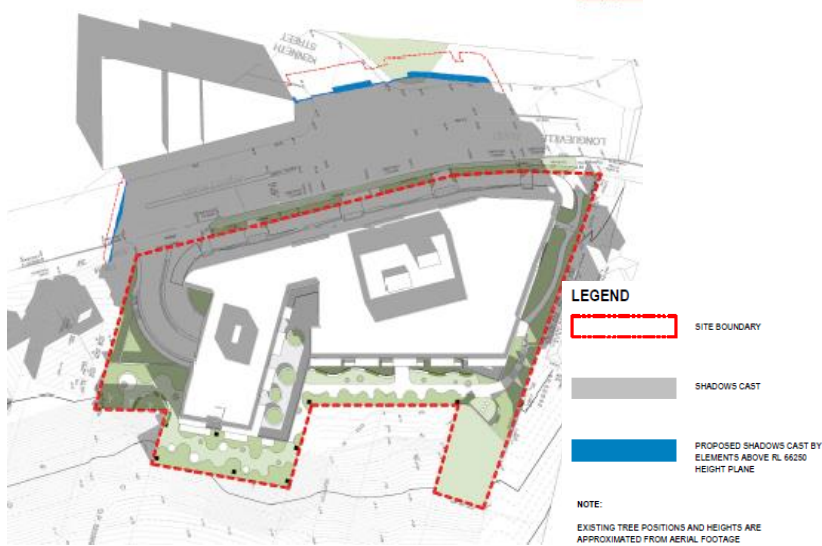
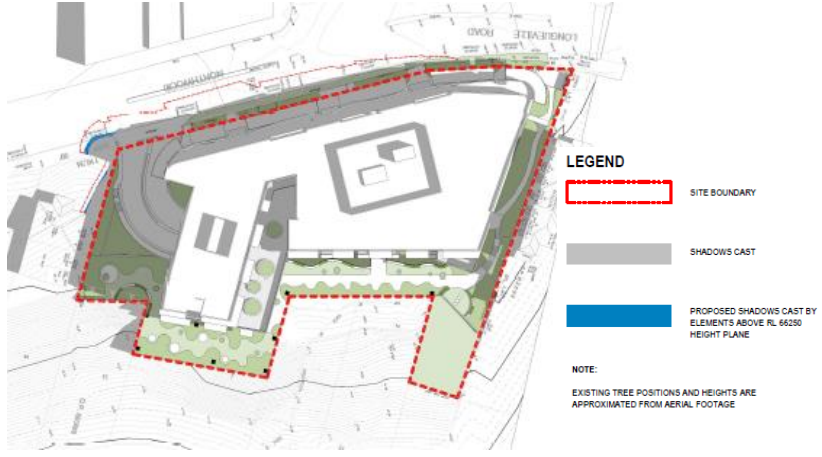
We have considered each of the ways as follows.

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

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (Test 1 under *Wehbe*). Given Clause 6.9 is a site specific provision and does not comprise any objectives, for the purpose of this test, since the variation is in relation to the height of the building, we have assessed against the objectives of Clause 4.3 Height of Buildings.

Table 1: Achievement of Objectives of Clause 4.3 of LEP.

Objective	Discussion
(a) to ensure development allows for reasonable solar access to existing buildings and public areas,	<p>The shadow diagrams prepared by Morrison Design Partnership confirm that the overall development, including the height departure, will allow reasonable solar access to all adjoining properties and the public space which will receive at least 3 hours of solar access in mid-winter.</p> <p>Extracts from the shadow diagrams are provided at Figure 6 to Figure 9 with the shadow impacts from the height exceedance shown in blue.</p> <p>At 9am during mid-winter, the building elements that exceed the height standard will cause additional overshadowing to a minor part of the Kenneth Street and Northwood Road road reserves. A small area of additional overshadowing will also occur to the Longueville Sporting Club's bowling greens. However, the overshadowing is mainly limited to the corner of the bowling greens where there are currently shading structures for the club's patrons. The extent of overshadowing, caused by the building elements that exceed the height standard, is considered minor as shown in Figure 6.</p>

