

Clause 4.6 Variation Request

Height of Buildings
Development Standards -
SEPP (Housing for Seniors or
People with a Disability) 2004
Clause 40(4)(b) (without
prejudice)

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

Submitted to North Sydney Council
On Behalf of Cranbrook Care

MARCH 2020

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1. EXECUTIVE SUMMARY

The proposal the subject of this Clause 4.6 involves the demolition of the existing buildings at 54 and 58 Wycombe Road, the sympathetic adaption 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.

The Clause 4.6 variation is to address a variation to Clause 40(4)(b), relating to the height of buildings in *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (Seniors SEPP); specifically “(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 not be more than 2 storeys in height.”

It is not clear what constitutes "adjacent to a boundary" and it is unclear whether the proposed development, which at its closest point is 4.3 metres, is 'adjacent' to the site's southern boundary. The Council, however, believes a Clause 4.6 is required. This Clause 4.6 is therefore submitted without prejudice to address their concerns.

The site is zoned R2 Low Density Residential under the North Sydney Local Environmental Plan 2013 (North Sydney LEP) and seniors housing is permissible within the provisions of the Seniors SEPP.

In the context of the subject site, part of the southern extent of the building is three levels high however the third level is setback between 4.3 metres and 6.6 metres where the required setback is 2.5 metres as stipulated in the North Sydney Development Control Plan 2013 (North Sydney DCP).

Compliance with the height standard is unreasonable and unnecessary in the circumstances of the proposed development and 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 standard, in this instance, is therefore unreasonable and unnecessary and Council may be satisfied that the requirements of Clause 4.6 are met.

2. INTRODUCTION

This request has been prepared in accordance with Clause 4.6 of the North Sydney LEP to justify a variation to Clause 40(4)(b) relating to the height of buildings in the 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)];
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out [Clause 4.6(4)]

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

3. STANDARD TO BE VARIED

The site is zoned R2 Low Density Residential under the 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:

(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—*

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.*

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

4. EXTENT OF VARIATION

Buildings adjacent to a boundary of a site must not be more than two storeys in height, pursuant to Clause 40(4)(b) of the Seniors SEPP.

The Seniors SEPP does not have a definition for storey, so the standard definition within the Standard Instrument is relied upon:

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.

It is accepted that the development is three levels in height.

Neither the Seniors SEPP or Standard Instrument defines the term "adjacent".

In the absence of such definitions, it is unclear what the extent of the non-compliance relates to in the context of the proposal. While the proposal comprises three levels in the southern part of the site, it is unclear as to what point the third level is "adjacent to a boundary of the site" and thus non-compliant. The fact that the proposal incorporates three levels in the southern part of the site does not in and of itself mean it is adjacent to a boundary of the site.

In *Taouk v The Hills Shire Council* [2015] NSWLEC 1512, the Court held that "adjacent" means "lying near, close, or contiguous". In that case, the Court held that the large setback proposed of 8.2 metres could not be regarded as "adjacent", in that the distance between the proposed unit and the dwelling to the south is not "lying near, close or contiguous" even though the Court accepted that the relationship between buildings could be said to be "adjoining; neighbouring". In that particular case, Council's side setback controls required a distance of 900mm to be provided at first and second floor levels and 1.5 metres to be provided at third floor level.

The North Sydney DCP establishes setbacks for the proposed development of 900mm, 1.5 metres and 2.5 metres at ground, first and second floor respectively. These setbacks should therefore, reasonably be accepted as the setbacks against which a boundary would be defined as adjacent to a boundary. The subject proposal sets back 2.33 metres, 2.33 metres and 4.3 metres to 6.6 metres respectively from the southern boundary. This is in excess of double what would reasonably be established at the "adjacent" setback.

Further, the southern elevation is separated from the adjoining residential development to the south by the distance of the Aubin Street carriageway and footpath. At third floor level, the proposal is separated 17.3 metres from the northern boundary of the adjoining residential properties at 48-52 Wycombe Road.

For these reasons, the proposed third storey is not in this case adjacent to a boundary of the site and therefore this Clause does not have any work to do. However, Council believes a Clause 4.6 is required. This Clause 4.6 is therefore submitted without prejudice to address their concerns.

Given the above and in the absence of any definitions of "adjacent" or further comment from Council, the extent of the variation sought to be varied is unclear. Certainly, it cannot be the whole third level. But at what point does it become "adjacent". For the purposes of this Clause 4.6 variation and Council's request, the proposed setback at the third level has been assumed without prejudice to be non-compliant and the extent of variation requested.

