

8 March 2019
Our Ref: 9890A.cl4.6



planning consultants

**RE: WRITTEN REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD
HEIGHT OF BUILDINGS DEVELOPMENT STANDARD
PROPOSED SENIORS HOUSING DEVELOPMENT
284 CASTLE HILL ROAD AND 411-415 & 417-419 OLD NORTHERN ROAD,
CASTLE HILL**

1.0 Introduction

DFP has been commissioned by Anglican Community Services (ACS) to prepare a request pursuant to clause 4.6 of *Hornsby Local Environmental Plan 2013* (Hornsby LEP 2013) in respect of the proposed seniors housing development at Anglicare Castle Hill, 284 Castle Hill Road and 411-415 & 417-419 Old Northern Road, Castle Hill (the Site).

The site is subject to three building height controls:

1. An 8m building height development standard under clause 40(4)(a) of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (SEPP Seniors). This building height is a development standard is measured from the top most ceiling of a building to the ground level below. SEPP Seniors does not provide a numeric control for structure above ceiling.
2. A two-storey height limit adjacent to a boundary of the site under clause 40(4)(b) of SEPP Seniors. The SEPP includes a notation to explain that the purpose of this paragraph is to avoid an abrupt change in the scale of the development in the streetscape.
3. An 8.5m building height development standard under clause 4.3 of Hornsby LEP 2013. This building height is a development standard and is measured from ground level (existing) to the highest point of the building.

The proposed development involves a variation to these three building height development standards which are all addressed in this written request to vary the development standards.

2.0 Hornsby Local Environmental Plan 2013

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) of the LEP states the objectives of the clause as follows:

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

Our response to these provisions is contained within this submission.

2.2 Subclause 4.6(2) – Consent may be granted

Subclause 4.6(2) provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

The height of buildings development standards are not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

2.3 Subclause 4.6(3) – Written Request

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- “(3) *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:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.”*

The proposed development does not comply with the height of buildings development standard pursuant to clause 4.3 of Hornsby LEP 2013 and clauses 40(4)(a) and 40(4)(b) of SEPP Seniors however, strict compliance is considered to be unreasonable and unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the building height variation as set out in this written request.

2.4 Subclause 4.6(4) – Written Request

Subclause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- “(a) *the consent authority is satisfied that:*
- (i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.”*

Furthermore, subclause 4.6(5) provides that in deciding whether to grant concurrence, the Secretary must consider:

- “(a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

The remainder of this written request for exception to the development standard addresses the matters required under subclauses 4.6(4) and 4.6(5) of the LEP.

2.5 The Nature of the Variation

Controls and Nature of the Variation

The site is subject to three building height controls:

1. An 8m building height development standard under clause 40(4)(a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors). This building height is a development standard is measured from the top most ceiling of a building to the ground level below. SEPP Seniors does not provide a numeric control for structure above ceiling.
2. A two-storey height limit adjacent to a boundary of the site under clause 40(4)(b) of SEPP Seniors. The SEPP includes a notation to explain that the purpose of this paragraph is to avoid an abrupt change in the scale of the development in the streetscape.
3. An 8.5m building height development standard under clause 4.3 of Hornsby LEP 2013. This building height is a development standard and is measured from ground level (existing) to the highest point of the building.

It should be noted that the 8m height line is not representative of the building height of a resultant building as the height is measured to the ceiling and therefore does not include roof structure. The 8m and 8.5m building height controls are therefore not comparable. The 8 metre building height control in the SEPP is somewhat misleading. Allowing for roof structure and lift overruns, a building compliant with the development control under SEPP Seniors could feasibly be 9.5m to 10m to the top of the building.

Clause 3 – Interpretation of SEPP Seniors provides guidance on how the 2 storey height control is calculated. The meanings in clause 3 relevant to height are:

*In calculating the **number of storeys** in a development for the purposes of this Policy, a car park that does not extend above ground level by more than 1 metre is not to be counted as a storey.*

ground level means the level of the site before development is carried out pursuant to this Policy.

Figure 1 is an extract from DA-410 Building Height Plane Diagram (**Attachment 1**). The dark blue colour identifies the parts of the building that exceed the 8m height of building development standard under SEPP Seniors.

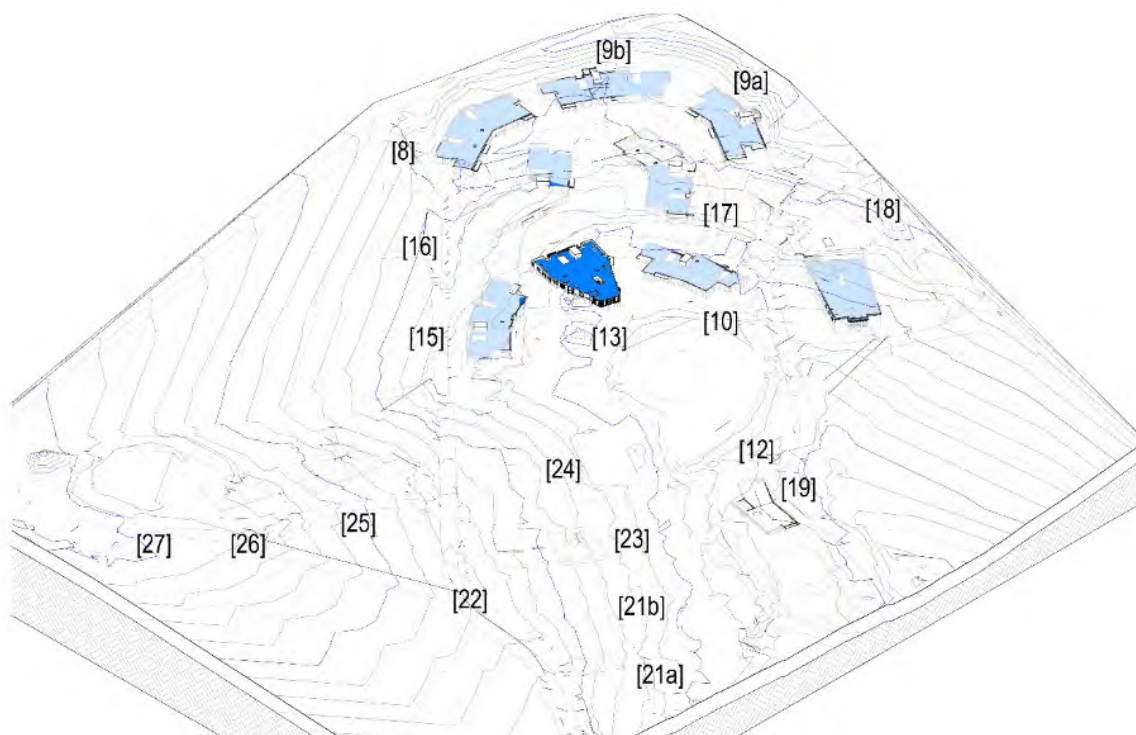


Figure 1: Proposed variations to the 8m height of buildings development standard under SEPP Seniors.

