

CLAUSE 4.6 SUBMISSION EXCEPTION TO DEVELOPMENT STANDARD FOR FLOOR SPACE RATIO

**Construction of a Seniors Housing Development
Comprising Fifty-two (52)
Independent Living Apartments**

Property:

**Former “Caroline Chisholm Village Retirement Village”
Lot 120 DP 613223 & Lot 51 DP 862728
No. 40A Cope Street Lane Cove**

Applicant:

Jackson Teece Architects
on behalf of Retire Australia Pty Ltd



Date:

June 2023

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CLAUSE 4.6 SUBMISSION

SUMMARY	
APPLICANT	Jackson Teece Architects (<i>on behalf of Retire Australia Pty Limited</i>)
PROPOSAL	Construction of a seniors housing development comprising a vertical retirement village in two (2) buildings containing 52 independent living apartments and associated community facilities
SITE DETAILS	Lot 120 DP 613223 & Lot 51 DP 862728
PROPERTY ADDRESS	No. 40A Cope Street Lane Cove NSW 2066
RELEVANT DEVELOPMENT STANDARD	Section 87(2)(b) of the State Environmental Planning Policy (Housing) 2021 – <i>Additional floor space ratios</i>
DATE	June 2023
REVISION No.	B

INTRODUCTION

The objectives of clause 4.6 of Lane Cove LEP 2009 (LCLEP) are as follows:

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

To this end and in accordance with clause 4.6(3), this submission requests and seeks to justify a variation to a development standard contained within *State Environmental Planning Policy (Housing) 2021* (the Housing SEPP), specifically the additional floor space ratio (FSR) bonus referenced under Section 87(2)(b) of the Housing SEPP which applies to the subject development. The submission seeks approval for a variation to the development standard as it applies to the proposed development on the following basis:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. There are sufficient environmental planning grounds to justify contravening the development standard;
3. The proposed development will be in the public interest on the basis it is consistent with the relevant objectives of the particular standard and the objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out; and
4. Departure from the standard on this occasion will achieve a better built outcome for and from the proposed development, will not raise any matter of significance for state or regional environmental planning and no particular public benefit will be served by maintaining the standard.

This submission should be read in conjunction with the amended Statement of Environmental Effects (SoEE) prepared by *Tim Shelley Planning* (Revision C dated 6/6/23) and the plans prepared by *Jackson Teece Architects* (Project No. 2017048 various issue nos. but all dated 7/6/23).

THE DEVELOPMENT STANDARD TO WHICH THE REQUEST RELATES

87 Additional floor space ratios

Section 87 of the Housing SEPP states:

- (1) This section applies to development for the purposes of seniors housing on land to which this Part applies if—
 - (a) development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or
 - (b) the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.
- (2) Development consent may be granted for development to which this section applies if:
 - (a) the site area of the development is at least 1,500m², and
 - (b) the development will result in a building with the maximum permissible floor space ratio plus—
 - (i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or
 - (ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or
 - (iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and
 - (c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.

As the site is zoned R4 High Density Residential in which residential flat buildings (RFBs) are permissible, section 87 applies to the development.

As shown on the extract of the Floor Space Ratio Map from Lane Cove Local Environmental Plan 2009 (LCLEP) applicable to the site provided as Figure 1 below, the subject site has two (2) applicable FSR limits, being Categories J and S3, which comprise FSRs of 0.8:1 and 1.7:1 respectively.

