



Clause 4.6 Variation Request

Height of Buildings
Development Standards –
SEPP (Housing for Seniors or
People with a Disability) 2004
Clause 40(4)(a)

54, 56, 58 & 58A Wycombe Road, Neutral Bay

Submitted to North Sydney Council
On Behalf of Cranbrook Care

MARCH 2020

REPORT REVISION HISTORY

Revision	Date Issued	Revision Description
01	04/09/2019	Draft
		Prepared by
		Lotti Wilkinson Associate
		Verified by
		
		Susan E Francis Executive Director
02	23/09/2019	Draft
		Prepared by
		Lotti Wilkinson Associate
		Verified by
		
		Susan E Francis Executive Director
03	26/09/2019	Final
		Prepared by
		Lotti Wilkinson Associate
		Verified by
		
		Susan E Francis Executive Director
04	03/03/2020	Updated
		Prepared by
		Lotti Wilkinson Associate
		Verified by
		
		Susan E Francis Executive Director

Disclaimer

This report has been prepared by City Plan Strategy & Development P/L with input from a number of other expert consultants (if relevant). To the best of our knowledge, the information contained herein is neither false nor misleading and the contents are based on information and facts that were correct at the time of writing. City Plan Strategy & Development P/L accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damage arising from reliance in information in this publication.

Copyright © City Plan Strategy & Development P/L
ABN 58 133 501 774

All Rights Reserved. No material may be reproduced without prior permission.

TABLE OF CONTENTS

1. Executive Summary	4
2. Introduction	5
3. Standard to be Varied	6
4. Extent of Variation.....	7
5. Unreasonable or Unnecessary	10
5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.....	10
6. Sufficient Environmental Planning Grounds	22
7. Public Interest.....	23
8. State or Regional Environmental Planning	25
9. Conclusion.....	26

FIGURES

Figure 1: Proposed first floor plan, location of contravention highlighted red (Source: Boffa Robertson Group).....	7
Figure 2: Proposed second floor plan, location of contravention highlighted red (Source: Boffa Robertson Group).....	8
Figure 3: Key Plan of Sections & Legend for Section Plans (Source: Boffa Robertson Group).....	8
Figure 4: Extract of Section A north/south through proposed building illustrating built form above the 8 metre SEPP height limit. Existing RACF shaded green and illustrating the integration of the proposal with the existing building (Source: Boffa Robertson Group)	9
Figure 5: Extract of Section D east/west through proposed building illustrating built form above the 8 metre SEPP height limit (Source: Boffa Robertson Group)	9
Figure 6: Extract of Section E north/south through proposed building illustrating built form above the 8 metre SEPP height limit. Existing RACF shaded green and illustrating the integration of the proposal with the existing building (Source: Boffa Robertson Group)	9
Figure 7: Two and three storey development to the east of the site fronting Wycombe Road, approximate extent of site boundary shaded red (Source: Google Maps).....	11
Figure 8: Residential flat building development to the west of the site fronting Aubin Street, Thrupp Street and Hariette Street, approximate extent of site boundary shaded red (Source: Google Maps) 12	
Figure 9: Development to the north of the site fronting Wycombe Road, approximate extent of site boundary shaded red (Source: Google Maps)	12
Figure 10: Development to the south of the site fronting Wycombe Road (Source: Google Maps)	13
Figure 11: Wycombe Road Elevation with existing and proposed RLs identified (Source: Boffa Robertson Group).....	13
Figure 12: Photomontage of proposed development viewed from Corner of Aubin Street and Thrupp Street (Source: Boffa Robertson Group)	15
Figure 13: Aerial view of site looking west illustrating extent of tree coverage on the site (Source: Google Maps).....	17

Figure 14: Development to the south of the subject site located at 46-52 Wycombe Road along its Aubin Street elevation (Source: Google Maps) 17

Figure 15: Elevational shadow diagram at 9am on 21 June (Source: Boffa Robertson Group) 19

Figure 16: Elevational shadow diagram at 9:30am on 21 June (Source: Boffa Robertson Group) 19

Figure 17: Elevational shadow diagram at 10am on 21 June (Source: Boffa Robertson Group) 19

Figure 18: Elevational shadow diagram at 11am on 21 June (Source: Boffa Robertson Group) 20

Figure 19: Elevational shadow diagram at 12pm on 21 June (Source: Boffa Robertson Group) 20

Figure 20: Elevational shadow diagram at 3pm on 21 June (Source: Boffa Robertson Group) 20

TABLES

Table 1: Achievement of Assumed Objectives of Clause 40(4)(a) of the Seniors SEPP 10

Table 2: Consistency with Zone Objectives. 23

1. EXECUTIVE SUMMARY

The proposal involves the demolition of the existing buildings at 54 and 58 Wycombe Road, the sympathetic adaptation of 56 Wycombe Road and the construction of a three-storey building to provide a residential aged care facility (RACF) for 87 beds which is to integrate with the existing facility at 58A Wycombe Road, Neutral Bay.

This Clause 4.6 variation is to address a variation to Clause 40(4)(a), relating to the height of buildings of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP), specifically “(a) the height of all buildings in the proposed development must be 8 metres or less”.

The maximum height of the development exceeds the 8 metre height limit by a maximum of 1.39 metres or 17% of the numerical value of the standard. The portions of the building that contravene the 8 metre building height limit relate to a small portion (280mm) of a bedroom located at first floor level in the site’s southwestern corner and portions of the second floor level (varying from 63mm transitioning to 1390mm) including six (6) bedrooms, storerooms, the dining room and lift lobby.

The portions of the building that contravene the height of buildings standard do not result in any detrimental impacts on the adjoining or nearby properties in terms of privacy or view loss, and do not detract from the amenity enjoyed by these residences. They are predominantly a result of the site’s topography and the need to maintain level floorplates for the operational characteristics of the RACF. Through a combination of increased setbacks and plantings, adequate levels of privacy are maintained. The overshadowing impacts caused by the additional height are limited in duration and an acceptable level of solar access will be provided to adjoining developments. All neighbouring private open space and internal living areas will maintain a minimum their current hours of sunlight or achieve a minimum of three hours of solar access between 9am and 3pm on 21 June.

The proposed building height will result in a building that is of an appropriate scale and density to the surrounding locality. The elements that contravene the height of buildings standard are predominantly within the centre of the site and are appropriately setback from the site’s boundaries to ensure the height departure is compatible with the character of the existing buildings on the site and the scale of development along Wycombe Road.

