



15 September 2020
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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 written 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).

This clause 4.6 written request addresses two building height standards (the 8m and 2 storey height controls) contained in clause 40 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors), and justifies a variation of those development standards pursuant to the requirements of clause 4.6.

A clause 4.6 variation to the 8.5m building height control in clause 4.5 of Hornsby LEP 2013 is not required because, pursuant to clause 5 of SEPP Seniors, the provisions of SEPP Seniors prevail to the extent of any inconsistency.

In summary the Proposal involves:

- Demolition of existing buildings, site excavation and earthworks, removal of trees and vegetation.
- Construction of eight apartment buildings of 3 storeys in height over a basement carpark containing a total of 144 dwellings.
- Six (6) single-storey villa buildings comprising 12 dwellings.
- A part 1, 3 and 4 storey residential care facility over basement car parking.
- A two storey administration building.
- Three (3) community rooms in Buildings B8, B13 and B17.
- A single storey café which will also serve as a community room.
- Construction of a new entry from Old Northern Road, new internal roads and upgrade of Western Road and associated infrastructure including upgraded stormwater management.

In preparing this clause 4.6 variation request, regard has been given to the following:

- NSW Department of Planning and Infrastructure varying development standards; A Guide, August 2011;

- The relevant principles identified in *Whebe v Pittwater Council* (2007) NSW LEC 827 ('Whebe');
- The *Four2Five Pty Ltd v Ashfield Council* cases ('Four2Five');
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action');
- *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* (2018 NSWLEC 191) ('Rebel');
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 ('Micaul');
- *De Stoop v Ku-ring-gai Council* [2010] NSWLEC 1019 ('De Stoop'); and
- *Nanevski Developments Pty Ltd v Rockdale City Council* [2010] NSWLEC 1369 ('Nanevski').

2.0 Identifying the Development Standard to be Varied

The development application was lodged pursuant to the SEPP Seniors 2004 and clause 40 of the SEPP contains several development standards. Clause 40(4)(a) and (b) are relevant to this clause 4.6 variation request and relevantly state:

"40 Development standards—minimum sizes and building height

(1) General

A consent authority must not consent to a development application made pursuant to this Chapter unless the proposed development complies with the standards specified in this clause.

.....
.....

(4) Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted

- (a) *the height of all buildings in the proposed development must be 8 metres or less, and*

Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).

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

Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.

- (c) *a building located in the rear 25% area of the site must not exceed 1 storey in height.*

(5) Development applications to which clause does not apply Subclauses (2), (3) and (4) (c) do not apply to a development application made by any of the following—

- (a) *the Department of Housing,*
- (b) *any other social housing provider.*

The site is zoned R2 – Low Density Residential under Hornsby LEP 2013. Residential flat buildings are not permitted in the R2 zone. The building height standards of clause 40(4) (a) and (b) therefore apply.

The application is made by Anglican Community Services and as set out in the SEE prepared by DFP Planning, Anglican Community Services is a social housing provider. Therefore, subclause (4)(c) relating to 1 storey building height in the rear 25% of the site does not apply.

The site is subject to two building height controls under clause 40 of SEPP Seniors:

1. An 8m building height development standard under clause 40(4)(a) of SEPP Seniors.

This is a development standard measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. “Ground level” is defined in SEPP Seniors to mean the level of the site before development is carried out pursuant to the Policy.

2. A two-storey height limit for a building that is 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. For the purposes of this standard, the boundary of the site is taken to be the external boundaries of the development site, as delineated by cadastral boundaries. Some of these boundaries are within the broader existing Anglicare Castle Hill site, where the proposed development adjoins existing development within the overall Anglicare village.

Clause 3 – Interpretation of SEPP Seniors provides guidance as to 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.

The proposed basement car parking areas are fully below existing ground level and therefore the car parking levels do not count as a storey.

SEPP Seniors does not contain a definition of a storey. For the purpose of this written request, the definition of storey in Hornsby LEP 2013 has been applied:

“storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include

- (a) a space that contains only a lift shaft, stairway or meter room, or
- (b) a mezzanine, or
- (c) an attic.”

Where there is no floor above, it is the ceiling or roof above that defines the upper part of a top storey. In the case of the proposed buildings it is the ceiling or roof that defines the top storey.

3.0 Identifying the Extent of the Non-Compliance

3.1 8m Height of Building Development Standard

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. The diagram is annotated to describe the extent of the building height departure.

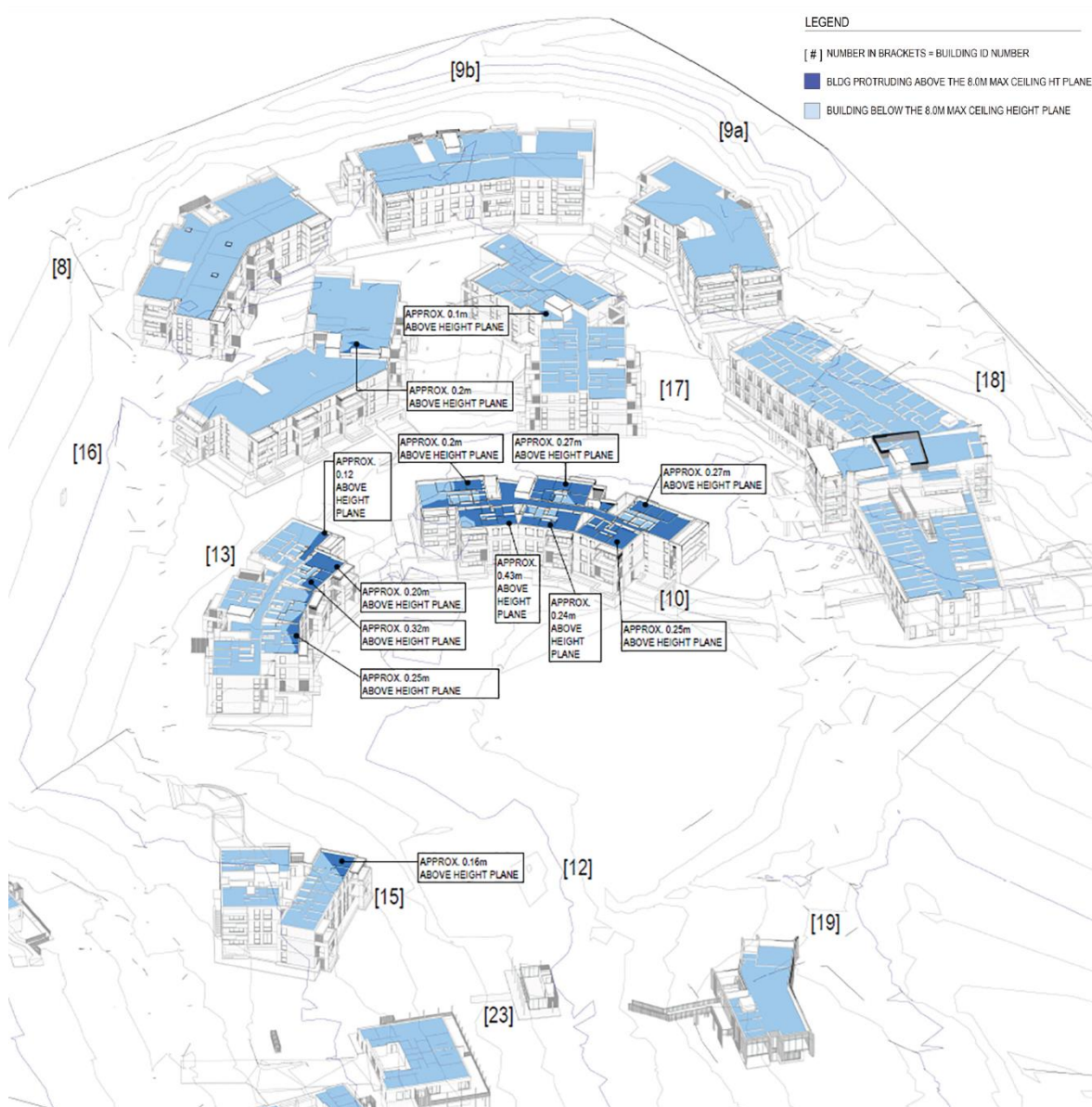



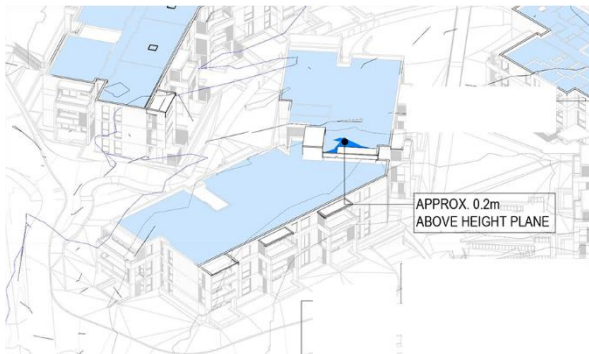
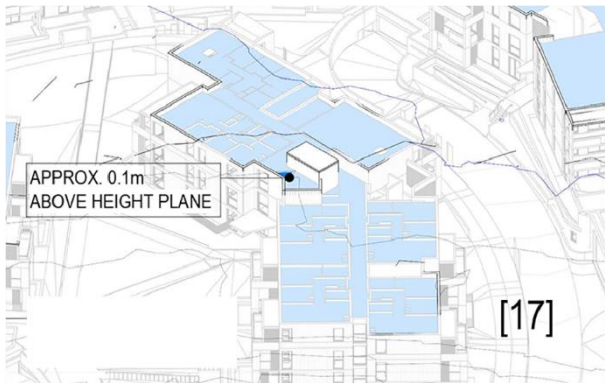
Figure 1: Proposed variations to the 8m height of buildings development standard under SEPP Seniors.

The buildings that depart from the 8m height of building development standard are explained in **Table 1** including diagrams extracted from the architectural plans to illustrate the location and extent of the variations in each building.