Figure 1 provides a section identifying the relationship of the proposal with the site's southern boundary. Figure 2 provides a streetscape elevation along Wycombe Road identifying the proposal and its relationship to the southern boundary of the site and residential development at 48-52 Wycombe Road.

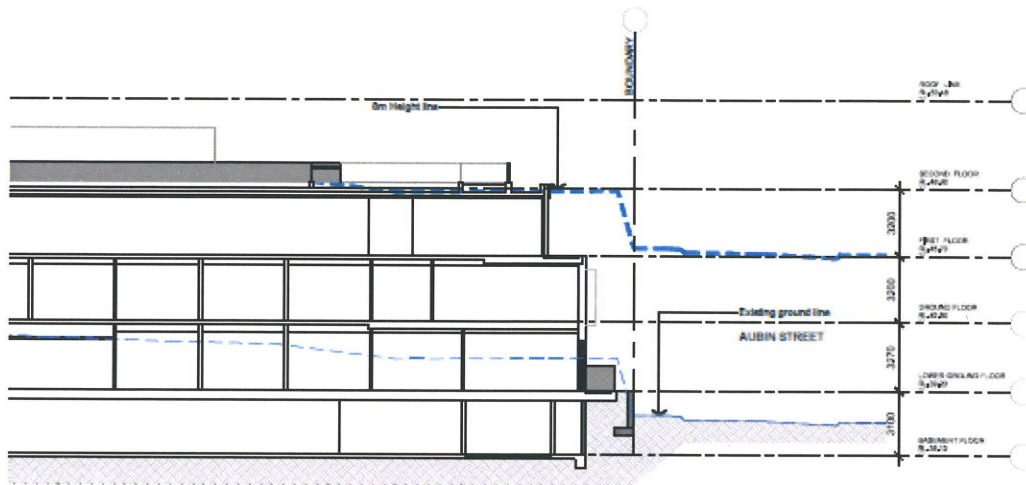


Figure 1: Section A identifying relationship of proposal with the site's southern boundary (Source: Boffa Robertson Group)



Figure 2: Wycombe Road streetscape elevation (Source: Boffa Robertson Group)

5. UNREASONABLE OR UNNECESSARY

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

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

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

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

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

In this case, it is demonstrated below that Test 1 has been satisfied.

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

The Seniors SEPP provides a note on the intent of the height control in Clause 40(4)(b), specifically "*The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape*", however, does not otherwise nominate any objectives to underpin the intent of this control.

A review of Land and Environment Court cases has been undertaken specifically relating to the height of a building adjacent to a boundary of the site.

In *Pathways Property Group Pty Ltd v Ku-ring-gai Council* [2017] NSWLEC 1486, Commissioner Brown stated:

78 "*The number of storeys objective seeks "an appropriate relationship" with side boundaries and the streetscape so as to avoid "an abrupt change in the scale". I have taken "an appropriate relationship" to have a similar meaning to the meaning of "compatibility" as set out in the planning principle in Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 (at 22) where it states:

22 *There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.*

"Scale" also has a particular meaning and this is addressed in the planning principle in *Veloshin v Randwick Council* [2007] NSWLEC 428 (at 29) where it states:

29 *The terms excessive height, bulk and scale and overdevelopment are probably the most frequently used phrases in councils' Statements of Contention. While bulk and scale tend to be used interchangeably, strictly speaking, bulk refers to the mass of a building and scale is properly used only when referring to the relative size of two or more things. When scale is used to mean apparent size, it is better to use those words. When scale is used to denote the character of an area, it is better to use that word. ...*

Consistent with *Pathways Property Group Pty Ltd v Ku-ring-gai Council* [2017] NSWLEC 1486 and the note provided in Clause 40(4)(b) of the SEPP, it is assumed that the intent/purpose (objectives) of this control are:

- To ensure that the development provides an appropriate relationship in storeys/scale to adjoining side boundaries and to the streetscape to avoid an abrupt change in scale.

In *Pathways Property Group Pty Ltd v Ku-ring-gai Council* [2017] NSWLEC 1486 Commissioner Brown stated at [81]: "the objective does not discourage three storey buildings but only that if a building is more than two storeys, it must be in harmony with other buildings given the relative size of the proposal. This assessment is not simply an exercise in comparing the different height of the buildings."

The variation sought will be tested against this assumed objective. The following table considers whether the objective of the development standard is achieved notwithstanding the proposed variation (Test 1 under Wehbe).

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

To ensure that the development provides an appropriate relationship in storeys/scale to adjoining side boundaries and to the streetscape to avoid an abrupt change in scale.

