



Clause 4.6 Variation Request



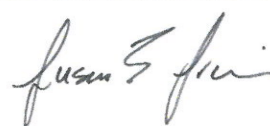
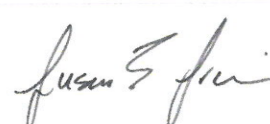
Minimum Sizes Development
Standards – SEPP (Housing
for Seniors or People with a
Disability) 2004
Clause 40(4)(c)

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

Submitted to North Sydney Council
On Behalf of Cranbrook Care

MARCH 2020

REPORT REVISION HISTORY

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		Lotti Wilkinson Associate	 Susan E Francis Executive Director
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		Lotti Wilkinson Associate	 Susan E Francis Executive Director
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		Lotti Wilkinson Associate	 Susan E Francis Executive Director

Disclaimer

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City Plan Strategy & Development P/L
Suite 6.02, 120 Sussex St, Sydney NSW 2000
P +61 2 8270 3500

CITYPLAN.COM.AU

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Page | i

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	9
5.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.	9
6. Sufficient Environmental Planning Grounds	20
7. Public Interest.....	21
8. State or Regional Environmental Planning	23
9. Conclusion	24

FIGURES

Figure 1: Rear 25% of subject site shaded in red and extent of variation outlined in blue (Source: Boffa Robertson Group).....	7
Figure 2: Proposed first floor plan, extent of variation shaded yellow and location of existing buildings to be demolished outlined and shaded in blue (Source: Boffa Robertson Group).....	8
Figure 3: Proposed second floor plan, extent of variation shaded yellow and location of existing buildings to be demolished outlined in blue (Source: Boffa Robertson Group).....	8
Figure 4: Subject site outlined red and rear of site outlined and shaded yellow (Source: NearMap) ..	10
Figure 5: Aerial view of site looking north, site outlined red (Source: Google Maps).....	11
Figure 6: Aerial view of site looking west, site outlined red (Source: Google Maps)	11
Figure 7: Plan illustrating development located within the rear 25% of the site and its relationship with development to the rear of the site (Source: Boffa Robertson Group).....	12
Figure 8: Section taken through proposed building at 58 Wycombe Road (Source: Boffa Robertson Group).....	13
Figure 9: Section taken through existing two-storey building at 58 Wycombe Road (Source: DG5)...	13
Figure 10: Fence western elevation (Source: Boffa Robertson Group)	13
Figure 11: Potential redevelopment of sites at the rear (Source: DG5)	15
Figure 12: Proposed First Floor Plan, extent of variation shaded in yellow (Source: Boffa Robertson Group).....	16
Figure 13: Proposed Second Floor Plan, extent of variation shaded in yellow (Source: Boffa Robertson Group).....	16
Figure 14: Shadow diagrams at 9am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group).....	17
Figure 15: Shadow diagrams at 9:15am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group).....	18

Figure 16: Shadow diagrams at 9:30am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group).....	18
Figure 17: Shadow diagrams at 9:45am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group).....	18
Figure 18: Shadow diagrams at 10am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group).....	19

TABLES

Table 1: Achievement of Objectives of Clause 40(4)(c) of the Seniors SEPP	9
Table 2: Consistency with Zone Objectives.	21

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)(c), relating to the height of buildings within the rear 25% of the site within State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP); specifically, “(c) a building located in the rear 25% area of the site must not exceed 1 storey in height”, as it relates to new built elements in the consolidated site.

In the context of the subject site, the rear of the site relates to the site’s western boundary and the variation relates to development on 58 Wycombe Road and a small extent of 56 Wycombe Road and 58A Wycombe Road. It is noted that the existing two-storey dwelling house located at 58 Wycombe Road is currently situated 0.8 metres from the site’s western boundary and the proposal will provide a replacement building with an increased setback of 4.74 metres at first floor level and will provide a 6.63 metre setback at second floor level. Further, it is noted that the existing RACF is also greater than one-storey and is located within the rear 25% of the site (setback 3.4 metres at first floor level from the rear boundary and setback 5.5 metres at second floor level).

The proposal is compatible by virtue of its bulk and scale, with the existing and future character of the rear of the site. The departure from the standard does not result in detrimental impacts on the adjoining residential development to the rear in terms of overshadowing, privacy or view loss. The front setbacks are consistent with the prevailing setback along Wycombe Road and the side and rear setbacks are consistent or greater than the existing development on the site.

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

A combination of careful siting of the building, enhanced separation distances and consideration of the position of window, balconies and landscaping ensure issues of privacy and overlooking are well managed. Compliance with the height standard in the rear 25% of the site is unreasonable or unnecessary in the circumstances of the proposed development. The development as a whole is in the public interest and therefore strict adherence to the standard, in this instance, is 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 to justify a variation to the Clause 40(4)(C), relating to the height of buildings in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP). 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. 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)(c) 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:

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

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

4. EXTENT OF VARIATION

The subject site's primary frontage is to Wycombe Road to the east and its rear boundary is situated along its western boundary. As demonstrated in Figure 1 below, the variation is restricted to a small portion of the north-western extent of 56 Wycombe Road (3.7 metres), 58 Wycombe Road (18.53 metres) and a small portion of the southern extent of 58A Wycombe Road (3.4 metres).

