



20 September 2021
Our Ref: 9890D.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 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 the 2 storey height control contained in clause 40(b) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors), and justifies a variation of that development standard 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 three apartment buildings of 3 storeys in height containing a total of 53 dwellings over a basement carpark.
- Thirteen (13) single-storey villa buildings.
- A two storey administration building.
- A single storey café which will also serve as a community room.
- Realignment of James Cook Drive 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 is lodged pursuant to the SEPP Seniors 2004 and clause 40 of the SEPP contains several development standards. Clause 40(4)(b) is relevant to this clause 4.6 variation request and provides as follows (emphasis provided with underlined text):

"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 proposed buildings comply with the 8m building height standard of clause 40(a) and is not discussed in this clause 4.6 variation statement.

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 and is not discussed in this clause 4.6 variation statement.

The only standard of relevance to this clause 4.6 variation statement is the 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

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 (red line) relative to the proposed development is shown in **Figure 1** and extends beyond the red line shown in the diagram. **Figure 1** also illustrates the location of the three buildings that depart from the 2 storey building height development standard.

The departures from the two storey height control are:

- Building 8 (Apartment) = 3 storeys;
- Building 9A (Apartment) = 3 storeys; and

- Building 9B (Apartment) = 3 storeys.

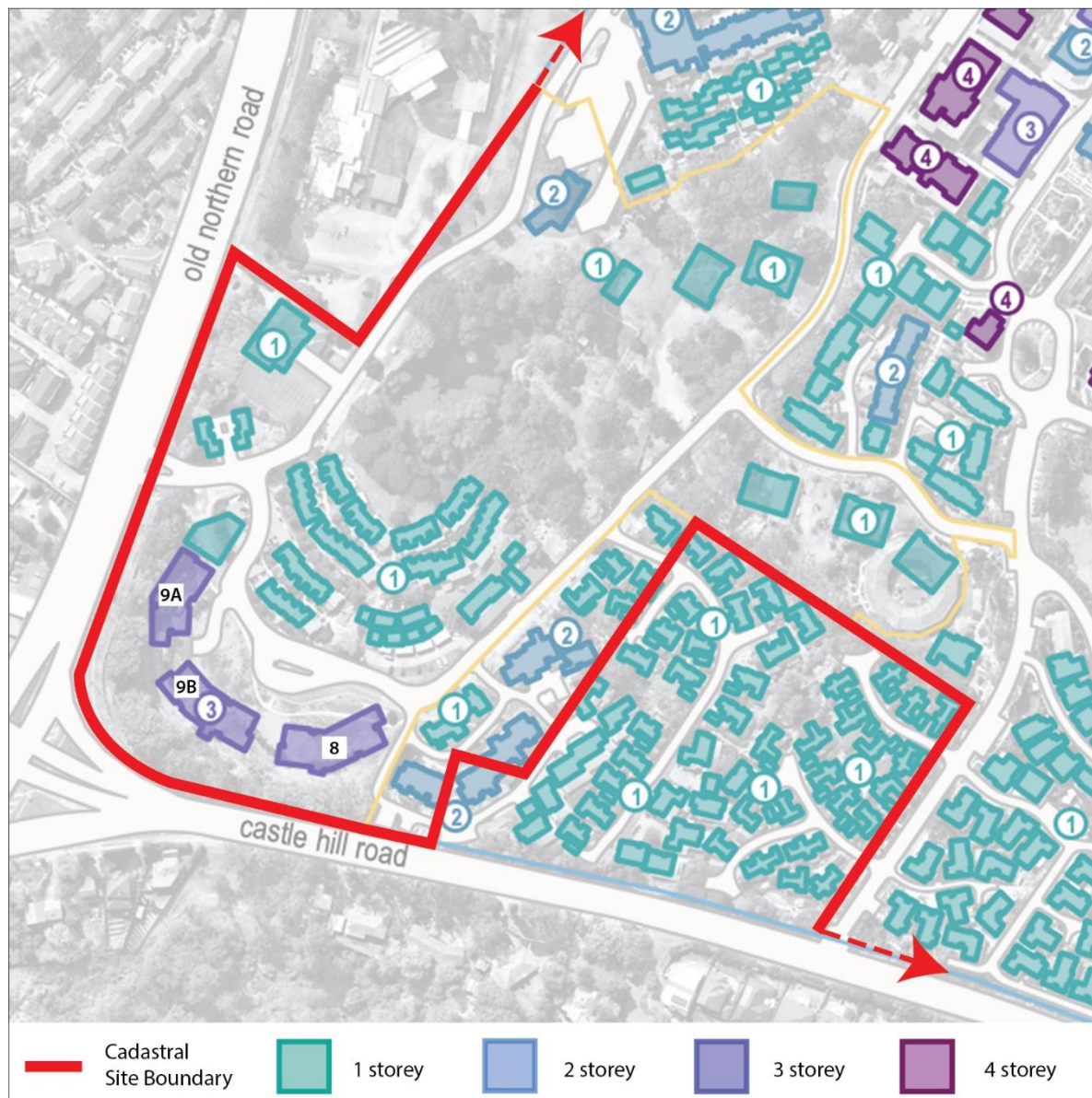


Figure 1: Proposed height of buildings and existing adjoining development (number of storeys)

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.

Subclause 8 of clause 4.6 also sets out certain land (being the Epping town centre) to which clause 4.6 does not apply which is not relevant in this case.