The proposed villas, café and administration buildings comply with the 8m building height development standard of SEPP Seniors. The buildings that depart from the development standard are summarised in **Table 1** including the location and nature of the variations.

Table 1 Summary of Variations to 8m SEPP Seniors Height Control		
Building	Location of the Variation	Nature of Variation
B9A (Apartment)	North-east corner of ceiling to Apartment L2-02 (localised)	Minor breach
B13 (Apartment)	Level 3	2.5m to 3.0m ^{Note 1}
B15 (Apartment)	South-west corner of ceiling to Apartment L2-03	Minor breach
B16 (Apartment)	North-east corner of ceiling to Apartment L2-08	Minor breach

Note 1: Height variations as measured by DFP Planning from DA209

Figure 2 is an extract from DA-410 Building Height Plane Diagram (**Attachment 1**) identifying the parts of the buildings that exceed the 8.5m height of buildings development standard under clause 4.3 of Hornsby LEP 2013.

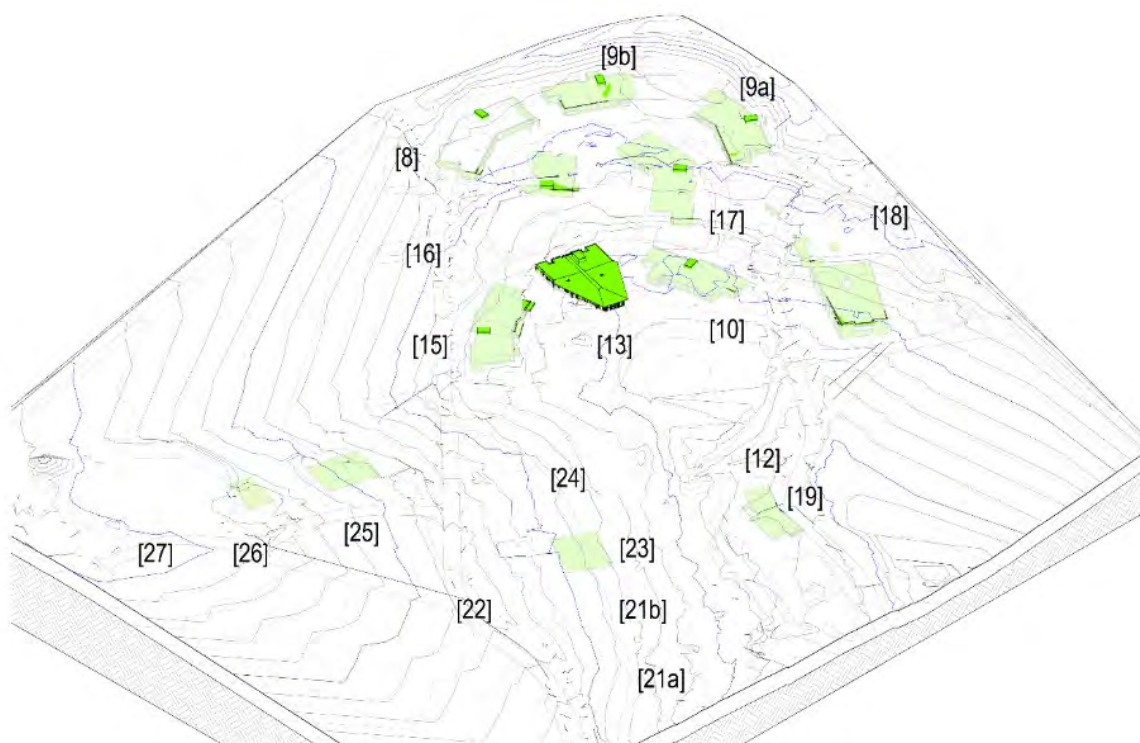


Figure 2: Proposed variations to the 8.5m height of buildings development standard under Hornsby LEP 2013.

The proposed villas, café and administration buildings all comply with the 8.5m building height development standard of Hornsby LEP. The buildings that depart from the development standard relate to the residential care facility and apartment buildings and **Table 2** summarises the location and nature of the variations under Hornsby LEP.