As illustrated in Figure 1 below (refer dotted outline of building footprint), the existing two-storey dwelling house at 58 Wycombe Road is currently located within the rear 25% of the site. The existing two-storey RACF located at 58A Wycombe Road is also situated within the rear 25% however, no changes are proposed to its built form and therefore the variation relates only to those areas shaded yellow in Figure 2 and Figure 3.

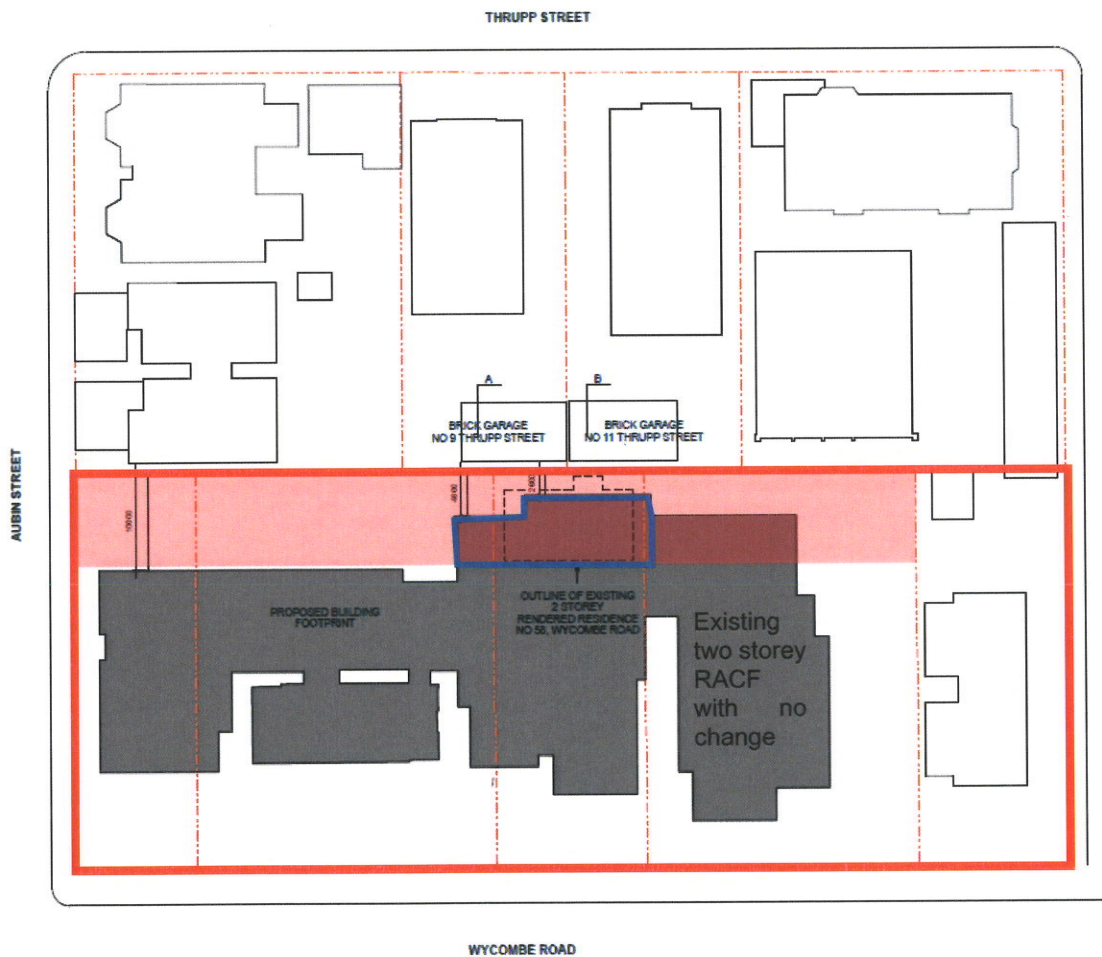


Figure 1: Rear 25% of subject site shaded in red and extent of variation outlined in blue (Source: Boffa Robertson Group)