This request demonstrates compliance with the building height standard is unreasonable or unnecessary in the circumstances of the proposed development and that there are sufficient environmental planning grounds to justify the variation. The development as a whole satisfies the assumed objectives of the height standard, as well as the objectives of the R2 – Low Density Residential Zone and is in the public interest. Strict adherence to the height standard in this instance is therefore unreasonable and unnecessary.

2. INTRODUCTION

This is a formal written request that has been prepared in accordance with Clause 4.6 of the North Sydney Local Environmental Plan 2013 (North Sydney LEP) to justify a variation to Clause 40(4)(a) relating to the height of buildings in *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP). The variation is in relation to a proposed development application submitted to North Sydney Council for demolition of the existing buildings at 54 and 58 Wycombe Road, the sympathetic adaptation of 56 Wycombe Road and the construction of a three-storey building to provide residential accommodation for seniors (87 beds) which will integrate with the existing RACF at 58A Wycombe Road, Neutral Bay.

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

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

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

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

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a));
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)); and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (clause 4.6(4)).

(See *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130).

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

3. STANDARD TO BE VARIED

The site is zoned R2 Low Density Residential under the North Sydney Local Environmental Plan 2013 (North Sydney LEP). Residential flat buildings are not permitted within the R2 Low Density Residential zone.

The standard that is proposed to be varied is the “*height in zones where residential flat buildings are not permitted*” which is set out in Clause 40(4)(a) of the Seniors SEPP as follows:

40 Development standards—minimum sizes and building height

(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

The development standard to be varied is not excluded from the operation of Clause 4.6 of the LEP.

4. EXTENT OF VARIATION

The definition of height within the Seniors SEPP is:

height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

As demonstrated by the plans prepared by Boffa Robertson Group, the development exceeds the 8 metre height limit by a maximum of 1.39 metres or 17% of the numerical value of the standard. The portions of the building that contravene the 8 metre building height limit relate to a small portion (280mm) of a bedroom located at first floor level in the site's southwestern corner and portions of the second floor level (varying from 63mm transitioning to 1390mm) including six (6) bedrooms, storerooms, the dining room and lift lobby.

The figures below illustrate the extent and locations of the proposed contraventions.

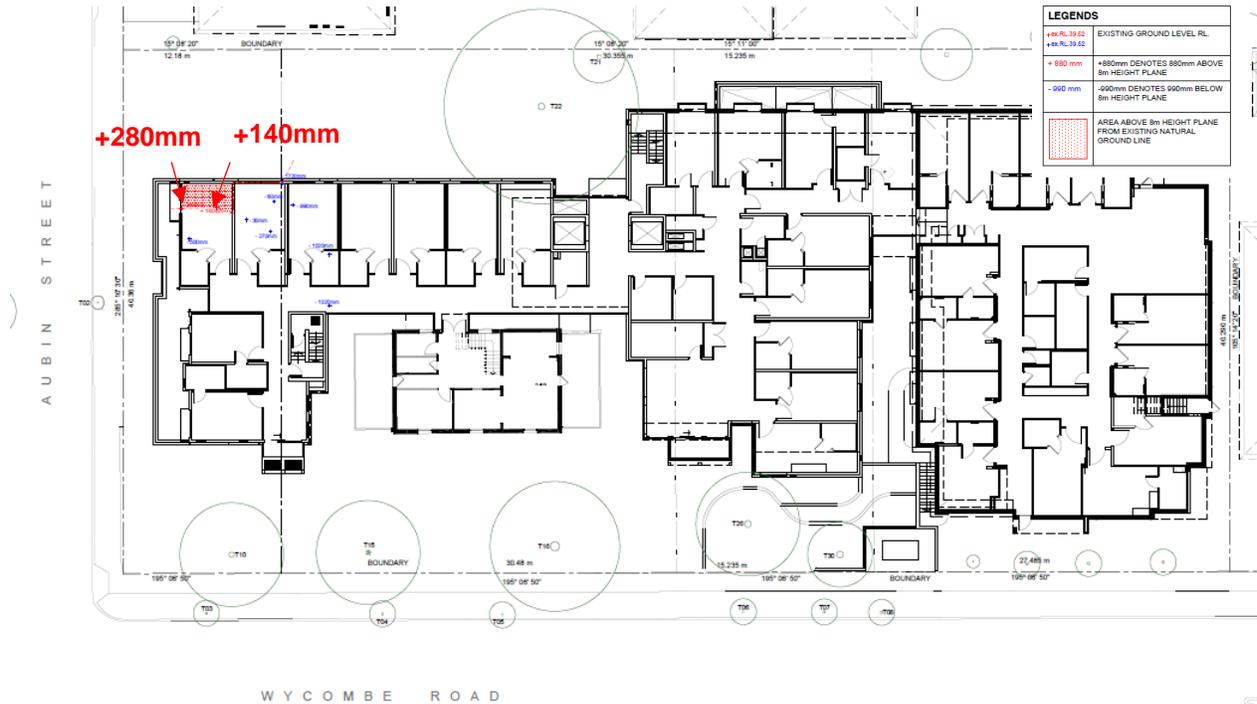


Figure 1: Proposed first floor plan, location of contravention highlighted red (Source: Boffa Robertson Group)