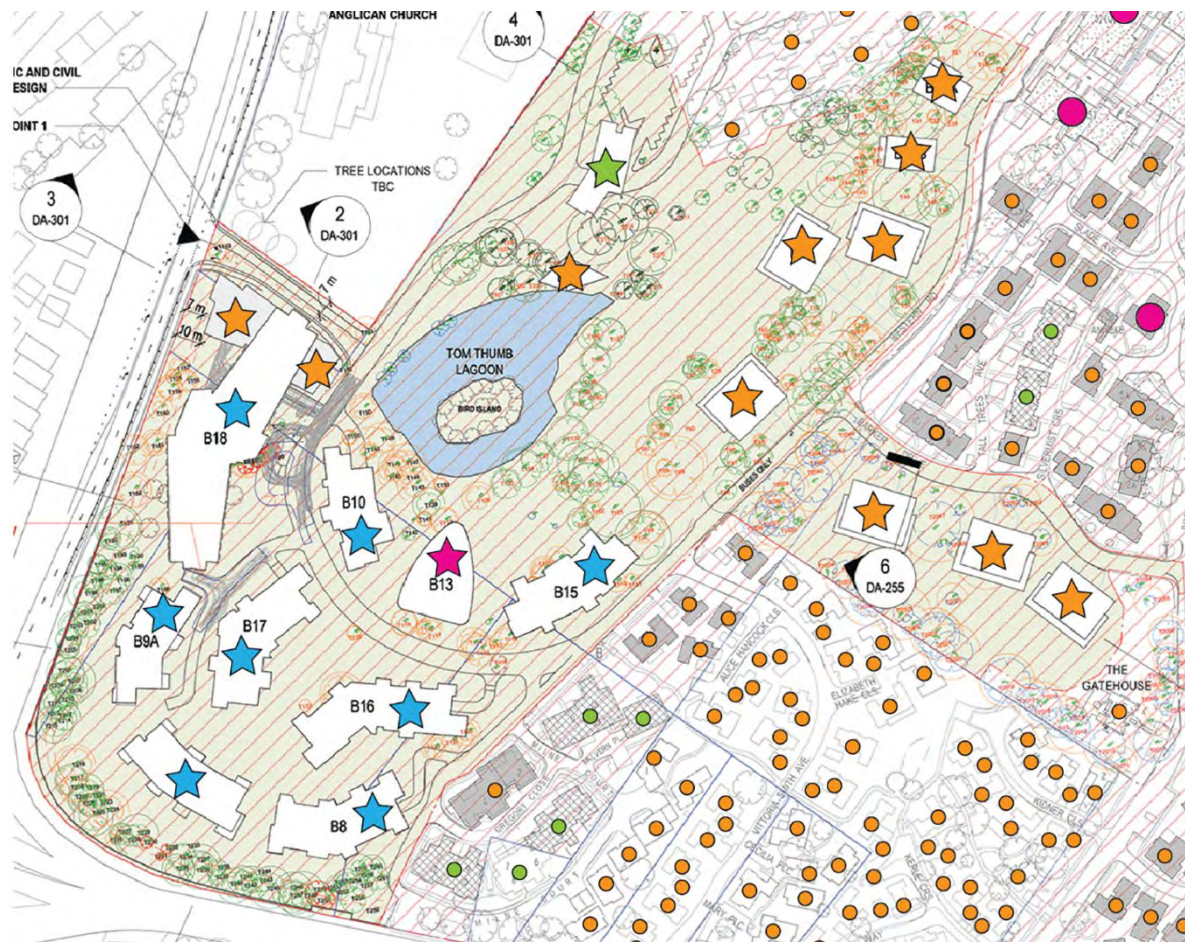
Table 2 Summary of Variation to 8.5m LEP height control

Building	Location of the Variation	Nature of the Variation
B8 (Apartment)	Lift over-run (south elevation) North-west corner of building	1.1m Minor breach
B9A (Apartment)	Lift over-run (west elevation) Eastern edge of parapet Small section of roof	1.3m Minor breach Minor breach
B9B (Apartment)	Lift over-run (south elevation) Northern edge of parapet Small section of roof (central)	1.4m Minor breach Minor breach
B10 (Apartment)	Lift over-run (south elevation) North-west corner of parapet	0.4m Minor breach
B13 (Apartment)	Lift over-run (south elevation) Roof and fourth storey	4.3m 2.9m to 3.6m
B15 (Apartment)	Lift over-run (east elevation) Roof in south-west corner Western parapet	1.1m Minor breach Minor breach
B16 (Apartment)	Lift over-run (central) Roof (central)	1.1m Minor breach
B17 (Apartment)	Lift over-run (central) Roof northern parapet	0.7m Minor breach
B18 (RCF)	North-east corner of roof (fourth storey) Northern parapet	Minor breach Minor breach

Note 1: Height variations as measured by DFP Planning from various elevations or section drawings.

Attachment 2 illustrates the proposed and existing number of storeys of buildings on the development site. An extract is provided as **Figure 3** below. This indicates the departures from the 2 storey height control under clause 40(4)(b). The villas, café and administration building and part of the residential care facility (Building 14) comply with the two storey control. The departures from the two storey height control are as follows:

- Building 8 (Apartment) = 3 storeys;
- Building 9A (Apartment) = 3 storeys;
- Building 9B (Apartment) = 3 storeys;
- Building 10 (Apartment) = 3 storeys;
- Building 13 (Apartment) = 4 storeys;
- Building 15 (Apartment) = 3 storeys;
- Building 16 (Apartment) = 3 storeys;
- Building 17 (Apartment) = 3 storeys;
- Building 18 (RCF) = part 3 storeys and part 4 storeys.



LEGEND


- | | | | |
|--|---|---|--|
|  Existing Single Storey |  Existing Two Storey |  Existing Three Storey |  Existing Four Storey |
|  Proposed Single Storey |  Proposed Two Storey |  Proposed Three Storey |  Proposed Four Storey |

Figure 3: Existing and proposed height of buildings (number of storeys) across the Anglicare Castle Hill site.

2.6 The Objectives of the Development Standard

SEPP Seniors

Clause 40 of SEPP Seniors 2004 does not contain specific objectives in relation to building height. However, reference has been made to the aims of the SEPP in clause 2, which are reproduced below.

"2 Aims of Policy

- (1) *This Policy aims to encourage the provision of housing (including residential care facilities) that will:*
 - (a) *increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
 - (b) *make efficient use of existing infrastructure and services, and*
 - (c) *be of good design.*
- (2) *These aims will be achieved by:*
 - (a) *setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
 - (b) *setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and*
 - (c) *ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes."*

Hornsby LEP 2013

Clause 4.3 of the LEP states the objectives of the height of buildings development standard as follows:

- "(1) The objectives of this clause are as follows:*
- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality."*

2.7 The Objectives of the Zone

The Land Use Table to Part 2 of Hornsby LEP 2013 states the objectives of the R2 Low Density Residential Zone (the R2 zone) as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

2.8 The Grounds of the Objection

The proposed variation to the development standard has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary and have sufficient environmental planning grounds to support a variation for the following reasons:

- The proposed seniors housing development is consistent with the objectives of the height of buildings development standard, the objectives of the R2 zone and the aims of SEPP Seniors;