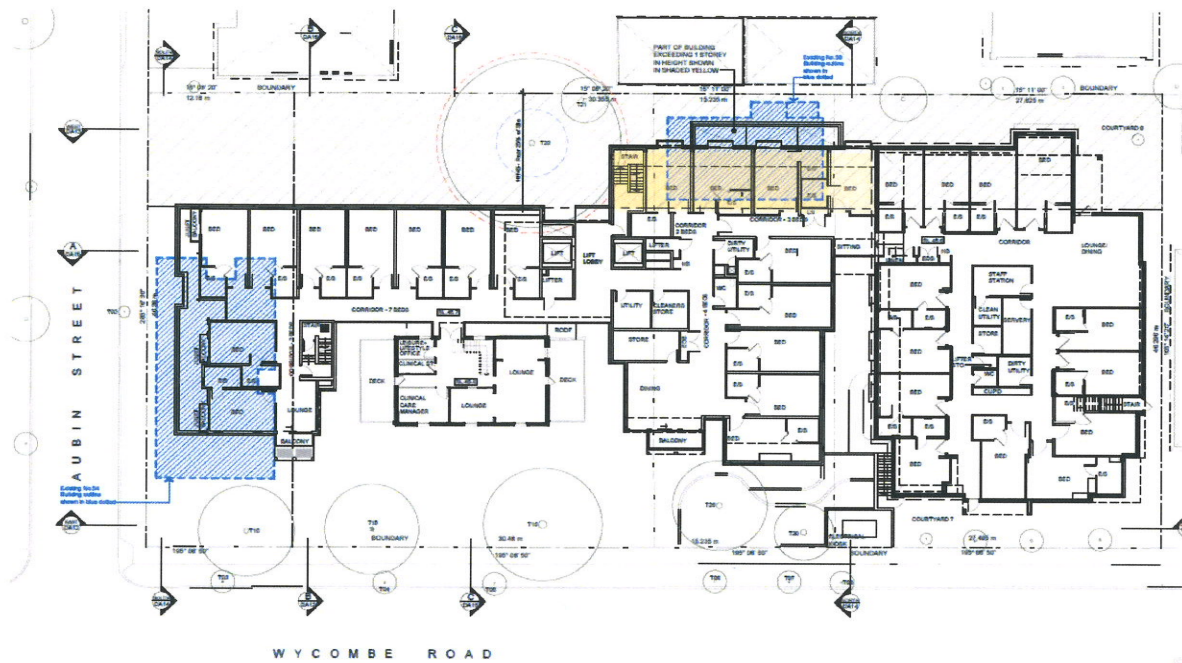


Figure 2: Proposed first floor plan, extent of variation shaded yellow and location of existing buildings to be demolished outlined and shaded in blue (Source: Boffa Robertson Group)

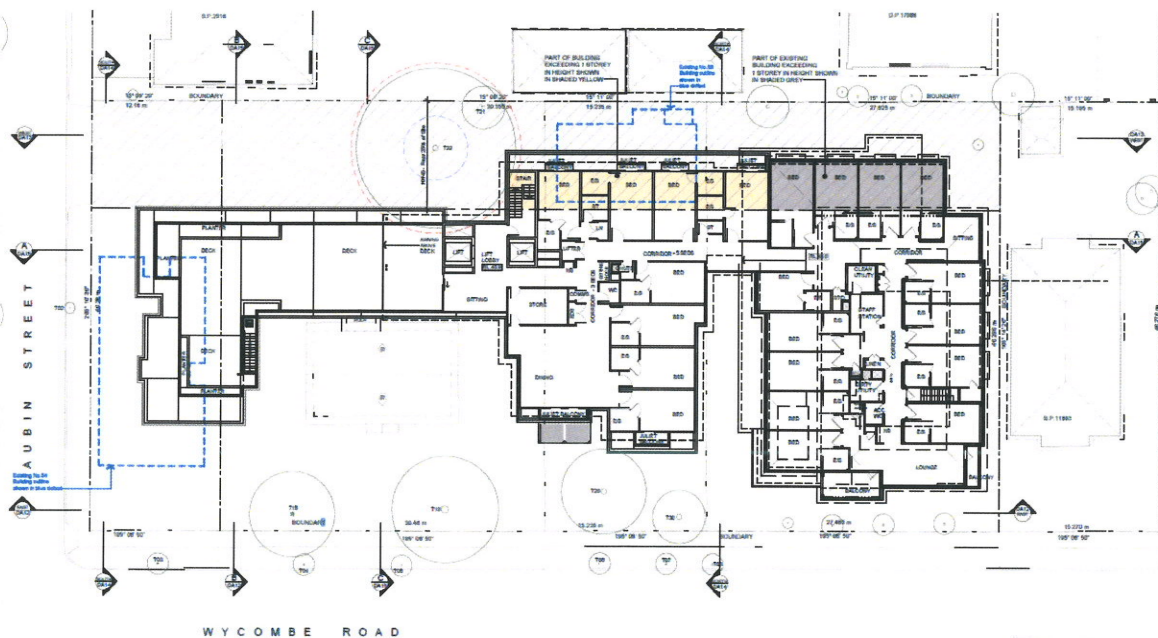


Figure 3: Proposed second floor plan, extent of variation shaded yellow and location of existing buildings to be demolished outlined in blue (Source: Boffa Robertson Group)

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 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)(c) 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 assumed that the intent/purpose (objectives) of this control are:


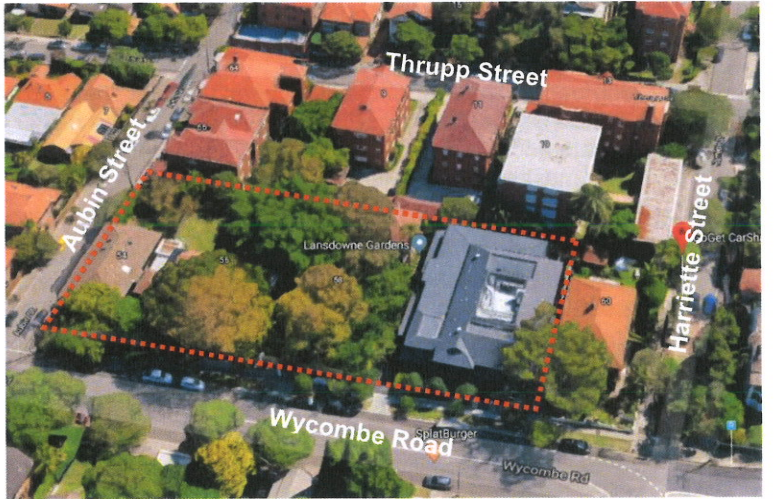
- *To ensure that the development is compatible, by virtue of its bulk and scale, with existing and future development at the rear of the site; and*
- *To not cause unreasonable amenity impacts on adjoining developments at the rear of the site.*


The variation sought will be tested against these assumed objectives.

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

Objective	Discussion
<i>To ensure that the development is compatible by virtue of its bulk and scale, with existing and future</i>	The rear of the site is defined, in this case, as development at the west of the site which fronts Aubin Street, Thrupp Street and Hariette Street (Refer Figure 4).

Objective	Discussion
development at the rear of the site	<p>Figure 4: Subject site outlined red and rear of site outlined and shaded yellow (Source: NearMap)</p>  <p>Existing Development</p> <p>The development to the rear of the site is located outside of the Kurraba Point Heritage Conservation Area and the character of buildings differ from the lower scale, detached, single and two storey dwelling houses located on the subject site at Nos 54-58 Wycombe Road.</p> <p>Development to the rear of the site contains residential accommodation provided in red brick residential flat buildings. These buildings are at a higher density and scale than the subject site and are reflective of the R4 High Density Residential zoning and applicable 12 metre maximum height limit.</p> <p>Specifically, existing development to the rear of the site comprises:</p> <ul style="list-style-type: none"> Nos 66 and 64 Aubin Street comprise two three-storey red brick residential flat buildings with pitched roofs which contain small gardens at the rear. No. 66 Aubin Street is located in close proximity to the boundary of the subject site and contains windows fronting the rear of 54 Wycombe Road. Nos 9, 11 and 13 Thrupp Street comprise three three-storey red brick residential flat buildings with pitched roofs. At the rear of 9 and 11 and adjacent to the boundary of 58 Wycombe Road are two one-storey garages. No 19 Harriette Street comprises a four-storey residential flat building with a flat roof. The building is setback from Harriette Street and is adjacent to the rear boundary of 58A Wycombe Road. <p>Aerial photographs of the existing development are provided below.</p>

Objective	Discussion
	 <p>Figure 5: Aerial view of site looking north, site outlined red (Source: Google Maps)</p>  <p>Figure 6: Aerial view of site looking west, site outlined red (Source: Google Maps)</p> <p>As illustrated in Figure 7 below, there is no established rear setback at the subject site. The existing two-storey RACF located at 58A Wycombe Road, as well as the existing two-storey dwelling house at 58 Wycombe Road are both currently situated within the rear 25% of the site. There are no proposed changes to amend the bulk and scale of the existing RACF, however the proposal seeks to demolish 58 Wycombe Road and provide a replacement three-storey building which provides an increased setback to the site's rear western boundary.</p>

Objective	Discussion
	 <p>Figure 7: Plan illustrating development located within the rear 25% of the site and its relationship with development to the rear of the site (Source: Boffa Robertson Group)</p> <p>This physical separation will be retained in the proposal (refer Figure 8) and while the proposed development includes an additional storey, due to the sloping topography of the site from north to south, the proposed third-floor storey is consistent with the height of the second storey of the existing aged care facility at 58A Wycombe Road (Refer Figure 10) and is setback 4.74 metres from the rear boundary which is over five times larger than the existing 0.82 metre setback. The proposal is consistent with the siting of the existing RACF at 58A Wycombe Road at first floor and provides a greater setback at second floor level.</p>

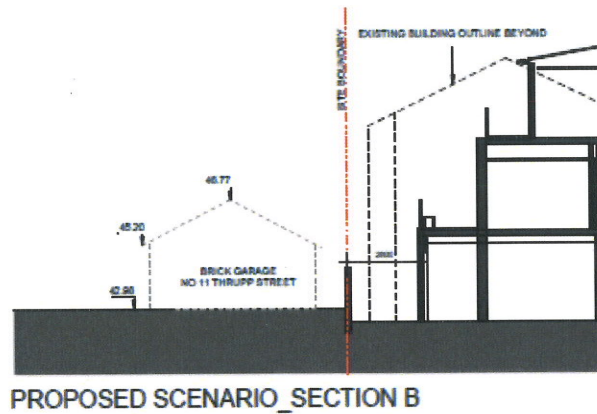


Figure 8: Section taken through proposed building at 58 Wycombe Road (Source: Boffa Robertson Group)

The siting of the proposed building in the rear 25% of the site is appropriate in this case as it seeks to improve the relationship between the built form on the western rear boundary. As illustrated in Figure 7, at present, two garages associated with Nos. 9 and 11 Thrupp Street are located adjacent to the site's rear western boundary. Currently they provide physical and visual separation from the existing two storey dwelling located 0.82 metres from the rear boundary and the existing residential flat buildings in Thrupp Street (refer Figure 9).