Objective	Discussion
	 <p>LEGEND</p> <ul style="list-style-type: none"> SITE BOUNDARY SHADOWS CAST PROPOSED SHADOWS CAST BY ELEMENTS ABOVE RL 66250 HEIGHT PLANE <p>NOTE: EXISTING TREE POSITIONS AND HEIGHTS ARE APPROXIMATED FROM AERIAL FOOTAGE</p> <p><i>Figure 6: Proposed Shadows 9am - 22 June (Source: Morrison Design Partnership)</i></p> <p>By 12pm the shadows are no longer on the bowling green, and instead the proposed building is mainly shadowing itself (refer to Figure 7). The elements of the building that exceed the height standard will overshadow a small portion of the road reserve and a minor part of the adjoining neighbour's front yard only.</p>  <p>LEGEND</p> <ul style="list-style-type: none"> SITE BOUNDARY SHADOWS CAST PROPOSED SHADOWS CAST BY ELEMENTS ABOVE RL 66250 HEIGHT PLANE <p>NOTE: EXISTING TREE POSITIONS AND HEIGHTS ARE APPROXIMATED FROM AERIAL FOOTAGE</p> <p><i>Figure 7: Proposed Shadows 12pm - 22 June (Source: Morrison Design Partnership)</i></p> <p>By 3pm, the elements of the building that exceed the height standard will overshadow the adjoining dwelling house at 20 Northwood Road and small portions of the rear yards of the R2 zoned residential properties to the south (refer to Figure 8).</p>

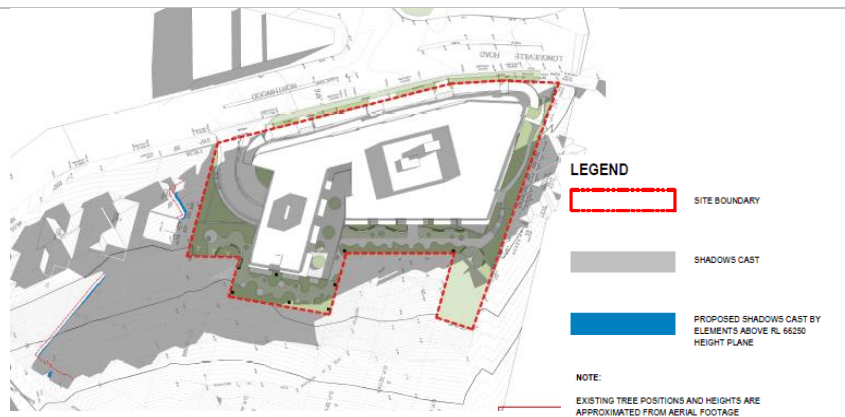


Figure 8: Proposed Shadows 3pm - 22 June (Source: Morrison Design Partnership)

As shown in Figure 9, the site's existing buildings overshadow the adjoining dwelling at 20 Northwood Rd, including the partial shadowing of the house's windows (along its northern elevation) and a portion of the back deck. The proposed development will increase overshadowing after 3pm, mainly to the house's back window (which likely provides solar access to a living room) and the remaining part of the deck, however the additional shadowing associated with the breach only falls on the roof of the dwelling.

This dwelling generally receives full solar access before 12pm, noting that it is only after 12pm that the proposal begins to overshadow the adjoining dwelling.