Table 1 Summary of Variations to 8m SEPP Seniors Height Control

Building	Location of the Variation	Extent of Variation
B10 (Apartment)		<p>The departure varies from 0.2m to 0.43m across most of the building floor plate and the extent of the departure varies according to the slope of the land.</p>
B13 (Apartment)		<p>The variations occur in 3 locations and are minor ranging from 0.12m to 0.32m.</p> <p>The variations relate to:</p> <ol style="list-style-type: none"> 1. 0.12m variation along a sliver of living room and corridor to Apartment L2-02. 2. 0.20m to 0.32m variation to the living and bedrooms of Apartment L2-03. 3. 0.25m variation to a narrow portion of the bedrooms and living rooms of Apartments L2-04 and L2-05. <p>The variations occur due to a step in the land which occurs midway through the floor plate as shown in the section opposite (extract from DA-369).</p> <p>The variations are minor and would not be apparent.</p>

Table 1 Summary of Variations to 8m SEPP Seniors Height Control

Building	Location of the Variation	Extent of Variation
B15 (Apartment)		<p>Minor breach of 0.16m.</p> <p>The variation occurs in the roof form behind the balcony of Apartment L2-02.</p> <p>The variation occurs due to slope of the land as highlighted in the sectional diagram opposite (refer to DA – 366).</p>
B16 (Apartment)		<p>Minor breach of 0.2m.</p> <p>Occurs along the eastern edge of Apartment L2-08 and part of a lift lobby.</p> <p>The variation occurs at the edge of the building at the point where there is a step in the building floor plate. The variation occurs due to the fall of the existing ground level at this location.</p>
B17 (Apartment)		<p>Minor departure of 0.1m for a very small surface area to the lift lobby.</p> <p>The additional lobby is necessary in this location due to the double sided lifts to provide access to both levels of the split level building.</p> <p>The variation is due to the uneven existing ground level below this part of the building.</p>

3.2 2 Storey Height of Building Development Standard

For the purposes of clause 40(4)(b) the 'boundary of the site' is taken to apply to the boundary of the land to which the development application applies, as delineated by cadastral boundaries (whether that is a boundary to Old Northern Road and Castle Hill Road, or to another lot forming part of the existing Anglicare Village). The boundary of the site relative to the proposed development is shown in **Figure 2**. **Figure 2** also illustrates the location of the buildings that depart from the 2 storey building height development standard.

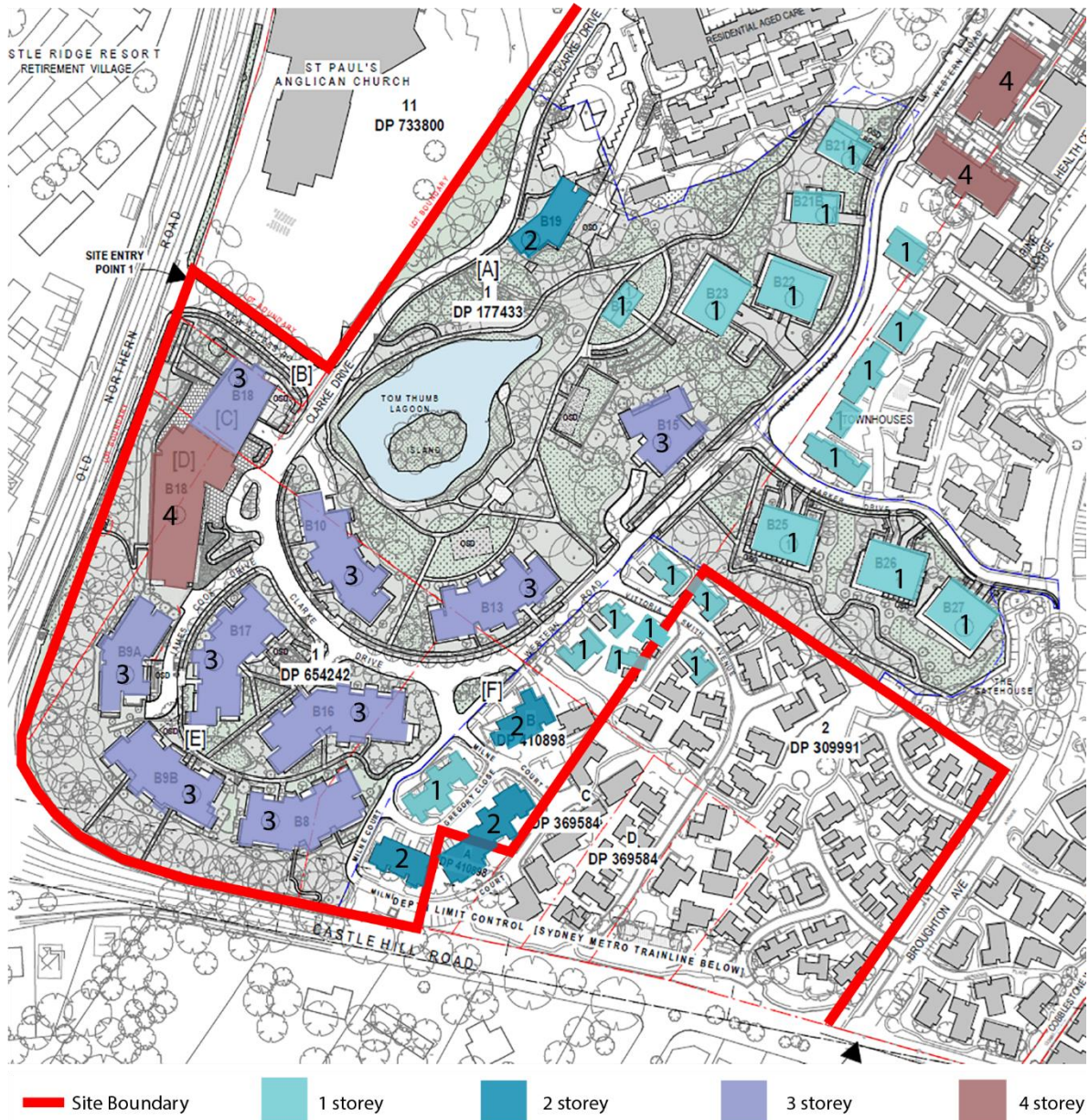


Figure 2: Proposed height of buildings and existing adjoining development (number of storeys)

The departures from the two storey height control are:

- Building 8 (Apartment) = 3 storeys;
- Building 9A (Apartment) = 3 storeys;
- Building 9B (Apartment) = 3 storeys;
- Building 18 (RCF) = part 3 storeys and part 4 storeys.

For the purposes of assessing departures in relation to buildings more than 2 storeys, Buildings B10, B13, B15, B16 and B17 have not been included as these buildings are not adjacent to a boundary of the site being the circumstance to which the 2 storey development standard relates.

4.0 Hornsby Local Environmental Plan 2013

Clause 4.6(1) exceptions to development standards provides the objectives of the clause which state:

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

In the Land and Environment Court proceedings *Initial Action Pty Ltd v Woollahra Municipal Council* the Chief Judge held that a clause 4.6 variation request does not need to demonstrate that the proposal is consistent with these objectives, instead they are the objectives of clause 4.6 itself.

Clause 4.6(2) provides as follows:

- (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.*

Subclause 8 of clause 4.6 sets out the development standards under Hornsby LEP 2013 to which clause 4.6 does not apply. They are:

- (a) development standards for complying development;
- (b) development standards relating to a BASIX certificate; and
- (c) development standards in clause 5.4 of Hornsby LEP 2013.

The height development standard of SEPP Seniors is not excluded from the provisions of clause 4.6 and accordingly the consent authority may grant development consent to this development where the height standards contained in clause 40(4) (a) and (b) of SEPP Seniors have been exceeded.

Clause 4.6(3) provides as follows:

- “(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.”*

Clause 4.6(3) is addressed in Section 5.0 of this statement.

Clause 4.6(4) provides as follows:

- “(4) Development 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.”*

This clause 4.6 variation adequately addresses the public interest in at Section 7.0.

Clause 4.6(5) provides as follows:

- “(5) 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.”*

On 21 February 2018 the Secretary of Department of Planning and Environment issued a notice under clause 64 of the Environmental Planning and Assessment Regulation 2000 providing that consent authorities may assume the Department's concurrence for exception to development standards for applications made under clause 4.6 of the Standard Instrument.

Alternatively the Court has power to grant development consent to the proposed development even though it contravenes the height of building development standards without obtaining or assuming the concurrence of the Secretary by reason of Section 69 of the Land and Environment Court Act, 1979.

Compliance with the Development Standard is Unreasonable or Unnecessary

In considering clause 4.6(3)(a) we have had regard to ‘Whebe’ wherein the Chief Judge expressed the view that there are 5 different ways in which an objection to a development standard may be assessed. These are:

1. Notwithstanding the non-compliance, does the proposal achieve the objectives of the development standard?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?

5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

Further, in 'Micaul' the Chief Judge confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

In the Judgment of 'Four2Five' the Chief Judge found that there is an onus on the applicant to demonstrate, through the written request, that there are "*sufficient environmental planning grounds*" such that compliance with the development standard is unreasonable or unnecessary. Furthermore, 'Four2Five' requires that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

In 'Initial Action', the Chief Judge held that it is reasonable to infer that "*environmental planning grounds*" as stated under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s1.3 of the EP&A Act. In addition, in 'Micaul' and 'Initial Action', the Chief Judge clarified that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

Sections 5.0 and 6.0 that follow demonstrate that:

- compliance with both the 8 metre and 2 storey development standards is unreasonable or unnecessary;
- there are sufficient environmental planning grounds to justify the variations; and
- The proposed development will be in the public interest because it is consistent with the objectives of the respective development standards and the objectives for development in R2 zone in which the proposed development is to be carried out.

5.0 8m Height Control

5.1 The 8m Height Control - Unreasonable or Unnecessary – Clause 4.6 (3)(a)

Clause 40 of SEPP Seniors 2004 does not contain specific objectives in relation to the 8m building height development standard. Reference has been made to 'De Stoop' and 'Nanevski' for guidance on the underlying objectives of the 8m building height development standard.

