

Clause 4.6 Variation Request – Floor Space Ratio (Housing SEPP 2021)

68-74 Deepwater Road, Castle Cove

Submitted to Willoughby City Council
on behalf of Castle Cove Country Club Limited and Taylor
Development Group



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

This Clause 4.6 Variation Request to vary 'Clause 108 – Non Discretionary Standards for Independent Living Units' (ILUs) of the Housing State Environmental Planning Policy (Housing SEPP) 2021 has been prepared by Ethos Urban on behalf Castle Cove Country Club Limited and Taylor Development Group (the Applicant). It is submitted to Willoughby City Council (Council) in support of a Development Application (DA) for the demolition and redevelopment of the Castle Cove Country Club and the construction of Independent Living Units (ILUs) located at 68-74 Deepwater Road, Castle Cove (the site).

This Clause 4.6 Variation Request relates to the development standard for floor space ratio (FSR) under Clause 108 of the Housing SEPP has been prepared in response to the Council's request for further information in relation to the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated December 2023, including supporting documentation.

It was noted in Council's RFI, there are two (2) separate clauses in two (2) separate instruments, each to operate in accordance with its own terms. The FSR applicable to the site under the Willoughby LEP 2012 is 0.4:1 in accordance with Clause 4.4A(1). In accordance with Clauses 4.5(2) and (8) of the Willoughby LEP 2012, along with the definition of site area as stipulated in Clause 4.5(3), the calculation of FSR for the entire development is to consider both the clubhouse and the ILUs components. A Clause 4.6 Variation Request seeking a variation to the FSR applicable to the site under the Willoughby LEP 2012 has been prepared under a separate cover.

The FSR non-discretionary development standard applicable to the site under the Housing SEPP (Section 108) applies only to the portion of the development that relates to the ILUs. This Clause 4.6 Variation Request relates to ILU component, which when considered on its nominal site area, comprises an FSR of 0.83:1, utilising the GFA definition (Section 82(1)) and the site area definition (Schedule 10) as per the Housing SEPP. This exceeds the Housing SEPP's Non-Discretionary Standard of 0.5:1 by 0.33:1 or approximately 66%.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clauses 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation).

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the FSR development standard:

- The proposed development will enable development of diverse housing types, providing development that:
 - Will meet the needs of more vulnerable members of the community, including seniors and people with a disability;
 - Will ensure new housing development provides residents with a reasonable level of amenity; and
 - Promotes delivery of housing in a location where it will make good use of existing and planned infrastructure and services.
- The bulk and scale of the proposed development has been distributed across the site and is responsive to topography to ensure it is sympathetic with the surrounding built forms and natural landscape;
- The ILUs have been designed in a way to limit impacts to neighbouring residential amenity including minimising impacts on views, solar access, and visual privacy due to siting of the built form responsive to site specific topography, and located approximately 6m below the ground level of the adjoining properties, and lower than the ridgeline of the existing Club structure;;
- The proposed development will provide a co-location of uses which will be mutually beneficial and has been appropriately master planned specific to the site opportunities and constraints for those land uses.

The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:

- The proposal has been designed in a way that responds specifically to the site's undulating topography and unique allotment shape, with the placement of building bulk and floorspace to minimise amenity impacts to the surrounding area;
- The proposed ILU building is setback from the street at the rear of the site, with the 2 storey clubhouse sited at the street front to Deepwater Road, to minimise the visual impacts on the surrounding area and integrate with the neighbouring residential context and character,
- The proposed ILU building is well articulated and has a varied materials palette, to minimise the perceived bulk and scale,
- The ILU building bulk and scale is sited downslope of adjacent residential buildings to minimise overshadowing, visual and privacy impacts and allows for suitable view sharing of views to the golf course,
- The ILU nominal site area complies with the other key Housing SEPP non-discretionary standards for deep soil planting (15%) and for landscaping (30%), at the same time providing for 25.6% communal open space (consistent with the ADG guideline), demonstrating that despite the unique site constraints, a high level of outdoor open space amenity will be achieved;
- The ILUs will support the provision of seniors housing within Castle Cove (which is an in demand form of housing) and which will provide residents an opportunity to downsize and age in place;
- The proposal is considered to be within the environmental capacity of the locality, including road network and servicing;
- While the clubhouse gross floor area could have been minimised and its nominal site area reduced to enable a larger ILU nominal site area (and result in a reduced FSR), this would however have compromised the intention for providing a new recreation and social facility for the community that is widely supported and welcomed by the local community following rigorous community consultation, and which is enabled by the partnering with the seniors housing;
- Council's appointed Design Review Panel have reviewed the proposal and have no objections related to the bulk and scale.