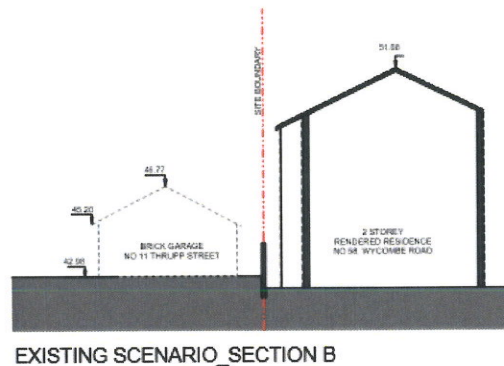


Figure 9: Section taken through existing two-storey building at 58 Wycombe Road (Source: DG5)

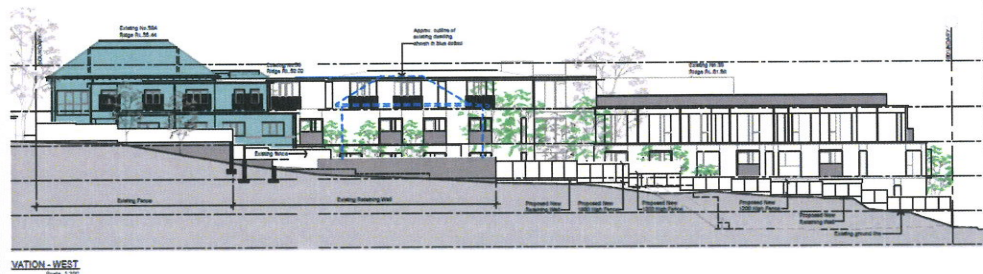