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)(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 at **Section 7.0** of this statement.

Clause 4.6(5) provides as follows:

- “(5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.”*

On 5 May 2020 the Group Deputy Secretary of the Department of Planning, Industry and Environment issued a notice under clause 64 of the Environmental Planning and Assessment Regulation 2000 in relation to assumed concurrence (refer Planning Circular PS 20-002). The Secretary's concurrence may not be assumed by a delegate of Council if the development contravenes a numerical standard by more than 10%. In this case the proposal involves a variation of greater than 10% (2 storey control to be varied for a 3 storey building). However, the restriction does not apply to decisions made by assessment panels. The subject DA is regionally significant development which is to be determined by the Sydney North Planning Panel and therefore concurrence may be assumed.

Compliance with the Development Standard is Unreasonable or Unnecessary

In considering clause 4.6(3)(a) regard has been had 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.

Section 5.0 that follows demonstrates that:

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

5.0 Two (2) Storey Height Control

5.1 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 of development in the streetscape**. The site boundary assessed is that of Old Northern Road and Castle Hill Road being the boundaries in respect of which there is an adjacent building which is proposed to be more than 2 storeys in height. These site boundaries are the ones that 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.

5.1.1 Scale Relationships

The September 2021 Urban Design Report prepared by Kennedy Associates Architects 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. **Figures 2, 3 and 4** are sectional diagrams extracted from Section 4.41 of the Urban Design Report illustrating the scale relationship of Buildings B8, B9A and B9B with Old Northern Road and Castle Hill Road.