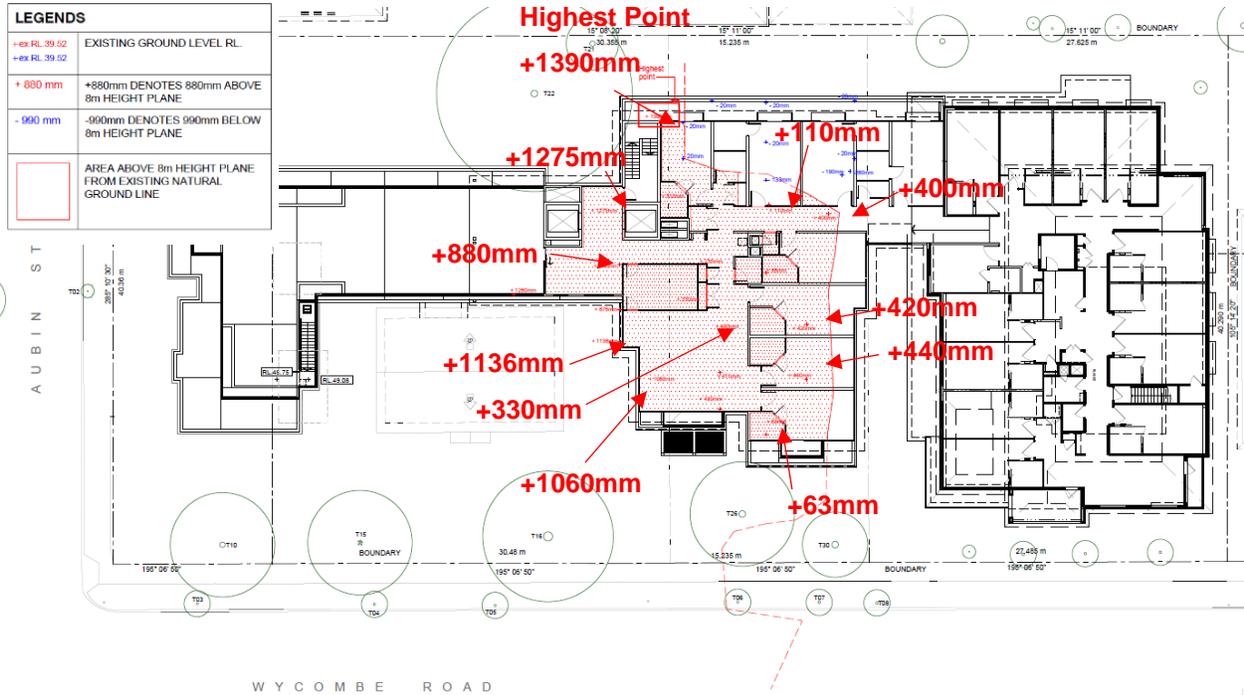


Figure 2: Proposed second floor plan, location of contravention highlighted red (Source: Boffa Robertson Group)

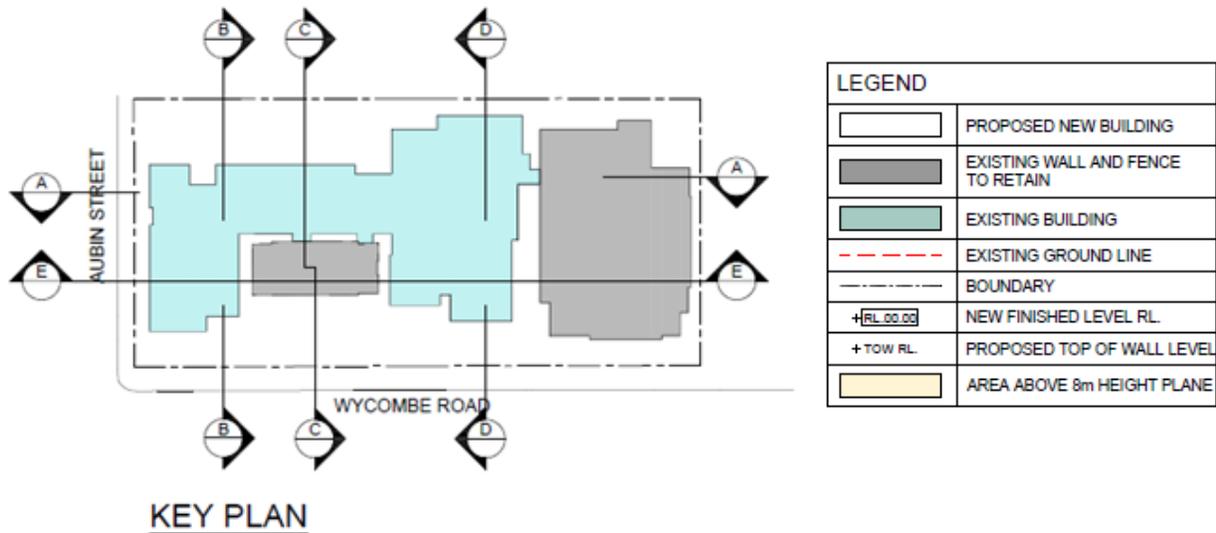


Figure 3: Key Plan of Sections & Legend for Section Plans (Source: Boffa Robertson Group)

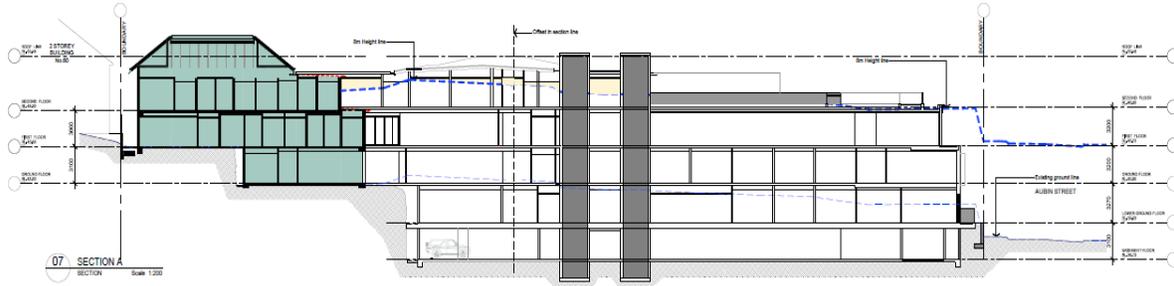


Figure 4: Extract of Section A north/south through proposed building illustrating built form above the 8 metre SEPP height limit. Existing RACF shaded green and illustrating the integration of the proposal with the existing building (Source: Boffa Robertson Group)

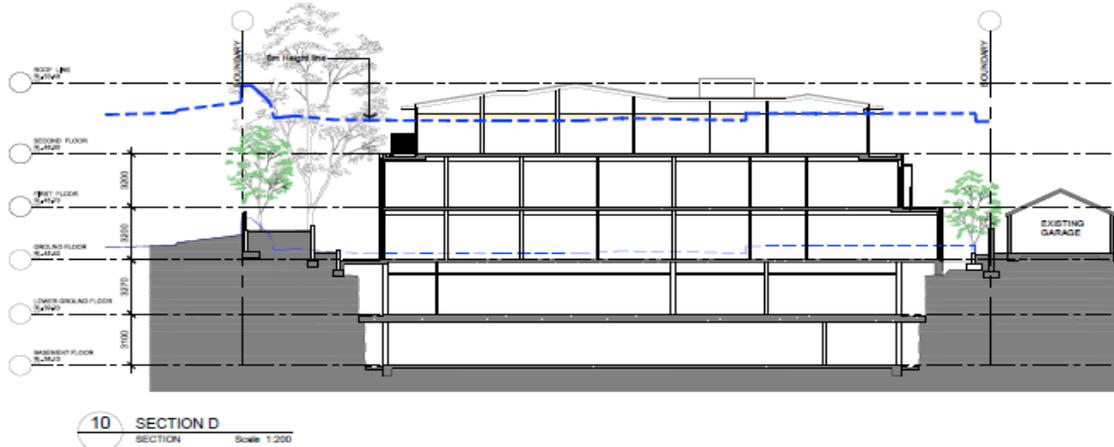


Figure 5: Extract of Section D east/west through proposed building illustrating built form above the 8 metre SEPP height limit (Source: Boffa Robertson Group)