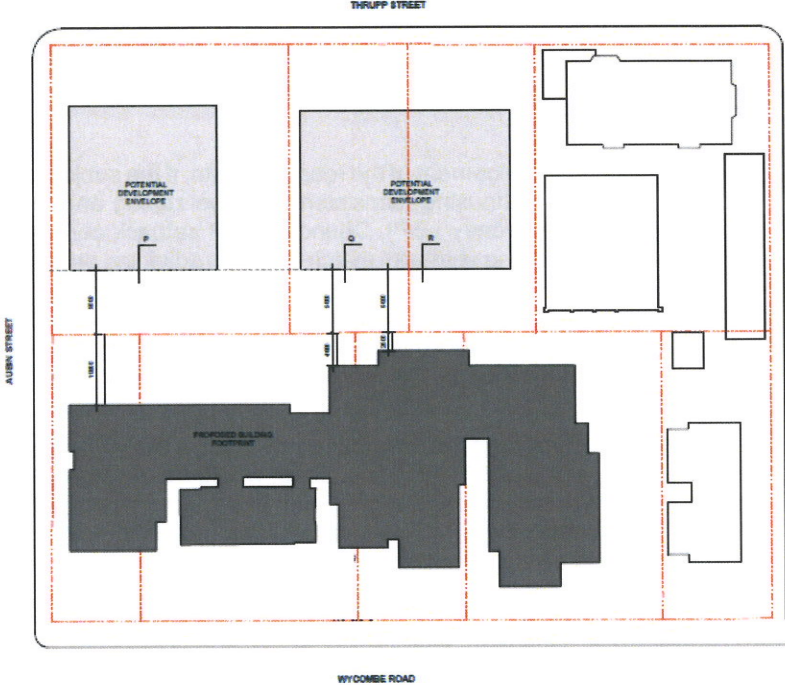
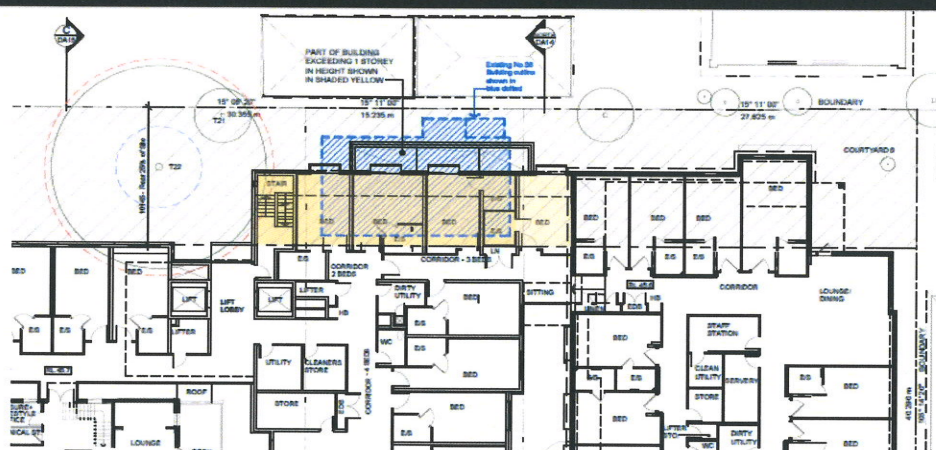
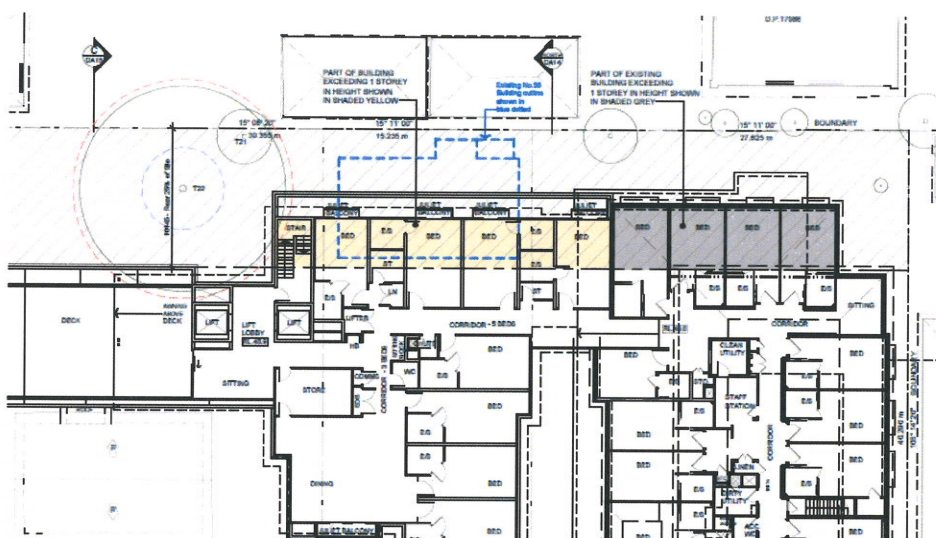
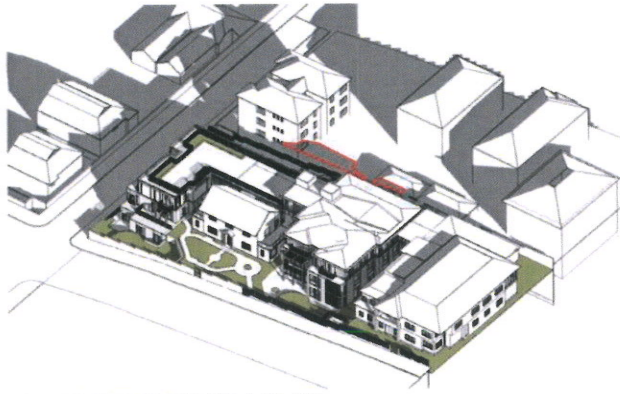