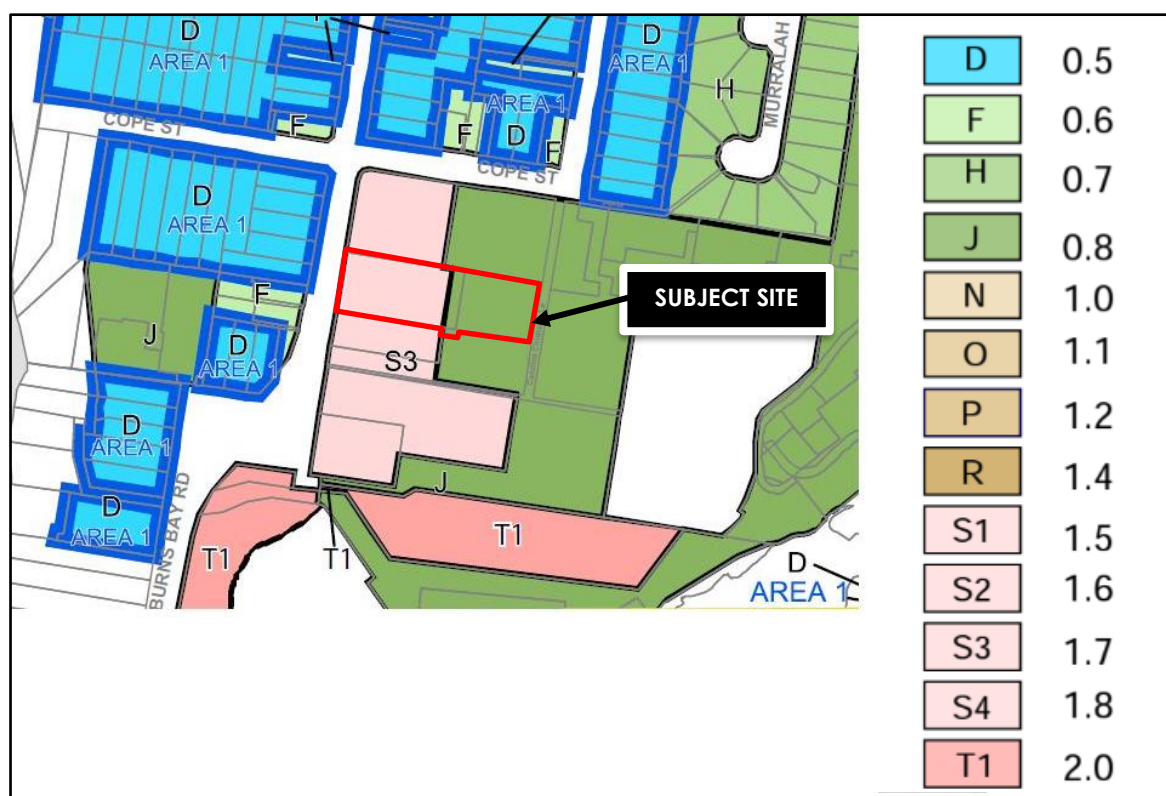


Figure 1 – Extract from LCLEP Floor Space Ratio Map

Under section 87(2)(b)(i) of the Housing SEPP, a floor space ratio bonus of 15% above the maximum permissible FSR – in conjunction with a height bonus of 3.8m – may be applied to development involving independent living units (ILUs) subject to the site meeting the criteria specified in sub-section (2)(a), that being a minimum area of at least 1,500m².

On the basis that the proposed development comprises only ILUs and the site has an area in excess of 1,500m², a bonus of 15% is applicable to the proposed development, taking the maximum allowable FSR permissible on each lot comprising the site to 1.954:1 on lot 120 and to 0.92:1 on lot 51, calculated as follows:

- **Lot 120 (front lot):**
 - Area = 2717.5m²
 - FSR under LCLEP = 1.7:1 (Category S3)
+ 15% BONUS = 1.995:1 (or 5312.7m²)
- **Lot 51 (rear lot):**
 - Area = 1778.1m²
 - FSR under LCLEP = 0.8:1 (Category J)
+ 15% BONUS = 0.92:1 (or 1635.9m²)

Based on legal advice prepared by *Norton Rose Fulbright* accompanying this submission, it is evident that the reference to 15% additional floor space in section 87(2) is a development standard and can therefore be varied via clause 4.6 of LCLEP.