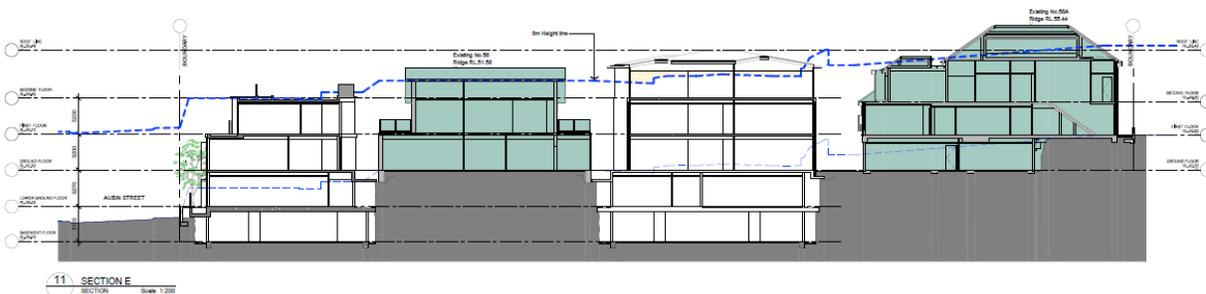


Figure 6: Extract of Section E north/south through proposed building illustrating built form above the 8 metre SEPP height limit. Existing RACF shaded green and illustrating the integration of the proposal with the existing building (Source: Boffa Robertson Group)

5. UNREASONABLE OR UNNECESSARY

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

The Court has held, in *Wehbe v Pittwater Council* [2007] NSWLEC, that there are at least five different ways, and possibly more, in which an applicant might establish that strict compliance with a development standard is unnecessary (it is achieved anyway) and unreasonable (no purpose would be served) including:

- compliance with a development standard is unreasonable or unnecessary;
- underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
- the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
- the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
- the zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.

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

In this case, we consider the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

The Seniors SEPP provides no instruction on the intent of the height controls in Clause 40(4)(a) and does not otherwise nominate any objectives to underpin the intent of this control. The provision applies to issues where a residential flat building is not permitted, and it is necessary to assume what the purpose of the standard might be to then evaluate whether a variation to the control would be consistent with these objectives. It is therefore assumed that the intent/purpose (objectives) of this control are:

- *To ensure that the development is compatible, by virtue of its bulk and scale, with the existing and desired future character of the area; and*
- *To not cause unreasonable amenity impacts on adjoining developments.*

The variation sought will be tested against these assumed objectives.

Table 1: Achievement of Assumed Objectives of Clause 40(4)(a) of the Seniors SEPP

Objective	Discussion
<i>To ensure that the development is compatible, by virtue of its bulk and scale, with the existing and desired future</i>	<p>The proposed seniors housing development forms part of the Wycombe Road streetscape. Wycombe Road is a local road that extends from Kurraba Road in the south to Military Road to the north. The land uses in the immediate area are predominantly residential and comprise a mix of low, medium and high density residential developments.</p> <p>Development to the east of the site includes large, detached dwelling houses two storeys in height with high pitched roofs. Existing development is setback from the</p>

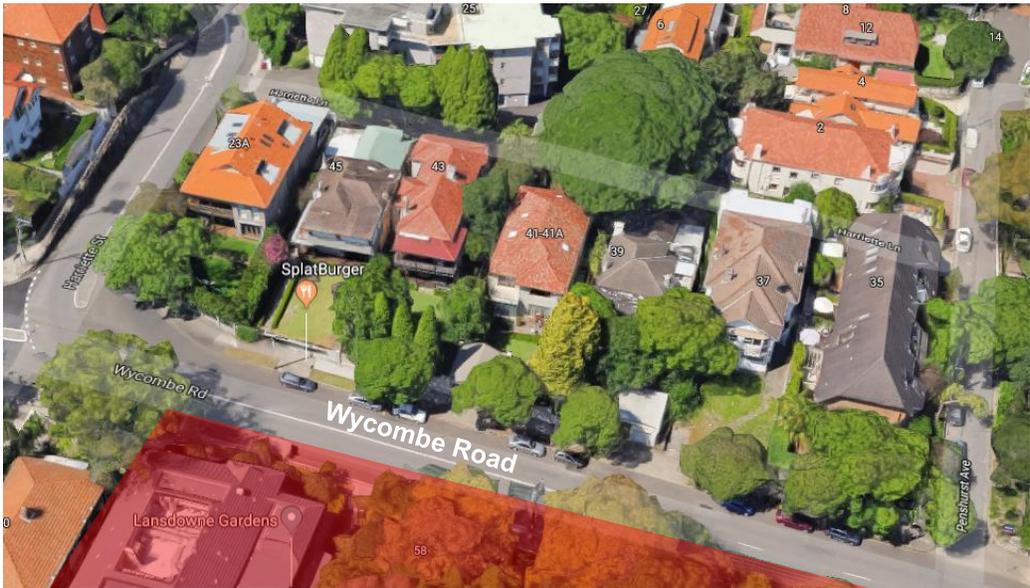
Objective	Discussion
<p><i>character of the area</i></p>	<p>streetscape and the buildings are largely obscured by landscaping, garaging and fencing.</p> <p>Development to the south of the site includes two-storey terrace housing and two-storey detached dwelling houses with high pitched roofs. Located at the corner of Kurraba Road and Wycombe Road is a residential flat building seven storeys in height.</p> <p>Development to the west of the site is zoned R4 High Density Residential and contains residential accommodation provided in red brick residential flat buildings with pitched roofs. Existing development includes two three-storey residential flat buildings at Nos 64 and 66 Aubin Street, three three-storey red brick residential flat buildings at Nos 9, 11 and 13 Thrupp Street and a four-storey residential flat building located at 19 Hariette Street.</p> <p>Development to the north of the site includes a two-storey residential flat building at 60 Wycombe Road. Development beyond predominantly comprises dwelling houses two storeys in height, with high pitched roofs.</p> <p>Photographs of existing development within the vicinity of the site are provided in Figure 7 to Figure 10. The proposed development will be a maximum of three storeys in height, with the third storey setback. The below figures demonstrate that the existing buildings, located opposite and to the south and north of the site, are of a similar scale and height to the proposed development.</p>  <p>Figure 7: Two and three storey development to the east of the site fronting Wycombe Road, approximate extent of site boundary shaded red (Source: Google Maps)</p>