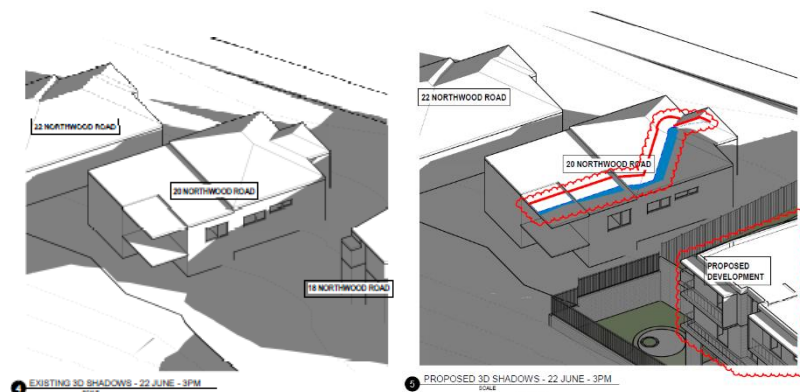


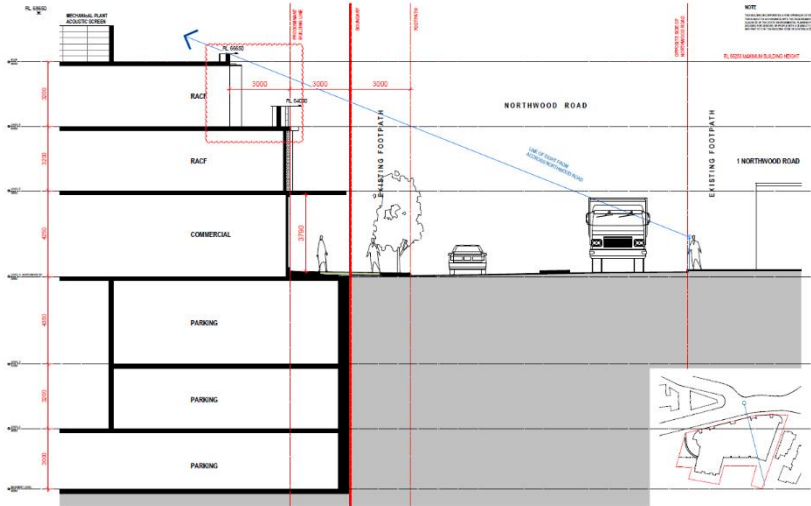
Figure 9: Existing (left) and Proposed (right) overshadowing on 20 Northwood Road at 3pm (Source: Morrison Design Partnership)

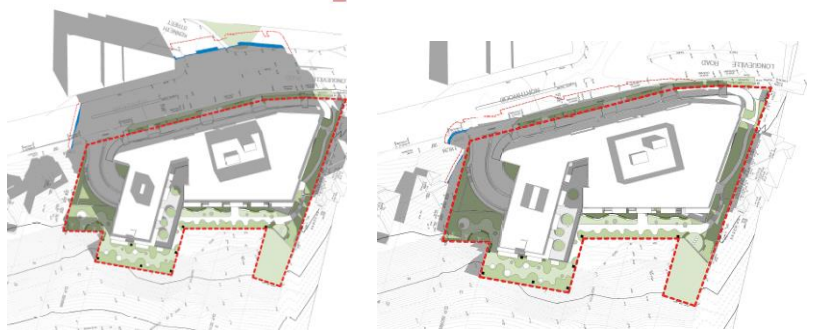

Public Interest

The Seniors SEPP requires that the proposed development provide “adequate” daylight to the main living areas and the main private open space areas of the neighbouring and nearby properties. While the SEPP prevails to the extent of any inconsistency with the DCP controls, it is noted that the site-specific DCP for the site requires that the proposed development provide solar access to the main living areas of neighbouring dwellings for a minimum of 2 hours in mid-winter.

Due to the orientation of the site, during the morning hours the majority of the overshadowing occurs within the Longueville/Northwood Road reserves to the west and in the afternoon the majority of

Objective	Discussion
	<p>overshadowing occurs to the adjacent bushland to the east and south-east of the site.</p> <p>The proposal does not result in any overshadowing of the existing residential flat building at 272 Longueville Road (to the north). Located to the south of the subject site is a single storey detached dwelling at 20 Northwood Road. The proposal does not result in any unreasonable overshadowing impacts to this dwelling or any other residential property located to the south, with a minimum of 3 hours of solar access being maintained in mid-winter (i.e. between 9am and 12pm). The amount of solar access is greater than that required under the site-specific DCP and is therefore considered acceptable.</p> <p>The surrounding buildings, including the bowling greens on the opposite side of Northwood Road, also receive reasonable levels of solar access (i.e. a minimum of 3 hours in mid-winter). There are no parks or public plazas near the site that would be impacted by overshadowing. For an assessment of the overshadowing impacts to surrounding footpaths and bushland areas, however, refer to item (c) in this table.</p> <p>The proposed development achieves this objective.</p>
<p>(b) to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,</p>	<p>The site is directly adjacent to several different zones, including R4 High Density Residential to the north and R2 Low Density Residential to the south.</p> <p>With the exception of the parapet, roof top services and the lift and stair overruns, the proposed development complies with the maximum height standard. No habitable floor space is located above the height standard.</p> <p>The protruding elements do not contribute additional bulk or density to the development as anticipated by the controls. The majority of the elements are inconsequential when viewed from the public domain and surrounding properties, in terms of its visual perception to contributing bulk to the building.</p> <p>The parapet creates visual interest and adds a high quality architectural element which can be seen from the surrounding area. Given it is part of the non-trafficable roof structure it will not pose any privacy impacts.</p> <p>The lift overrun, stair overrun, and roof top services are setback from the site's boundaries and mainly located in the centre of the roof. Access to the roof will be via the stairs only, noting that the lift terminates at level 6 (5th storey) of the building. As the stairs provide maintenance access only, they will not be in regular use and hence will not pose a visual or privacy impact to the surrounding area (refer to Figure 10).</p>