AS SUCH, THIS SUBMISSION RELATES SPECIFICALLY TO THE FSR APPLICABLE TO THAT PART OF THE SITE CONTAINED WITH LOT 51, BEING **0.92:1** AND REQUESTS THAT THIS STANDARD BE VARIED.

THE OBJECTIVES OF THE DEVELOPMENT STANDARD

There are no objectives listed under Section 87 of the Housing SEPP. However an analysis of the explanation document that pre-empted the adoption of the Housing SEPP, as well as the principles of the Housing SEPP itself, provide an insight or general understanding of the likely objectives of Section 87.

In this regard, the document titled "*Housing SEPP consultation draft Plain English supporting document*" prepared by the (then) Department of Planning, Industry and Environment in July 2021 provided a summary of various elements of the draft version of *State Environmental Planning Policy (Housing) 2021* following its public exhibition. With respect to seniors housing, this document noted that "the requirements for vertical villages have been updated, including new FSR bonuses to **incentivise this form of development.**"

Upon its gazette, section 3 of the Housing SEPP identified a range of principals of the policy. In amongst other principles – both generic and development (or housing type) specific – section 3(B) states as follows with respect to seniors housing:

The principles of this Policy are as follows—

- (b) **encouraging the development of housing** that will meet the needs of more vulnerable members of the community, **including** very low to moderate income households, **seniors and people with a disability,**

Given the above, it can be deduced that section 87 has been included as a tool, or measure, to encourage or incentivise seniors housing development. Therefore, for the purpose of this analysis, the objective of the development standard adopted is that it is to encourage or incentivise the development of seniors housing in higher density residential zones where residential flat buildings and shop top housing are permissible.

In addition, as section 87 is titled "additional floor space ratios," it is also deduced that, in conjunction with the objective of encouraging or incentivising seniors housing, section 87 also needs to be viewed, or applied, in the context of the overarching objective of the FSR development standard. To this end, clause 4.4(1) of LCLEP states that "the objectives of this clause are as follows:

(a) *to ensure that the bulk and scale of development is compatible with the character of the locality.*

As such, in addition to the objective to incentivise the development of seniors housing in higher density residential zones, the general objective of the FSR control stated above is also relevant to the development standard in section 87, such that any additional floor space applied for, or sought, under Section 87 would still need to result in, or facilitate, a development with "a bulk and scale that is compatible with the character of the locality".

THE NATURE OF THE DEPARTURE FROM THE DEVELOPMENT STANDARD

As shown on the calculations on drawing number **DA-012** of the architectural plans, the amount of floor space on lot 120 totals 4,478m² which, when compared to the area of lot 120 (or FSR Category S3) of 2,717.5m², equates to a FSR of 1.64:1, which is 0.315 (or 15.72%) less than the maximum FSR permissible of 1.995 on lot 120, inclusive of the bonus. This equates to 834m² less than that allowable on lot 120.

Conversely, the amount of floor space on lot 51 totals 2,443m² which, when compared to the area of lot 51 (or FSR Category J) of 1,778.1m² equates to a FSR of 1.37:1 which is 0.45 or (49.28%) in excess of the maximum FSR permissible of 0.92 on lot 51, inclusive of the bonus. This equates to 807.1m² in excess of that allowable on lot 51.

As such, this submission seeks a variation to the FSR of 0.92:1 on lot 51.

WHY COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

The proposed variation from the 0.92:1 FSR development standard is assessed below against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSW LEC 82. While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis is still deemed to be of assistance and hence applied to variations made under clause 4.6 (see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 at [61] and [62]).

In his decision in *Wehbe v Pittwater*, Chief Justice Preston expressed the view that there are five "tests" in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. These tests are reasonable to consider in the request to vary the 0.92:1 FSR development standard in this instance as follows:

Test 1 the objectives of the standard are achieved notwithstanding non-compliance with the standard;

Test 1 is of most assistance in this matter in establishing that compliance with a development standard is unreasonable or unnecessary and that "the objectives of the standard are achieved notwithstanding non-compliance with the standard".