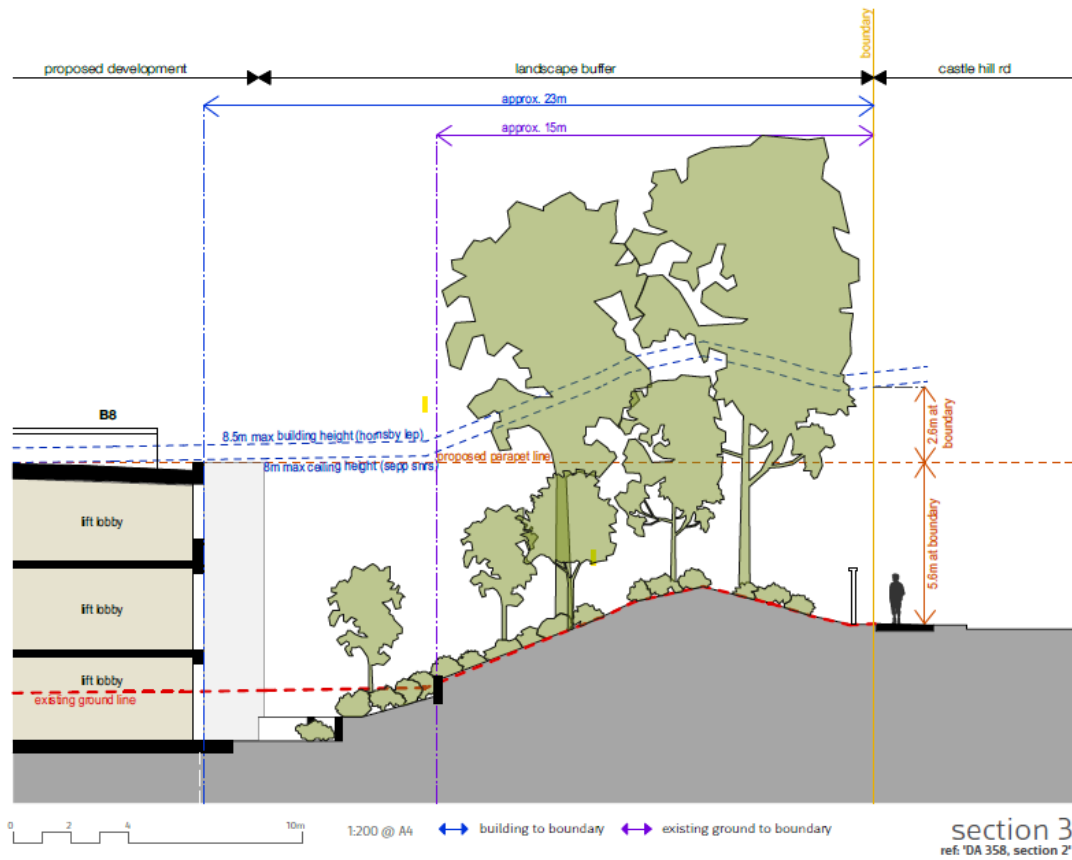


Figure 2: Section through Building B8 extracted from Urban Design Report

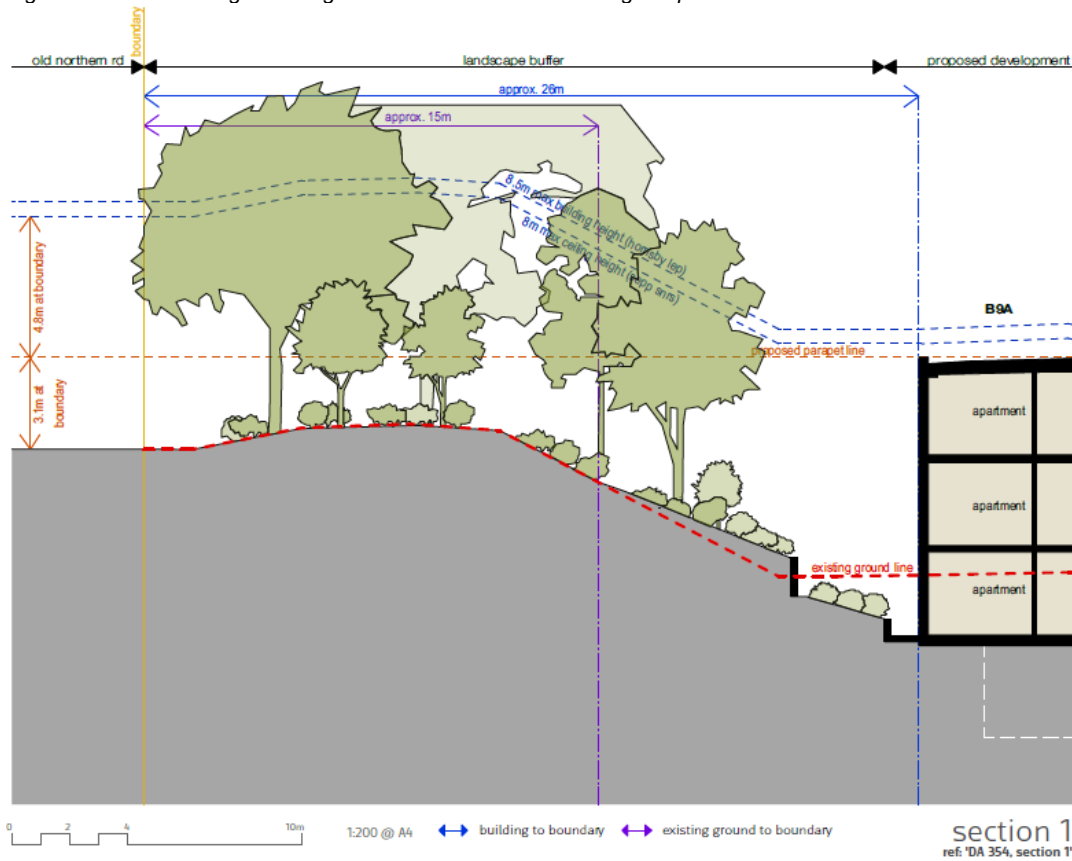


Figure 3: Section through Building B9A extracted from Urban Design Report

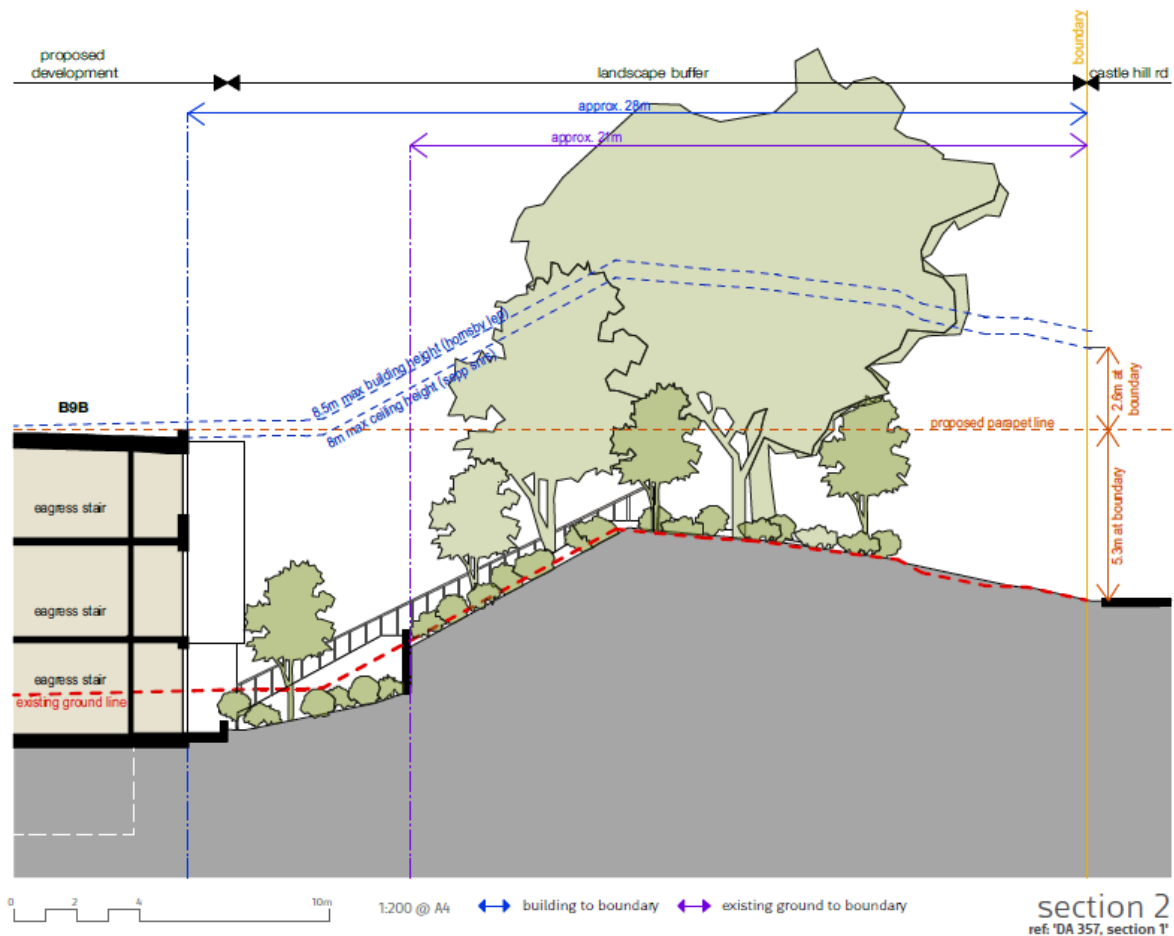


Figure 4: Section through Building B9B extracted from Urban Design Report

Relationship to Old Northern Road and Castle Hill Road (refer Section 4.4.1 of the Urban Design Report, September 2021). Having regard to the above sections and the Urban Design Report, Kennedy Associates Architects notes that the development achieves an appropriate scale 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 height of development in 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 three buildings to Old Northern Road and Castle Hill Road are between 23m to 34m. 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 of surrounding development or the public domain.
- The retention of vegetation and the masonry wall along the Old Northern Road and Castle Hill Road frontages 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 5**). 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 along both Castle Hill Road and Old Northern Road

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 5: View of proposed seniors housing development from Castle Hill Road

The Urban Design Report provides a thorough analysis which demonstrates that the proposed 3 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 storey buildings will not create an abrupt change in scale in the streetscape. The proposed heights are therefore consistent with the objective of the control. For 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 good design has been achieved as per the aims of SEPP Seniors, and the design avoids adverse impacts to the public domain and will therefore not cause environmental harm as per the guidance provided in 'Micaul'.

5.1.2 Application of the R2 zone to the Existing Built Form