Figure 8: Residential flat building development to the west of the site fronting Aubin Street, Thrupp Street and Harriette Street, approximate extent of site boundary shaded red (Source: Google Maps)

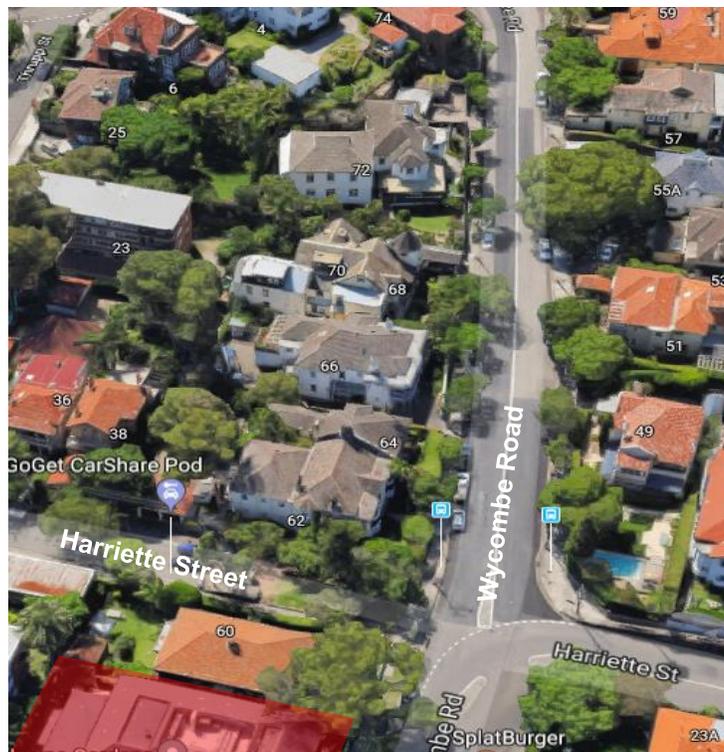


Figure 9: Development to the north of the site fronting Wycombe Road, approximate extent of site boundary shaded red (Source: Google Maps)

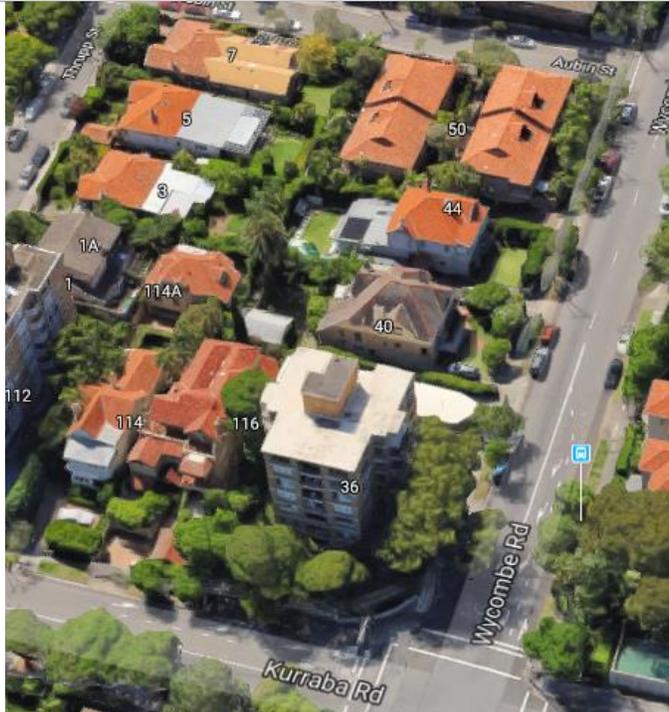


Figure 10: Development to the south of the site fronting Wycombe Road (Source: Google Maps)

The extent of the contravention is limited to a small portion (280mm) of a bedroom located at first floor level in the site's southwestern corner and portions of the second floor level (varying from 63mm transitioning to 1390mm) including six (6) bedrooms, storerooms, the dining room and lift lobby.

Wycombe Road Frontage

Along the site's Wycombe Road frontage the extent of the contravention extends for a length of 21.40 metres and is limited to the part of the site identified as 58 and 56 Wycombe Road (Refer Figure 11).

Approximately 5.87 metres of the proposed contravention along the Wycombe Road frontage is setback approximately 20.3 metres from the site's frontage and is located behind the roof of the existing heritage item at 56 Wycombe Road.

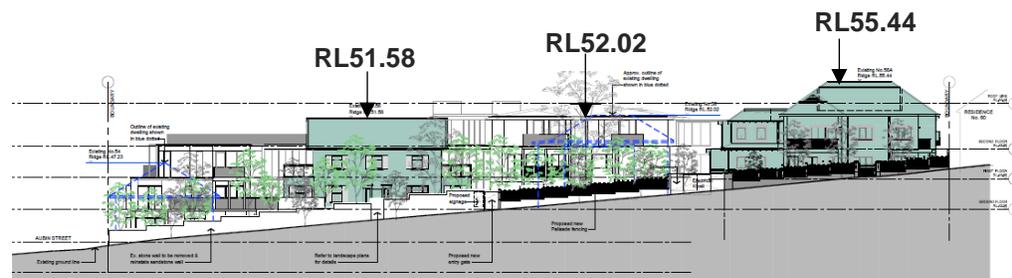


Figure 11: Wycombe Road Elevation with existing and proposed RLs identified (Source: Boffa Robertson Group)

