



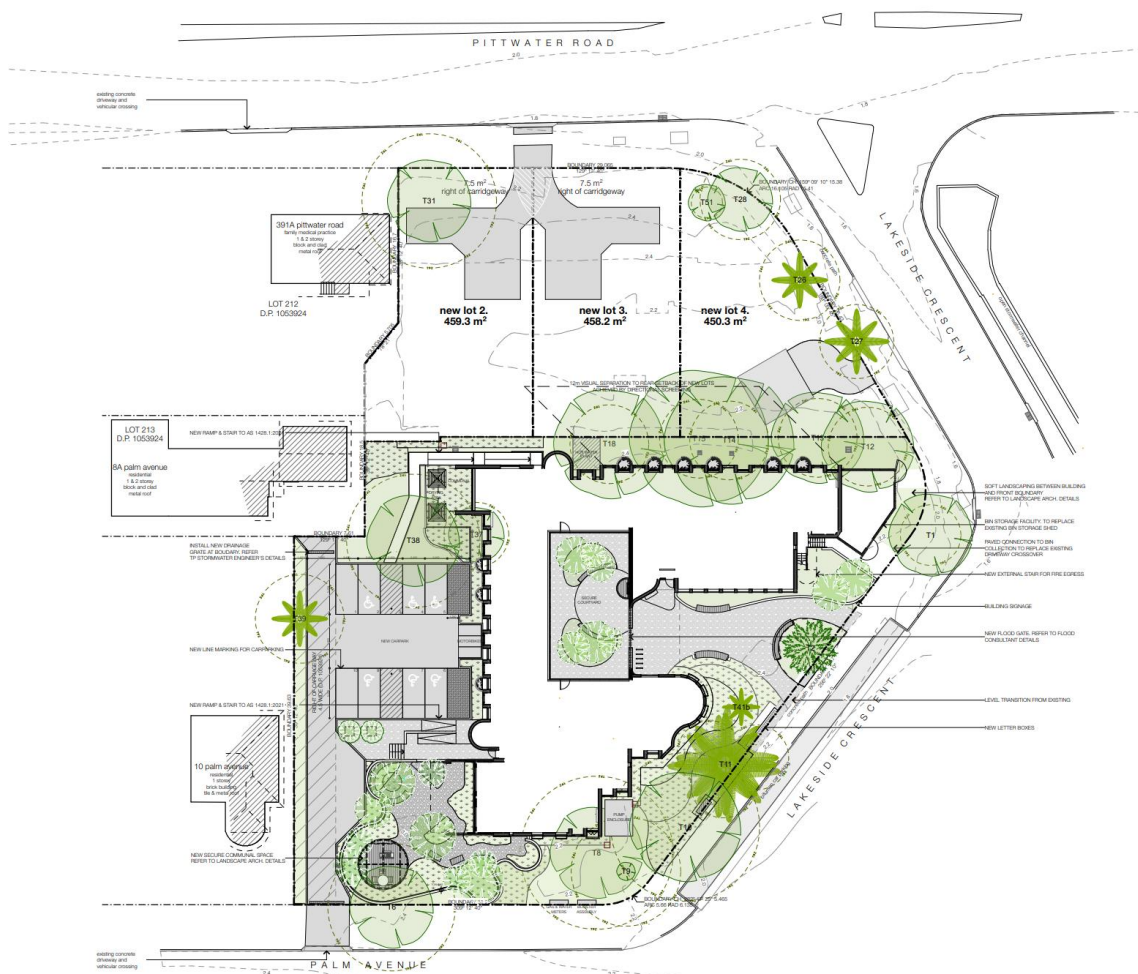
CLAUSE 4.6 VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

The Queenscliff Project

GLN 11090

22 July 2023

| Summary Description | |
|------------------------------|--|
| Property: | Approved Lot 1 in subdivision of Lot 22 DP 865211, 389 Pittwater Road; Lot 1 DP 544341 and Lot 46, 47 & 48 DP 12578; 2-4 Lakeside Crescent and Lot 45 DP 12578, 8 Palm Avenue, North Manly NSW 2100 |
| Development: | Adaptive re-use of former Queenscliff Community Health Centre to become a mixed housing development comprising a boarding house containing 12 rooms and seniors housing containing 25 self-contained rooms |
| Development Standard: | Clause 4.3 (Height of buildings) of <i>Warringah Local Environmental Plan 2011</i> |
| Development Plans: | Architectural Plans prepared by Integrated Design Group, dated 30/9/2021, as amended May 2022 and July 2023 |