Objective	Discussion
	 <p>Figure 10: Public Domain Section (Source: Morrison Design Partnership)</p> <p>The protruding roof top structures (i.e. mechanical plant, lift overrun, and stair overrun) are located in the centre of the building. These elements will also have no impact on the privacy of neighbouring properties given that access to the roof is unavailable (except via the stairs for maintenance purposes). Future occupants of the development and their visitors will therefore be unable to overlook adjoining properties or the public domain from the rooftop area.</p> <p><u>Public Interest</u></p> <p>In relation to the public interest, the overall development is considered to be consistent with the objective of the standard for the reasons stated above and for the following additional reasons:</p> <ul style="list-style-type: none"> ▪ Significant setbacks are provided along each of the side setbacks, including a 6 metre setback to the north (to 272 Longueville Road) and a 2.5 metres to 18 metres setback to the south (to 20 Northwood Road). ▪ Significant plantings, including deep soil plantings, will be provided along each boundary, to also assist in mitigating any potential privacy impacts between the different zones. ▪ The development includes privacy screens to the upper level terraces which have been positioned and designed to prevent overlooking of the adjoining properties, specifically at 272 Longueville Road.
<p>(c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,</p>	<p>As shown in Figure 11, the elements of the building that exceed the height standard will overshadow a minor portion of road reserve between 9am and 12noon. The extent of overshadowing is minor and will have no detrimental impact on the public domain. After midday the elements that exceed the hight standard will cause no overshadowing on the public domain.</p>

Objective	Discussion
	<div data-bbox="555 353 1390 683">  </div> <p data-bbox="555 689 1390 763"><i>Figure 11: Proposed Shadowing on Public Domain, 9am to the left and 12pm to the right. Additional shadowing associated with the exceedance highlighted in blue. (Source: Morrison Design Partnership)</i></p> <p data-bbox="555 813 732 842"><u>Public Interest</u></p> <p data-bbox="555 851 1390 943">The proposed development is generally consistent with the setbacks and separation distances outlined in the site-specific development control plan for the site.</p> <p data-bbox="555 949 1390 1041">Shadowing to public domain areas is limited to shadowing to the road reserve and adjacent footpaths, to the north of the site between 9am and 12pm.</p> <p data-bbox="555 1048 1390 1263">To the east, the site shares a boundary with a bushland reserve, which can be accessed by the public. The development is compliant with the site-specific development control plan, which requires a setback of up to 10 metres along its eastern boundary. As shown in Figure 12, at 3pm parts of the south-eastern bushland are shadowed. The proposed development, however, does not overshadow the bushland during the morning hours or in the middle of the day.</p> <div data-bbox="555 1270 1390 1787">  </div> <p data-bbox="555 1798 1390 1852"><i>Figure 12: Proposed shadowing at 3pm, additional shadowing highlighted in blue (Source: Morrison Design Partnership)</i></p> <p data-bbox="555 1899 1390 2018">Overall, the proposed development provides an appropriate building envelope, generally compliant with the site-specific development control plan, which minimises shadowing impacts to surrounding public domain areas.</p>