Objective	Discussion
	<p>Buildings along Wycombe Road are predominantly two storeys in height with high pitched roofs. The existing RACF at 58A Wycombe Road, currently comprises a two-storey building with a pitched roof (RL55.44). The existing heritage building at 56 Wycombe Road also comprises a two-storey building with a pitched roof (RL51.58). The proposed height is required so that the development is consistent and congruous with the existing height of 56 and 58A Wycombe Road. Within this context, the proposed development is consistent with the bulk, scale and streetscape presentation of the existing buildings</p> <p>Due to the sloping topography of the site, the area of contravention along Wycombe Road will present as a two-storey building with the third storey setback (ridge height of 53.48) to Wycombe Road which appropriately transitions in height between the heritage building at 56 Wycombe Road and the existing RACF at 58A Wycombe Road. It is noted, should the development comply with the height standard, then one storey would need to be removed from 58 Wycombe Road which would create a dramatic drop in height between 56 and 58A Wycombe Road, before dropping again at 54 Wycombe Road. To ensure the proposed development is compatible with existing development, as well as the topography of the land, the development has been purposively sloped (as shown in Figure 6 and Figure 11).</p> <p>To further ensure the contravention is compatible with the existing and future character of the area, the area of height exceedance is setback a minimum of 9.4 metres from the Wycombe Road frontage which is over triple the existing 3 metre setback provided from the existing RACF at second floor level. Further, to enhance the appearance of this part of the site, planting is provided along the second floor balconies which will help to soften the appearance of the building from the streetscape.</p> <p>It is noted that despite the contravention, the height of the proposed development is lower (RL53.48) than the existing RACF at 58A Wycombe Road (RL55.44) which complies with the 8 metre height standard. The definition of height, as per the Seniors SEPP, relates specifically to the ceiling height of the topmost floor and does not take into account the height of the roof or any roof structures. A compliant development could therefore comply with the 8 metre height standard, but could be significantly taller in height as a result of the proposed roof form or rooftop elements (as illustrated at 58A Wycombe Road with its high pitched roof) and result in detrimental impacts to adjoining or nearby properties in terms of overshadowing, privacy or view loss. The proposed development, which partially breaches the height standard, provides a modest roof form and appropriately transitions in height between the existing buildings on the site.</p> <p><u>Aubin Street Frontage</u></p> <p>Along the site's southern boundary, the contravention is restricted to a small area of the corner bedroom. The area of contravention is setback approximately 4.49 metres from the site's Aubin Street boundary and its perceived bulk and scale will be reduced through appropriate planting on the Juliet balcony of this bedroom.</p> <p>The proposed development along this frontage will present as a two storey building to Aubin Street, with the third storey setback, which is lower in height (RL48.90) than the existing residential flat buildings immediately adjacent to the site at 64 and 66 Aubin Street (RL 52.32 and RL52.86 respectively).</p> <p>The resultant built form along this frontage is a building that is compatible in bulk and scale with the existing and expected future character of the area, as it transitions to the higher density development to the west.</p> <p>A photomontage of the proposed development along the Aubin Street frontage is provided at Figure 12.</p>

Objective	Discussion
	 <p data-bbox="402 1094 1421 1146"><i>Figure 12: Photomontage of proposed development viewed from Corner of Aubin Street and Thrupp Street (Source: Boffa Robertson Group)</i></p> <p data-bbox="402 1192 690 1224"><u>Rear Western Boundary</u></p> <p data-bbox="402 1234 1421 1350">Along the site's western boundary, the contravention is approximately 3.9 metres in length along the site's south-west corner of the building at first floor level and approximately 5.05 metres in length within the central part of the building at second floor level.</p> <p data-bbox="402 1360 1421 1455">The existing character of development to the west of the site comprises higher density, taller buildings which contain residential accommodation provided in red brick residential flat buildings with pitched roofs.</p> <p data-bbox="402 1465 1421 1644">The 3.9 metres area of non-compliance at the south-western boundary is considered to respond to the predominant building typology along the Aubin Street frontage and the built form in this location will assist in anchoring the corner of the site. This minor variation is setback by approximately 10.1 metres from the site's western boundary and is considered to be compatible, by virtue of its bulk and scale, with the existing and future character of this part of the site.</p> <p data-bbox="402 1654 1421 1833">The contravention at the centre of the site (approximately 5.05 metres in length) is considered to respond to the change of scale and density to the west of the site. Part of the variation (1.80 metres) is setback 6.8 metres from the western boundary and part of the variation (3.25) metres is setback 11.77 metres from the western boundary. The variation is setback over 22.79 metres from the nearest residential flat building located at 9 Thrupp Street.</p> <p data-bbox="402 1843 1421 1934">The resultant built form along this frontage is a building that is compatible in bulk and scale with the existing and expected future character of the area, as it transitions to the higher density development to the west.</p>

Objective	Discussion
<p><i>To not cause unreasonable amenity impacts on adjoining developments</i></p>	<p>Along the site's Wycombe Road frontage the extent of the contravention extends for a length of 21.40 metres and is limited to the part of the site identified as 58 and 56 Wycombe Road. Along the site's southern boundary, the contravention relates to approximately 2.01 metres and is restricted to a small area of one bedroom. Along the site's western boundary, the contravention relates to approximately 3.93 metres within the site's south-west corner of the building at first floor level and approximately 5.05 metres within the central part of the building at second floor level.</p> <p>Views</p> <p>Views from the surrounding properties will not be affected as a consequence of the contravention of the development standard. Existing views across the subject site are largely obscured by dense vegetation located at the front and rear of Nos 58 Wycombe Road and rear of 54 Wycombe Road. The proposal seeks to remove a number of existing trees in this location and will offer opportunities to enhance view sharing across the site.</p> <p>The areas of contravention are setback from the adjoining boundaries and have been designed to achieve a sensitive transition to the existing buildings on the site at 58A Wycombe Road and 56 Wycombe Road.</p> <p>The area of contravention along Wycombe Road is setback further than the front setback of the adjoining RACF at 58A Wycombe Road and partially wraps behind 56 Wycombe Road to help maintain views of the existing heritage item at 56 Wycombe Road.</p> <p>The closest adjoining dwellings are located at 66 Aubin Street and 9 and 11 Thrupp Street to the west of the site and 48-52 Wycombe Road to the south of the site. The dwellings to the west are zoned R4 High Density Residential and comprise three storey residential flat buildings, with principle views towards the south. Existing views to the east are largely obscured by dense vegetation within the subject site, refer Figure 13. The proposal, located due east of these dwellings, will not impact views currently enjoyed from these dwellings. The proposal includes the removal of a number of existing trees which will provide an opportunity to enhance view sharing for these properties.</p>



Figure 13: Aerial view of site looking west illustrating extent of tree coverage on the site (Source: Google Maps)

Development to the south of the site is separated by Aubin Street and includes two rows of two-storey terrace housing located at 46-52 Wycombe Road. Due to the sloping topography of the road, the second storeys of these existing dwellings read as single storey with a prominent roof form when viewed from the subject site. There are limited openings along this frontage, with openings restricted to small or high-level fixed windows.