Source: Integrated Design Group, DA-0102 Rev F

Figure 1. Site Plan

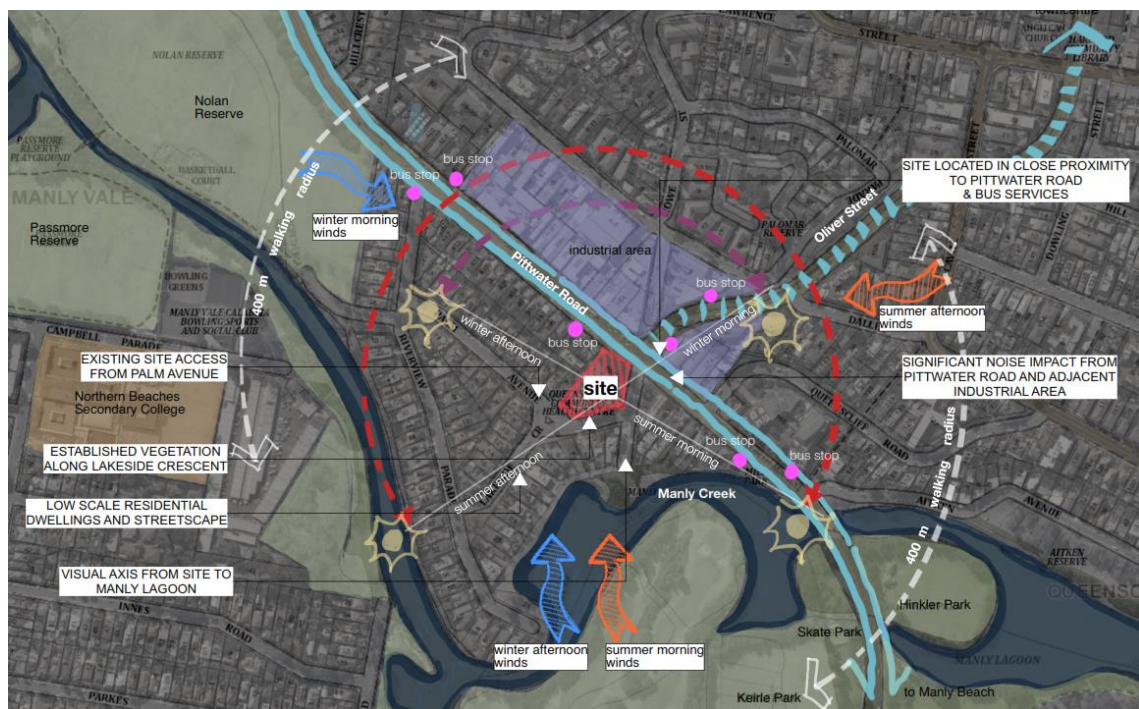
1. Background and Summary

Introduction

The proposed development involves the adaptive re-use of the former Queenscliff Community Health Centre to become a mixed housing development comprising a boarding house and seniors housing. The boarding house will comprise 12 rooms and will be located on the ground floor, while seniors housing will comprise 25 self-contained dwellings across the second and third storeys. The development is situated on surplus land owned by Landcom, and will be known as the Queenscliff Project, an innovative partnership between Link Wentworth Limited and Landcom.

Location

The site is located within North Manly within the Northern Beaches Council LGA. The site is located approximately 11 kilometres north east from the Sydney CBD, 2 kilometres north west from Manly town centre, and 700 metres south west from Freshwater town centre. Within close proximity of the Site are Manly Creek, industrial lands, low density residential land uses, and a number of public reserves. **Figure 1** illustrates the surrounding locality including public transport and urban amenities in the area.



Source: Integrated Design Studio, DA-002 REV C

Figure 2. Surrounding locality

The Site

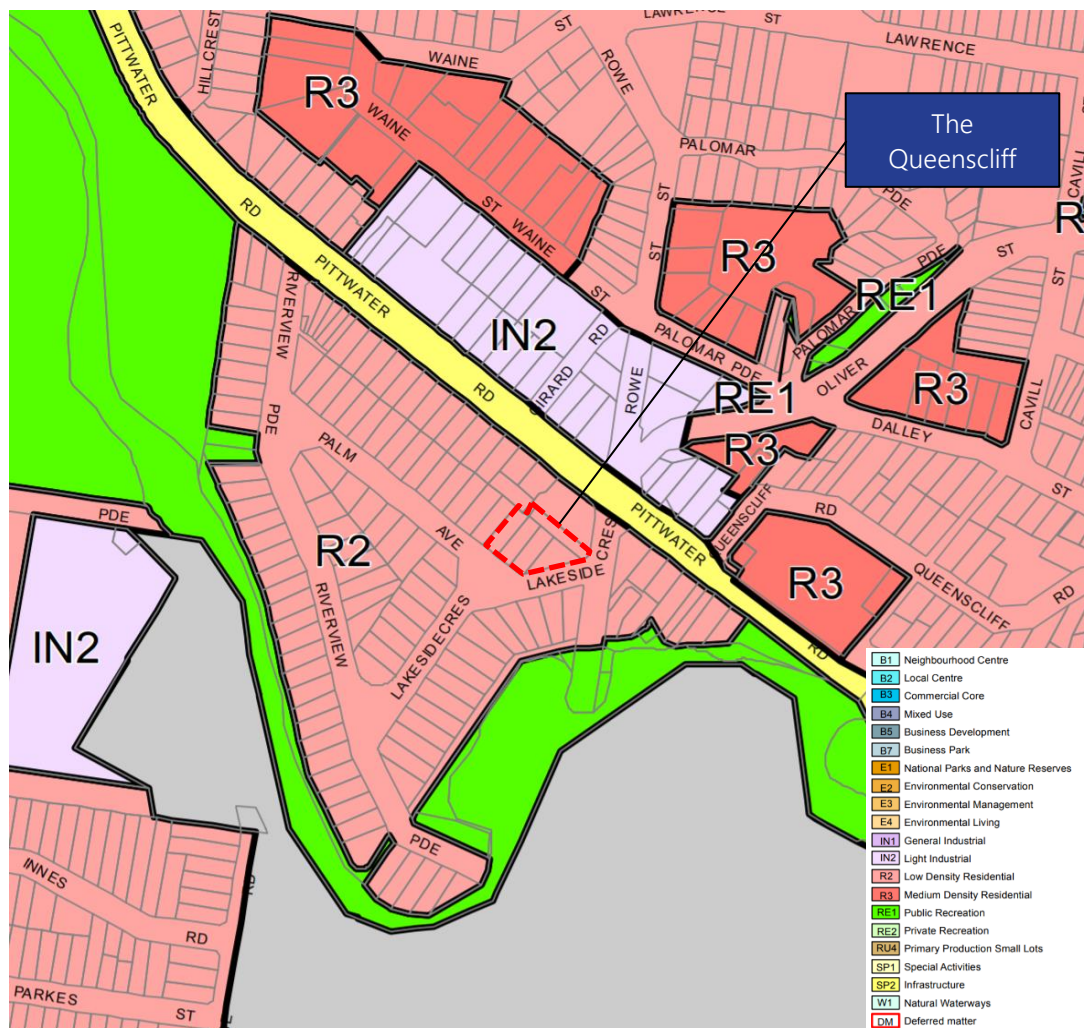
The site is approved Lot 1 in approved subdivision of 6 allotments of various sizes and is legally registered as Lot 22 DP 865211, 389 Pittwater Road; Lot 1 DP 544341 and Lot 46, 47 & 48 DP 12578; 2-4 Lakeside Crescent and Lot 45 DP 12578, 8 Palm Avenue, North Manly NSW 2100. The site is