- The site is its own entity and is self-contained, with limited relationship with the surrounding urban context. The proposed building heights are in keeping with the scale, height and character of the Anglicare Castle Hill village and the surrounding development external development to the site;
- The scale, form and character of development is consistent with the scale, form and character of development across the Anglicare Castle Hill site;
- Some of the departures are minor and localised due to changes in the land level (e.g. dips in the topography) and it is unreasonable to change the building form to account for irregular changes in topography;
- Some departures arise due to the slope of the land and the need to maintain a consistent floor plate. These departures typically occur at the 'end' of a building and are minor in extent and have negligible visual or amenity impact;
- There are no adverse overshadowing impacts on any adjoining development;
- There are no adverse privacy impacts on adjoining development;
- The proposed seniors housing development will read as one and two storey development when viewed from Castle Hill and Old Northern Roads;
- Wide setbacks have been maintained to Castle Hill and Old Northern Roads enabling the retention of the existing mature trees along these frontages;
- Building 13 (four-storey residential apartment building) has been located centrally within the site and is not adjacent to any external site boundaries or internal boundaries with Castle Hill village;
- The additional height does not result in a departure to the 0.5:1 or 1:1 Floor Space Ratio controls under SEPP Seniors; and
- Improved site planning outcomes by consolidating the new development in the southern portion of the site enabling the enabling the protection of mature trees north of Tom Thumb Lagoon and the creation of an expansive green central spine.

The following sections describe these concepts in greater detail.

2.8.1 Topography

The departures all relate to the buildings south of Tom Thumb Lagoon. The site falls from the Old Northern Road and Castle Hill Road site boundaries towards Tom Thumb Lagoon. There are embankments on the site boundaries and these embankments are retained. The ground levels vary from approximately RL 172m at the toe of the embankment to RL 165m on the edge of Tom Thumb Lagoon, being a 7m level change from the toe of the embankment to the Lagoon. The fall is not even and there are dips and rises.

Where possible some of the buildings have been stepped. For example:

- The residential care facility building has been stepped at its northern end to into account for the fall of the land.
- Apartment buildings 16 and 17 have been stepped with a 1.55m level change occurring midway along each floor level (at the lift core).

Residential care facility buildings tend to have larger floor plates to achieve disabled access on each floor level and for operational reasons the floor levels need to be continuous and cannot 'step' with the land. Similarly, the floor plates of apartment buildings are not always conducive to stepping to accommodate gradual level changes.

Whilst steps have been proposed in some buildings to manage the height control, the floor plates are such that there are some departures where the land continues to fall. These departures occur at one 'end' of the building and are minor and do not give rise to any adverse impact. It would be unreasonable to step the buildings further which will cause operational constraints for the residential care facility and add additional construction costs such as the introduction of an additional lift core for apartment buildings with little benefit in terms of the external appearance of the buildings achieved by complying with the 8m and 8.5m height controls.

There are also some departures that arise due to dips in the landform. It is difficult and unreasonable to alter the design of the buildings to respond to these localised changes in topography when the eight departure from the 8m and 8.5m height control will not be apparent.

2.8.2 Scale, form and character

Anglicare Castle Hill is one of the oldest retirement villages in Australia and the existing pattern of development on the site reflects the changing nature of seniors housing residential design since 1959. The existing village provides a diverse range of seniors housing typologies including residential care facilities, residential apartment buildings, villas and townhouses (**Figures 4 – 6**). The seniors housing on the site is complimented by a range of ancillary facilities and buildings including a chapel, bowling green, café, medical facilities and community buildings. These facilities provide services to support the seniors housing development. Existing buildings range in height from single storey to more than four storeys as identified in **Attachment 2**.

Figures 4 to 6 also provides some examples of the different buildings heights that occur through the Castle Hill village.



Figure 4: Four storey scale of Residential Apartment Development at Lober Square (Western Road)



Figure 5: Single storey villas on Western Road



Figure 6: Existing part two storey and part four storey seniors housing (Gibbs Court, Nuffield Village)

The variety in building scale and form has led to a mixed pattern of residential development across the Anglicare Castle Hill site. As illustrated in **Attachment 2** and **Figure 3**, there are other precincts within Anglicare Castle Hill that have building heights of greater than 8.5 metres and 2 storeys. Lober Square is one of the most recent developments with buildings that exceed the height controls. Older buildings towards the eastern part of the village such as the Donald Coburn Centre and buildings within Nuffield Village are 3 and 4 storeys in certain locations (**Figure 7**). The whole of the site is characterised by seniors housing residential development set within an attractive landscape setting with areas of three and four storey buildings separated by lower scale buildings. The proposed redevelopment of the Kilvinton and Dorothy Mowll Court precinct at Anglicare Castle Hill is consistent with the established mixed character of residential development on the site. The proposed development provides for a diverse range of seniors living types including residential apartments, villas, companion suites and residential care beds. These proposed buildings are set within an attractive landscape setting (**Figure 8**).



Figure 7: Building heights in storeys across the Anglicare Castle Hill village



Figure 8: Proposed character of the Kilvinton and Dorothy Mowll Renewal seniors housing development.

The proposed seniors housing development will read as a single storey above the existing brick fence when viewed from both Old Northern and Castle Hill Roads (**Figure 9**). The visual impact of the residential buildings as viewed the public domain is minimal. The existing trees and vegetation along with the existing brick fence provides screening and softens the appearance of the buildings. This is consistent with the notation of under Clause 40(4)(b) to avoid an abrupt change in the scale of development at the boundary of the site.



Figure 9: View of proposed seniors housing development from Castle Hill Road

2.8.3 Amenity Impacts

The proposed seniors housing development will not result in adverse impacts on any surrounding development including overshadowing and privacy impacts. Setbacks between buildings achieves the minimum requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide (ADG). Adjoining residential development is capable of achieving a minimum of three hours of solar access between 9am and 3pm on 21 June (mid-winter) as illustrated on DA-800 and DA-801 prepared by Jackson Teece Architects.

In addition, the internal residential amenity of apartments within the development are not compromised. **Figure 10** shows a section through Building 9B showing that although the ground level has been lowered by 1-2 metres, a high level of residential amenity and outlook is still provided to the ground floor apartments.