The streetscape along the site's Wycombe Road frontage slopes approximately 7.72 metres from the north at 58A Wycombe Road to the south at 54 Wycombe Road. There is a fall of approximately 2.7 metres between the site's southern boundary at 54 Wycombe Road to the adjacent residential development at 48-52 Wycombe Road.

The existing buildings along the Wycombe Road streetscape are characterised as gently stepping, consistent with the sloping topography of the street. As identified in Figure 3 the existing RACF at 58A Wycombe Road has a ridge height of RL55.44, the existing dwelling at 56 Wycombe Road has a ridge height of RL51.58 and the adjoining residential dwelling at 48-52 Wycombe Road has a ridge height of RL44.87. The red line denoted on Figure 3 identifies the established gradient between the existing buildings on Wycombe Road.

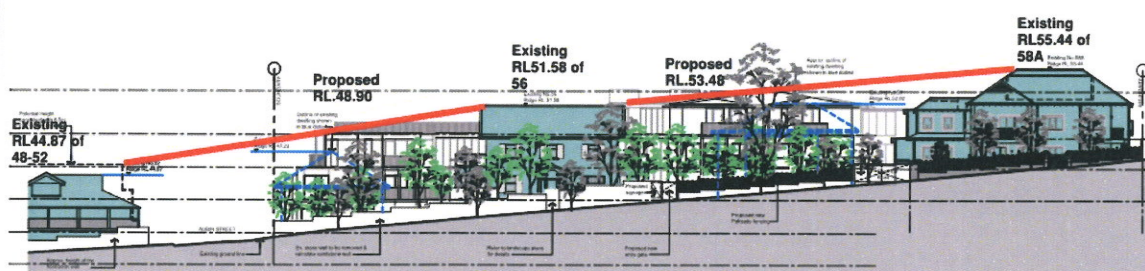


Figure 3: Wycombe Road

As identified in Figure 3, the southern extent of the third level (alleged area of non-compliance) provides an appropriate scale of development which mediates between the existing development at 56 Wycombe Road and the 8.5 metre maximum building height of the adjacent development at 48-52 Wycombe Road. Similar to the existing built form along the streetscape, the southern extent is lower than the height of development to the north (RL48.90) and has been stepped down to follow the natural fall and gradient of the land.

The proposal and the third level does not adjoin residential development to the south but is separated by the carriageway and footpath of Aubin Street. The proposal is separated 17.3 metres from the northern boundary of the adjoining residential properties at 48-52 Wycombe Road

Despite the three levels of development on the southern part of the site, the proposed variation will predominantly present as a two-storey building, with the third storey setback between 4.3 metres and 6.6 metres. The third storey setback is substantial in the context of the street and will minimise the visual impact of the third storey from the public domain on Aubin Street.

To ensure that the development provides an appropriate relationship in storeys/scale to adjoining side boundaries and to the streetscape to avoid an abrupt change in scale.

The third level is purposively stepped down, following the fall of the land to ensure a gradual and compatible built form is provided along Wycombe Road. The variation does not result in an unacceptable transition in height or scale along Wycombe Road and will not result in an abrupt change in scale between development to the south of Aubin Street.

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

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

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

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

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

As discussed in Section 4, the elements of the development which Council believes contravene the building height development standard relate to the third storey along the site's Aubin Street frontage. As demonstrated, the third level does not result in an unacceptable transition in height or scale along Wycombe Road and will not result in an abrupt change in scale along this streetscape. The southern extent of the third level (alleged area of non-compliance) provides an appropriate scale of development which mediates between the existing development at 56 Wycombe Road and the 8.5 metre maximum building height of the adjacent development at 48-52 Wycombe Road. Similar to the existing built form along the streetscape, the southern extent is lower than the height of development to the north and has been stepped down to follow the natural fall and gradient of the land.