located on the corner of Lakeside Crescent and Palm Avenue. A separate Development Consent No 2021/1914 to consolidate and re-subdivide the site into 4 lots was approved 7 June 2023 by the Sydney North Planning Panel. The Site the subject of this Development Application (**DA**) DA is approved Lot 1.

The site was formerly used as the Queenscliff Community Health Centre, with scattered trees and gardens located on the site, the majority of which have frontage towards Pittwater Road, which is a classified road. Vehicular access to the site is available from a driveway accessed from Palm Avenue.

Zoning

The site is zoned R2 Low Density Residential under *Warringah Local Environmental Plan 2011* (the **LEP**) as shown in **Figure 3**. Boarding houses are permissible with consent in this zone, while seniors housing is prohibited in the zone. However, *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004* (**Seniors SEPP**) overrides the LEP in this instance and permits seniors housing on the site. The operation of Seniors SEPP is preserved on the site despite the repeal of Seniors SEPP by the savings provisions of *State Environmental Planning Policy (Housing) 2021* as detailed in the Statement of Environmental Effects.



Source: NSW Planning Portal, 2021

Figure 3. Land zoning map

Summary of Clause 4.6 Request

This DA proposes the adaptive re-use of the former Queenscliff Community Health Centre. The proposed development exceeds the maximum 8.5 metre maximum building height under the LEP. A variation to the development standard is sought having regard to the site context, compliance with the objectives of the standard, and a site responsive design that provides a high level of internal amenity and social interaction without adversely impacting the amenity of surrounding properties.

It is noted that the existing structure is 2-3 storeys in height, and therefore the additional height increase will result in a 3-storey structure, representing a minor increase to the scale of the development. The Seniors SEPP and the Affordable Rental Housing SEPP provide indicative planning controls, although these cannot be used to refuse development consent. These are not understood to be development standards and therefore it is unclear whether these provisions prevail over the LEP. Consequently, this clause 4.6 submission is made for abundant caution.

2. Authority to vary a development standard

The objectives of clause 4.6 of the Warringah LEP seek to recognise that in particular circumstances strict application of development standards may be unreasonable or unnecessary. The clause provides objectives and a means by which a variation to the standard can be achieved as outlined below:

(1) The objectives of this clause 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.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

When this Plan was made it did not contain Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition or Zone R5 Large Lot Residential.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4.

(8A) Also, this clause does not allow development consent to be granted for development that would contravene a development standard for the maximum height of a building shown on the Height of Buildings Map on land shown on the Centres Map as the Dee Why Town Centre.