Figure 14: Development to the south of the subject site located at 46-52 Wycombe Road along its Aubin Street elevation (Source: Google Maps)

Due to the stepping topography of the site, there are limited existing views from these properties to the north (across the subject site). The variation relates to 2.014 metres of this frontage at first floor level, which is setback 4.4 metres from the street. The proposed development is not considered to impact on existing views to the north.

Objective	Discussion
	<p>Overshadowing</p> <p>The definition of height, in accordance with the Seniors Housing SEPP, relates to the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point. The definition of height does not include any built form which is located above the ceiling such as roofs and rooftop elements such as lift over-runs and plant structures.</p> <p>Shadow diagrams cannot be produced which demonstrate the extent of the height breach alone, as the roof and proposed rooftop elements (which are not relevant for the height standard) result in additional overshadowing, notwithstanding the breach to the height control.</p> <p>A comparison cannot be made to a compliant 8 metre development as a compliant development could have a greater physical height, including its roof form and rooftop structures, and result in greater overshadowing impacts than the proposed development.</p> <p>Notwithstanding the height breach, the shadow diagrams prepared by Boffa Robertson Group demonstrate the proposed development would protect the amenity of neighbouring properties in relation to sunlight, despite the non-compliance with the height standard. All neighbouring properties will maintain their existing solar access or maintain at least three hours of sunlight between 9am and 3pm on 21 June.</p> <p>In terms of overshadowing, a summary is provided below:</p> <ul style="list-style-type: none"> ▪ The closest residential property to the west of the subject site, at 66 Aubin Street, will receive additional overshadowing only between 9am and 10am on 21 June. However, the extent of the overshadowing is restricted to the lower portion of its northern and western elevation. Three windows will be affected by overshadowing; however, this is restricted between the hours of 9am and 9:30am on 21 June only. The proposal will not result in any additional overshadowing to the property between 11am and 3pm on 21 June. ▪ The closest residential properties to the south of the subject site, at 46-52 Wycombe Road, will receive additional overshadowing only between 9am and 11am on 21 June. The proposal will not result in any additional overshadowing between 11am and 3pm on 21 June. ▪ The residential property at 7 Thrupp Street, will receive additional overshadowing only between 9am and 10am on 21 June. The proposal will not result in any additional overshadowing between 10am and 3pm on 21 June. ▪ The majority of the shadows will fall on the site itself and the road reserve between 11am and 3pm. <p>Refer to extracts of the shadow diagrams provided below.</p>



Figure 15: Elevational shadow diagram at 9am on 21 June (Source: Boffa Robertson Group)



Figure 16: Elevational shadow diagram at 9:30am on 21 June (Source: Boffa Robertson Group)



Figure 17: Elevational shadow diagram at 10am on 21 June (Source: Boffa Robertson Group)



Figure 18: Elevational shadow diagram at 11am on 21 June (Source: Boffa Robertson Group)



Figure 19: Elevational shadow diagram at 12pm on 21 June (Source: Boffa Robertson Group)

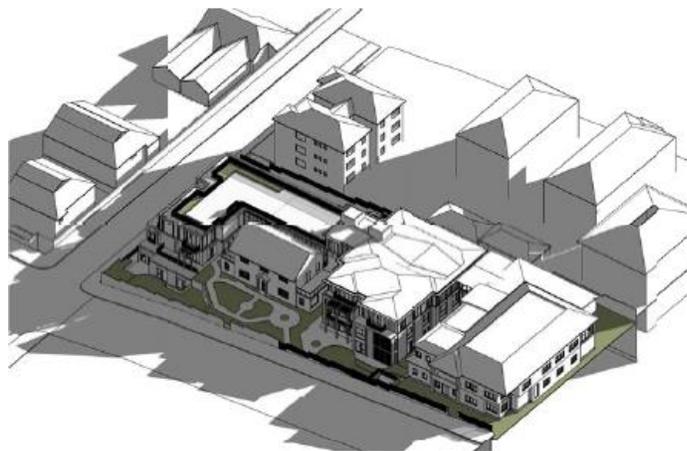


Figure 20: Elevational shadow diagram at 3pm on 21 June (Source: Boffa Robertson Group)

Objective	Discussion
	<p>Privacy</p> <p>Along the site's Wycombe Road frontage, the extent of the contravention extends for a length of 21.40 metres. Approximately 5.87 metres of the proposed contravention is setback 20.8 metres from the site's frontage and is located behind the existing heritage item at 56 Wycombe Road.</p> <p><u>Wycombe Road Frontage</u></p> <p>The remaining area of contravention is setback a minimum of 9.4 metres from the Wycombe Road frontage which is over triple the existing 3 metre setback provided from the existing RACF at second floor level at 58A Wycombe Road.</p> <p>Development to the east is separated by Wycombe Road, with dwelling houses on the eastern side of Wycombe Road setback at least 10 metres from the street. The separation distance between the proposed development and these dwellings is considerable and any privacy impacts caused as a result of the contravention will be negligible.</p> <p>Notwithstanding, decorative pots and planting are proposed along the second floor balconies and extensive tree planting is proposed at ground floor level to maintain appropriate levels of privacy for occupants.</p> <p><u>Aubin Street Frontage</u></p> <p>Along the site's Aubin Street frontage, the extent of the contravention extends for a length of 2.01 metres. The area of non-compliance is setback 4.4 metres from the site's Aubin Street boundary.</p> <p>Development to the south of the site is separated by Aubin Street and includes two rows of two-storey terrace housing located at 46-52 Wycombe Road.</p> <p>While the proposal includes a Juliet balcony outside of the area of contravention, the proposed landscaping treatment includes decorative pots and planting to reduce opportunities for overlooking. Further, it is noted that there are limited windows and openings along the adjacent building at 46-52 Wycombe Road which will ensure existing levels of privacy can be maintained.</p> <p><u>Western Rear Boundary</u></p> <p>Along the site's western boundary, the contravention is limited in length to approximately 3.93 metres within the site's south-west corner of the building at first floor level and approximately 5.05 metres within the central part of the building at second floor level.</p> <p>At first floor level the exceedance relates to a narrow window which is set forward of the nearest dwelling at 66 Aubin Street, and setback 10.15 metres from the site's western boundary. The location of this contravention will not result in any adverse overlooking impacts.</p> <p>In relation to the contravention at second floor level, the contravention only occurs within the building and not along the site's western elevation. There are no associated privacy impacts as a result of this contravention.</p>

As demonstrated in The variation sought will be tested against these assumed objectives.

Table 1 above, the objectives of the height development standard are achieved notwithstanding the proposed variation.