Therefore, the DA may be approved with the variations proposed in accordance with the flexibility allowed under Clause 4.6 of the Willoughby LEP.

2.0 The Site and Proposed Development

2.1 Site description

The site is located at 68-74 Deepwater Road, Castle Cove, and is located within the Willoughby Local Government Area (LGA). The site comprises a unique allotment shape which includes a pinch point (approximately 15 metres) within its middle portion and includes a north western boundary shaped by the Castle Cove Golf Course. It includes a total area of approximately 5,711m² and is legally described as Lot 1 in DP 610360 (refer to **Figure 1**).

Overall, the site ranges from an RL of 66.77m in the south-western portion to a RL of 83.28m in the elevated north-east corner towards Amaroo Avenue. The undulating topography of the site requires careful consideration of the changes in level and built form response.

The site has a street frontage of approximately 80m to Deepwater Road. The site currently accommodates the Castle Cove existing clubhouse located in the north-eastern part of the site and was constructed in the 1970s and hardstand areas for carparking. The existing clubhouse exhibits clear signs of aging, and some parts of the building appear to be very deteriorated. The upper level is no longer in use given the poor condition of the interior spaces and facilities.



 The Site



Figure 1 Site aerial map

Source: Nearmap / Ethos Urban

2.2 Description of the proposed development

The development application seeks approval for the following development:

- Demolition of the existing golf clubhouse and car park;
- Subdivision of current Lot 1 in DP 610360 into proposed lots 1 and 2 (inclusive of easements);
- Construction of a two (2) storey new golf clubhouse, comprising:
 - Ground floor carpark comprising 76 spaces and one (1) loading zone; and
 - First floor comprising a foyer; dining lounge; kitchen and service area; pro-golf shop; club administration area and meeting room; male/female changing rooms and toilet facilities; terrace dining and golf buggy and cart storage cages.
- Construction of a part two (2) and three (3) storey building for Independent Living Units (ILUs) comprising:
 - Three (3) two bedroom and 14 three bedroom units; and
 - Two (2) level basement car parking containing 26 spaces, one (1) bus zone and one (1) loading zone.
- Associated landscaping.

A photomontage of the proposed development showing the ILUs and the clubhouse is provided at **Figure 2**.



Figure 2 Photomontage of the proposed development (ILUs located to the left and clubhouse to the right)

Source: Antoniades Architecture

3.0 Planning Instrument, Development Standard and Proposed Variation under the Housing SEPP 2021

The Housing SEPP outlines the permissible FSR under the non-discretionary development standards for ILUs for seniors housing. Outlined below:

108 Non-discretionary development standards for independent living units—the Act, s 4.15

(1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

(2) *The following are non-discretionary development standards in relation to development for the purposes of independent living units—*

- (a) *no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,*
- (b) *servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—*
 - i. *is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
 - ii. *is limited to an area of no more than 20% of the surface area of the roof, and*
 - iii. *does not result in the building having a height of more than 11.5m,*
- (c) ***the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less,***
- (d) *for a development application made by a social housing provider—at least 35m² of landscaped area per dwelling,*
- (e) *if paragraph (d) does not apply—at least 30% of the site area is landscaped,*
- (f) *a deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,*
- (g) *at least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,*
- (h) *for a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building—*
 - i. *at least 15m² of private open space per dwelling, and*
 - ii. *at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor,*

Note The open space needs to be accessible only by a continuous accessible path of travel, within the meaning of AS 1428.1, if the dwelling itself is an accessible one—see Schedule 4, section 2.
- (i) *for a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and—*
 - i. *an area of at least 10m², or*
 - ii. *for each dwelling containing 1 bedroom—an area of at least 6m²,*
- (j) *for a development application made by, or made by a person jointly with, a social housing provider—at least 1 parking space for every 5 dwellings,*
- (k) *if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.*

The Housing SEPP's definition of site area notes:

site area or **site** means the area of land on which development is or will be carried out and may include the whole or part of 1 lot, or more than 1 lot if the lots are contiguous to each other, but does not include land on which development is not permitted to be carried out under this Policy.