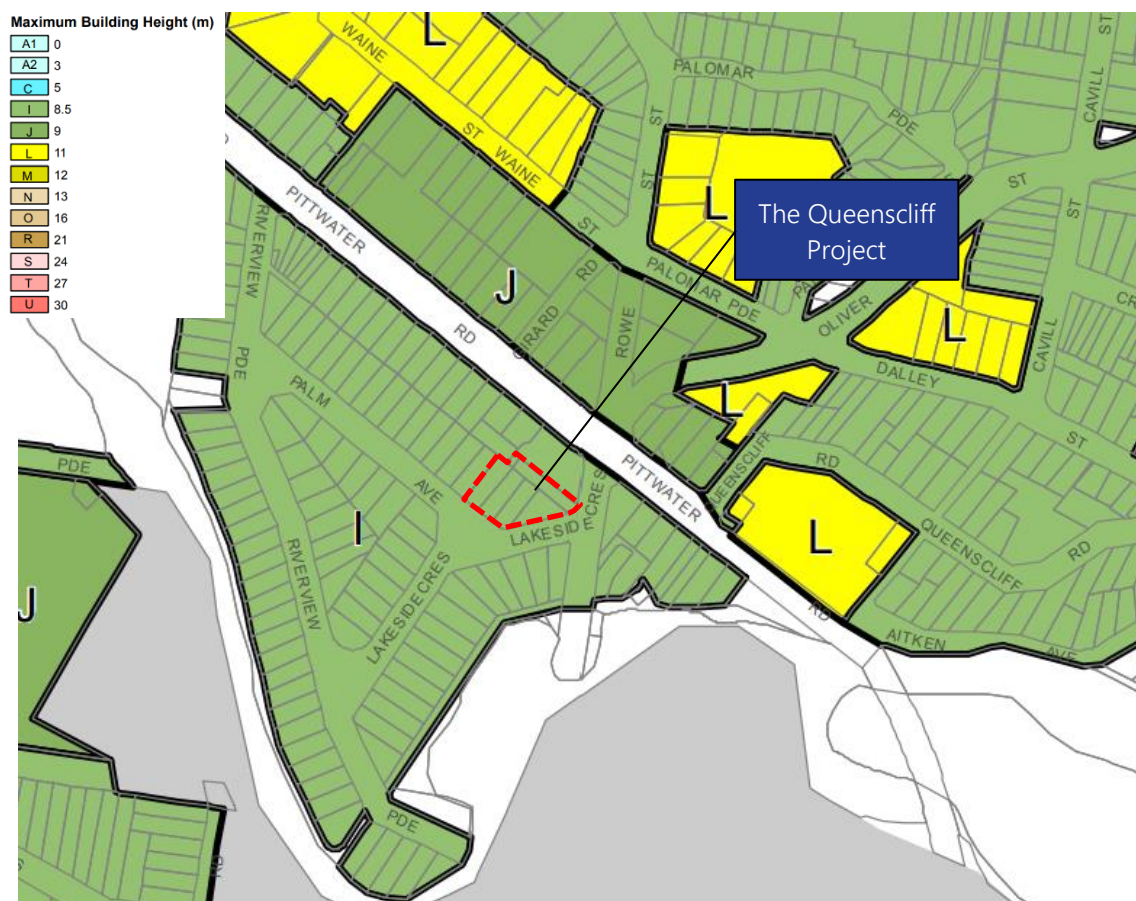
(8B) Despite subclause (8A), development on Site C or Site E may exceed the maximum height of building shown on the Height of Buildings Map if the maximum height is allowable under clause 7.14.

3. Development standard to be varied

A variation is requested to Clause 4.3 Height of buildings in Warringah LEP which requires:

- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The site is subject to a maximum building height of 8.5 metres as illustrated at **Figure 4**.



Source: NSW Planning Portal, 2021

Figure 4. Height of buildings

The WLEP dictionary provides the following relevant definitions:

building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

4. Extent of variation

The floor levels of the proposed development are established by the footprint of the existing building and the flood affectation of the site. The site has variable levels associated with the slope of the site, with a maximum building height of 12.1m proposed, and a variation of between 0.15 metres (1.7%) to 3.5 metres at the plant (42.3.%) from the development standard. In determining the extent of the height variation, the ground levels beneath the building are not available and in accordance with the approach taken by the NSW Land and Environment Court in *Bettar v Council of City of Sydney* [2014] NSWLEC 1070, the ground levels have been adopted at the edge of the building facades. This approach is a pragmatic approach to the consideration of the height of the proposal as the ground levels adjoining the building and that of the adjoining land are the means by which the height of the building are perceived.

The existing built form is 2 to 3 storeys and is non-compliant with the development standard at a height of around of 10m. The original development was constructed as a purpose built facility for the Department of Health under the then applicable planning controls of Warringah Planning Scheme Ordinance in 1971. The existing built form which exceeds the 8.5m height limit is indicated in orange at **Figure 5** below.