The Urban Design Report sets out how the character of the site has evolved over many years (this is also summarised in **Section 5.2** 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 2 storey development standard (which applies to the R2 zone where residential flat buildings are not permitted) is unreasonable and unnecessary and particularly when the 3 storey scale buildings are not uncharacteristic of other buildings within the overall village. Further the 3 storey scale buildings do not give rise to any adverse environmental impacts as demonstrated in the following sections.

5.2 Sufficient Environmental Planning Grounds – Clause 4.6(3)(b)

5.2.1 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 standard of clause 40(4)(b) of SEPP Seniors therefore applies. 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 existing on the site comprises many buildings 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 area of 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, community buildings and a chapel. The character of the existing housing (Hunter Terraces) whilst being single storey, is not of 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 is an urban form not characteristic of a low density residential environment. **Figure 6** provides six examples of buildings from different eras and of different building heights 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 are provided in the Urban Design Report, September 2021 prepared by Kennedy Associates Architects.

Kennedy Associates Architects notes (p10) 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 2021. In Section 4.3.1 they observe that 3 storey built form 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 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.

5.2.2 Site Planning Outcomes

The design approach of buildings with a 3 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 13% of the 'development site area' of 78,159m² (refer Drawing No. 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 55,597m² (or 71% of the development site area) is provided. This is considerably more than the 2,310m² 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 and B9B 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,*