At Para 53 of 'De Stoop' the underlying objective of the 8m height standard is "*to limit development in areas not zoned for residential flat buildings to 3 storeys in order to ameliorate the potential for amenity impacts on adjoining residential properties and to be in character with residential zones where residential flat development is not permitted.*"

In 'Nanevski', the objective of the standard in terms of amenity impacts on adjoining residential properties is expanded with reference to clause 31 of SEPP Seniors which relates to design of 'in-fill self-care housing'. The proposed development is not 'in-fill self-care housing' but is 'serviced self-care housing' as per clause 13 of SEPP Seniors. However, the differences are operational rather than built form related and therefore the objectives have been examined. The underlying objectives of the standard were found to be:

- *To minimise impacts on the privacy and amenity of existing neighbouring dwellings;*

- *To minimise overshadowing of existing dwellings and private open space;*
- *To retain neighbours' views and outlooks;*
- *To reduce the apparent bulk of development and its impact on neighbouring properties; and*
- *Provide adequate building separation.*

In addition, reference has been made to the aims of SEPP Seniors as stated 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."*

The paragraphs to subclause (2) are not aims or objectives relevant to the building height standard but are an explanation of how the SEPP operates to achieve those aims. This clause 4.6 variation written request focuses on the objectives stated in subclause (1) as well as the underlying objectives as expressed by the Court in 'De Stoop' and 'Nanevski'.

5.1.1 Building Design Considerations

The 8m height departure in B10 arises in order to address two design considerations of the building relative to the surrounding ground levels.

Building B10 sits lower than Clarke Drive due to the sloping topography of the site. This results in the road and adjacent footpath being slightly higher than the ground level dwellings. In order to achieve an acceptable level of residential amenity (outlook and privacy) for the ground level dwellings, the ground floor level has been raised to RL166. Combined with the 10m setback from the kerb, this space provides a good landscape zone to provide privacy without the dwellings being too low relative to the street.

The proposed ground floor level of RL166 also provides a more gradual pedestrian access into the lobby of B10 without the need for switchback ramps. This improves the arrival experience for residents and visitors to this building.

The above reasons examine the design advantages of raising the building slightly in order to achieve better design outcomes for the building itself. In addition, there are contextual design reasons to retain Building B10 as a 3 level building. As illustrated in **Figures 3a** and **3b**, the scale of Building B10 relative to B16 and B17 relate well to each other. If Building B10 was reduced to a compliant height, then it would result in the loss of one level and appear out of

context with the surrounding buildings (including the residential care facility B18). A height departure of between 0.20m to 0.43m achieves a better design outcome than if a compliant building was proposed in the location of B10.

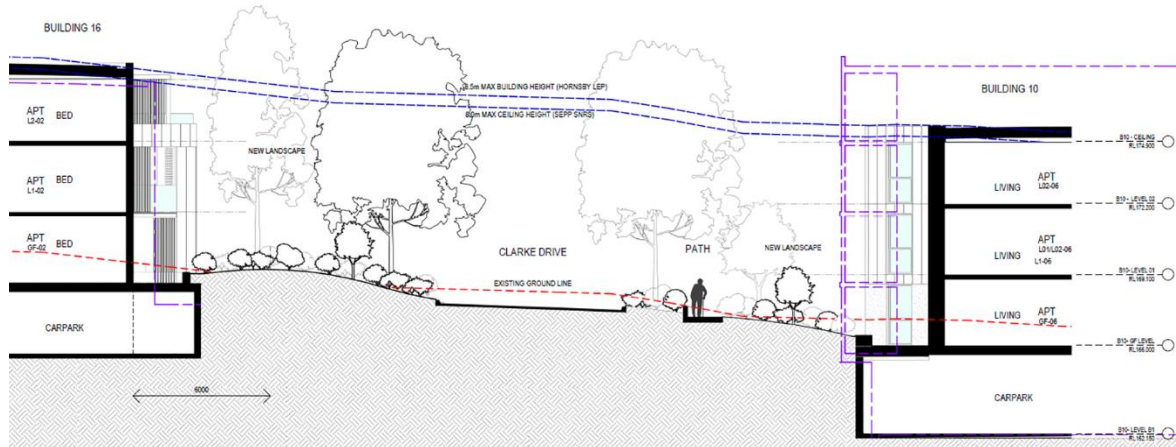


Figure 3a: Scale relationship of B10 and B16 (extracted from DA-365)

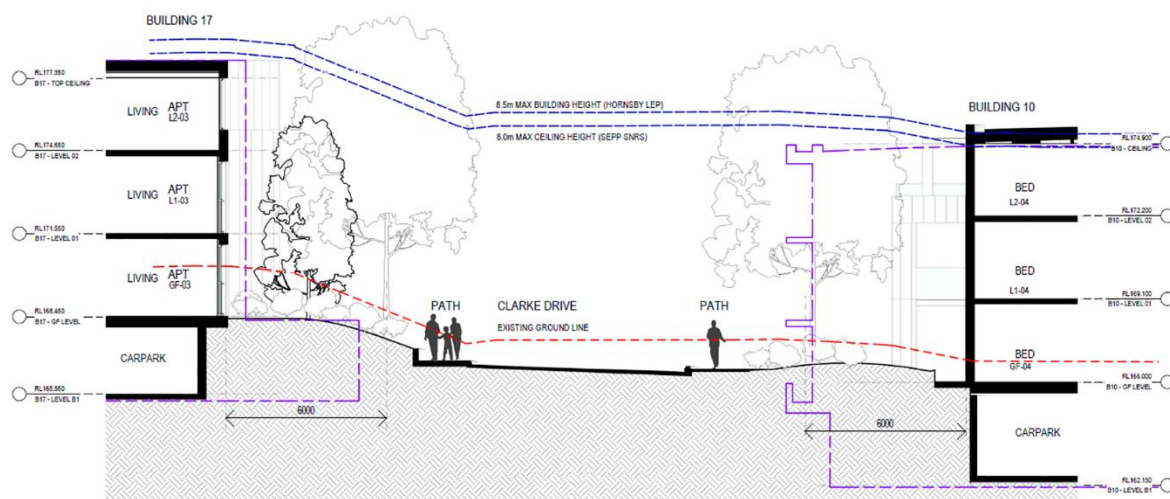


Figure 3b: Scale relationship of B10 and B17 (extracted from DA-364)

The flood modelling prepared by Bonacci has calculated that the 1:100 year flood level is RL165.82 (in the developed condition). Instead of raising the ground floor to RL166.32 (including 500mm freeboard) and causing a greater height variation, a combination of raising the building to RL166 (providing freeboard 180mm) and landscaped berms around the building has been utilised to protect the habitable level of the ground floor of the building.

5.1.2 Topography

The 8m height departures in B13, B15, B16 and B17 arise due to the slope of the land towards Tom Thumb Lagoon.

The site falls significantly from the Old Northern Road and Castle Hill Road site boundaries towards Tom Thumb Lagoon. 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.

Similarly, the land falls from Western Road towards the Lagoon. The fall in this location ranges from approximately RL169 / RL 174 to the RL 165 on the edge of the Lagoon, representing a level change of between 4m to 9m.

The fall is not even and there are variations in the gradient of the slope as well as localised dips and rises across along the slopes.

Steps in the building floor plate have been proposed in Buildings B16 and B17 to manage the building height, however, for other buildings the floor plates are such that there remain some minor departures where the land continues to fall.

Figures 4 to 5 are sections which illustrate the location of the 8m height departure for Buildings B13 and B15. The location of the departure is shown with a red ellipse in each Figure.

Building B13 (Extract from DA -369)

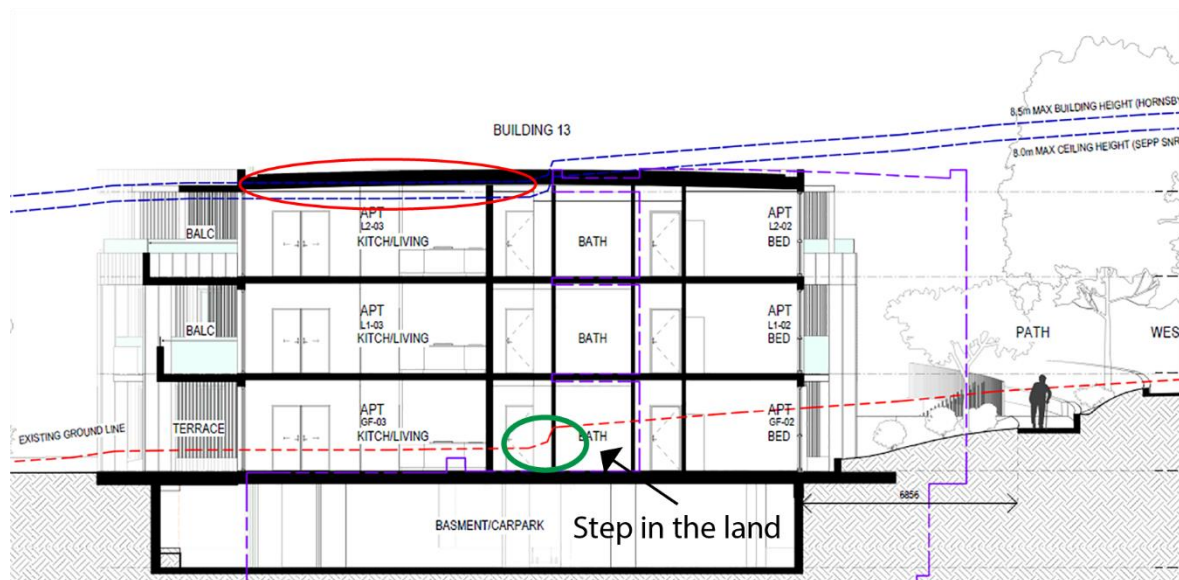


Figure 4a: Building B13 section showing location of departure and step in the land