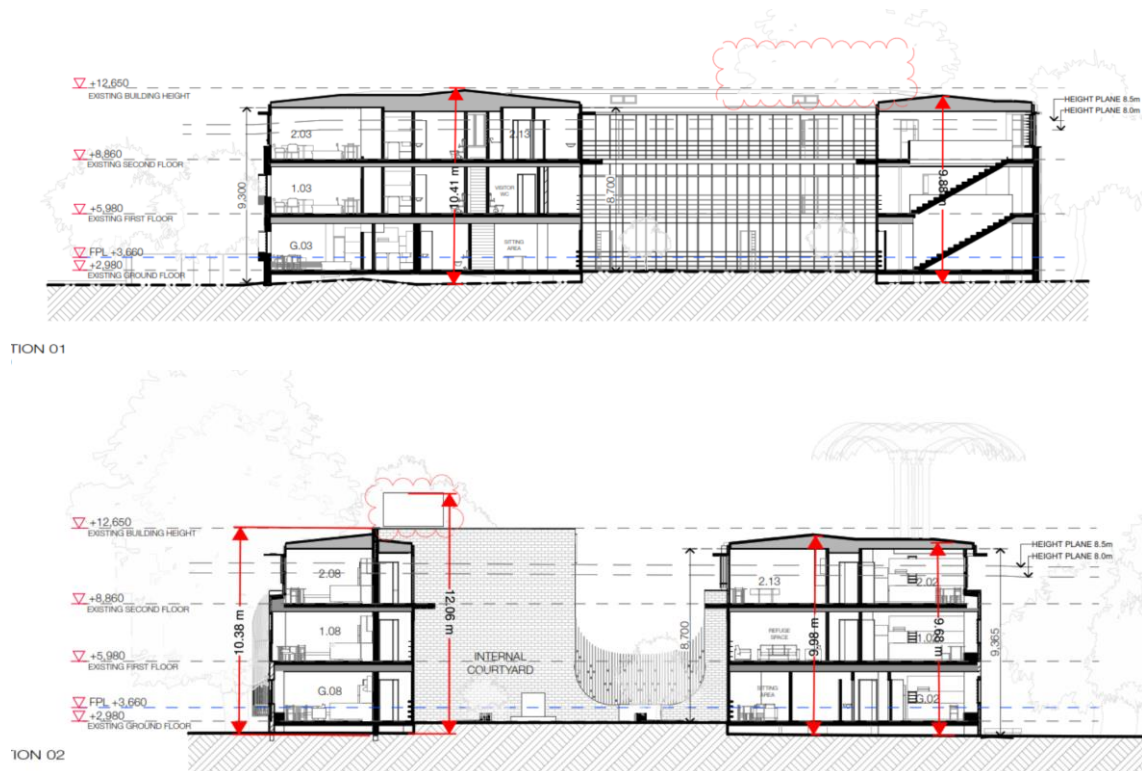


Source: Integrated Design Group, DA-9400 Rev C

Figure 5. Height plane diagram

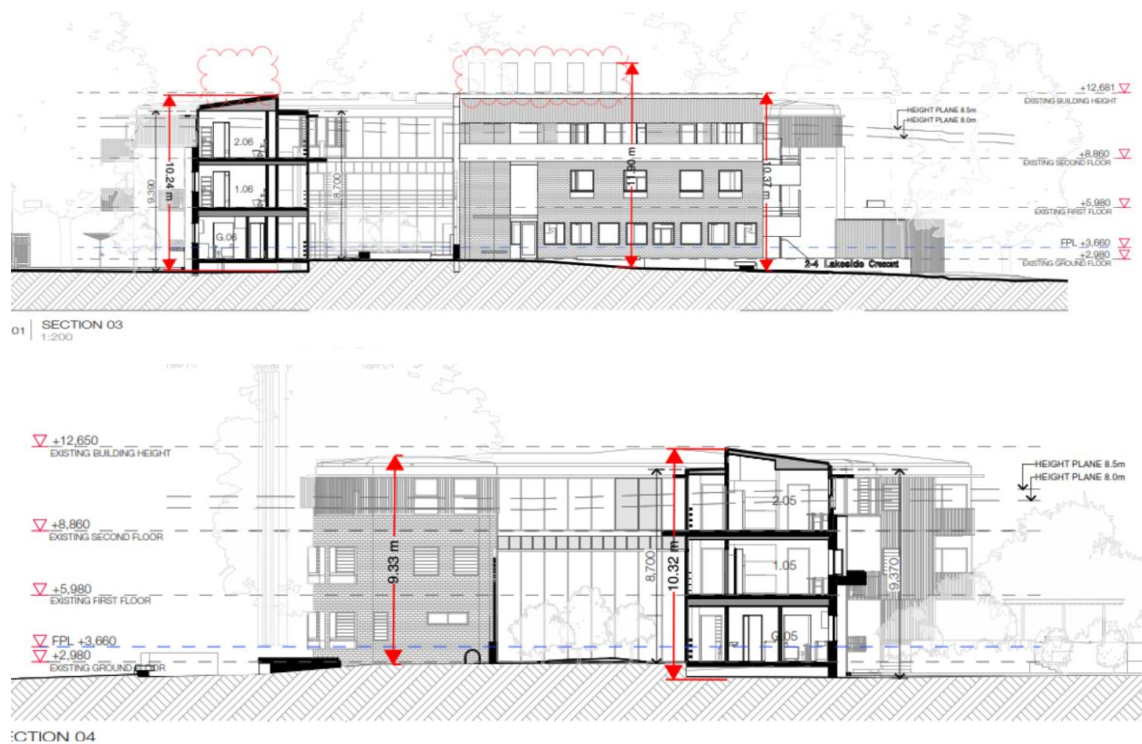
To enable the delivery of affordable housing within footprint and existing architectural form of the former Queenscliff Health Service building, the overall increase in the height of the building has been designed to be of a lesser height than that of the existing 3rd floor of the building with the exception of plant located on the roof. An increase in the height to the existing built form to include a new roof over the parapet to replace the box gutter. The other increase in height is a result of the extension the existing third floor to become a full third level as shown at **Figure 7**. The additional floor space within at the proposed 3rd floor level whilst comprises a greater volume of floor space above the height limit has been designed to sit behind the parapet and within the roof space. The proposal seeks to access the additional volume that is created as a result of the roof amendments. The overall form of the roof and the floorspace provides for negligible increase to the bulk and scale of the proposed development.

The existing building achieves a maximum height of RL 12.65 to RL 12.681 above the existing third storey. The variation to height control for the building sought varies from 9.86m to 10.41m as indicated in the extracted Sections in **Figures 6** and **7** below. The height measurements in accordance with the definitions of height are shown by the red arrow markings. The proposed height of the building does not exceed the existing maximum RL of the building except for the location of the plant on the roof.



Source: Integrated Design Group, Drawing DA-3000 REV G

Figure 6. Section Plans 1 & 2



Source: Integrated Design Group, Drawing DA-3001 REV E

Figure 7. Section Plans 3 & 4

5. Objectives of Clause 4.3 Height of building

The objectives of Clause 4.3 of WLEP are outlined below:

(1) The objectives of this clause are as follows—

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

All objectives are of specific relevance to the site and proposed development.