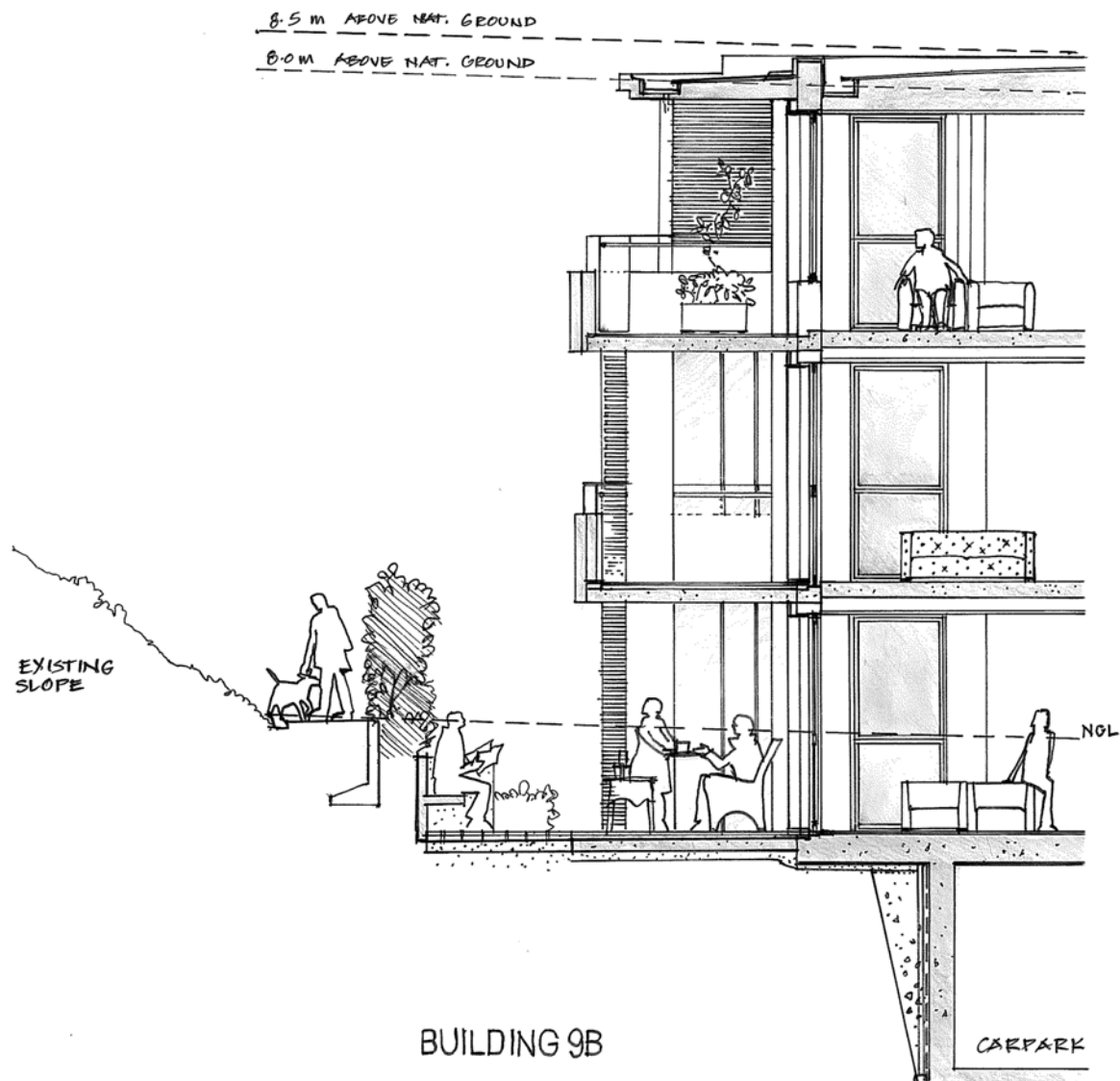


Figure 10: Building 9B – Section looking west with embankment to Castle Hill Road.

2.8.4 Improved Site Planning Outcomes

The built form of the proposed seniors housing development results in improved site planning outcomes for the site. Overall the development has a Gross Floor Area of 33,798m², which is equivalent to a Floor Space Ratio of 0.43:1. This is based on a site area of 78,159m². The overall site coverage is equivalent to 17% of the site area. This low percentage of site coverage maximises landscaped area on the site and ensures that existing vegetation is retained and protected where possible. In addition, the precinct around Tom Thumb Lagoon is preserved and enhanced as a major focal point for the site (**Figure 10**). A total landscaped area of 26,063m² is provided. This is considerably more than is required under SEPP Seniors.



Figure 11: Tom Thumb Lagoon is a key focal point for the proposed seniors housing village

These landscape outcomes have been achieved by consolidating building footprints and providing taller buildings. The alternative option to achieve the same density would be to reduce building heights and provide more buildings or larger building footprints, however this would increase the overall site coverage and reduce the landscaped area. It would potentially compromise the quality and scale of the landscape precinct around Tom Thumb lagoon.

An improved planning outcome has therefore been capable of being achieved both for the development and from the development in terms of residential amenity.

2.8.5 Consistency with Objectives of SEPP Seniors

Clause 40 of SEPP Seniors does not contain specific objectives in relation to building height. However, reference has been made to the aims of SEPP Seniors in clause 2 as identified in **Section 2.6** of this written request.

The design principles referred in clause 2 of SEPP Seniors are taken to be a combination of the 'Seniors Living Policy: Urban Design Guideline for Infill Development' published by the Department of Infrastructure, Planning and Natural Resources (March 2004) and the design principles set out in Division 2 of SEPP Seniors. **Table 3** reviews the proposed development against the design principles established by Clause 33 (Neighbourhood amenity and streetscape) of SEPP Seniors.