Therefore and as explained above, it has been deduced that the objective of section 87 is to encourage or incentivise the development of seniors housing in higher density residential zones where residential flat buildings and shop top housing are permissible. It is considered that the proposed development meets this objective for the following reasons:

- Seniors housing has a greater spatial requirement – in the vicinity of 5 to 10% – than conventional residential apartments due to the need to be compliant with the Disability Discrimination Act (DDA) and associated standards and guidelines with respect to circulation space in areas such as kitchens, bathrooms and hallways etc. This greater spatial requirement manifests itself into lower yields and greater costs and as such, additional floor space is necessary to offset this lower yield and higher cost to allow seniors housing to be a viable form of development and an alternative to residential apartments in higher density zones, which are more cost effective to build and yield greater returns.
- Seniors housing is accepted in the market as having a generally larger floor space and land take-up rate than conventional residential apartment development due to more onerous parking requirements identified under the Housing SEPP, whereby all car parking spaces must comply with the additional width requirements for disabled parking set out in AS 2890.6, with 10% having a further width requirement of 3.8 metres. As a result, a floor space bonus is a necessary incentive to offset the floor space and/or land lost to provide parking and hence encourage the development of seniors housing.
- The cost to construct a retirement village (in this instance, a vertical village) is significantly greater than conventional residential apartments as they include significant areas of non-revenue floorspace, such as on-site community facilities, communal open space and other items and services required on site by the Housing SEPP. Whilst these facilities and services are intrinsic to the value, amenity and liveability of these villages and assist in creating the community spirit sought after by residents, they are all cost-negative and contribute to the higher costs of seniors housing, such that a mechanism is required to increase yield to partially offset these costs and encourage the development of seniors housing when more cost efficient housing could be delivered to the market on any given site.
- Further to and essentially in summary of the above points, seniors housing providers cannot actively compete with developers of conventional residential apartments who are able to achieve higher yields and therefore higher returns and revenues when applying the same floor space ratios (and building heights). Therefore, in effect, the application of a floor space ratio bonus is essentially just “levelling the playing field” and making the provision of this type of housing a viable proposition (or alternative) in these zones where both forms of development are permissible).
- Providing an incentive for the development of seniors housing in the nominated zones has ongoing and community-wide benefits such as:
 - residents are able to use on-site facilities and hence travel off site less, thereby reducing traffic flows;
 - the provision of extensive on-site community facilities for the residents – in the form of libraries; dining areas and cafes; gyms, swimming pools and fitness areas; and substantial areas of communal open space (usually allocated on the basis of 5 – 8m² per apartment) – reduces demand on Council-provided community facilities; and
 - more local aged residents can remain independent and living within the local community, thereby maintaining existing social networks; and
 - greater housing choice is provided for aging residents within the Lane Cove LGA, consistent with the growing need for this type of housing identified in the North District Plan.

Further, it is considered that the proposed development – inclusive of the variation to the FSR bonus under section 87 – meets the objectives of the FSR standard of clause 4.4 of LCLEP for the following reasons:

- The proposed development represents a high-quality, contemporary built-form outcome that is consistent with the zoning, nature, scale and both the existing and constantly evolving character of the surrounding R4-zoned high-density residential neighbourhood residential area. Specifically, the proposed development is entirely consistent with the appearance, height and density of a number residential flat buildings constructed

generally in the past 10 years just to the south of the subject site, which range between six (6) and eight (8) storeys in height, including “Emerant Lane” at 284-288 Burns Bay Road, “Delve Apartments” at 290 Burns Bay Road, “Eva” by Hyecorp at 2 Waterview Drive and “Bay Pavilions” at 9 Waterview Drive. Photos of these developments are provided below and on the following pages as Figures 2 – 6.

Given the R4 zoning extends beyond the site to the north, east and south and even greater height (up to 21 and 24 metres) and FSR limits apply to this land – particularly to the south – the proposed development is entirely consistent with future developments likely to be constructed on these surrounding sites and the likely future urban form in this locality.