5.2.3 Scale Relationship

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 5.1.1** 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 and B9B. The previous arguments have not been repeated but the rationale presented above is equally relevant in the context of "*sufficient environmental planning grounds*".

The Urban Design Report, September 2021 provides a thorough analysis which demonstrates that the proposed 3 storey buildings where they are adjacent to a boundary of the site provide appropriate transitions in height, separation and landscape treatment and collectively this ensures that the proposed 3 storey height does not create an abrupt change in scale in the streetscape.

5.2.4 Apartment Design Guide (ADG) Separation

The departure from the 2 storey height control results in a 3 storey residential flat building (albeit that the building will be for seniors housing) and therefore SEPP 65 and the ADG becomes a relevant consideration.

The ADG building separation controls have been considered in the context of Buildings B8, B9A and B9B.

The building separation under the ADG relevant to Buildings B8, B9A and B9B with a 3 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 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). The building separations achieved are:

- 13.1m to 13.2m between B8 and B9B (more than complying with the ADG)
- 12m between B9B and B9A (complying with the ADG).
- 13m between B8 and the existing building at 11 Gregory Close (more than complying with the ADG).

Despite the 3 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. Drawing DA-050 illustrates screening to private open spaces however these are not required to meet ADG requirements and have been added to provide a break in the line of sight and add architectural interest to the facades.