As part of this application, the proposed two (2) lot subdivision of the overall site (at 5,711m²) provides for nominal site areas to be assessed as follows:

- Lot 1 (Club) - 2,538m²
- Lot 2 (ILUs) - 3,173m²

Subject of this Clause 4.6 Variation is the proposed variation relating to the ILU component which equates to an FSR of 0.83:1 (GFA of 2,622.13m²). As noted above, Section 108 of the Housing SEPP notes that development relating to ILUs is non-refusable on the basis of FSR if it comprises an FSR of 0.5:1 or less. When considering the 0.5:1 non-discretionary FSR development standard of the Housing SEPP, the exceedance that is subject to this Variation Request is 0.33:1, which is an exceedance of 66% from the Housing SEPP non-discretionary development standard.

It is further noted that if the site area of land on which the development is carried out includes "*more than 1 lot if the lots are contiguous to each other*" (i.e. to total area of lots 1 and 2 being 5,711m²), the ILU component would equate to an FSR of 0.45:1 (GFA of 2,622.13m²) and would therefore be compliant with the non-refusable FSR development standard.

Height of buildings development standard

The Housing SEPP also stipulates maximum height of buildings development standards which apply to seniors housing and which apply to the ILUs of the proposed development. The controls limit building heights to 9.5m without servicing and 11.5m with servicing. The proposal substantially complies with the SEPP's intended height which reflects form and scale (2 to 3 storeys) with the exception of some upper level elements which exceed the 9.5m height limit as a result of the site's undulating topography that do not relate to servicing but remain within the 11.5m. The servicing components of the development fully comply with the 11.5m height development standard. The variations to the 9.5m height development standard have been assessed as part of a separate Clause 4.6 Variation Request which accompanies the DA.

4.0 Justification for the Proposed Variation

Clause 4.6(3) of the Willoughby LEP 2012 provides that:

4.6 Exceptions to development standards

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*); and
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (*Al Maha*).

Role of the consent authority

The role of the consent authority in considering this request for a Clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action*. This requires the consent authority being satisfied that the applicant's written request has adequately addressed the matters in clause 4.6(4)(a)(i).¹

The consent authority is required to form this opinion first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matter. In particular, the consent authority needs to be satisfied that there are sufficient environmental planning grounds to grant consent and that the contravention of the standard is justified.

This document provides the basis for the consent authority to reach this level of satisfaction. The relevant matters contained in clause 4.6 of the Willoughby LEP 2012 with respect to the FSR standard, are addressed below, including with regard to the above decisions.

4.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the NSW Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Willoughby LEP 2012 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 Variation Request.

The five methods outlined in *Wehbe* include:

¹ Clause 4.6(4)(a)(i) has since been repealed. The note under clause 4.6(3) references the EP&A Regulation which requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in clause 4.6(3)(a) and (b).

5. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
6. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
7. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
8. 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 (**Fourth Method**).
9. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the **First Method**.

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

There are no specific objectives contained within Part 5 or Section 108 of the Housing SEPP, however the underlying object or purpose of the provision is implied in the section itself. Namely to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. Non-discretionary development standards are not to be a restriction on how development is assessed.