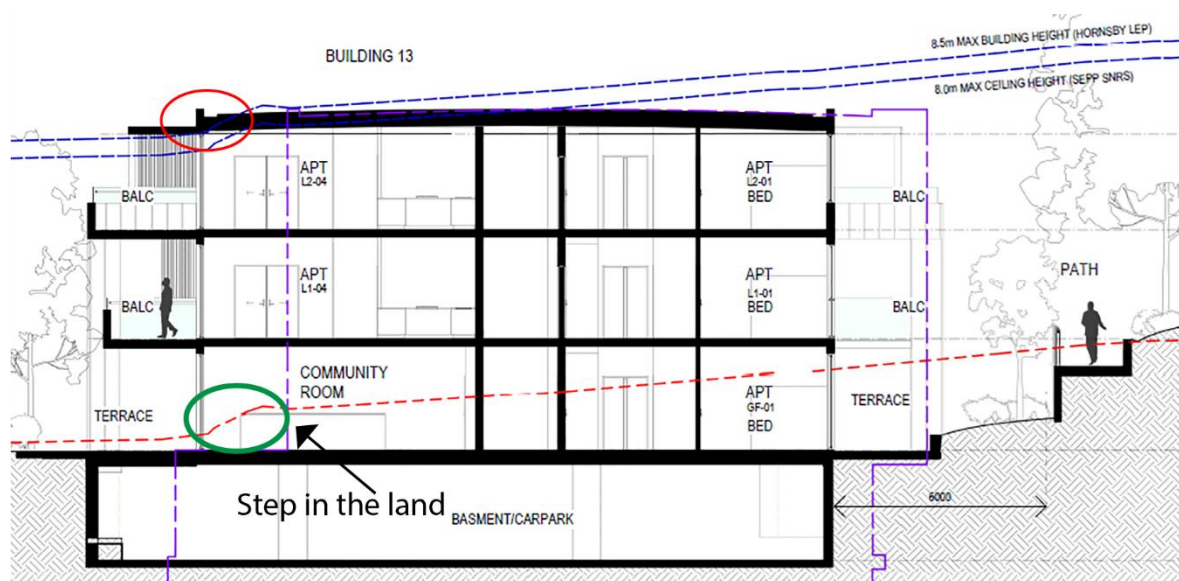


Figure 4b: Building B13 sections showing location of departure from 8m building height control

The sections in **Figure 4a and 4b** illustrate that there is a step in the land which relates to previous benching of the land when Kilvinton Village was constructed. The floorplate of Building B13 extends over the step in the land. The height departure occurs at the point where the land steps down. The departures occur in 3 locations as described in **Table 1** and are minor in extent ranging from 0.12m to 0.32m.

If the building was to comply it would require a step in the floor plate in the location of the corridor which would not be readily achieved using the current building footprint. In order to achieve a compliant building height in this location the width of the building would need to be increased potentially creating another height departure on the western edge of the building where the land continues to fall. Alternatively, sections of the floor plate would need to be removed potentially creating a contrived building design that would be inconsistent with the architectural form of the remainder of the proposed buildings. Such a solution would be contrary to the aim of SEPP Seniors to achieve good design.

Building B15 (Extract from DA 366)

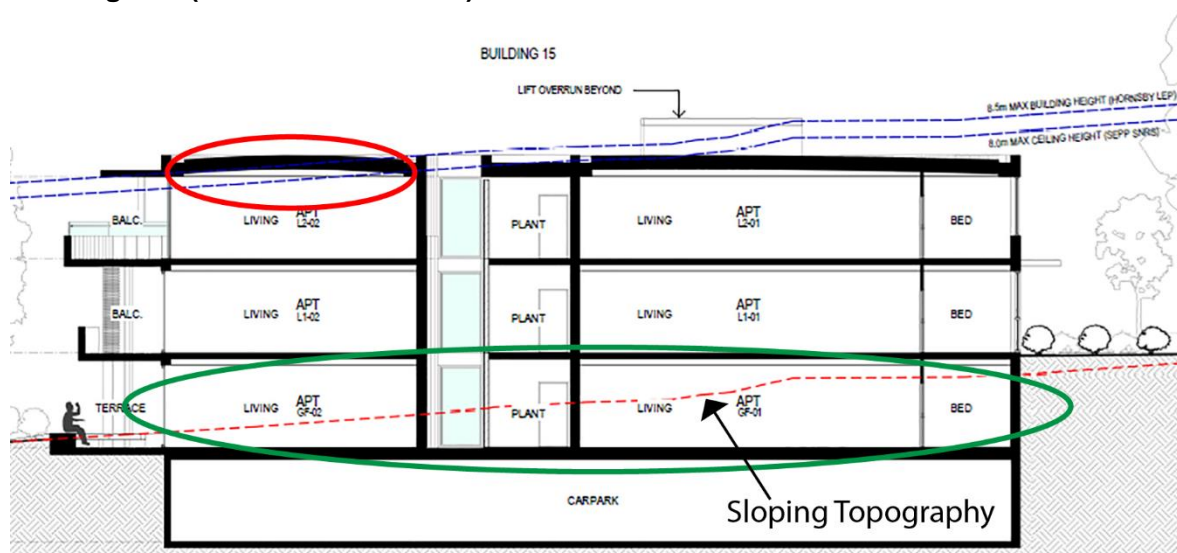


Figure 5: Building B15 section showing location of departure from 8m building height control

Figure 5 illustrates the location of the departure. The height of the departure tapers with the topography and is 0.16m at its greatest point. The departure relates to part of the living room and part of the bedroom of apartment L2-03. To achieve compliance would require part of the dwelling at the top floor would be required to be removed and as noted above, such an amendment would be a contrived design approach removing the balanced symmetry to the building contrary to the aim of SEPP Seniors to achieve good design.

Building B16 (Extract from DA 362)

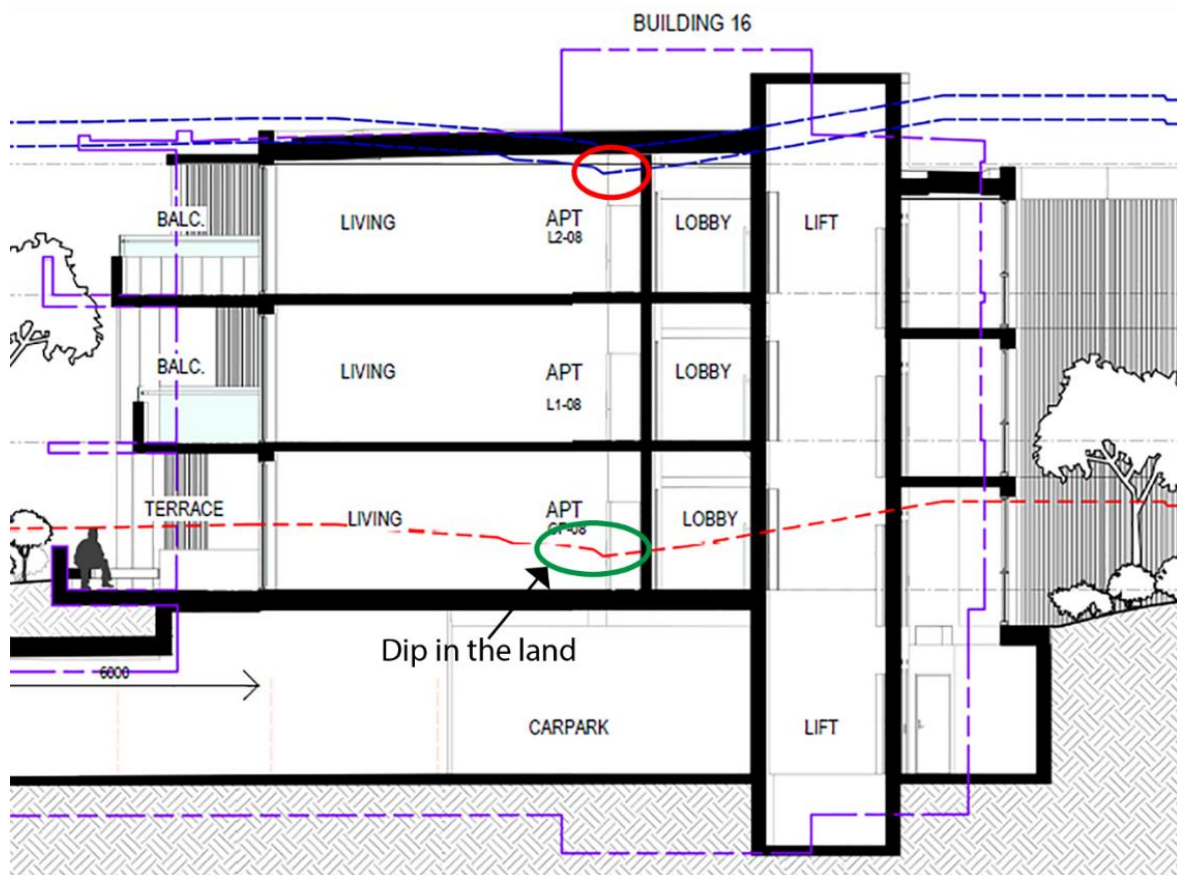


Figure 6: Building B16 section showing location of departure from 8m building height control

Figure 6 illustrates the localised dip in the land which is the reason for the departure. The departure occurs in the middle of the floor plate and compliance would not have any benefit in terms of the external appearance of the building. Due to the minor and very localised nature of the departure an amendment to achieve compliance would be unreasonable and unnecessary as it would not achieve a better environmental or design outcome.

Building B17

Building 17 has a stepped floor plate in order to avoid the building departing from the height control. As noted in **Table 1**, there is a very minor height departure of 0.1m and this occurs in a very localised area due to uneven topography. **Figure 7** shows the approximate location of the height departure on the floor plan of the second floor adjacent to the lift lobby serving the upper floor level of the stepped floor plate. The height departure could potentially be removed by lowering the ceiling outside the lift. However, the roof height in this location would remain unchanged and compliance would achieve no change to the external appearance of the building. Compliance would be unreasonable and unnecessary as it would not achieve a better environmental or design outcome.