Table 3 Review against Clause 33 of SEPP Seniors

(a) recognise the desirable elements of the location's current character (or, in the case of precincts undergoing a transition, where described in local planning controls, the desired future character) so that new buildings contribute to the quality and identity of the area, and	The character of the proposed seniors housing development is consistent with the existing character of the Anglicare Castle Hill village. The seniors housing development provides high quality residential development in an existing seniors housing village.
(b) retain, complement and sensitively harmonise with any heritage conservation areas in the vicinity and any relevant heritage items that are identified in a local environmental plan, and	The proposed seniors housing development is considered to have a positive impact on the heritage significance of the 'Mowll Village group' (Item 255) under Schedule 5 of Hornsby LEP 2013. The proposed development will enhance the landscape setting for the Gate House with increased setbacks between the Gate House and the proposed Villa (B27). The setting of Tom Thumb lagoon will also be enhanced with new landscaping and improved access to the lagoon.
(c) maintain reasonable neighbourhood amenity and appropriate residential character by: <ul style="list-style-type: none"> <li data-bbox="268 1037 774 1104">(i) providing building setbacks to reduce bulk and overshadowing, and <li data-bbox="268 1249 774 1317">(ii) using building form and siting that relates to the site's land form, and <li data-bbox="268 1462 774 1541">(iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, and <li data-bbox="268 1653 774 1731">(iv) considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, and 	<p>Wide setbacks (minimum 7 metres) to Old Northern and Castle Hill Roads has been provided. The proposed seniors housing development reads as one storey above the existing brick fence from Old Northern and Castle Hill Roads. The existing trees providing screening, which assists in reducing the bulk of the buildings. The proposed seniors housing does not result in any adverse overshadowing impacts on adjacent development.</p> <p>Whilst the proposed development includes excavation, the buildings follow the topography by gradually stepping with the slope of the land towards Tom Thumb Lagoon. The form of the residential care facility building when viewed from Old Northern Road also responds to the land form by stepping with the slope of the land to provide an appropriate scale and character with the development on the opposite side of Old Northern Road.</p> <p>The proposed seniors housing development reads as one storey above the existing brick fence at the street frontage. This is compatible with the low-density residential development in the vicinity of the development. North of the site is St Paul's Anglican Church, which is single storey but has a tall spire. East of the site is Mowll Village, which is a mix of one and two storey buildings.</p> <p>No buildings are located on the boundary.</p>
(d) be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, and	The proposed seniors housing development is located a minimum of 7 metres from Old Northern Road (B14). However, Buildings (B8, B9A and B9B) are set back a minimum of 15 metres from the front boundaries, this is consistent with the existing development and preserves a wide landscaped front setback.
(e) embody planting that is in sympathy with, but not necessarily the same as, other planting in the streetscape, and	The proposed planting schedule consists of a mix of native and exotic species. This planting palette reflects and compliments the existing planting on site.

Table 3 Review against Clause 33 of SEPP Seniors

(f) retain, wherever reasonable, major existing trees, and	Existing trees have been retained where ever possible. This includes the existing mature trees along the Old Northern and Castle Hill Road frontages.
(g) be designed so that no building is constructed in a riparian zone.	No buildings are to be constructed within a riparian zone.

The proposed seniors housing development is therefore considered to achieve the aims of SEPP Seniors as it relates to building height and streetscape.

2.8.6 Consistency with Objectives of Hornsby LEP 2013

Clause 4.3 of the LEP states the objectives of the height of buildings development standard as follows:

“(1) The objectives of this clause are as follows:

- (a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.”*

The proposed building heights are considered to be appropriate for the site constraints. The proposed seniors housing development has a FSR of 0.43:1, which is appropriate in a low-density residential precinct. The site is already serviced with water and sewer. Additional substations have been identified as being required for the proposed seniors housing development.

2.9 Secretary’s Considerations

As indicated above, subclause 4.6(5) of the LEP also requires the Secretary, in deciding whether to grant concurrence, to consider the following:

- “(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,”*

The proposed non-compliance does not raise any matter of significance for State or regional environmental planning.

- “(b) the public benefit of maintaining the development standard,”*

There is not considered to be a public benefit of maintaining the development standard as the proposed seniors housing development is consistent with the strategic planning objectives for Hornsby Shire and the North District Structure Plan.

- “(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”*

It is considered that there are no other matters of relevance that need to be taken into consideration by the Secretary.

3.0 Land and Environment Court Principles

The Land and Environment Court of NSW, through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001]*, has established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. This 5-part test was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007]* where Chief Justice Preston expressed the view that there are 5 different ways in which an

objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of the policy. The full extent of the judgement in *Wehbe* has not been reproduced in this submission but is referenced to make clear the methodology of assessment. Whilst these Judgments related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to clause 4.6. The 5-part test has been addressed in this submission but is summarised below for clarity.

Test	Comment
1. Is the planning control a development standard?	Yes, the building height control is a development standard.
2. What is the underlying object or purpose of the standard?	Clause 4.3(1) of Hornsby LEP 2013 states the objectives of the building height development standard which have been addressed in this submission.
3. Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?	<p>The proposed height will enable a seniors housing development of a size that achieves operational efficiencies and therefore promotes the social welfare of the community and still achieves orderly and economic use and development of land.</p> <p>Accordingly, requiring strict compliance with the development standard would be inconsistent with the objectives of clause 4.6 which are to provide flexibility in the application of the standard and to achieve better outcomes for and from development through such flexibility.</p>
4. Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?	For the reasons expressed in this clause 4.6 variation request, strict compliance with the development standard is considered to be both unnecessary and unreasonable in the circumstances of this case.
5. Is the objection well founded?	<p>This variation request relies upon the first 'way' expressed by Chief Justice Preston in <i>Wehbe v Pittwater Council</i> [2007] as follows:</p> <p>"1. The objectives of the standard are achieved notwithstanding non-compliance with the standard."</p> <p>As discussed above, notwithstanding the non-compliance, the proposed development achieves the objectives or "purpose" of the development standard under clause 4.3 and will not adversely impact on adjoining development or the streetscape and therefore, the objection is well founded.</p>

In addition, *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 has also established the principle that the consent authority must also be satisfied that there are other "sufficient environmental planning grounds to justify contravening the development standard". A variation to building height development standard is also considered to have sufficient environmental planning grounds for the following summarised reasons:

- The existing Anglicare Castle Hill village is a large stand-alone development that has minimal relationship with the surrounding urban context and low density residential precincts.
- The proposed building heights achieve an acceptable and comfortable scale relationship with adjoining development.
- The proposed building heights are consistent with the existing residential character of Anglicare Castle Hill and provide an appropriate transition to the site boundaries.
- There are improved site planning outcomes by reducing building footprints and increasing building heights to minimise site coverage and maximise landscaped area and communal open space.
- Wide landscape setbacks to Old Northern Road and Castle Hill Road, along with the existing brick fence screen the built form of the proposed residential buildings.