The Principles of the Housing SEPP (Section 3) are considered to play a similar role to what objectives are for certain development standards but for the whole application of the Housing SEPP itself. The principles which are of particular relevance to this Clause 4.6 Variation Request, can be achieved notwithstanding the variation on the part of the site that is subject to the Housing SEPP, as are provided below:

- a) enabling the development of diverse housing types, including purpose-built rental housing,*
- 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,*
- c) ensuring new housing development provides residents with a reasonable level of amenity,*
- d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- e) minimising adverse climate and environmental impacts of new housing development,*
- f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- h) mitigating the loss of existing affordable rental housing.*

Further reasoning as to how the proposal responds to the above Principles is provided below.

It should also be noted that Section 92 of the Housing SEPP provides development standards which relate to development on land used for the purposes of an existing registered club, noting that development for the purposes of seniors housing (including ILUs) can be carried out provided the consent authority is satisfied that, in accordance with Section 92(1) –

- (a) the development includes appropriate measures to separate the club from residential areas to avoid land use conflicts, and*
- (b) an appropriate protocol will manage the relationship between the seniors housing and the gambling facilities on the site of the club to minimise harm associated with the misuse and abuse of gambling activities by residents of the seniors housing.*

In reference to (1)(a) above, appropriate measures include the following—

- (a) separate pedestrian access points for the club and the residential areas of the seniors housing,*
- (b) design principles underlying the building aimed at ensuring acceptable noise levels in bedrooms and living areas in the residential areas of the seniors housing.*

Given the site is accommodating both a registered club and ILUs, the nominal site area for the ILUs is constrained and has resulted in a non-compliance with the non-discretionary development standard. As noted in **Section 3.0**, the role of non-discretionary development standards are only to prevent the consent authority from imposing more onerous standards, not create a more restrictive development control. Had the proposal been assessed against the total site area, including the nominal area relating to the clubhouse, it would have complied with the non-discretionary development standard. Given the proposal seeks to co-locate the two uses, which is a supported form of development, as facilitated by the Housing SEPP (and as noted in Section 92 above), provided certain measures are met, the variation to the non-discretionary standard is considered acceptable.

Noting the Principles of the Housing SEPP provided above, compliance with Section 108 is unreasonable for the following reasons:

- The ILUs seek to provide for seniors housing to enable residents of Castle Cove and surrounds to age in place while also providing significant amenity in the form of the neighbouring Castle Cove Golf Course and proposed neighbouring clubhouse. The ILUs will provide an alternate housing typology in the area that also meets the needs of its future residents, co-locating this with access to recreational facilities and opportunities for social interaction through the colocation of the ILUs with the clubhouse;
- The ILUs have been designed in a way to limit impacts to neighbouring residential amenity including minimising impacts on views, solar access, and visual privacy due to siting of the built form responsive to site specific topography, and located approximately 6m below the ground level of the adjoining properties;
- The cumulative traffic flows along Deepwater Road (east) and Castle Cove Drive as a consequence of the development proposal are expected to hover around the 300 vehicles per hour threshold for a collector road's environmental goal, however, remain well below the threshold of 500 vehicles per hour which is the maximum for a collector road. As a result of the traffic generation from the development, it is anticipated the development will not impact the level of operation of any surrounding intersections, which will all continue to operate at the highest level of service;
- Diagrams showing the overshadowing impacts of the existing clubhouse building and the proposal during mid-winter, where the overshadowing impacts are considered to be at their worst, have been provided at **Figure 4**;
- While the ILUs are not a form of affordable housing, there is likely to be an important connection between the clubhouse and the residents of the ILUs. It is likely residents of the ILUs will be, or may want to become, members of the clubhouse and use the Castle Cove Golf Course facilities located directly adjacent to the ILUs. The clubhouse will therefore be not only of benefit to the broader Castle Cove community as an ancillary use to the Castle Cove Golf Course but will also provide a community space for both the existing community and future residents of the ILUs on the site, through the proposed development;
- The inclusion of the ILUs in the proposal plays a large role in the overall viability of renewing the clubhouse building which has significant potential to be a critical piece of social infrastructure for the surrounding community. There is potential that if the Club were required to sell the land to a developer due to financial failure, the clubhouse would no longer exist and as a result require development on Council owned land. The site could then be redeveloped purely for the purposes of ILUs, similarly to the scale proposed, which would comply with the FSR development standard; and
- The alternate uses therefore reflect a bulk and scale of a built form that differs from the surrounding residential development. Despite this, the proposal's bulk and scale has been appropriately distributed across the site. The clubhouse has intentionally been positioned on the site's frontage to Deepwater Road (with a predominantly two storey appearance) to respond to the scale of adjoining residential development (as shown in the render provided at Error! Reference source not found.). The Design Review Panel had no objection to the proposed bulk and scale.