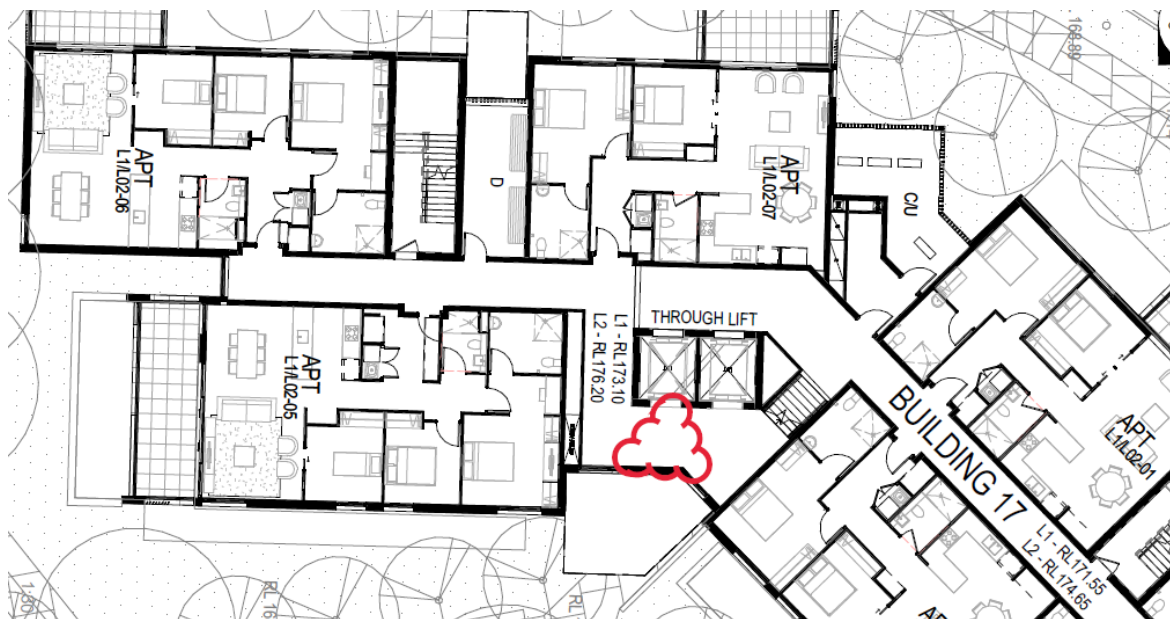


Figure 7: Location of the height departure in the floorplate of B17

The departures are all minor and do not give rise to any adverse solar or visual impacts. It would be unreasonable to introduce localised steps to achieve compliance in the buildings that are non-compliant due to localised topographical variations as there would be no environmental benefit to such design amendments and no benefits in terms of the external appearance of the buildings. The consequence of an amendment to achieve compliance is unreasonable and unnecessary particularly when the departure is not be apparent in terms of built form or its scale relative to other buildings and does not give rise to environmental impacts.

5.1.3 Underlying Objectives

In 'De Stoop' (para 55) it was found that one of the underlying objectives or purposes of the standard was to limit development in areas not zoned for residential flat buildings to 3 storeys to ameliorate impacts. Implicit in this underlying objective is that a 3 storey built form is contemplated and this works in concert with the 2 storey height control for a building adjacent to a boundary of the site which is to avoid an abrupt change in the scale of development in the streetscape. That is, the objectives of these 2 controls is to achieve a 2 storey scale in the streetscape and boundary of a site but enable 3 storey scale (with the 8m ceiling height control) elsewhere on the site.

All of the buildings that depart from the 8m height control are 3 storeys achieving a scale consistent with the underlying objective. The extent of departures range from 0.1m to 0.43m.

- For Buildings B15, B16 and B17 the variations are very small and localised.
- For B13, the variation is essentially one edge of the building.
- Building B10 a departure over the greatest footprint is to manage an overland flow / flooding constraint (discussed above).

In all cases the extent and nature of the departures are small and do not constitute an additional storey. Based on a floor to floor height of 3.1m, the height variation represents 3% to 14% of a level (storey). The 3 storey intent of the control is still achieved.

To remove or reduce the extent of the departure would require either the ground level to be further excavated or the ceiling heights reduced from the ADG compliant 2.7m. Neither of these

solutions are considered to be consistent with the aims of SEPP Seniors to promote good design.

In relation to the underlying objectives and the matters raised in 'De Stoop' and Nanevski the following observations are made for each building.

Underlying objective	Comment
Character in residential zones where 3 storeys not permitted	<p>The variations are minor in extent and nature ranging from 0.1m to 0.43m and do not constitute an additional storey. Compliance would not alter the character of the development in the context of the surrounding complaint buildings.</p> <p>Buildings 13 and 15 adjoin existing residential development, however the height is compliant at the eastern façade of these buildings where they interface with the adjoining residential development. Compliance with the western side of the buildings, which is not visible from the villas opposite, will not alter the character outcome.</p> <p>In terms of the wider context, the proposed development is not readily visible from Old Northern Road or Castle Hill Road and the retention of trees along the boundaries with these roads and significant landscaped area between buildings will ensure that the appearance and character of the site when viewed from the external roads will retain the existing character of the immediate area despite the minor height variations.</p>
To minimise impacts on the privacy and amenity of existing neighbouring dwellings;	<p>The existing neighbouring dwellings on the opposite side of Old Northern Road are too far removed from the site to have any privacy or amenity impacts.</p> <p>The existing neighbouring dwellings within the site are the villas on the eastern side of Western Road. The additional height of B13 (0.12m to 0.32m) and B15 (0.16m) is located on the western side of the buildings and not visible from the existing villas. The eastern façades of the buildings facing the villas comply with the 8m building height control. There are no adverse privacy or amenity impacts arising from the height departure of B13 or B15.</p>
To minimise overshadowing of existing dwellings and private open space;	<p>The existing neighbouring dwellings on the opposite side of Old Northern Road are too far removed to be affected by overshadowing.</p> <p>The existing neighbouring dwellings on the opposite side of Western Road are similarly too far removed to be impacted by shadows from B13 or B15. In addition, the location of the height variation in Buildings B13 and B15 is on the western side of the buildings which do not cast a shadow over the existing villas. The eastern sides of B13 and B15 are compliant in height and do not cause a shadow impact between 9am and 3pm at the winter solstice to the villas opposite.</p>
To retain neighbours' views and outlooks;	<p>The neighbours potentially affected are the existing villas on the opposite side of Western Road. Building B13 is the building that is most relevant for this amenity impact and as noted above, the departure is located on the western side of the building. The eastern side of the building which is visible from the villas is compliant in terms of height. The building separation of at least 18m and the avenue of street trees will provide a landscaped outlook from the villas.</p> <p>In terms of views or outlooks from the other proposed buildings, the height departures are between 0.1m to less than 0.43m (B10) and do not constitute an additional level. Buildings B10 and B13 have the larger height departures and even at 2 storeys they would obstruct potential views/outlook. The proposed 3 storey built form is therefore no different to a 2 storey building in terms of outlook from other proposed buildings. However, the private open space of adjoining proposed buildings is located to direct views across the proposed open space.</p>
To reduce the apparent bulk of development and its impact on neighbouring properties	<p>The very minor (0.1m, 0.16m and 0.2m) height departures in B16, B17 and B15 (respectively) and their very localised nature do not increase their apparent bulk and the variations would not be readily noticeable.</p> <p>Buildings B10 and B13 have height departures of 0.2m to 0.43m which does not constitute an additional level. A compliant building height would not be noticeably different in terms of visible bulk. The building massing is also ameliorated by the generous setbacks, building separation and landscaped setting.</p> <p>The curved façade of these buildings to Clarke Drive also ensures that the extent of the facades is reduced as one travels along the road.</p>

Underlying objective	Comment
Provide adequate building separation.	<p>Building B16 and B17 have very minor (0.2 and 0.1m) height departures in very small locations. The building separation between the location of the height departures is about 40m.</p> <p>Buildings B10 and B13 are separated by 18.6 to 30m which is far in excess of the 12m ADG requirement.</p> <p>Buildings B10 and B13 are separated from B16 and B17 on the opposite side of Clarke Drive by some 23m to 27m, also far greater than the 12m separation required by the ADG.</p> <p>Building 15 is about 65m from Building B13.</p> <p>Building separation is generous and allows for generous landscaped areas to assist with the setting of the development and ameliorate potential impacts. The landscape setting also ensures that the treed character of the Anglicare Village is retained and augmented as part of this development which will integrate this development with the landscaped area of the remainder of the village.</p>

The underlying objectives of the 8m height control are achieved, and the small localised departures do not impact on the design outcome of the development.

5.2 The 8m Height Control - Sufficient Environmental Planning Grounds – Clause 4.6(3)(b)

Topography

As detailed in **Section 4.1.2** of this variation request, the height departures from the 8m building height control as they relate to Buildings B13, B15, B16 and B17 are small in height and footprint and arise due to localised dips and rises in the topography of the land.

Design Objectives

Also detailed in **Section 4.1.2**, the building height variation for Building B10 is to achieve better design outcomes including the relationship with the ground level of Clarke Drive and related residential amenity considerations.

Visual Impact

The departures will not be readily apparent as they do not result in those parts of the building being taller than any of the adjoining buildings. The small departures do not in themselves give rise to any adverse visual impacts, providing sufficient environmental planning grounds for those variations.

Solar

The minor variations to the 8m building height control for Buildings B10, B13, B15, B16 and B17 are small in height and their location in the building footprints is such that they do not increase shadow impact to other buildings and therefore does not give rise to an adverse environmental impact.

5.3 Public Interest – 8m Height Control – Clause 4.6(4)(a)(ii)

The proposed development will be in the public interest because it is consistent with the building height development standards and the objective for development within the R2 zone.

5.3.1 Objectives of the 8m Height Control

The objectives of the 8m height control have been addressed in Section 5.1 of this variation statement. The scale of the building is still that of a 3 storey building which is consistent with the underlying objective to limit development in areas not zoned for residential flat buildings to 3 storeys.

The amenity impacts of privacy, bulk, overshadowing, views and outlook in relation to both the existing residential development (internal and external to the site) and the proposed buildings has been found to be consistent with the underlying objective of the 8m height control.