- Additionally, the proposed development:
 - provides an appropriate transition across the sites between the two height and FSR limits within the site as well as to the lower density townhouse development (Glenwood) to the immediate north;
 - has been well considered in terms of massing and volume, using deep recesses, two slender towers and a large building separation to reduce its visual bulk and presence in the streetscape (probably moreso than many of the taller buildings shown in Figures 2 – 6); and
 - further addresses its streetscape presence with appropriate and comprehensive landscape treatment.



Figure 2 – “Emerant Lane”, Nos. 284-288 Burns Bay Road (7 storeys)



Figure 3 – “Delve” Apartments, No. 290 Burns Bay Road (6 storeys)



Figure 4 – “Eva”, No. 2 Waterview Drive (8 storeys).



Figure 5 – “Bay Pavilions”, No. 9 Waterview Drive looking south (7 & 8 storeys)



Figure 6 – “Bay Pavilions”, No. 9 Waterview Drive looking north (7 & 8 storeys)

For the reasons outlined above, the objectives of the standard are considered to have been achieved notwithstanding the non-compliance. Therefore Wehbe Test 1 is satisfied.

The remainder of the Tests have only limited, if any, relevance to this variation request as indicated as follows:

Test 2 The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

As can be seen from the discussion above, it is considered that the proposed development is completely consistent with the objective of section 87 to specifically encourage seniors housing development on the land, such that strict compliance with the 15% additional floor space figure identified under section 87(2) of the Housing SEPP can be considered unnecessary in this instance.

Test 3 The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.

Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required, as FSR is still seen to be a reasonable starting point to determine the appropriate correlation between the size of the site and the bulk, height and density of the proposed building, but only in concert with the range of other applicable planning controls and development standards and noting the need for flexibility as a result, particularly to encourage this specific form of housing in this particular zone.

In this regard, it is acknowledged that FSR provides a convenient but somewhat crude development standard that establishes the potential maximum development density and land use intensity on any given lot. However, it is also noted that a broad-brush and generic application of such standards is not always appropriate to every site and each specific development scenario, given the wide ranging and differing physical (i.e. size and shape), topographical and contextual characteristics of each site, even those in the same residential precinct with the same zoning.

When designing developments, the FSR does not operate in isolation, but has to be applied in conjunction with a suite, or wide range, of other planning controls and development standards such as height, site coverage, setbacks, landscaping, parking, and private open space, which all further combine to inform and constrain the design of any given development. For this reason, the difficulty in designing a development such as that proposed (or any development for that matter) to comply with a generic (or simple) numerical development standard such as FSR given the extent and often contradicting nature of the various other controls has to be factored in.

Rather – or more correctly – FSR should be seen as only one measure of determining what is an appropriate correlation between the size of the site and the bulk, height and density of the building on any given site and in turn, the need for the flexibility in the application of this measure acknowledged.

Test 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 compliance with the standard is unnecessary and unreasonable.

From a review of Council's DA Tracking system, there is no evidence to suggest the development standard has been abandoned, although it appears there are a number of specific instances where Council has departed from the maximum FSR standard in the LGA over recent years for various and justifiable reasons, as is the case here. As such, there is considerable justification for granting a consent which departs from the standard in this particular instance for the reasons outlined elsewhere in this submission.

Test 5 The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The rationale for the R4 zoning of this property and the surrounding area appears sound and not deemed to be inappropriate or in question. However, it is not understood why there is a difference in FSR limits on this site compared to those to the south, many of which have greater FSR limits – up to 2:1 as shown on Figure 1 – than the subject site despite having the same R4 zoning. Hence the application of a higher FSR as provided for by section 87 of the Housing SEPP seems to be appropriate in this instance.