In accordance with the decisions in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118, compliance with the building height development standard is unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In this section we demonstrate that there are sufficient environmental planning grounds to justify contravening Clause 40(4)(a) of the Seniors SEPP as required by clause 4.6(3)(b) of the LEP.

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

As demonstrated in Section 5, the variation is minor and relates to a small extent of the upper level of accommodation. A compliant development would clearly result in a lesser built form but would be inconsistent with the heights of the existing buildings on the site and provide an abrupt change in building heights across the site. As demonstrated, the parts of the buildings that contravene the standard do not cause any adverse impacts to surrounding residential properties. Therefore, it can be concluded that the proposal does not result in any unreasonable environmental impacts and it is considered there are sufficient environmental planning grounds to justify the contravention.

Some additional specific environmental grounds to justify the contravention of the standard are summarised below:

- The proposed development satisfies the assumed objectives of the standard and the objectives of the zone (refer Section 7);
- The proposed height will facilitate an integrated development across the site allowing for level floorplates which are a pre-requisite for the expanded operation of the existing RACF;
- Buildings along Wycombe Road, including the buildings which are to be retained on the site, are predominantly two storeys in height with high pitched roofs. Due to the sloping topography of the site, the area of contravention along Wycombe Road will present as a two storey building to Wycombe Road with the third storey setback which is consistent with the height of the existing buildings on the site appropriately transitions in height between the heritage building at 56 Wycombe Road and the existing RACF at 58A Wycombe Road. The proposal will provide a modest pitched roof which is in keeping with the character of the existing buildings on the site, as well as the heritage conservation area.
- The design of the proposal incorporates generous setbacks, recessed third storeys of accommodation to complement the built form and assist in reducing the scale of the development when viewed from the public and private domain. This ensures the proposal results in minimal amenity impact and is compatible with the surrounding area in terms of bulk and scale;
- The additional height will not have a detrimental visual impact on the surrounding area;
- There are no adverse environmental impacts such as unacceptable additional overshadowing or overlooking as a result of the proposed building for seniors housing and contravention of the standard; and
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it allows for the coordinated redevelopment of the site to expand the existing RACF to provide further seniors housing, which is critically under-resourced in the North Sydney LGA.

7. PUBLIC INTEREST

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

In section 5 it was demonstrated that the objectives of the development standard are achieved notwithstanding the variation of the development standard.

Table 2 below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with Zone Objectives.

Objectives of Zone R2 Low Density Residential	Discussion
<p><i>To provide for the housing needs of the community within a low density residential environment.</i></p>	<p>The proposed development is consistent with this objective and the contravention of the development standard does not result in an inconsistency with this objective. The proposal responds to the identified need for seniors housing within the locality. The proposal will enable the expansion of the existing RACF at 58A Wycombe Road to provide an additional 62 beds (87 beds in total) within an appropriate and sympathetic built form which is compatible with the existing low density residential environment.</p> <p>The proposed development will present as two storeys to Wycombe Road with the third storey setback, consistent with the height of the two storey buildings at 58A Wycombe Road and 56 Wycombe Road, due to the fall in the slope and the pitched roof profile of these buildings. The proposal will maintain the current relationship to the street and adjoining low density residential environment.</p> <p>To respond to the low density residential environment, the built form is broken down along Wycombe Road. The built form is set behind and around the heritage item and appears as two additional segments interspersed between the existing RACF and the heritage item. The resulting form is a modulated façade that follows the natural fine grain rhythm of the existing built form character.</p> <p>The proposed development includes extensive landscaping along its site boundaries and throughout the site to contribute positively to the locality and the street’s landscape quality.</p> <p>The contravention of this development standard does not affect the site’s consistency with this provision.</p>
<p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p>	<p>The proposed development is consistent with this objective as the proposal is for a RACF designed to cater for the needs of the growing ageing population. As identified by Council, there is an identified acute shortage of seniors housing, specifically residential aged care facilities within the LGA.</p> <p>In May 2019 Council successfully sought an exemption from the Seniors Housing SEPP to enable development applications for seniors housing in Heritage Conservation Areas to be lodged. The Seniors Housing SEPP was subsequently amended in August 2019.</p> <p>In their report to Council, Council officers confirmed the shortfall of seniors housing in the LGA and the need for additional purpose built accommodation:</p>

	<p>“The last time, in 2014, Council surveyed residential aged care places in North Sydney it found the shortfall was 242 beds (the largest shortfall for LGAs in the whole of our aged care region). The shortfall is now reportedly 312 places.</p> <p>Council can allow itself the opportunity to examine, by considering the proposed DA, the potential for adding much needed aged care places for our residents. The mechanism for allowing this is to seek an exemption from the Amendment to the Seniors Housing SEPP.</p> <p>Such an Application, if successful, would do no more than return the situation to how it was in January 2019”.</p> <p>The proposed development will enable the logical extension and enlargement of an established RACF across the adjoining three lots. Cranbrook Care have advised that the current waiting list for residential aged care places at the Lansdowne Gardens facility was 18 as at 1 February 2019. The proposal would greatly assist in meeting current demand and will provide approximately three years’ worth of the LGA’s demand for residential aged care places in a modern, purpose-built facility. Specifically, the proposal would meet the demands of a large pool of people who have the resources and the required needs to enter into a private facility.</p> <p>The contravention of this development standard does not affect the site’s consistency with this provision.</p>
<p><i>To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.</i></p>	<p>The proposed contravention of the standard does not affect consistency with this objective.</p> <p>Council has successfully sought an exemption from the Seniors Housing SEPP to enable development applications for seniors housing in Heritage Conservation Areas to be lodged.</p> <p>The proposal is consistent with Council’s LEP and DCP controls relating to heritage conservation, character and amenity controls. Specifically, the built form relative to the Kurraba Point Heritage Conservation Area and the existing heritage item on the site have been maintained at an appropriate height and scale.</p>
<p><i>To ensure that a high level of residential amenity is achieved and maintained.</i></p>	<p>The contravention of the development standard does not result in an inconsistency with this objective. The proposed development will provide 87 aged care beds in a modern, purpose-built facility with excellent levels of amenity for residents. The proposal will provide an integrated development across the site allowing for level floor plates which are required for the operation of the RACF as well as for the amenity of residents.</p>

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

8. STATE OR REGIONAL ENVIRONMENTAL PLANNING

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

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

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

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

9. CONCLUSION

This Clause 4.6 variation request demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention;
- The development achieves the objectives of the development standard and is consistent with the objectives of the R2 zone notwithstanding the non-compliance with the height standard;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard in the circumstances; and
- The variation does not raise any matter of State or Regional Significance.

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