The buildings achieve good design and relate to one another without the departures being apparent or dominating other buildings. The aim of the SEPP to achieve good design has therefore been achieved despite the small departures to the 8m building height control.

5.3.2 Objectives of the R2 – Low Density Residential Zone pursuant to Hornsby LEP 2013

There are two objectives of the R2 zone which are addressed in turn below.

- *To provide for the housing needs of the community within a low density residential environment.*

There are two main elements to this objective:

- Housing needs of the community; and
- The low density residential environment.

Housing needs of the community

The population is ageing and as the population ages there will be an increasing demand and need for housing that suits the needs of seniors (e.g. lower maintenance, good accessibility, a community environment with social and support networks). The proposed housing is provided in a format of low maintenance dwellings (apartments and villas) which are often sought by seniors downsizing from larger dwellings with gardens. The proposal also provides a network of accessible paths and every dwelling is accessible. There are recreational facilities and multiple community rooms (3 in the apartment buildings) and one in the form of a self-serve café in which residents will be able to meet with other residents to build social networks. The proposal therefore responds to the housing needs of the community.

Low density residential environment

An area broader than an individual site needs to be considered to make sense of the term 'low density'. The concept of density needs to consider more than one development or building in its environment which requires a broader view. Taking a bigger picture view, the R2 zone is broad and the site is located in a small 'pocket' at the corner of the R2 zone boundary and the Hornsby local government boundary, as illustrated in **Figure 8**.

Within this broader context, the proposal provides housing (to meet the needs of the community) within that broader residential environment of the R2 zone.

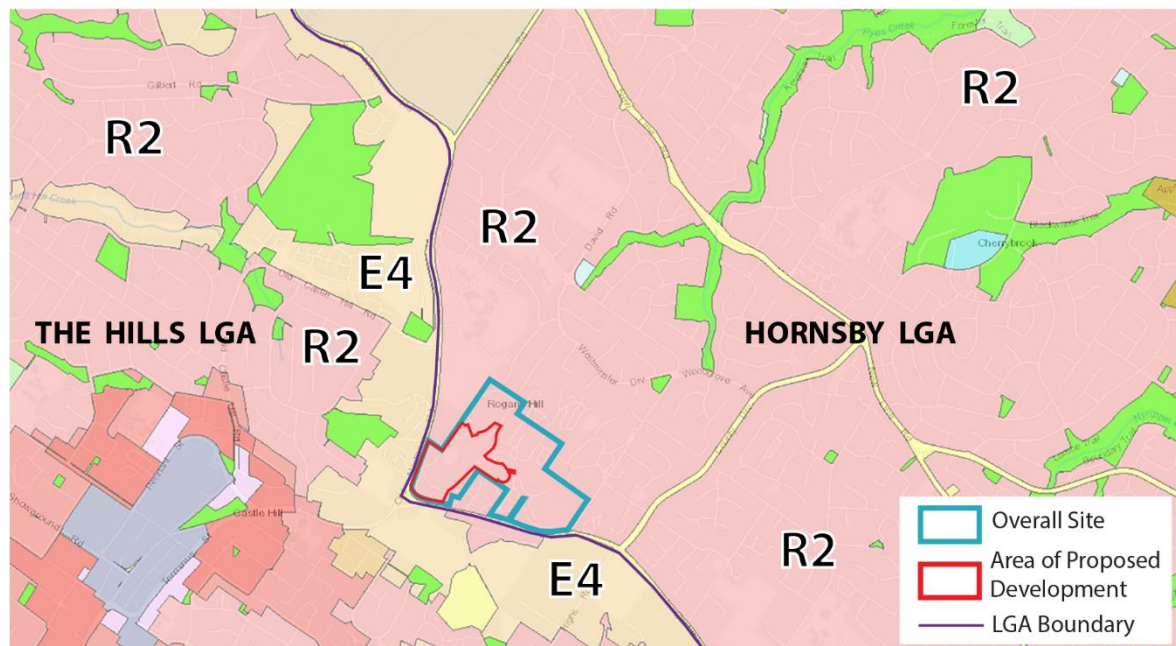


Figure 8 : Extent of the R2 Zone

As detailed in the preceding sections, the existing building heights within the existing Anglicare Castle Hill village and the nature and character of the existing development are not characteristic of the housing typology that dominates the R2 zone (i.e. streets of detached housing which is determined by lot layout, with each dwelling have its own front and rear setbacks and narrow side setbacks). In order to achieve the zone objective, the housing form does not need to be detached housing; it can take the form of other typologies and still sit within a low density residential environment.

In this regard the height of the proposed buildings is not visible from the R2 zones in the broader area. The existing low density residential environment visible from the public domain (e.g. Old Northern Road, Castle Hill Road) will also be largely unchanged. The existing landscaped character visible from the public domain will be unchanged. Buildings will not be readily visible from these streets and the existing treed canopy character will still dominate the streetscape maintaining the existing low density residential environment of the broader R2 zone.

At a finer scale, the relationship with other parts of the R2 zone of the Anglicare Village achieve a low density residential environment by retaining the large central green spine through this part of the site, creating large landscaped open spaces to reinforce the treed canopy character of the village and siting buildings to accommodate tree lined streets adding to the character and softening built form. The heights of the buildings visible from other parts of the R2 zone within the village are ameliorated by the large separation between buildings and the landscaping between those buildings. Essentially an open suburban character is achieved despite the minor departures to the 8m building height control (and the 2 storey building height control which is discussed below).

The FSR of the development is 0.432:1 which is less than the 0.5:1 FSR 'deemed to comply' control under SEPP Seniors. Whilst the development has been designed as 3 to 4 storey buildings, this has allowed significant areas of open space to be provided and vegetation to be retained. In addition, the siting of the buildings has generally achieved a 9m setback to the internal roads allowing for significant street tree planting to provide a landscaped outcome characteristic of a low density residential environment. Both the built form and landscape character are consistent with the remainder of the village.

Site coverage and landscaped area are two controls that relates to residential density. **Table 3** summarises the site coverage and landscape area controls of the Hornsby DCP for the detached housing for the most common lot sizes in the R2 zone in the surrounding area.

Table 3: Site Coverage and Landscaped Area Controls of Hornsby DCP

Lot size	Site Cover	Landscaped Area
600m ² to 899m ²	50% (450m ² to 899m ²)	30%
900m ² to 1499m ²	40%	40%
1500m ² or larger	30%	45%

The overall site coverage is 15% of the site area of 78,159m², excluding the area of Tom Thumb Lagoon (refer DA-601). The site coverage achieved is significantly lower than that permitted for large residential lots (i.e. lots greater than 1500m²) in a R2 zone.

The landscaped area is 53,021m² or 68% of the 'construction site area' of 78,159m², which is significantly greater than the landscape area requirement for residential lots in a R2 zone.

The low site coverage and high landscaped area enables a landscape character that is far stronger and dominant than would otherwise be achieved for housing typical of a R2 zone ensuring that the site blends with the surrounding R2 zone to maintain the low density residential environment.

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

Given the nature of the seniors housing, the proposal provides a range of services and facilities that meet the day to day needs of resident such as:

- Recreational open spaces (croquet lawn, pathways).
- Three community rooms in the apartment buildings.
- A self-serve café that will also serves as a community room.
- Access to facilities in the residential care facility (chapel, consulting rooms, café).
- Access to existing facilities elsewhere in the village such as those in Lober Square (Wills Café, St James Chapel / Dover Hall, bowling green, medical rooms) other community and social facilities elsewhere in the village.
- Provision of garbage collection to remove the need for residents to manoeuvre bins for domestic waste.
- The administration building which is a necessary and essential component of the village to allow management to occur from within the site so that administration and maintenance staff can manage the day to days needs of the residents in the village.

Despite the minor variations to the 8m building height control (and the 2 storey building height control), the proposal is considered to be consistent with the zone objectives.

6.0 Two (2) Storey Height Control

6.1 Two (2) Storey Height Control - Unreasonable or Unnecessary – Clause 4.6(3)(a)

As previously outlined the 2 storey height control applies to a building that is adjacent to the boundary of the site. Clause 40(4)(b) of SEPP Seniors contains a notation that explains that the purpose of the 2 storey height control *“is to avoid an abrupt change in the scale of development in the streetscape.”*

When the parameters of the control and the objective are read together, the intent of the development standard applies to a site boundary and avoiding an abrupt change of scale in the streetscape. The site boundary assessed is that of Old Northern Road, Castle Hill Road and the northern site boundary with St Pauls Church (along Old Northern Road) because these are the boundaries in respect of which there is an adjacent building of more than 2 storeys. All of these site boundaries have a streetscape context. The scale relationship of those streetscapes and how the proposed development responds to the streetscapes is therefore relevant to the analysis of the variation to the development standard.

Scale Relationships

The Urban Design Report prepared by Kennedy Associates Architects September 2020 examines the transitions between proposed buildings and the site boundaries. The relevant sections of the Report are referenced below. They include detailed analysis of the scale relationships with adjacent development and are summarised for each building.

The transition to Old Northern Road and Castle Hill Road (refer Section 5.5.3 of the Urban Design Report, September 2020). In this regard Kennedy Associates Architects notes that the development achieves an appropriate relationship with the surrounding context and streetscape for the following reasons:

- Buildings 8, 9A and 9B have an apparent height of 1 to 2 storeys when viewed from the public domain of Old Northern Road and Castle Hill Road.
- The ‘visible’ height appears consistent with the R2 zone (on the opposite side of Castle Hill Road) and the medium density residential development on the opposite side of Old Northern Road.
- Setbacks of the buildings to Old Northern Road and Castle Hill Road are between 12m to 30m. Therefore, they are substantially separated from the roads and development beyond, and as such will not impact on visual or acoustic amenity, privacy or solar access.
- The retention of vegetation and the masonry wall along the Old Northern Road and Castle Hill Road frontages (and the extension of the wall along Old Northern Road) together with additional landscaping will substantially obscure the proposed development when viewed from the public domain.