Objective	Discussion
(d) to relate development to topography.	<p>The steep fall of the land has resulted in a height encroachment at the rooftop level of the building. The overall height results from the alignment of the ground floor to the existing street front/public domain and provision of appropriate floor to ceiling heights within the development.</p> <p>Lowering of the building or removing of the lift/stair overruns and services would result in a complying built form. This, however, would compromise the operation of the development and would lead to an outcome with reduced environmental planning benefits.</p> <p>The height exceedances are limited to minor elements of the overall built form of the development. The building design responds to the steep topography of the site, whilst reducing the need for additional excavation. Accordingly, the design of the development achieves this objective.</p> <p><u>Public Interest</u></p> <p>The site was subject to a site-specific planning proposal, which was gazetted on 20 May 2020. Given the sloping topography of the site, it was proposed to introduce a RL height limit as part of the planning proposal.</p> <p>The site slopes from west to east. The proposed development responds to the topography by providing a 2-storey street wall along Northwood Road and a total of 5-storeys (and 1 basement level) at the rear of the site.</p> <p>The stepping of the building to follow the natural fall of the land minimises the appearance of bulk and scale, is consistent with the anticipated built form for the site and therefore achieves this objective.</p>

As demonstrated in Table 1 above, the objectives of the building height standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the Height of Buildings development standard is demonstrated to be unreasonable or unnecessary and the requirements of Clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, however, the other recognised ways are considered as follows.

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

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

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

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

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

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

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

The zoning of the land is reasonable and appropriate and therefore this reason is not relied upon.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

This section demonstrates that there are sufficient environmental planning grounds to justify contravening the site-specific height development standard as required by Clause 6.9(2)(a) of the LCLEP.

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

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

As discussed in Section 4, the elements of the development which contravene the applicable height limit in Clause 6.9 of the LCLEP are the parapet, roof top services, lift overrun and stair overrun of the building (refer to 1 to 5).

Parapet

The proposed parapet has a maximum height of RL 66.65 which is a variation of 0.4 metres from the maximum height standard. The amended design has reduced the parapet height from 66.75/67.25 down to 66.65. Consideration was given to removing the parapet completely, however, as demonstrated in the following figure, the inclusion of a parapet at the Northwood Road frontage grounds the building and creates more visual interest when viewed from the public domain.



Figure 13: View of building from Northwood Road without parapet (top) with parapet (bottom) (Source: MDPa)

Although the reduced parapet results in a minor (0.4m) variation the development standard, as can be seen in the views above, removing the parapet entirely creates an abrupt end to the top of the built form. The inclusion of a parapet creates a continuous flow in the building without resulting in any additional floor space or adverse overshadowing on neighbouring properties or the public domain. Further, the parapet assists in screening the elements on the roof, including the services and stair overrun, when viewed from the opposite side of Northwood Road.

Height Definition

If this application was relying on the height controls established in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP), the height would be measured to the ceiling of the uppermost floor as per the height definition under the Seniors SEPP and would not include any roof top structures including the parapet, services or lift/stair overruns.

However, given Clause 40(4) of the Seniors SEPP does not apply to this site (because RFBs are permissible in the B4 zone) the relevant controls are contained in Clause 6.9 of the LCLEP. Consequently, the height is required to be measured using the LCLEP definition, which is defined as "the vertical distance from the Australian Height Datum to the highest point of the building". This definition requires plant equipment and lift overruns to be included in the height measurement.

The overall variation associated with this development is therefore a technicality. If the development was subject to the height definition in the Seniors SEPP, a variation request would not be required.

Floor to floor heights

The overall building height is dictated by the alignment of the ground floor to the existing street front/public domain, provision of appropriate floor to ceiling heights within the development and increased floor to ceiling heights at the ground level to facilitate the view corridors through the site in accordance with Council's DCP.

Lowering of the building or removing of the lift/stair overruns and services would result in a complying built form. This, however, would compromise the operation of the development and would lead to an outcome with reduced environmental planning benefits. The proposed 3.2m floor to floor heights for the upper levels allow for high level of internal amenity for residents. This is consistent with the Apartment Design Guide which identifies a 3.1m floor to floor height for a standard apartment. The additional floor to floor height assists from an operational perspective to accommodate the high volume of air conditioning and mechanical services (including bed lifting rails) required for a residential aged care facility.

As the height breach does not result in any adverse impacts, it is unreasonable and unnecessary to lower the building in order to comply with the maximum building height. A reduction in the building height could hinder patient care and impact the operation of the residential aged care facility as well as result in a loss of design benefits.