THE ENVIRONMENTAL PLANNING GROUNDS WHICH JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARDS IN SECTION 87 OF THE HOUSING SEPP

In response to clause 4.6(3)(b), sufficient environmental planning grounds exist to justify departure from the development standard on this occasion as follows:

- When spread across the entire site, the total amount of floor space allowable under both FSR categories S3 and J is 6,948.6m², whereas total floorspace proposed across the entire site is 6,921m². As such, across the entire site, the amount of floorspace proposed is 27.6m² less than what is allowable and therefore complies with the FSR applicable to the site as a whole.
- The exceedance on lot 51 is simply – and almost exactly – counterbalanced by the unused amount on lot 120. In this regard, the excess (or no-compliant) floor space on lot 51 is 807.1m², whereas the amount of unused floorspace on lot 120 (or less than that allowable) is 834m². As such, the floor space has simply been moved from one lot to the other such that the numerical variation on lot 51 is of no consequence.
- The built-form of the proposed development is completely appropriate given the height complies the two (2) maximum height limits applying to the land, other than the two lift overruns (which have been addressed via separate clause 4.6 submission consistent with the advice of Council).
- By actually contravening – or not complying with – the FSR development standard in this instance, an improved built-form outcome is actually achieved. In this regard, nothing would be gained by removing the excessive floorspace on lot 51 and adding it to lot 120 via a wider tower or higher podium below to simply achieve numerical compliance with the FSR on lot 51. In fact, such an exercise would be detrimental, as this would simply add bulk to that part of the development on lot 120, which contains the higher of the two towers and which has deliberately been made more slender to reduce apparent bulk and provide a greater gap between the two towers on each lot to provide maximum and compliant solar access and ventilation to properties to the south. As such, a redistribution of floor space from one lot to the other actually results in a worse built-form outcome, as it would increase the width of the higher tower and height of the middle podium, reduce the gap between the two towers and increase overshadowing on properties to the south. Conversely, such an exercise doesn't result in any benefit on an overall basis, as the development as currently proposed already complies with the total FSR applicable across the entire site and would continue to do so without the redistribution.
- Despite the non-compliant section of FSR on lot 51, the proposed development complies with all relevant requirements of the Housing SEPP, including:
 - the general development standards pertaining to all forms of seniors housing under section 84;
 - the more detailed development standards pertaining specifically to hostels and independent living units under section 85, which cross-references the further, more detailed standards specified in Schedule 4;
 - the site, locational and access requirements pertaining specifically to independent living units under section 93; and
 - the non-discretionary development standards for independent living units under section 108 relating to landscaped area, deep soil zones, private open space and car parking.

- The proposed development meets the further, more detailed design principles pertaining to in-fill self-care housing identified in the document "*Seniors Living Policy: Urban Design Guideline for Infill Development*" which is cross referenced under the Housing SEPP.
- The size, shape and orientation of the site, as well as the design and siting of the proposed towers and the position of buildings on adjoining allotments, ensure that the proposed development is unlikely to result in an adversely impact upon the amenity of surrounding residences by way of overlooking or overshadowing, with solar access remaining compliant with the requirements of the Housing SEPP and the ADG.
- Despite the minor non-compliance with the FSR, the density and bulk of the proposed development is appropriate and achieves a satisfactory relationship with the area, dimensions and shape of the site. In this regard, the built-form of the proposed development is completely appropriate given the height complies with the maximum height limits applying to the land (inclusive of bonuses), whilst all setbacks under the DCP have been complied with other than for the northern side of the upper two floors of Building A, for which a variation has been extensively justified in the SoEE and which is compensated for by a larger than required setback to the southern boundary. This suggests that the bulk, height and density of the building represents an appropriate correlation with the size of the site in this instance, which is the express purpose of a floor space ratio.

