

Clause 4.6 Variation Request – Floor Space Ratio (Willoughby LEP 2012)

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 4.4 – Floor Space Ratio' of the Willoughby Local Environmental Plan 2012 (Willoughby LEP 2012) 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 4.4 of the Willoughby LEP 2012 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 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. This exceeds the Housing SEPP's Non-Discretionary Standard of 0.5:1 by 0.33:1 or approximately 66%. A separate Clause 4.6 Variation Request has been prepared seeking a variation to the Housing SEPP and is provided under a separate cover.

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. This Clause 4.6 Variation Request seeks a variation to the FSR applicable to the site under the Willoughby LEP 2012.

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).

It is noted, in summary, that the proposed FSR variation is as follows:

- The FSR of the overall development proposal for both the new clubhouse and the ILUs is 0.64:1.
- The FSR of the club is 0.4:1, when considered on a nominal site area within the overall site (as represented by the proposed two (2) lot subdivision). This complies with the LEP's FSR control of 0.4:1.

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

- The proposed development achieves the objectives of clause 4.4 of the Willoughby LEP 2012:
 - The proposed intensity of development is suitable in terms of the land uses, which can be appropriately managed;
 - 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 proposal will result in an acceptable traffic generation that can be accommodated by the surrounding road network and intersections;
 - 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. Further, Council's Design Review Panel has no objection to the bulk and scale of the proposed development;

- The proposal will provide for community floor space that is ancillary to the Castle Cove Golf Course and therefore provides wider public benefits beyond the site itself (which are also widely supported by the community); and
- The proposal will not impact on the growth of commercial development of the city centre of Chatswood nor will it impact the city centre's primary character and land use, which is a specific objective of the FSR development standard, though of less relevance in this instance.
- The proposed development meets the relevant principles of the Housing SEPP:
- The proposal will enable the development of diverse housing types;
 - The development will meet the needs of more vulnerable members of the community, including seniors and people with a disability;
 - The development will ensure new housing development provides residents with a reasonable level of amenity; and
 - The development promotes delivery of housing in a location where it will make good use of existing and planned infrastructure and services.
- 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;
 - The clubhouse component comprises a gross floor area that is only 87.8m² more than the existing built form and is considered to generate similar traffic generation. It is expected that the redevelopment will also encourage more walk-in users from ILUs and local residents, thereby allowing varied and sustainable forms of transport to access the site;
 - 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, which is enabled by the partnering with the seniors housing;
 - Typically clubhouses, which are considered to be an ancillary use to a golf course, have been located on the same site as the golf course and which are not subject to a floor space ratio control (due to the recreation zoning). Therefore, the proposal should be afforded the flexibility apparent and appropriate to other metropolitan clubhouse developments;
 - The proposal will enable the orderly and economic use and development of the land, resulting in the redevelopment of the clubhouse which exhibits clear signs of aging and portions unusable due to its poor condition. The orderly redevelopment of the site therefore offers a clear public benefit in terms of much needed housing, a more sustainable and design responsive club form, and a new facility for club members and the wider community; and
 - 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.