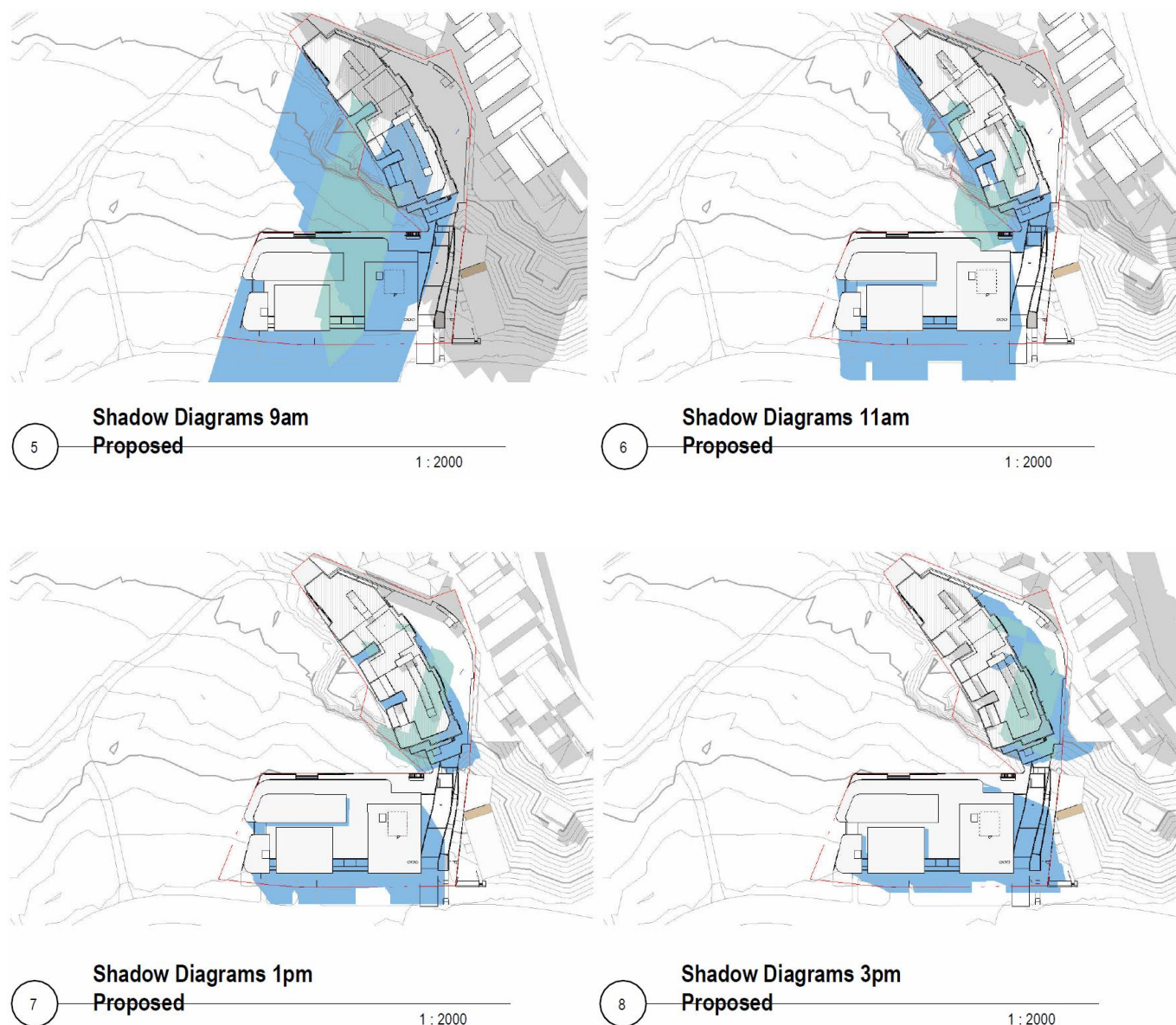


Figure 4 Existing (Green) and Proposed (Blue) Overshadowing Impacts

Source: Antoniades Architecture

4.2 Sufficient environmental planning grounds to justify the contravention of the development standard

Clause 4.6(3)(b) of the Willoughby LEP 2012 requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the document must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. In this instance, the relevant aspect of the development relates to the general exceedance of FSR across the site as a result of the proposed uses.

There are sufficient environmental planning grounds to justify a flexible approach to the application of the FSR control as it applies to the site. These are discussed below.

4.2.1 Good design, amenity and relationship with the built environment and natural surrounds

The proposal essentially presents a unique opportunity in a R2 low density zone for a combination of uses on the site which align with the site's zoning, responds to calls for housing and facilities that meet the needs of the community, including the demand for seniors allowing them to age in place. The FSR attributed to the proposal as a whole is considered to be acceptable given the site's unique allotment configuration, latent land size, provision of community uses and infrastructure offerings, and its location immediately adjacent to the Castle Cove Golf Course.

It is acknowledged that when considered as a nominal site area, the proposal's variation is a numerically considerable departure from the Housing SEPP FSR non-discretionary development standard. The NSW Land and Environment Court has consistently held that Clause 4.6 (and the old SEPP 1) does not provide a numeric cap on the extent of variation allowable and that. Instead, a proposed variation to development standards is simply (and lawfully) required to meet the various "tests" laid down under Clause 4.6, including whether compliance with the development standard is "unreasonable or unnecessary" in the circumstances of the case and whether there are sufficient environmental grounds to justify the contravention of the development standard. In fact, the Land and Environment Court has approved significant exceedances of development standards. For example, in *GM Architects v Strathfield Council* [2016] NSWLEC 1216, the Court approved in response to a Clause 4.6 request, a 103% exceedance of the height standard and a 157% exceedance of the FSR standard.

Notwithstanding, the bulk and scale of the proposed built form has been appropriately distributed across the site, specifically designed to respond to the site's undulating topography to minimise impacts on the adjoining residential locality and ensure the local character is maintained through the use of a sympathetic materials palette and landscaping treatment.