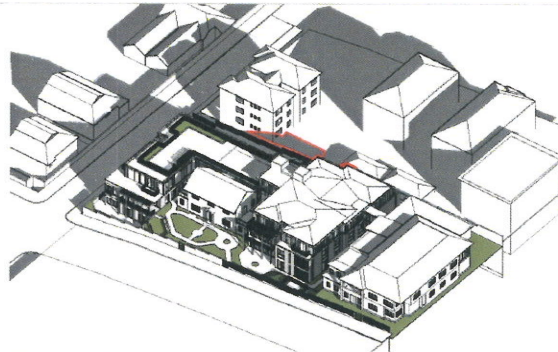
Figure 10: Fence western elevation (Source: Boffa Robertson Group)

Objective	Discussion
	<p>The location of the breach is consistent with the existing built form on the site and the proposal is consistent with the siting of the existing RACF at 58A Wycombe Road at first floor and provides a greater setback at second floor level. The additional bulk is compatible with the existing development at the rear of the site.</p> <p>Future Development</p> <p>In relation to future development of the rear of the site, if the subject site was redeveloped as two-storey dwelling housing (consistent with the zoning and height standard of the site under the North Sydney LEP), Council's DCP setback controls would require that the proposed rear building setbacks match those on adjoining properties or with setbacks identified in the relevant area character statement. As identified earlier, there is no established rear building setback at the subject site, with the properties at 58A and 58 Wycombe Road located in close proximity to the rear boundary of the site. Similarly, rear setbacks are not identified in the relevant South Cremorne Planning Area Character Statement.</p> <p>It is therefore reasonable to assume that an alternative likely future redevelopment of the subject site, in particular 58 Wycombe Road, would result in a two storey development which provides a rear setback consistent with the existing rear setback of 58A Wycombe Road and the existing dwelling house at 58 Wycombe Road. A proposed development would therefore similarly fall within the rear 25% of the site.</p> <p>The location of the proposed RACF development on the site, which partially falls within the rear 25% of the site, is consistent with an alternative redevelopment scenario for the site. The additional bulk of the proposed development is considered acceptable. While the proposed development is three storeys in height, due to the sloping topography of the site from north to south, the proposed height of the development is consistent with the second storey of the existing aged care facility at 58A Wycombe Road. When viewed from the rear of the site, the proposed development will provide a compatible and commensurate built form, contiguous with the existing development at the site. The mass and location of the proposed built form has been purposively reduced and setback further from the rear site boundary (compared to the existing building) to reduce the perceived scale and mass of the development, as well as reduce potential amenity impacts.</p> <p>There is limited scope for redevelopment of the existing buildings at the rear of the site given the established development at the rear of the site and the existing buildings' consistency with the permissible 12 metre height limit. It is therefore reasonable to assume future development at the rear of the site is unlikely to change.</p> <p>Notwithstanding this, we have considered two potential redevelopment outcomes which include the amalgamation of Nos 64 and 66 Aubin Street as well as the amalgamation of Nos 9 and 11 Thrupp Street to understand whether the proposed development is compatible, by virtue of its bulk and scale, with anticipated future development at the rear of the site.</p> <p>The potential development envelope plan (Figure 11) illustrates the siting of two residential flat buildings at the rear of the site. As required by the Apartment Design Guide (ADG), a 6-metre minimum separation distance is required for development up to four storeys in height, plus a 3-metre setback due to a change in zoning (R4 to R2). As such, a minimum 9-metre setback to the rear boundary of the subject site would be required for any future redevelopment scenario.</p>

Objective	Discussion
	 <p>Figure 11: Potential redevelopment of sites at the rear (Source: DG5)</p> <p>The separation afforded in any likely redevelopment scenario would ensure the bulk and scale of that proposed development is restricted and that any amenity impacts (such as privacy, views, acoustics and overshadowing) would be reasonable. We note, the existing residential flat building located at 64 Aubin Street is currently located on the site's western boundary and thus the existing additional separation would improve amenity impacts between the properties.</p> <p>Overall, there is limited scope for redevelopment at the rear of the site given the established residential character of the area and it is therefore reasonable to assume development at the rear of the site is unlikely to change. Notwithstanding this, the extent of the variation is considered to be compatible by virtue of its bulk and scale with future development at the rear of the site.</p>
<p><i>To not cause unreasonable amenity impacts on adjoining developments at the rear of the site</i></p>	<p>The extent of the building which contravenes this standard is for a length of approximately 22.3 metres and it is noted the existing two storey building at 58 Wycombe Road currently contravenes this standard by approximately 13 metres, as does 58A Wycombe Road for some 16.7 metres.</p> <p>Consideration to amenity impacts including privacy, overshadowing and visual impacts is discussed below.</p> <p>Privacy</p> <p>At first floor level, the extent of the variation includes a stairwell and four rooms and at second floor level the extent of the variation includes a stairwell and another four rooms (refer Figure 12 and Figure 13).</p>

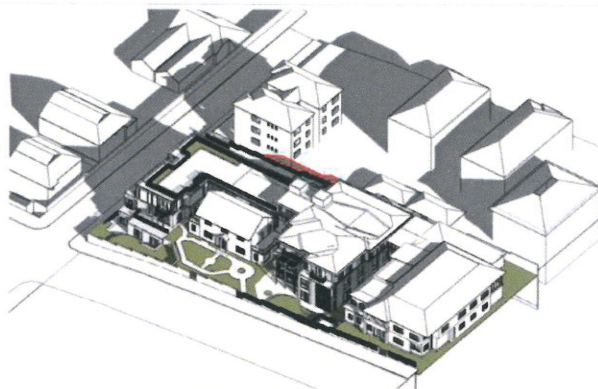
Objective	Discussion
	 <p>Figure 12: Proposed First Floor Plan, extent of variation shaded in yellow (Source: Boffa Robertson Group)</p>  <p>Figure 13: Proposed Second Floor Plan, extent of variation shaded in yellow (Source: Boffa Robertson Group)</p> <p>The nearest existing residential flat buildings at the rear of the site, located at 9 and 11 Thrupp Street, have habitable windows facing the subject site's rear boundary, however these are located at least 15 metres from the site boundary and over 20 metres from the proposed building at 58 Wycombe Road.</p> <p>Notwithstanding, to ameliorate issues with acoustic and visual privacy, the proposed built form has been setback a minimum of 4.74 metres at first floor level (which is over five times the existing 0.82 metre setback) and 6.63 metres at second floor level. The balconies at first and second floor levels comprise Juliet balconies to ensure there is limited opportunity for overlooking. There is a small narrow window provided in the stairwell to maintain privacy to the rear.</p>