The proposed seniors housing development will read as a single storey above the existing brick wall when viewed from both Old Northern and Castle Hill Roads (**Figure 6**). The visual impact of the residential buildings as viewed from the public domain is minimal. The existing trees and vegetation along with the existing brick wall provide screening and soften 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.

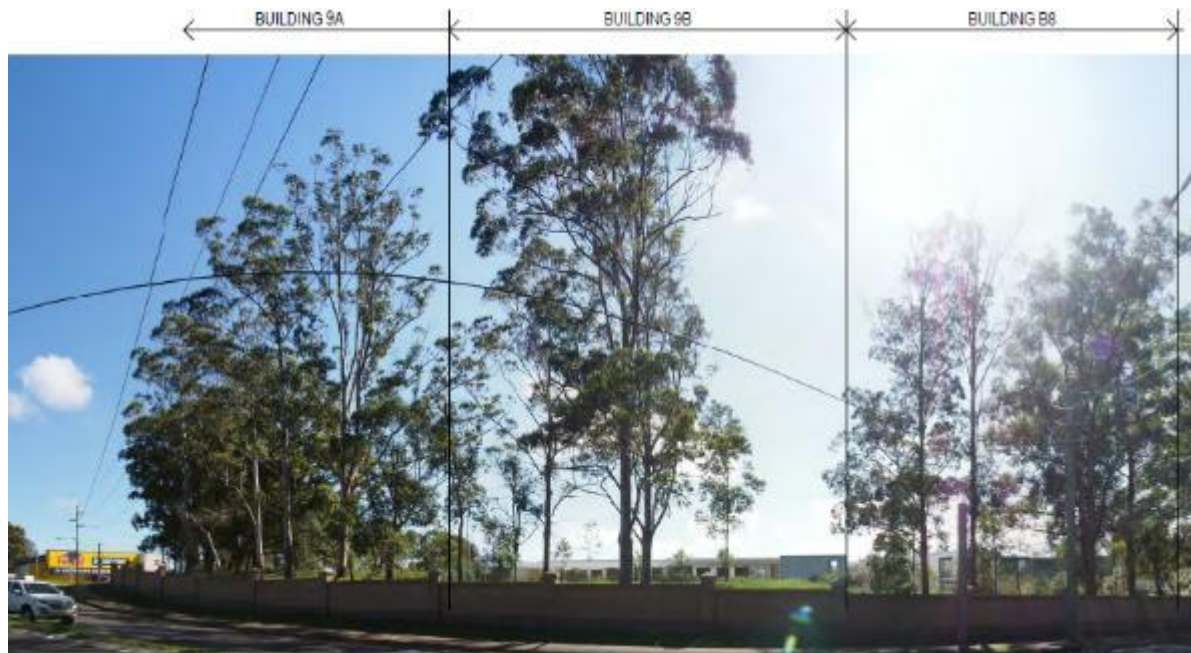


Figure 6: View of proposed seniors housing development from Castle Hill Road

The transition to St Paul's Anglican Church (Section 5.5.3 of the Urban Design Report, September 2020). In this regard, Kennedy Associates Architects notes that the development achieves an appropriate relationship with the surrounding context and streetscape for the following reasons:

- Building B18 is setback 17m from the St Paul's church common boundary and is considered acceptable on urban design grounds by Kennedy Associates Architects and provides for street trees landscaping to improve the urban design outcome.
- There is a separation of about 67m between B18 and the St Paul's Church building.
- Whilst the 3 storey element of B18 adjoins the St Paul's boundary, the lower level of the B18 is set into the ground creating an apparent height of about 2 storeys.

The Urban Design Report provides a thorough analysis which demonstrates that the proposed 3 and 4 storey building heights, adjacent to a boundary of the site, provide for appropriate transitions in height, separation and landscape treatment and collectively this ensures that the proposed 3 and 4 storeys will not create an abrupt change in scale in the streetscape. The proposed heights are therefore consistent with the objective of the control. For all the reasons set out above it is unreasonable and unnecessary to comply with the 2 storey building height standard when the objective of the control is achieved, consistent with 'Way 1' of 'Whebe' which is an established approach to demonstrating that the control is unreasonable or unnecessary.

The above analysis and the supporting Urban Design Report demonstrate that the objective of the 2 storey height control and that good design has been achieved as per the aims of SEPP Seniors, and the design avoids adverse impacts to adjacent residents and will therefore not cause environmental harm as per the guidance provided in 'Micaul'.

Application of the R2 zone to the Existing Built Form

The Urban Design Report set out how the character of the site has evolved over many years (this is also summarised in Section 6.2 below). Whilst past developments within the Anglicare village were approved prior to the R2 zoning being applied to the land, they indicate that the current R2 zone (typically characterised by detached housing typologies) is not representative of the form of buildings that have evolved on this site over 60 years. As per 'way 5' in Whebe,

the 8 metre and 2 storey development standards (which applies to the R2 zone where residential flat buildings are not permitted) are unreasonable and unnecessary and particularly when the 3 and 4 storey scale buildings are not uncharacteristic of other buildings within the overall village. Further the 3 and 4 storey scale buildings do not give rise to any adverse environmental impacts as demonstrated in the following sections.

6.2 Two (2) Storey Height Control -Sufficient Environmental Planning Grounds – Clause 4.6(3)(b)

Character

The site is zoned R2 – Low Density Residential under Hornsby Local Environmental Plan (LEP) 2013. Residential flat buildings are not permitted in the R2 zone. The building height standards of clause 40(4)(b) therefore apply. One of the objectives of the R2 zone is to “*provide for the housing needs of the community within a low density residential environment.*”

The form of development already existing on the site comprises many buildings that are not representative of buildings most commonly found in the R2 zone including residential flat buildings, residential care facilities, large community buildings and medium density style housing.

The overall Anglicare village is some 46 hectares. It has developed over 60 years and displays a wide variety of building forms, scales and typologies. The housing styles across the village are different to those of the surrounding residential areas of Cherrybrook which developed from the 1980s. The adjoining suburb of Cherrybrook is of a suburban character with detached houses each with their own landscaped front yard, driveway and backyards. That character or density is not representative of the Anglicare village which comprises a variety of building typologies – detached buildings, villa style housing, 2 – 4 storey apartment buildings and several large floor plate buildings including 5 residential care facility buildings and a chapel. The character of the existing housing (Hunter Terraces) where the development is proposed to be sited, whilst being single storey, is not a low density character. It comprises villa style housing in a terrace/row housing typology with banks for detached carports which is also uncharacteristic of the R2 zone in nearby areas and an urban form not characteristic of a low density residential environment.

Figure 7 provides six examples of the different building heights and ages (residential care facility and dwellings) that occur throughout the Castle Hill village.



Figure 7 Examples of different building typologies and scales

Further examples and analysis of the character of the existing village is provided in the Urban Design Report, September 2020 prepared by Kennedy Associates Architects.

Kennedy Associates Architects notes (p11) that the Anglicare village is “*a unique entity, analogous to a suburb, with its own structure, character and function.*”

The R2 zone that has been applied to the site is not representative of the existing character of the Anglicare village which exhibits an entirely different building typology and subdivision pattern to the adjoining R2 zoned land.

Kennedy Associates Architects has considered the proposed building height relationships within the overall village in their Urban Design Report, September 2020. In Section 5.2.1 they observe that 3 – 4 storey built forms can be considered to be an established, expected and accepted part of the built form and character of Anglicare Castle Hill. In their opinion, *there is no compelling reason to suggest that the proposed development as a whole – and the 3 – 4 storey forms in particular – are fundamentally incompatible with the built form character Anglicare Castle Hill.*

Kennedy Associates Architects has analysed the appropriateness of the proposed development having regard to the site strategy and building transitions which are relevant to consider in the

context of a departure to the 2 storey building height development standard at the boundary of the site. Those concepts are discussed below.

Site Planning Outcomes

The design approach of buildings with a 3 and 4 storey scale responds to the site constraints by minimising building footprint to enable buildings to be sited where they minimise impacts to the Blue Gum High Forest, existing trees and the landscape corridor through the site.

The overall site coverage is equivalent to 15% of the site area based on a site area of 78,159m² (refer DA-601). 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 vegetation corridor for the overall village ensuring that the proposed development and its landscape outcome ties in with the landscape character of the overall village. A total landscaped area of 53,021m² is provided. This is considerably more than the 7,760m² required under SEPP Seniors or the Hornsby DCP controls.

These landscape outcomes have been achieved by responding to the site's constraints by consolidating building footprints in 3 storey formats. An alternative option to achieve the same yield would be to reduce building heights of Buildings B8, B9A, B9B, B18 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.

This approach is consistent with the section 1.3 - Objects of the EP&A Act and relevantly subclause (e) – *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

Scale Transition

As noted previously, clause 40(4)(b) of SEPP Seniors contains a notation that explains that the purpose of the 2 storey height control “*is to avoid an abrupt change in the scale of development in the streetscape.*”

The scale relationship reasons discussed in **Section 4.1.2** of this variation statement (in relation to the unreasonable and unnecessary argument) are equally applicable to providing the environmental planning grounds for a variation to the two (2) storey height control for Buildings B8, B9A, B9B and B18. The previous arguments have not been repeated but the rationale presented above has been reconsidered in the context of “*sufficient environmental planning grounds*”.

The Urban Design Report, September 2020 provides a thorough analysis which demonstrates that the proposed 3 and 4 storey buildings where they are adjacent to a boundary of the site provide for appropriate transitions in height, separation and landscape treatment and collectively this ensures that the proposed 3 and 4 storeys do not create an abrupt change in scale in the streetscape.

Apartment Design Guide (ADG) Separation

The ADG separation has been considered in the context of Buildings B8, B9A, B9B and B18. Building B18 is a residential care facility and is not a building to which SEPP 65 applies but it is opposite a proposed apartment building and therefore building separation has been considered.

The building separation under the ADG relevant to Buildings B8, B9A, B9B and B18 with a 3 or 4 storey scale are:

- 12m for habitable to habitable spaces
- 9m for habitable to non-habitable
- 6m for habitable to blank walls

Despite the proposed 3 and 4 storey building height, the development achieves the required ADG building separation as set out below (refer to Drawing DA-050 prepared by Jackson Teece Architects).