As previously stated, the proposal seeks to locate the residential built form, related to the ILUs within the rear portion of the site so that the bulk and scale is minimised through the significant change in ground level surrounding the site. Given the site's topography, the ILU building is located downslope and at lower building heights in relation to the adjacent residential properties in Amaroo Street, thereby minimising amenity impacts to neighbour and reducing any perceived bulk and scale impacts. Further, only minor portions of the ILUs will be visible from Deepwater Road, given its location within the rear portion of the site.

The additional bulk and scale related to the FSR variation is not considered to generate any additional overshadowing impacts. The FSR and height variations collectively will not have any additional overshadowing impacts on the adjoining neighbours. Minor portions of additional overshadowing are expected on the Golf Course as a result of the variations which are considered negligible. The diagrams illustrate the overshadowing is primarily contained within the neighbouring Castle Cove Golf Course which already receives significant and ample sun due to the sheer size of the golf course, or within the site itself or within the proposal's street frontage and on Deepwater Road.

Council's appointed Design Review Panel have reviewed the proposal and have specifically noted they have no objections related to the bulk and scale.

4.2.2 Minimal traffic generation from the ILUs

Further, the ILU trip generation is considered to be low given the units will house around 2 people on average, which is lower than standard residential development and will benefit from the co-location of facilities and amenities in the clubhouse and neighbouring recreation facilities as well as a private bus service.

4.2.3 Provision of valuable community floor space

Consistent with the objectives of the R2 Low Density Residential zone as outlined in the Willoughby LEP, the site aims to enable other land uses that provide facilities or services to meet the day to day needs of residents. The clubhouse is considered a critical community facility that is essential to the operation of the Castle Cove Golf Course. Removing the clubhouse would also have significant adverse social and economic impacts for the Castle Cove Golf Club and would also require Council to fund a new Golf Pro-Shop as well as provide required parking on Council owned land.