5.2.5 Solar Access

Adjoining Development Outside the Site

There are no solar impacts arising from the 3 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 sides of those roads.

Existing Development Within the Site

The nearest buildings are the existing dwellings in Milne Court / Gregory Close (to the west). Building B8 is located at the southern part of the site with most of its shadow falling on the embankment. The shadow diagrams (Drawings DA800 and DA801 prepared by Jackson Teece Architects) demonstrate that Building B8 does not shade 11 Gregory Close until 3pm. More than 3 hours of sunlight would be available to the dwellings in that adjoining building.

Solar Access for Proposed Buildings

Each of the three apartment buildings have been considered in terms of overshadowing of each other. It should be noted that both the ADG and SEPP Seniors require solar access to be assessed for each building (ADG) or the development has a whole (SEPP Seniors) and compliance is achieved. The following analysis is on an apartment by apartment basis providing a level of assessment more detailed than the planning controls require but is useful to understand the effects of the additional storey.

Jackson Teece Architects has prepared view from the sun diagrams to verify the solar access to all apartments (refer Drawings DA714-DA730). The view from the sun diagrams show sunlight to each window and private open space area for each apartment in each building at each hour between 9am and 3pm at the winter solstice. This has allowed a thorough assessment against the ADG (2 hour) and SEPP Seniors (3 hour) solar access requirements. The results of the solar analysis have been tabulated by Jackson Teece Architects in Drawing DA-604. Analysis of these view from the sun diagrams illustrates the following

Building 8

Building 8 is shaded by Building 9A. However the shadow does not affect the western elevation of Building 8 until after 2pm.

At 3pm only the ground level of Building 8 is affected by the top floor of Building 9A. The affected dwelling is at the rear (Dwelling GF-01). Its private open space is on the southern side and is therefore self-shaded. The living room windows on the western façade receive 2 hours of solar access complying with the ADG. The additional storey is therefore not adversely impacting the west facing dwelling in Building 8 and it would comply with the ADG on a stand-alone basis.

Building 9A

Building 9A is shaded by Building 9B.

At 2pm the middle section at ground level on the western elevation of Building 9A is affected by the top floor of Building 9B. The affected dwelling is GF-02. This dwelling receives 4 hours of sunlight to its living space and 5 hours to its private open space. This dwelling complies on a stand-alone basis under both the ADG and SEPP Seniors.

At 3pm the front half of the building on the western elevation is affected at ground and first floor levels by the top floor of Building 9B. The affected dwellings are GF-03 and L01-03.

- GF-03 receives 2 hours to its living space and 3 hours to its private open space. This dwelling complies on a stand-alone basis for its private open space under both the ADG and to its living room under the ADG.
- L01-03 receives 6 hours its living space and 4 hours to its private open. This dwelling complies on a stand-alone basis under both the ADG and SEPP Seniors.

The above analysis demonstrates that there are no shadow impacts external to the site, to the adjoining dwellings in Milne Court and Gregory Close or for the proposed dwellings in Buildings 8, 9A and 9B when assessed on a stand-alone basis. The 3 storey scale of the Buildings B8, B9A and B9B does not give rise to adverse solar impacts providing an environmental planning ground to justify a variation.

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

As discussed below, 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 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 storey buildings (B8, B9A and B9B) do not create an abrupt change in scale in the streetscape. The preceding discussion has demonstrated that this objective has been achieved.

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 a community room (in Building B8) and one in the form of a self-serve café in which residents will be able to meet 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**.