6. Assessment

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (Clause 4.3 (3)(a))

Clause 4.6(3)(a) requires the applicant to provide justification that strict compliance with the maximum building height requirement is unreasonable or unnecessary in the circumstances of the case.

In *Wehbe v Pittwater Council (2007) NSWLEC 827*, Preston CJ established five potential ways for determining whether a development standard could be considered to be unreasonable or unnecessary. These include:

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

1. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
2. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
3. 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.
4. 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.

We note that whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6. Regard is also had to the Court's decision in *Four2Five Pty Limited v Ashfield Council [2015] NSWLEC 90* and *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*, which elaborated on how these five ways ought to be

applied, requiring justification beyond compliance with the objectives of the development standard and the zone.

In addition to the above, Preston CJ further clarified the appropriate tests for a consideration of a request to vary a development standard in accordance with clause 4.6 in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. This decision clarifies a number of matters including that:

- the five ways to be satisfied about whether to invoke clause 4.6 as outlined in *Wehbe* are not exhaustive (merely the most commonly invoked ways);
- it may be sufficient to establish only one way;
- the written request must be “sufficient” to justify contravening the development standard; and
- it is not necessary for a non-compliant development to have a neutral or beneficial effect relative to a compliant development.

It is our opinion that the proposal satisfies at least one of the five ways established in *Wehbe* that demonstrate that the development standard is unreasonable and unnecessary in this instance, for the reasons set out below.

1st Way – The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposal satisfies the objectives of the standard to the extent relevant to the current proposal, and compliance with the maximum building height standard in the circumstances is considered both unreasonable and unnecessary for the following reasons.

Objective (a) - to ensure that buildings are compatible with the height and scale of surrounding and nearby development

The proposal seeks adaptive re-use of an existing 2-3 storey building to a 3-storey mixed housing development. The existing building has been located at the site since 1971. The site is located opposite industrial development. The floorspace of the proposed housing is entirely within the existing building footprint. The additional floorspace is largely located within the existing volume of the building with additions above the existing parapet to incorporate the additional level 3 floorspace. The roof form and architectural treatment of the additional floorspace at Level 3 has been designed to reflect the existing built form. The roof top plant has been located to minimise view lines from external to the site and within the site. The plant is required to be located at roof level as a result of the flood affection of the site and the constraints of the existing built form.

The higher building form is responsive to the site context and will continue to be setback significantly from the western boundaries ensuring that there are no unacceptable adverse solar or privacy impacts. The design has also been informed with the design of the approved 3 lots along Pittwater Road to ensure that there would be no unacceptable amenity impacts to future residential development on those properties. The existing trees and enhanced boundary plantings will provide a landscape screen to the adjoining approved residential subdivision.

The exceedance of the height standard is a direct consequence of the existing built form of the former Queenscliff Health Centre for which adaptive reuse is proposed to provide for housing choice.

It is noted that the flood planning level of RL 3.66 would establish a maximum height of building in the order of RL 12.16 on the basis that a new building would adopt a higher ground floor. In that instance the uppermost level of the entire building would be at the level of the proposed plant.

The adaptive reuse and the incorporation of the floor space generally within the uppermost levels of the existing built form will enable the continuation of built form in the substantive form of the existing building.

The additional floorspace which is incorporated at the upper level has been proposed with ceiling levels and proposed roof to be marginally above the existing parapet, thereby reducing the apparent height of the additional floorspace. It is noted that the flood affectation of the site supports the provision of the floorspace within the existing footprint

The extent of the height variation for the substantive form of the building will be largely consistent with that of the existing built form. The renewal and reuse of the existing building which will make an ongoing positive contribution to the character of the area.

Objective (b) - to minimise visual impact, disruption of views, loss of privacy and loss of solar access.

The proposed increase in height is minor relative to the existing building height and will and not result in unacceptable view, privacy or overshadowing impacts and consequently none will arise as a consequence of the proposed variation. As evidenced by the solar access diagrams, the proposal does not impact the solar access of residences on adjoining properties at midwinter due to the orientation and position of the site.

The residential accommodation has been designed to minimise overlooking of the rear yards of the recently approved residential lots which formed part of the original Queenscliff Health Clinic site. Existing trees and additional boundary screen plantings will minimise the visual impact of the proposed building on the adjoining approved residential lots.

The proposal being located within the footprint of the existing building provides more than the required quantum of common open space, and the internal courtyard in addition to the new communal space at the western corner of the site, will provide a high level of amenity and encourage desirable social interaction. The site formerly provided for carparking areas to support the health care use, the adaptive reuse enables the enhancement of the existing grounds and building.

Objective (c) - to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments

The proposed increase in height is minor above that of the existing built form and the introduction of additional landscape area and maintenance of generous landscaping arrangements will ensure that the proposed mixed housing developed will not impede the scenic coastal nature of the site. The proposal is wholly compliant with the objective in addition to the requirements of the Coastal Management SEPP.

Objective (d) - to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

The proposed height increase is not substantial in relation to the existing built form on the site being incorporated within the height of the existing development. With the exception of the roof top plant all additional floorspace is largely contained within the building envelope established by the existing building. The additional floor space proposed is contained at the same floor level as the existing 3rd level of the building marginally above the existing parapet of the building. The adaptive reuse of the building has been undertaken to minimise the overall height to that or less than that of the existing building. The rooftop plant has been located to minimise view lines and so ameliorate the visual impact. The adaptive reuse of the existing building and the location of the site will ensure no impacts from overshadowing of public places such as parks and reserves or community facilities.