The proposal's intent to co-locate of the clubhouse with the ILUs will provide for significant amenity and spaces that will stimulate social interaction and cohesion within Castle Cove, not only benefitting residents of the ILUs but also the surrounding community. As noted above, the colocation is also supported by the Housing SEPP which provides a pathway for seniors housing to be collocated with a registered club (as per Section 92), further described below.

4.2.4 Provision of necessary seniors housing

According to Australian Bureau of Statistics, the Castle Cove locality (which encompasses Castle Cove, Castlecrag and Northbridge) is subject to a median age of 45 years, reflecting a typically older demographic when compared to New South Wales which is subject to a median age of 39 years. A large proportion (31%) of residents in the Castle Cove locality are aged between 40 and 59 years.

The North District Plan recognises the large proportion of growth in older people to 2036, with a 47% increase in people aged 65-84 years and an 85% increase in the 85+ year age group. This equates to 20% of the district's population being aged 65 years and over, up from 16% in 2016. The Willoughby Housing Strategy identifies that those within retirement age groups (60 and above) will make up a large portion (43%) of the expected population increase to 2036.

The proposal is responsive to these housing and demographic needs and enable existing Willoughby residents an opportunity to downsize and to age in place. Further, the provision of ILUs will accommodate residents 60 years and over and aligns with the Housing SEPP 2021's principles in that it will provide for housing that will meet the needs of vulnerable members of the community, providing necessary support and care.

4.2.5 Acknowledged synergies of land uses

It should also be noted Section 92 of the Housing SEPP 2021, permits seniors housing on land used for the purposes of an existing registered club to encourage the colocation of uses and mutual benefits for the long term success of both the ILUs and the clubhouse. As noted previously, it is likely residents of the ILUs will be, or may want to become, members of the clubhouse and use the Castle Cove Golf Course facilities located directly adjacent to the ILUs. The clubhouse will therefore be not only of benefit to the broader Castle Cove community as an ancillary use to the Castle Cove Golf Course but will also provide a community space for both the existing community and future residents of the ILUs on the site, through the proposed development.

4.2.6 Consistency with Objects of the EP&A Act

The proposal's consistency with the objects of the EP&A Act is provided in **Table 1** below.

Table 1 *Assessment of consistency of the proposed development with the Objects of the EP&A Act*

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	<p>The proposed development will promote the economic and social welfare of the community through the introduction of a tangible improvement in building form and amenities offers from the club house, providing public benefits that will respond to the site's proximity to the Castle Cove Golf Course, while delivering additional seniors housing in the Willoughby LGA.</p> <p>Strict compliance would not promote the social and economic welfare of the community, as it would result in the removal or reduction of the clubhouse building or thwart its redevelopment entirely. This would result in a significant loss of valuable community floorspace that is essential to the operation of the Castle Cove Golf Course.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	<p>The proposal has been designed to incorporate ecologically sustainable design principles by allowing appropriate development on an existing site and that will have no negative impact on environmental and social considerations and will support the economic health of the Castle Cove Golf Course and the broader Willoughby LGA. The proposed built form represents a vast improvement on the sustainability credentials of the existing club building.</p>
(c) to promote the orderly and economic use and development of land	<p>The proposed development will promote the orderly and economic use of the land by allowing the development of the site to provide for a colocation of uses which complement the site's location adjacent to the Castle Cove Golf Course. Further, the ILUs will provide for support and care in a medium density form that is respectful of the surrounding built form.</p> <p>The existing clubhouse exhibits clear signs of aging, and some parts of the building appear to be very deteriorated. The upper level is no longer in use given the poor condition of the interior spaces and facilities. Accordingly, its redevelopment is necessary to ensure the orderly and economic use and development of land.</p>