3 ADG Separation for Buildings Departing from the 2 storey height control		
Building	Adjoining Buildings	Comment
B8	B9B	Habitable to Habitable relationship. Separation of 13.1m to 13.2m. Complies.
	B16	Habitable to Habitable relationship. Separation of 12.029m at narrowest point. Complies
B9A	B9B	Habitable to Habitable relationship. Separation of 12m. Complies.
	B17	Habitable to Habitable relationship. Separation of 14.733m. Complies
	B18	Habitable to Blank Wall - Separation of 12.503m. Complies.
B9B	B8	Habitable to Habitable relationship. Separation of 13.1m to 13.2m. Complies.
	B9A	Habitable to Habitable relationship. Separation of 12m. Complies.
	B16	Habitable to Habitable relationship. Separation of about 23m. Complies.
	B17	Habitable to Habitable relationship. Separation of 13.552m. Complies.
B18	B9A	Habitable to Blank Wall - Separation of 12.503m. Complies.
	B10	Habitable to Blank Wall - Separation of about 32m. Complies.
	B17	Habitable to Blank Wall - Separation of 19.061m. Complies.

Despite the 3 and 4 storey scale, the proposed buildings achieve compliance with the building separation requirements of the ADG ensuring that appropriate levels of privacy are provided between buildings.

Solar Access

There are no solar impacts arising from the 3 and 4 storey scale of the buildings adjacent to Old Northern Road and Castle Hill Road due to the embankment and distance separation to residential development on the other side of those roads.

Buildings B8 and B9B are the southern-most buildings and therefore do not cast a shadow on other proposed buildings within the site.

Building 9A is on the western side of the site. Shadows from this building are cast towards to the south (Building 9B) or east (Building B17). Jackson Teece Architects has analysed the internal shadow effects between the proposed buildings under the ADG and SEPP Seniors and the 2 and 3 hours solar controls, respectively. Building 9A does not impact on the solar access to the apartments in the two adjacent buildings and they both achieve compliance with the ADG and SEPP Seniors solar controls.

The 3 and 4 storey scale of the Buildings B8, B9A, B9B and B18 do not give rise to adverse solar impacts providing an environmental planning ground to justify a variation.

6.3 Public Interest – 2 storey height control – Clause 4.6(4)(a)(ii)

The proposed development will be in the public interest because it is consistent with the building height development standards and the objective for development within the R2 zone.

6.3.1 Objectives of the 2 Storey Height Control

Clause 40(4)(b) of SEPP Seniors contains a notation that explains that the purpose of the 2 storey height control *“is to avoid an abrupt change in the scale of development in the streetscape.”* Despite the departure to the 2 storey control, the proposed 3 and 4 storey buildings (B8, B9A, B9B and B18) do not create an abrupt change in scale in the streetscape. The preceding discussion has demonstrated that this objective has been achieved.

6.3.2 Objectives of the R2 – Low Density Residential Zone Pursuant to Hornsby LEP 2013

How the proposal meets the objectives of the R2 zone in relation to the 8m building height control has been discussed in Section 5.3.2. The justification presented in that section is equally applicable to the 2 storey building height control and is not repeated here.

7.0 The public interest

Clause 4.6(4) of Hornsby LEP 2013 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.”*

The discussion in **Sections 5.3 and 6.2** satisfies the requirements of subclause (4)(a)(i) and (ii).

The following discussion addresses subclause (4)(b).

8.0 Concurrence of the Secretary

- “(5) *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.”*

It is the opinion of DFP Planning that the development does not raise any matters of State or Regional environmental significance.

In relation to the concurrence of the Secretary we refer to our previous comments at Section 4.0 of this statement in relation to clause 4.6(4)(5).

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 of the North District Plan in particular:

- Planning Priority N3 – providing services and social infrastructure to meet people’s changing needs. In this regard the Plan recognises that the Northern District is expected to have a 47% increase in the 65-84 age group and an 85% increase in people aged over 85. This will increase the need for seniors housing and residential care facilities. Hornsby local government area (LGA) is one of four LGAs in the northern district to have the largest projected increase. This demand will need to be catered for, and the Anglicare site is an appropriate location where seniors housing can be located within an existing seniors housing community
- Planning Priority N5 – Providing housing supply, choice and affordability, with access to jobs, services and public transport. The Plan notes that housing must be located in the right places to meet the different demands. As noted above, the Anglicare site is an ideal location as the housing and care facilities can be located within an existing seniors and aged care community with social, health and recreational infrastructure already established on the site and with public transport connections to local services and facilities that service the site.
- Planning Priority N16 - Protecting and enhancing bushland and biodiversity by siting proposed buildings to avoid fragmenting the existing landscaped corridor and the native vegetation it supports and allowing additional native vegetation to be planted that does not affect other development. The site planning and retention of the corridor not only retains the ecological values of the site, but also retains the biodiversity connections beyond the site.
- Planning Priority N19 - Increasing urban tree canopy cover and delivering Green Grid connections is also achieved by the approach to site planning and landscaping as discussed above.

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

9.0 Conclusion

The proposed variation to the building height development standards has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary. There are also sufficient environmental planning grounds to support a variation for the following reasons:

- 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 existing scale, height, building forms and character of development across the Anglicare Castle Hill village.
- Notwithstanding that the proposed buildings are not a building typology typically found in a R2 zone, the proposed built form achieves a low density residential environment as a result of large open spaces, large building separations, street trees and generous landscape character.
- The 3 storey apartment buildings and part 3 and 4 storey residential care facility building achieve a character that is consistent with the overall Anglicare Castle Hill Village.

- The 3 storey apartment buildings and part 3 and 4 storey residential care facility do not give rise to any adverse environmental impacts, such as overshadowing of any adjoining development or other buildings of the proposed development.
- The proposed seniors housing development will read as one and two storey development when viewed from Castle Hill and Old Northern Roads maintaining the existing low density residential environment when viewed from these roads.
- The 3 storey apartment buildings and part 3 and 4 storey residential care facility provide for transition in scale at the boundaries of the site and therefore achieve the objective of the 2 storey control despite the variation, in that there is no abrupt change in the scale of development in the streetscape.
- The scale, form and character of development is consistent with the scale, form and character of the townhouses and commercial buildings along Old Northern Road to the west of the site.
- The building separation of B8, B9A, B9B and B18 (being the buildings that do not comply with the 2 storey height control) achieve the ADG building separation design criteria in relation to the neighbouring proposed apartment buildings.
- The 8m height departures are generally minor and localised due to changes in the land level variations (e.g. dips or steps in the topography) and it is unreasonable to change the building form to account for irregular changes in topography.
- The 8m height departures do not give rise to any adverse impacts in terms of character, or solar or visual impacts.
- Generous setbacks in excess of the minimum requirements have been maintained to Castle Hill and Old Northern Roads enabling the retention of the existing mature trees along these frontages maintaining the existing landscaped character when viewed from these roads.
- The site planning outcomes, i.e. locating the new development primarily in the southern portion of the site, have enabled retention of mature trees north of Tom Thumb Lagoon and the opportunity to provide further landscaping to reinforce the green central spine and maintain this character element of the overall 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.

The proposed seniors housing development is also in the public interest because it is consistent with the objectives of the height of buildings development standard, the objectives of the R2 zone and the aims of SEPP Seniors.

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; that there are sufficient environmental planning grounds to support a variation to the building height development standards under SEPP Seniors; and that the proposed development will be in the public interest.

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

Attachment 1: DA-410 Building Height Plane Diagram, Issue 4 prepared by Jackson Teece



planning consultants

ATTACHMENT I

AMENDMENTS

ISSUE	DESCRIPTION	APPROVED	DATE
1	AMENDED DEVELOPMENT APPLICATION	CA	31/08/20

LEGEND

[#] NUMBER IN BRACKETS = BUILDING ID NUMBER

BLDG PROTRUDING ABOVE THE 8.0M MAX CEILING HT PLANE

BUILDING BELOW THE 8.0M MAX CEILING HEIGHT PLANE

NOTES

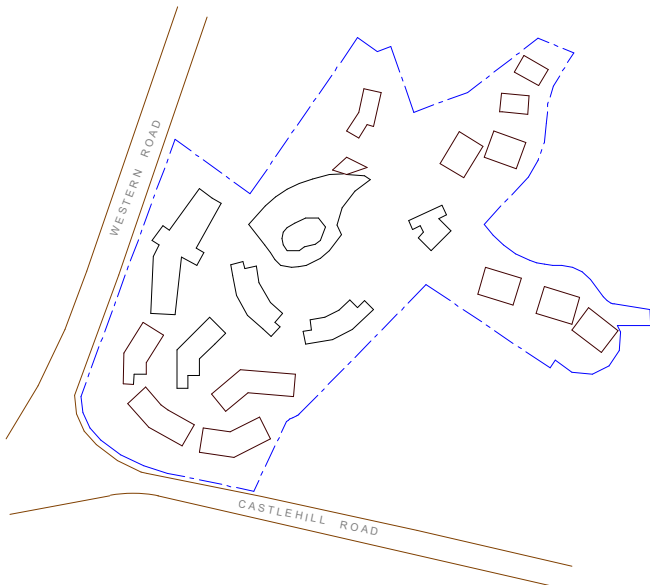
BUILDING ROOFS HIDDEN FOR CLARITY

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

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

PALE BLUE COLOUR INDICATE BUILDING BELOW THE RESPECTIVE HEIGHT CONTROL PLANES.

KEY PLAN



THIS DRAWING ISSUE HAS BEEN REVIEWED FOR

DA ISSUE

APPROVED BY: CA CHECKED BY: CW

CLIENT
ANGLICARE CASTLE HILL



DRAWING
BUILDING HEIGHT PLANE DIAGRAM
SEPP SENIORS

DATE 10/01/20 SCALE @ A1 NTS DRAWN PL

PROJECT No. 2016056 A DISCP. DA-411 DRAWING No. ISSUE 1

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