Environmental Planning Grounds

The environmental planning grounds to justify the departure of the height standard are as follows:

- The proposed height exceedance is created by the technical interrelationship between planning instruments. If this application was being made pursuant to the Seniors SEPP, the height would by definition be measured to the ceiling of the uppermost floor and would not include the parapet, services, or lift/stair overruns. However, given Clause 40(4) of the Seniors SEPP does not apply to this site (because RFBs are permissible in the B4 zone) the relevant height controls are contained in Clause 6.9 of the LCLEP and the LCLEP height definition is applicable, which requires the height to be measured to the highest point of the building.
- The proposed elements that exceed the height standard do not include habitable space and do not contribute to distinguishable bulk, scale, or density of the building. The stair overrun (which exceeds the standard the greatest) has been located centrally on the roof and is barely visible when viewed from the public domain.
- Compliance with the development standard will result in a poorer outcome for residents of the facility and also the local community. It will require the floor levels to be reduced, which will compromise the architectural intent of the design by reducing the proposed view corridors from

Northwood Road to the adjacent bushland, as well as the functional operation of the residential aged care facility.

- There will be no loss to any views as a result of the exceedance of the standard.
- The variation to the height standard will not result in any unreasonable overshadowing of neighbouring properties, with the adjoining neighbours and the adjacent bushland all receiving a minimum of 3 hours of solar access in mid-minter.
- The additional height will not result in any additional overlooking or loss of privacy for neighbouring properties. The lift and stair overruns are servicing elements that are well setback from the street and side boundaries and do not provide access to habitable space.
- There are no adverse environmental impacts as a result of the proposed exceedance of the standard.

7. PUBLIC INTEREST

In this section it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. This is required by Clause 4.6(4)(a)(ii) of the LEP.

In section 5 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the B4 Mixed Use zone.

Table 2: Consistency with B4 Zone Objectives.

Objectives of B4 Mixed Use Zone	Discussion
To provide a mixture of compatible land uses.	The proposed development includes a mix of uses, including a residential aged care facility. Along the ground level, it is proposed to include a "health and wellbeing" precinct, including a range of commercial uses, to be used by both residents of the aged care facility and also the local community.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	<p>The site is in a highly accessible location, within the Northwood local centre, which is serviced by regular bus services to surrounding centres such as Lane Cove, Crows Nest and the North Sydney CBD.</p> <p>The location of commercial uses, along the development's ground level, will activate the Northwood centre and will encourage local residents to use alternative modes of transportation such as walking, cycling and public transportation.</p>
To encourage urban design maximising attractive public domain and adequate circulation space for current and future users.	<p>As part of the preparation of the planning proposal, significant urban design analysis was undertaken to ensure the proposed development was appropriate given the site's location. This analysis identified several opportunities to enhance the public domain, such as including view corridors from the public domain to the adjacent bushland, through site links and an increased setback along Northwood Road for additional landscaping. This will allow for appropriate levels of circulation space for existing and future pedestrians visiting the site.</p> <p>A site-specific development control plan was prepared to ensure that these opportunities and benefits were provided in the detailed design of the development.</p> <p>The proposed development is generally consistent with the site-specific development control plan and will enhance the public domain.</p>
To maximise sunlight for surrounding properties and the public domain.	As outlined in Table 1, the proposed development is compliant with the site-specific development control plan, which will ensure surrounding properties, public domain area and adjacent bushland receive reasonable and appropriate levels of sunlight.

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 5 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to Clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

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

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

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

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

9. CONCLUSION

This submission requests a variation, under Clause 4.6 of the Lane Cove *Local Environmental Plan* 2009, to the building height development standard under Clause 6.9 and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the B4 Mixed Use Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.
- The variation represents a technical non-compliance of the standard. Given this application is being made pursuant to the Seniors SEPP, the height would ordinarily be measured to the ceiling of the uppermost floor and would not include the parapet, services or lift/stair overruns. However, given Clause 40(4) of the Seniors SEPP does not apply to this site (because RFBs are permissible in the B4 zone) the relevant height controls are contained in Clause 6.9 of the LCLEP and the LCLEP height definition is applicable, which requires the height to be measured to the highest point of the building.

The development achieves the objectives of the development standard and is consistent with the objectives of the B4 Mixed Use zone notwithstanding non-compliance with the site-specific building height standard and is therefore in the public interest. The concurrence of the Secretary can also be assumed in accordance with Planning Circular PS 18-003.

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