The proposed development will not have a negative visual impact on the surrounding locality when viewed from any public place, and presents as an improvement of the built form's visual presentation to the streetscape through being a sensitively designed adaptive re-use project that is compatible with the surrounding residential character of the site.

Accordingly, the variation to the maximum height of building standard will not compromise achievement of the objectives of the standard.

2nd Way - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

This consideration is not relevant in this case. It is noted that this development standard is inconsistent with the Affordable Rental Housing SEPP and Seniors SEPP, and that this Clause 4.6 Variation request has been prepared out of an abundance of caution.

3rd Way - The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required.

The exceedance is a consequence of a carefully considered design approach that is site responsive, and that seeks to provide essential housing of an appropriate scale and density that is more consistent with the objectives of the R2 Low Density Residential zone than the previous use.

4th Way - The development standard has been virtually abandoned or destroyed by the Council's own decisions

This consideration is not relevant in this case.

5th Way – The zoning of the site is unreasonable or inappropriate and consequently so is the development standard.

This consideration is not relevant in this case.

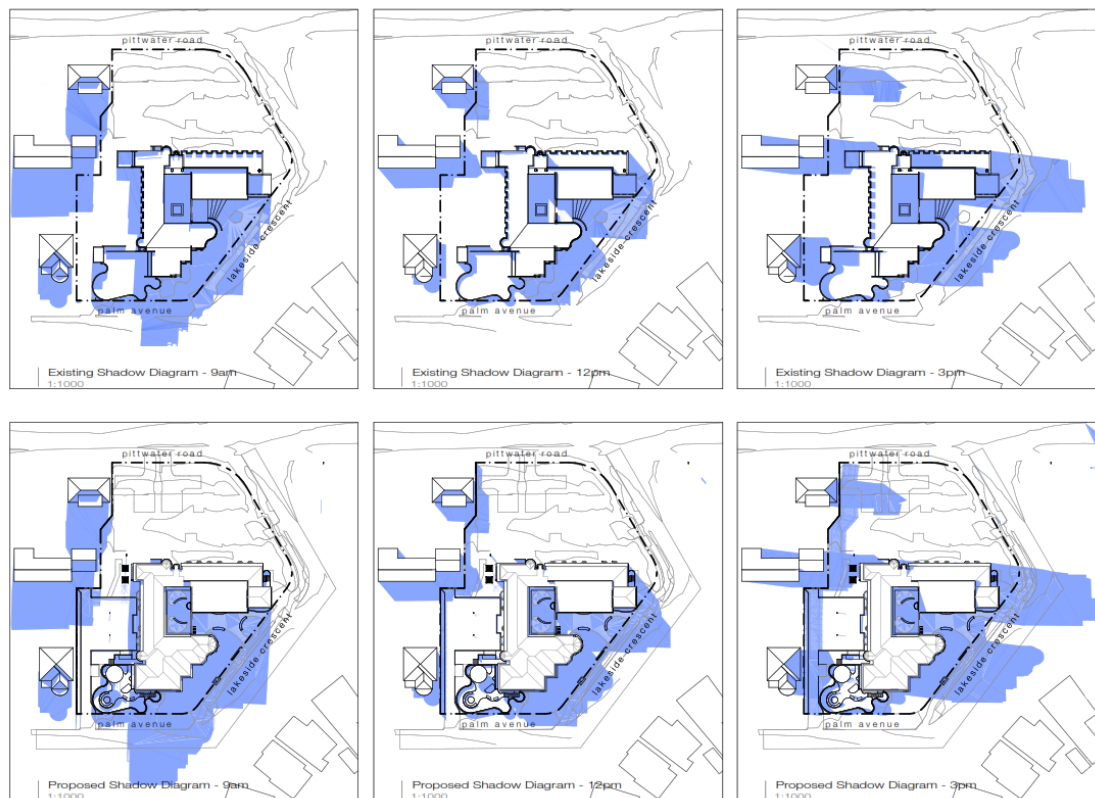
Are there sufficient environmental planning grounds to justify contravening the development standard? (Clause 4.6(3)(b))

The environmental planning grounds which support the contravention to the height of building standard relate to:

- The form and footprint of the existing building effectively dictates the height of the proposed development.
- The notable architectural value of the existing building which will be reinvigorated for future residents.
- The opportunity provided for the adaptive reuse of the former Health service building to provide for affordable housing incorporating housing choice and environmental sustainability.
- Waste minimisation achieved by the adaptive reuse of the existing building.
- Flood affectation of the site limits additional floorspace at ground level balanced with the benefits of additional floor space above the flood planning level. The existing footprint provides for generous setbacks and landscaped areas.
- Substantial public benefit in the provision of affordable housing to meet the critical shortage of housing for women over the age of 55. In addition, the design of the building addresses and accommodates the security and privacy often required for victims of domestic violence.
- The extent of the building which will exceed the maximum height of building is either existing or largely within the existing building envelope. The minor increases of the substantive form of the building are equivalent to the existing parapet of the building and

the setbacks to adjoining development are maintained within the existing footprint. The additional height will not impact adjoining properties by way of view loss or overshadowing.