The third level has been designed to minimise its bulk and appearance, with careful consideration to the third storey being setback from the built form below and setback from the site's southern property boundary between 4.3 metres and 6.6 metres. The third level is compatible with the adjoining development along the southern boundary and therefore, it can be concluded that the variation does not result in any unreasonable environmental impacts. 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 design of the proposal incorporates generous setbacks at third floor level; 4.3 metres and 6.6 metres to the site's southern boundary and 17.3 metres to the northern boundary of the nearest residential dwellings at 48-52 Wycombe Road. The setbacks are not considered to result in an abrupt change in scale and will not have a detrimental visual impact on the surrounding area;
- Consistent with the R2 Low Density Residential zoning of the site and 8.5 metre maximum building height with minor excavation and a flat roof a three storey dwelling house is achievable on the site. If the subject site was redeveloped as a three-storey dwelling house, Council's DCP setback controls would require that the proposal provides a setback of 2.5 metres at third floor level. The proposed development the subject of this Clause 4.6 variation provides a significantly enhanced setback (over double the requirement along part of this extent) that would be ordinarily anticipated for development within the R2 zone. The additional setback allows for landscaping to assist in screening the building.
- The proposed development along the southern elevation is substantially contained under the 8-metre maximum height limit prescribed under the Seniors SEPP and is wholly compliant with the 8.5 metre height limit prescribed for the site under the North Sydney LEP. Nonetheless, an alternative, compliant scheme for the site could provide additional height along the site's southern boundary, with a reduced setback at third floor level of 2.5 metres. The variation thus allows for a reduction in the scale on the boundary otherwise expected by the controls.
- As identified on the streetscape elevations provided at Figure 4 the adjoining development at 48-52 Wycombe Road is below the 8.5 metre height limit prescribed for the site under the North Sydney LEP and as a result, does not reflect the desired future character of this streetscape. It is therefore reasonable to assume that an alternative likely future redevelopment of 48-52 Wycombe Road would result in a higher built form, with a side boundary setback to Aubin Street of 2.5 metres at third floor level. As detailed in Figure 4 a compliant future redevelopment scenario of 48-52 Wycombe Road would result in a building which provides a reduced setback at third floor level of 2.5 metres when compared to the proposed setback at 54 Wycombe Road.

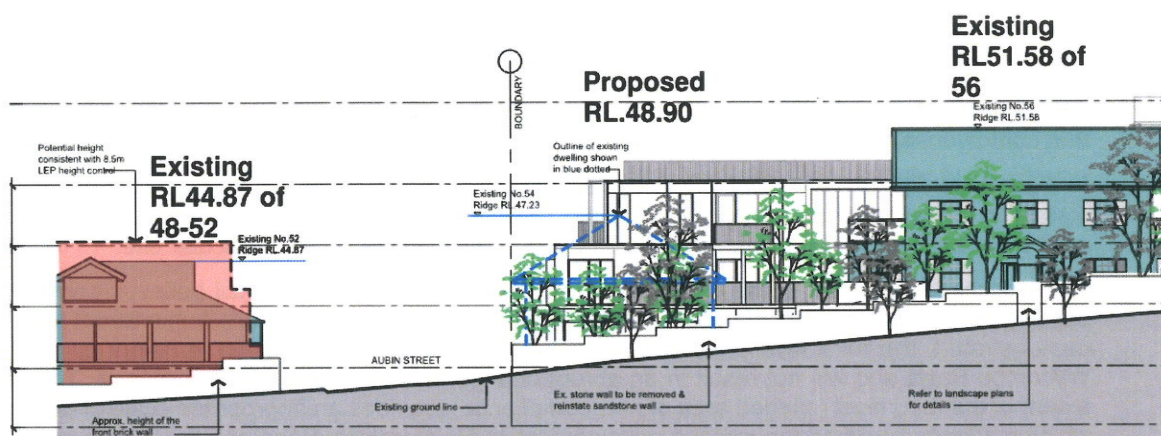


Figure 4: Wycombe Road streetscape elevation identifying extent of compliant development at 48-52 Wycombe Road (Source: Boffa Robertson Group)

- To achieve compliance with the standard would necessitate the removal of the third floor level from the existing building. This would result in the loss of beds, and a built form outcome that is inconsistent with the desired future character relative to the anticipated development on the adjacent site; and
- The proposal would result in a better planning outcome than if compliance were to be achieved, as it allows for the co-ordinated 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 it is explained how the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. This is required by clause 4.6(4)(a)(ii) of the LEP.

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

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

Table 2: Consistency with Zone Objectives.

Objectives of Zone R2 Low Density Residential	Discussion
To provide for the housing needs of the community within a low density residential environment.	<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 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>
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	<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</p>

Objectives of Zone R2 Low Density Residential	Discussion
	<p>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>
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.	<p>The proposed development 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>
To ensure that a high level of residential amenity is achieved and maintained.	<p>The development is consistent 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

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

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

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

9. CONCLUSION

This submission requests a variation, under Clause 4.6 of the North Sydney LEP, to Clause 40(4)(b) of the Seniors SEPP and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development because the objectives of the development standard are achieved notwithstanding non-compliance with the standard; and
- There are sufficient environmental planning grounds to justify the contravention.
- We submit that the consent authority can be satisfied to the above and that the development achieves the assumed objectives of the development standard and is consistent with the objectives of Zone R2 Low Density Residential notwithstanding the non-compliance with Clause 40(4)(b) of the Seniors SEPP and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

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