Object	Comment
(d) to promote the delivery and maintenance of affordable housing	N/A.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed development will not adversely impact threatened species or ecological communities as detailed in the Flora and Fauna Impact Assessment at Appendix P .
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	The site is not identified as a heritage item, nor is it located in a heritage conservation area or identified to comprise specific aboriginal cultural heritage. Notwithstanding, an Aboriginal Cultural Heritage Assessment Report has been prepared by Uearthed (Appendix Q) and noted it is anticipated that Aboriginal objects and evidence of Aboriginal occupation could be located on the site and therefore test excavations have been recommended prior to construction.
(g) to promote good design and amenity of the built environment	The proposed design has been highly considered with regard to the site's landscape setting, providing a built form that contains materials that are sympathetic of the natural surroundings and a bulk and scale compatible with the surrounding context. The bulk and scale of the proposal has been distributed appropriately across the site to ensure a low-scale built form fronts Deepwater Road which has a direct interface with existing residential properties and the ILUs built form are located to the rear of the site which is subject to a significant level change (approximately 5m) from adjoining neighbours therefore reducing their appearance and bulk and scale
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development will comply with all relevant construction codes and standards and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	This object is not relevant to this proposal; however, the proposal has adhered to the required planning processes for the site and scale of development.
(j) to provide increased opportunity for community participation in environmental planning and assessment	The proposed development will be publicly exhibited in accordance with the requirements of Council's Community Participation Plan.

5.0 Conclusion

The assessment above demonstrates that compliance with the FSR non-discretionary development standard contained in Section 108 of the Housing SEPP is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify the contravention of the development standard.

Section 108 applies a FSR non-discretionary development standard of 0.5:1 which relates to the portion of the site which contains ILUs.

In the absence of an assessment against the objectives which a Clause 4.6 Variation Request would typically include in the event an LEP FSR development standard was to be varied, consideration has been made to the Principles of the Housing SEPP. Noting the Principles of the Housing SEPP provided above, compliance with Section 108 is unreasonable for the following reasons:

- The proposed development will enable development of diverse housing types, providing development that:
 - Will meet the needs of more vulnerable members of the community, including seniors and people with a disability;
 - Will ensure new housing development provides residents with a reasonable level of amenity; and
 - Promotes delivery of housing in a location where it will make good use of existing and planned infrastructure and services.
- The bulk and scale of the proposed development has been distributed across the site and is responsive to topography to ensure it is sympathetic with the surrounding built forms and natural landscape;
- The ILUs have been designed in a way to limit impacts to neighbouring residential amenity including minimising impacts on views, solar access, and visual privacy due to siting of the built form responsive to site specific topography, and located approximately 6m below the ground level of the adjoining properties;
- The proposed development will provide a co-location of uses which will be mutually beneficial and has been appropriately master planned specific to the site opportunities and constraints for those land uses.

The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:

- The proposal has been designed in a way to respond specifically to the site's undulating topography and unique allotment shape, with the placement of building bulk and floorspace to minimise amenity impacts to the surrounding area;
- The proposed ILU building is setback from the street at the rear of the site, with the 2 storey clubhouse sited at the street front to Deepwater Road, to minimise the visual impacts on the surrounding area;
- The proposed ILU building is well articulated and has a varied materials palette, to minimise the perceived bulk and scale;
- The ILU building bulk and scale is sited downslope of adjacent residential buildings to minimise overshadowing, visual and privacy impacts and allows for suitable view sharing of views to the golf course;
- Council's appointed Design Review Panel have reviewed the proposal and have no objections related to the bulk and scale;
- The ILU nominal site area complies with the other key Housing SEPP Non-Discretionary Standards for deep soil planting (15%) and for landscaping (30%), at the same time providing for 25.6% communal open space (consistent with the ADG guideline), demonstrating that despite the unique site constraints, a high level of outdoor open space amenity will be achieved; and
- The ILUs will support the provision of seniors housing within Castle Cove (which is an in demand form of housing) and which will provide residents an opportunity to downsize and age in place.

Therefore, the consent authority can be satisfied that there are sufficient grounds for the variation to the FSR development standard as proposed in accordance with the flexibility allowed under clause 4.6 of the Willoughby LEP 2012.