- The development enables the delivery of an economically viable mixed use development comprising boarding house and seniors living unit including additional floor space from that of the existing building by a Community Housing Provider.
- The new roof form will enable an improved response to the management of roof water and its disposal over the existing parapet and box gutters. Supporting the reuse and maintenance of the building, identified for its notable architecture that has been a part of the character of the area, and contributed to the wellbeing of the community, for decades.
- The exceedance is a response to a considered design approach that is site responsive and comprises an adaptive re-use of the existing building that maximises the inherent strengths of the site while modernising the built form to ensure compliance the ARH SEPP and Seniors Housing SEPP to result in a liveable and sustainable development.
- The existing building form allows for the concentration of floorspace at the at the eastern end of the site, away from existing residences to the west. Furthermore, as indicated at **Figure 8** over the page, the position and orientation of the site ensures that there will be no additional shadow impacts to the living areas or private open space of surrounding properties, while the use of screening, orientation to the street and generous setbacks will ensure that privacy impacts can be mitigated.
- The overall height of the building as proposed is minimal from that of the existing building with all substantive height of the additions being at or below that of the existing building. The adaptive reuse will provide upgrading and introduce residential qualities to the existing building which was previously more commercial in its appearance and relationship with the adjacent residential areas.



Source: Integrated Design Group, Drawing No. DA-9100 REV C

Figure 8. Shadow diagrams

Consequently, the proposal would be consistent with the following objectives of the EP&A Act at section 1.3:

- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (g) to promote good design and amenity of the built environment,*

Is the proposed development in the public interest? (Clause 4.6(4)(a)(ii))

The proposed development is in the public interest because it:

- Facilitates a development that is not inconsistent with the objectives of the standard and the intent of the R2 Low Density Residential zoning of the site. Consistency, with the objectives of the standard has been addressed previously under Wehbe methods.
- Provides a significant public benefit in the delivery of additional and varied affordable housing choice within the Northern Beaches LGA, in the form of boarding house rooms and seniors housing including for low income women, as the population ages and the number of single-women households increases.
- The site is well located on public transport to both Manly and Warringah Mall hubs.

- Affordable housing will support the economic vitality of the local area by ensuring local residents and those in housing need are not displaced from their communities as a result of the increasing cost of housing.

In regard to the first point, the relevant objectives of the R2 Low Density Residential zoning of the site area are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

The proposed housing will contribute to the delivery of 12 boarding house rooms and 25 self-contained seniors dwellings that will substantially contribute to meeting the need for diverse and affordable housing in the Northern Beaches LGA. The proposal provides a mix of housing options and room sizes, and will positively contribute to the housing mix to be achieved across the LGA within each of the R2, R3 and R4 residential zones. The proposal, as an adaptive re-use of an existing building, will be of an appropriate density and scale that is compatible with the character established by the existing built form of the building and the planned intent for the R2 zoning of the area.

Consideration of concurrence by Director-General (Clause 4.6(4)(b) & (5))

Concurrence to the proposed variation is not required by the Secretary pursuant to clause 4.6(4)(b), as we understand that the Sydney North Planning Panel has necessary delegation as set out in the Assumed Concurrence Notice issued by the Secretary of the Department of Planning and Environment dated 21 February 2018 (attached to DPIE Planning Circular PS 18-003).

The proposed variation to the maximum height of building standard is not considered to be detrimental to any matter of significance for state or regional environmental planning. Rather, the proposed development is supportive of the adaptive reuse of surplus government assets in the delivery of environmental sustainable development and the critical need for affordable housing.

In the circumstances of the application, the public benefit achieved by the proposed development supports the variation as proposed as has been outlined above. The enforcement of the maximum height of building development standard is both unreasonable and unnecessary in the circumstances of the proposed development. To the contrary and consistent with the objectives of clause 4.6, allowing the variation will facilitate a development that achieves better and appropriate outcomes and represents an appropriate degree of flexibility in applying a development standard.

In relation to clause 4.6(5)(c), we note that no other matters have been nominated by the Secretary for considerations.

2. Conclusion

A variation to the strict application of the maximum building height standard of 8.5m under Clause 4.3 of WLEP is considered appropriate for the proposed Queenscliff Project development.

The proposed height results in an optimum outcome for the site given the intended use of the site and its adaptive re-use, incorporating additional floorspace within a roof form that has been designed in response to the built form of the existing building. The maximum extent of the variation sought is not indicative of the overall variation as it is for the extent of the roof top plant. All other variations are within the determined by the envelope of the existing building parapet and an amended roof form. The additional floorspace accommodated enables the delivery of the compliant development under the provisions of the SEPP ARH and SEPP SL, providing a public benefit in the housing provided and environmental sustainability in the adaptive reuse of the existing building.

The proposed development will provide high levels of amenity for future residents for accommodation which is identified as being in critical shortage. The variation to the height of building control will not give rise to amenity impacts that would be any different should a development of a compliant height be achieved. With the exception of the plant required to be located on the roof all residential accommodation is contained within the upper height of building as determined by the existing building. The height of the building is determined by the existing building, flood levels and the ability to achieve a viable affordable housing development. It is noted that the proposal is otherwise compliant with the Affordable Rental Housing SEPP and the Seniors SEPP.

The proposal meets the intent of the height of building standard under Clause 4.3 of WLEP and in accordance with clause 4.6 of the WLEP, demonstrates that the development standard is unreasonable and unnecessary in this case and that the variation warrants support.