- Building 13 is located centrally within the site and is not adjacent to any external or internal site boundaries

4.0 Conclusion and Recommendations

We have assessed the proposed seniors housing development against the relevant statutory provisions of clause 4.6 of Hornsby LEP 2013 and prepared this written request which provides justification that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to support a variation to the building height development standards.

Accordingly, the justification within this written request is considered to be well founded.

Attachment 1: DA-410 Building Height Plane Diagram prepared by Jackson Teece dated 4/2/19

Attachment 2: Building Height in storeys diagram.



planning consultants

ATTACHMENT I

AMENDMENTS

ISSUE	DESCRIPTION	APPROVED	DATE
1	DEVELOPMENT APPLICATION	DL	04/02/19

LEGEND

[#] NUMBER IN BRACKETS = BUILDING ID NUMBER

- BUILDING PROTRUDING ABOVE 8.5M MAX BUILDING HT PLANE
- BUILDING BELOW THE 8.5M MAX BUILDING HEIGHT PLANE
- BLDG PROTRUDING ABOVE THE 8.0M MAX CEILING HT PLANE
- BUILDING BELOW THE 8.0M MAX CEILING HEIGHT PLANE

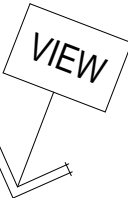
NOTES

3D AERIAL VIEWS OF THE SITE ARE TAKEN FROM THE NORTH.

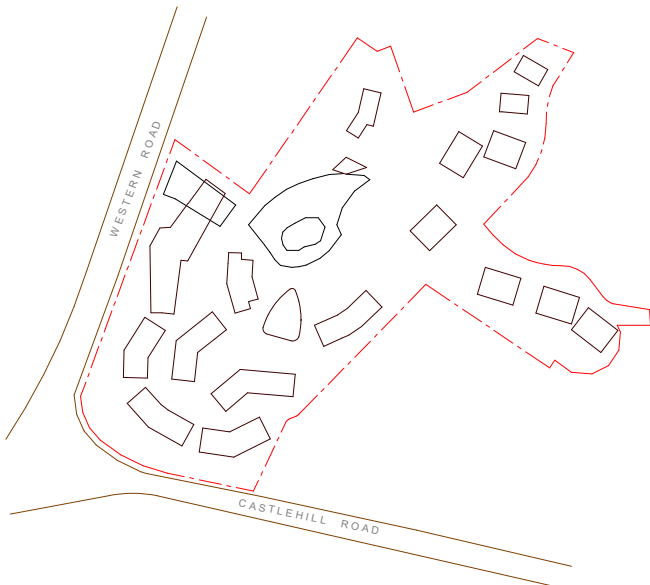
PROTRUSIONS BEYOND 8.5M HEIGHT CONTROL (HORNSBY LEP 2013 REQUIREMENT) ARE SHOWN IN BRIGHT GREEN.

PROTRUSIONS OF CEILING BEYOND 8.0M HEIGHT CONTROL (SEPP SENIORS REQUIREMENT) ARE SHOWN IN BRIGHT BLUE.

PALE GREEN AND PALE BLUE COLOURS INDICATE BUILDING BELOW THE RESPECTIVE HEIGHT CONTROL PLANES.