THE PUBLIC INTEREST, CONSISTENCY WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD AND THE OBJECTIVES FOR DEVELOPMENT WITHIN THE R4 GENERAL RESIDENTIAL ZONE

The Public Interest

The proposed development, inclusive of the variation to the FSR limit on lot 51, is considered to be in the overall public interest as it will:

- provide additional seniors housing to the local housing market to assist in meeting the ongoing and increasing demand for such housing in the Lane Cove area;
- provide a significant increase in the availability of high-quality seniors housing product to the market in a premium location;
- enable more local residents to remain independent but living within the local community and maintaining existing social network;
- increase residential densities and housing choice in an established location that is close to public transport;
- provide high quality independent living style housing with good accessibility to the Figtree local centre and to bus transport connecting to inner northern Sydney and the City;
- significantly improve the appearance and built-form of this site and the Burns Bay Road streetscape; and
- generate section 7.11 contributions which will, in combination with other monies collected by Council from other developments, be used for a range of improvements to local infrastructure and the provision and embellishment of public reserves and community facilities in the surrounding area.

Objectives of the Development Standard

As discussed in detail in the preceding section of this Submission, the proposed development is consistent with the relevant objectives of the development standard requested to be varied.

Consistency with Zone Objectives

The proposed development is entirely consistent with the objectives of the R4 zone. In this regard, the objectives of the R4 zone (where relevant to residential development) are identified below, with a comment provided immediately following to demonstrate how the proposed development is consistent with each:

- *To provide for the housing needs of the community within a high-density residential environment.*
 - The proposed development provides housing needs for the local community in a vertical, high density retirement village and in doing so, will assist in meeting a shortage of senior's accommodation in the Lane Cove LGA.
- *To provide a variety of housing types within a high-density residential environment.*
 - The proposed development provides an alternate type of retirement living in the form of a vertical village and hence contributes to the variety of seniors housing product available in the Lane Cove LGA.
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
 - The proposed development is located in close proximity (400m) to the Lane Cove West shopping centre and community precinct, and is highly accessible to an extensive range of retail, community, commercial services and facilities via public transport to the Lane Cove town centre and Hunters Hill village centre.
- *To ensure that the existing amenity of residences in the neighbourhood is respected.*
 - The proposed development has been designed and sited to avoid any significant adverse impact on the amenity of surrounding residences by way of overshadowing, diminished privacy or view loss, as discussed in greater detail in the SoEE and the SEPP 65 Design Verification Statement accompanying the DA.
- *To avoid the isolation of sites resulting from site amalgamation.*
 - The subject site comprises two (2) allotments that combine to provide a large, amalgamated site of a regular shape that facilitates the proposed development and in doing so, does not isolate any surrounding properties nor compromise the future development potential of these properties
- *To ensure that landscaping is maintained and enhanced as a major element in the residential environment.*
 - The site will be extensively landscaped, inclusive of the planting of large trees within deep root zones around the buildings to provide appropriate shading, softening and scaling of the development, as well as the planting of smaller trees, shrubs and hedges within private terraces, garden beds, planter boxes and communal areas to provide privacy and amenity for residents.

CONCLUSION

It is clear from the above discussion that the variation sought to the FSR limit applicable to the land under section 87(2)(b) of SEPP (Housing) 2021 is justified for a range of economic, siting, design, amenity and environmental planning reasons. The proposed variation is therefore consistent with clause 4.6 of LCLEP, which provides an appropriate degree of flexibility in the application of development standards to permit a particular development where warranted. To this end, the preceding submission satisfies the considerations requiring assessment in sub-clause (3) and demonstrates as follows:

1. strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
2. there are sufficient environmental planning grounds to justify contravening the development standard;

3. the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the R4 zone in which the development is proposed to be carried out; and
4. departure from the standard will achieve an improved built-form outcome, have a negligible impact on surrounding properties and will not raise any matter of significance for state or regional environmental planning.

Therefore, the request for a departure from the floor space ratio development standard referenced under section 87(2)(b) of SEPP (Housing) 2021 to permit the proposed development is considered worthy of support.

Tim Shelley

Director – Tim Shelley Planning



Bachelor Urban and Regional Planning, University of New England