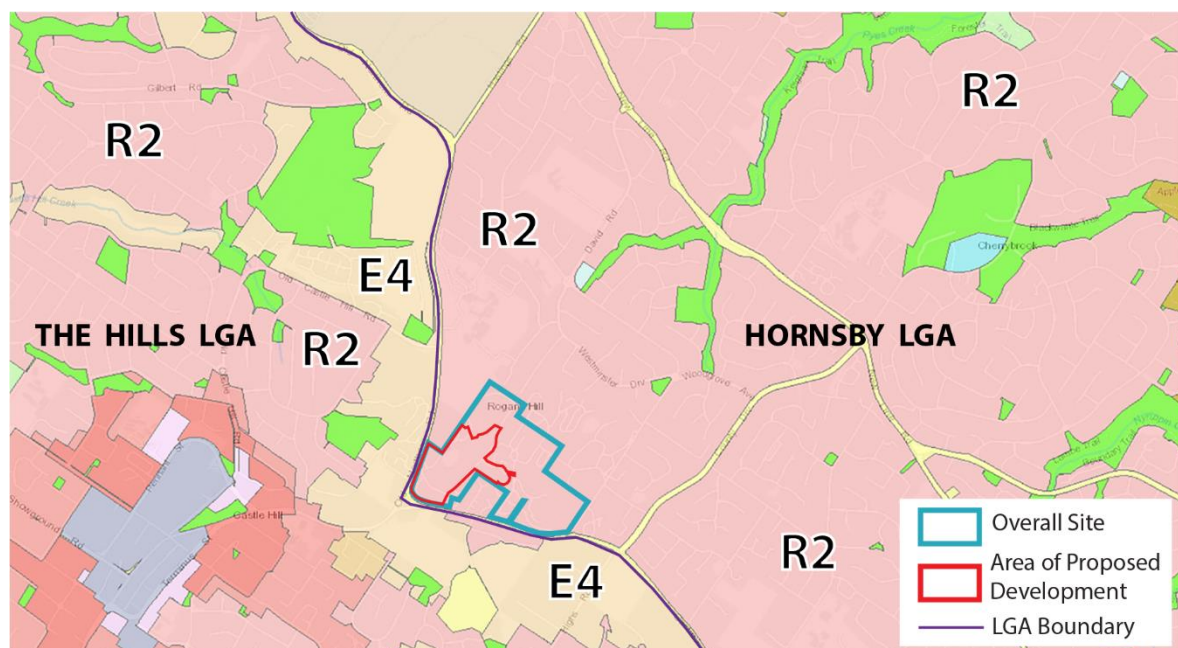


Figure 8 : Extent of the R2 Zone

Within this broader context, the proposal provides housing (to meet the needs of the community) within the broader residential environment 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 having 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 will not be 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. The 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 of the buildings with other parts of the Anglicare Village that are zoned R2, achieves 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 separations between the buildings and the landscaping between those buildings. Essentially an open suburban character is achieved despite the departures to the 2 storey building height control.

The FSR of the development is 0.13:1 which is less than the 0.5:1 FSR 'deemed to comply' control under SEPP Seniors. Whilst the development has been designed as 3 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 allows for street tree planting in front of the buildings 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 relate to residential density. **Table 3** summarises the site coverage and landscape area controls of the Hornsby DCP for 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 of the proposed development is 13% 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 55,597m² or 71% of the 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).
- A community room in building B8.
- A self-serve café that will also serve as a community room.
- 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 day needs of the residents in the village.

Despite the minor variations to the 2 storey building height control the proposal is considered to be consistent with the zone objectives.

6.0 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:*
 - (ii) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (iii) 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 Planning Secretary has been obtained.”*

The discussion in **Section 5.1** (unreasonable or unnecessary), **Section 5.2** (sufficient environmental planning grounds) and **Section 5.3** (public interest) satisfies the requirements of subclause (4)(a)(i) and (ii).

The following discussion addresses subclause (4)(b) in relation to the concurrence of the Planning Secretary.

7.0 Concurrence of the Planning Secretary

- “(5) In deciding whether to grant concurrence, the Planning 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 Planning 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 variation 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. 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 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.

8.0 Conclusion

The proposed variation to the 2 storey building height development standard in SEPP Seniors 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 broader 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 achieve a character that is consistent with the overall Anglicare Castle Hill Village.
- The 3 storey apartment buildings 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 buildings 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 provide for transition in scale at the boundaries of the site and therefore achieve the objective of the 2 storey height 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 and B9B achieve the ADG building separation design criteria.
- Generous setbacks in excess of the minimum requirements have been provided 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 Floor Space Ratio deemed to satisfy provisions 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 2 storey building height development standard 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.