KEY PLAN



50mm on original

THIS DRAWING ISSUE HAS BEEN REVIEWED FOR

DA ISSUE

APPROVED BY: TW CHECKED BY: CW

CLIENT
ANGELICARE CASTLE HILL



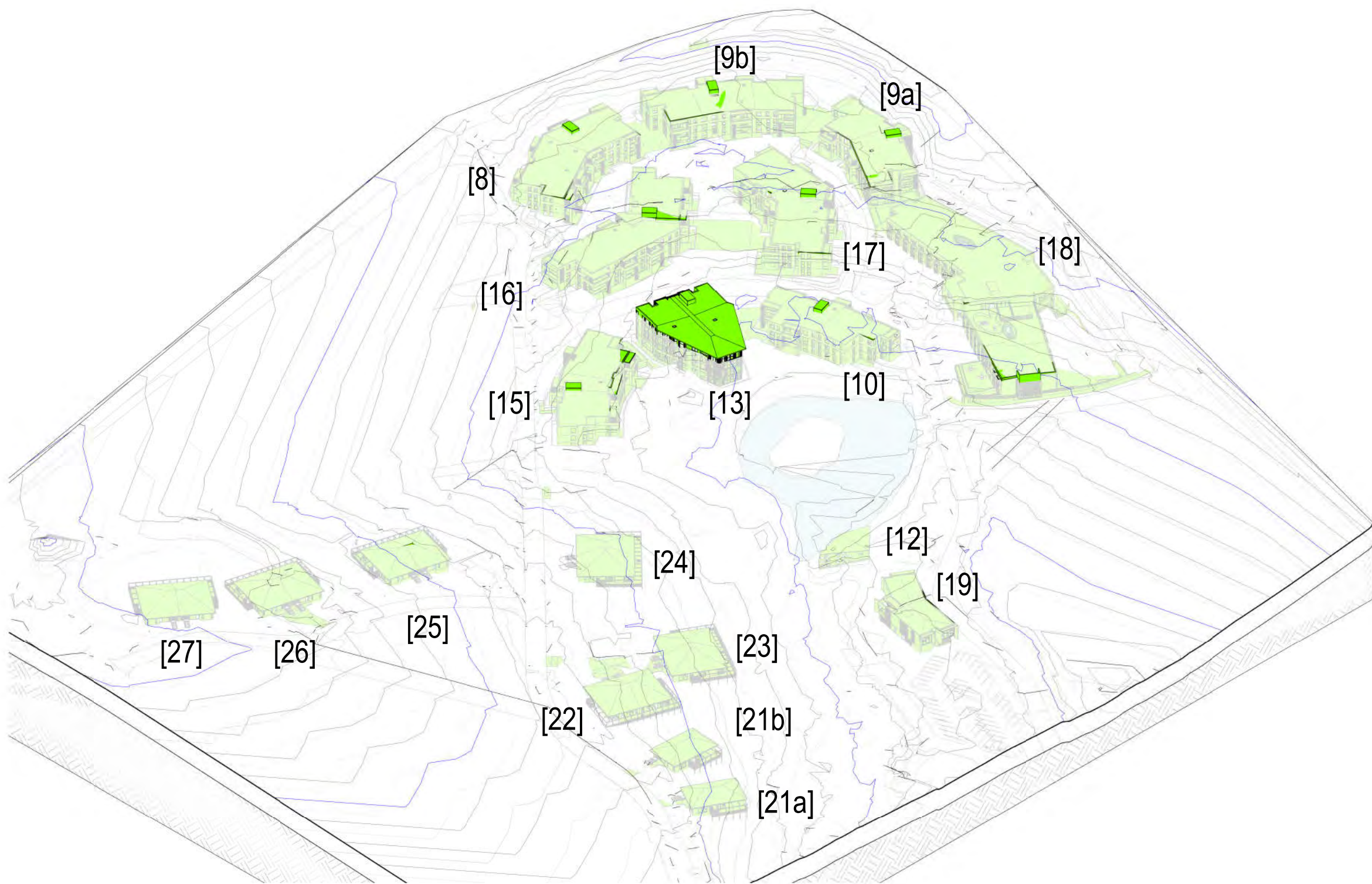
DRAWING
BUILDING HEIGHT PLANE DIAGRAM

DATE	SCALE @ A1	DRAWN
10/17/18	NTS	PL
PROJECT No.	DISCP.	DRAWING No.
2016056 A		DA-410
ISSUE		1

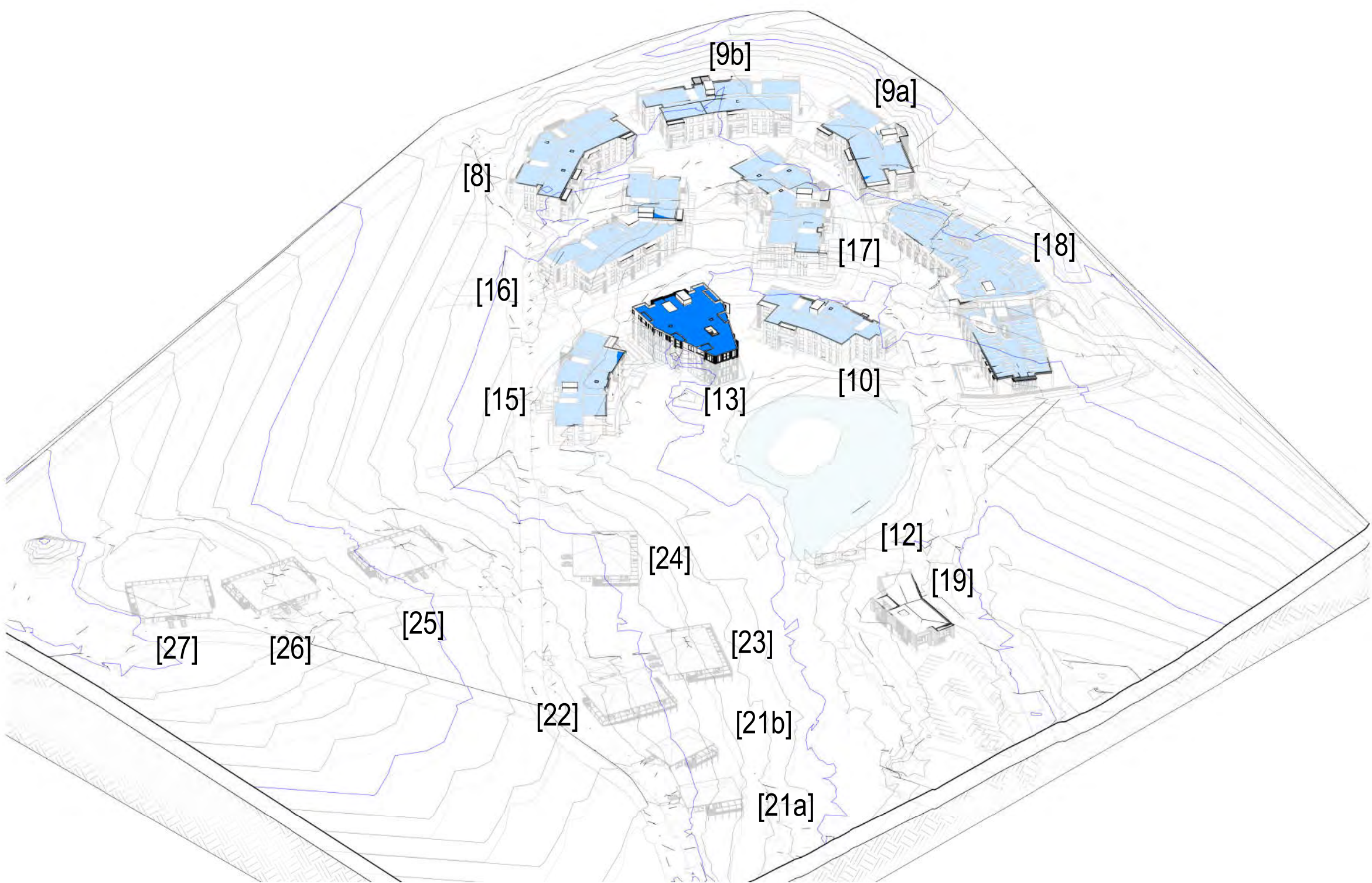
PROJECT
KILVINTON & DOROTHY MOWLL COURT
RENEWAL

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Nominated Architects: Damian Barker (8192), John Gow (6790), Daniel Hudson (8315)

JACKSON TEECE



1 8.5M BLDG HEIGHT CONTROL PLANE - HORNSBY LEP 2013 RQMT



2 8M MAX CEILING HEIGHT - SEPP SNRS RQMT



planning consultants

ATTACHMENT 2