Objective	Discussion
	<p>Further, the proposed landscaping includes a variety of large canopy tree planting along the site's western rear boundary, as well as screen planting and feature planting to provide additional privacy to neighbouring properties.</p> <p>Overshadowing</p> <p>Shadow diagrams have been prepared by Boffa Robertson Group. These diagrams demonstrate the impact of the additional overshadowing as a result of the exceedance of the rear 25% control only.</p> <p>As identified in the diagrams below, the additional overshadowing results in additional overshadowing between 9am and 10am on 21 June only. There are no additional overshadowing impacts as a result of the exceedance of the rear 25% control between 10am and 3pm on 21 June.</p> <p>Shadow diagrams have been produced at 9am, 9:15am, 9:30am and 9:45am to illustrate the impact of the additional overshadowing, which is outlined in red. As illustrated, the non-compliance results in additional overshadowing to two windows on the adjacent property at 66 Aubin Street, however the impact is short in duration (between 9:00-9:30am only). From 9:30am onwards, the additional overshadowing is limited to the wall of the building, its garden and development within the subject site. The non-compliance does not result in adverse overshadowing impacts.</p>  <p>01_WINTER SHADOW 9.00 AM</p> <p><i>Figure 14: Shadow diagrams at 9am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group)</i></p>



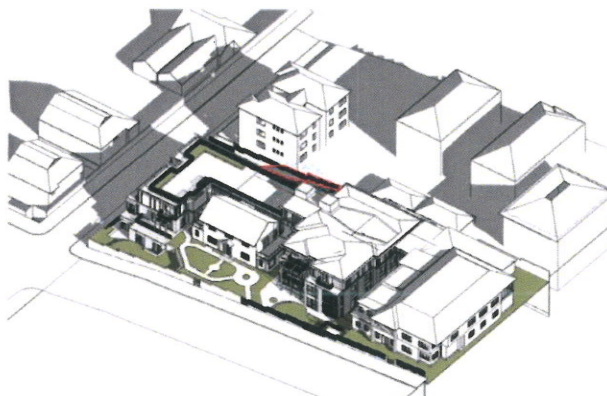
02_WINTER SHADOW 9.15 AM

Figure 15: Shadow diagrams at 9:15am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group)



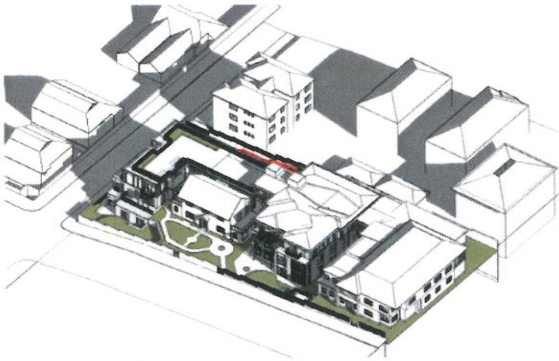
03_WINTER SHADOW 9.30 AM

Figure 16: Shadow diagrams at 9:30am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group)



04_WINTER SHADOW 9.45 AM

Figure 17: Shadow diagrams at 9:45am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group)

Objective	Discussion
	 <p>05_WINTER SHADOW 10.00 AM</p> <p>Figure 18: Shadow diagrams at 10am on 21 June, extent of shadow caused by non-compliance outlined in red (Source: Boffa Robertson Group)</p> <p>Views</p> <p>Views from surrounding properties will not be affected as a consequence of the portion of the building that contravenes the one-storey height limit. Existing views across the subject site are largely obscured by dense vegetation located at the rear of Nos 56 and 58 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>

As demonstrated in Table 1 above, the objectives of the rear 25% 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)(c) 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, with its bulk and scale compatible with the existing and future character of the area. The extent of the variation is not considered to cause unreasonable amenity impacts on adjoining developments at the rear of the site.

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

- The proposal will increase the rear setback of the existing boundary on the site by to 4.74 metres (which is five times larger than the existing 0.82 metre setback) notwithstanding its contravention of the 25% alignment;
- The existing facility at 58A Wycombe Road has a similar encroachment to the rear 25% of the site. Accordingly, the proposal would be consistent with the existing and future built form character of the immediate area;
- Levels two and three of the proposal are setback a minimum of 4.74 metres and 6.63 metres respectively from the rear western boundary, so that the proposed development will not have any additional visual privacy or overshadowing impacts on the existing and future development at the rear of the site, compared to if the proposed development was compliant with the one storey control;
- The increased setback allows for additional boundary landscaping which will visually enhance the relationship between the development at the rear of the proposal;
- The presence of the existing pitched roof garages on the rear boundary of Nos 9 & 11 Thrupp Street provide a unique visual separation to the existing and proposed development on the subject site. Figure 1 identifies that characteristically all immediately adjoining developments to the rear of the site have buildings one to three storeys in height within the rear 25% of their sites. The subject proposal is therefore consistent with the existing and likely future built form character of the area.
- 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 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
<i>To provide for the housing needs of the community within a low density residential environment.</i>	<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 (in total 87 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>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<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><i>"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.</i></p> <p><i>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.</i></p> <p><i>Such an Application, if successful, would do no more than return the situation to how it was in January 2019".</i></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>
<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>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>
<i>To ensure that a high level of residential amenity is achieved and maintained.</i>	<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.

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.