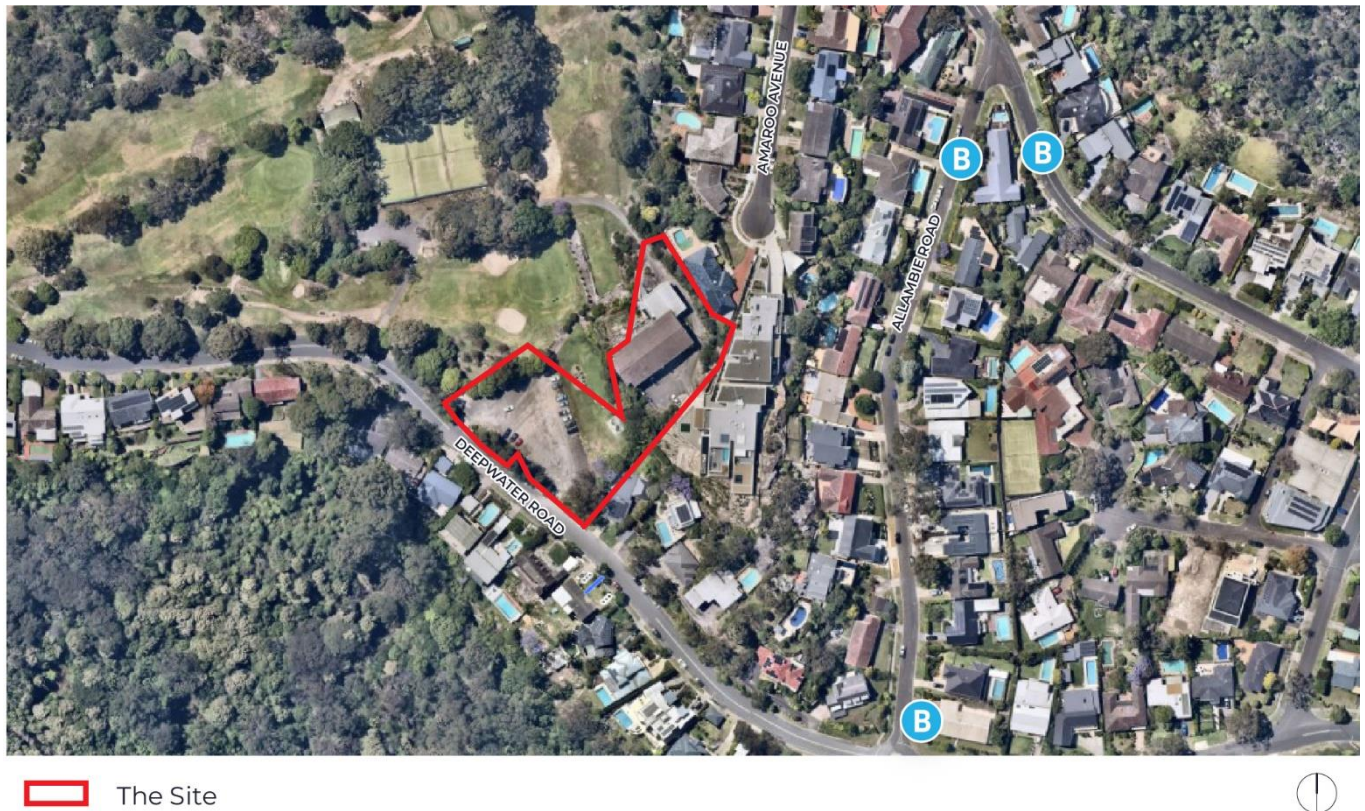


Figure 1 Site aerial map

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



Figure 3 Site plan showing clubhouse to the south and ILUs to the north

Source: Antoniades Architecture

3.0 Planning Instrument, Development Standard and Proposed Variation

A summary of the environmental planning instrument (EPI), development standard and proposed variation is summarised in **Table 1**.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	Willoughby LEP 2012
The site’s land use zone	R2 Low Density Residential
Development standard sought to be varied	<p>Clause 4.4 Floor space ratio</p> <p>The objectives of this clause are as follows:</p> <ul style="list-style-type: none">• (a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives for the land,• (b) to limit traffic generation as a result of that development,• (c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,• (d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,• (e) to permit higher density development at transport nodal points,• (f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood’s sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,• (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,• (h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,• (i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,• (j) to encourage the consolidation of certain land for redevelopment,• (k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.
Type of development standard	Numerical development standard
Numeric value of the development standard in the EPI	0.4:1 (map extract provided in Figure 4)

Matter	Comment
Difference between the existing and proposed numeric values. Variation percentage between the proposal and the EPI	<p>The proposed development, in totality (considering both Clubhouse and ILU components), will result in an FSR of 0.64:1.</p> <p>The total FSR of 0.64:1 comprises an exceedance of 0.24:1 above the maximum FSR development standard of 0.4:1, which represents a 60% variation to the maximum FSR development standard.</p>
Visual representation of the proposed variation	Applicable to the entire proposed development.

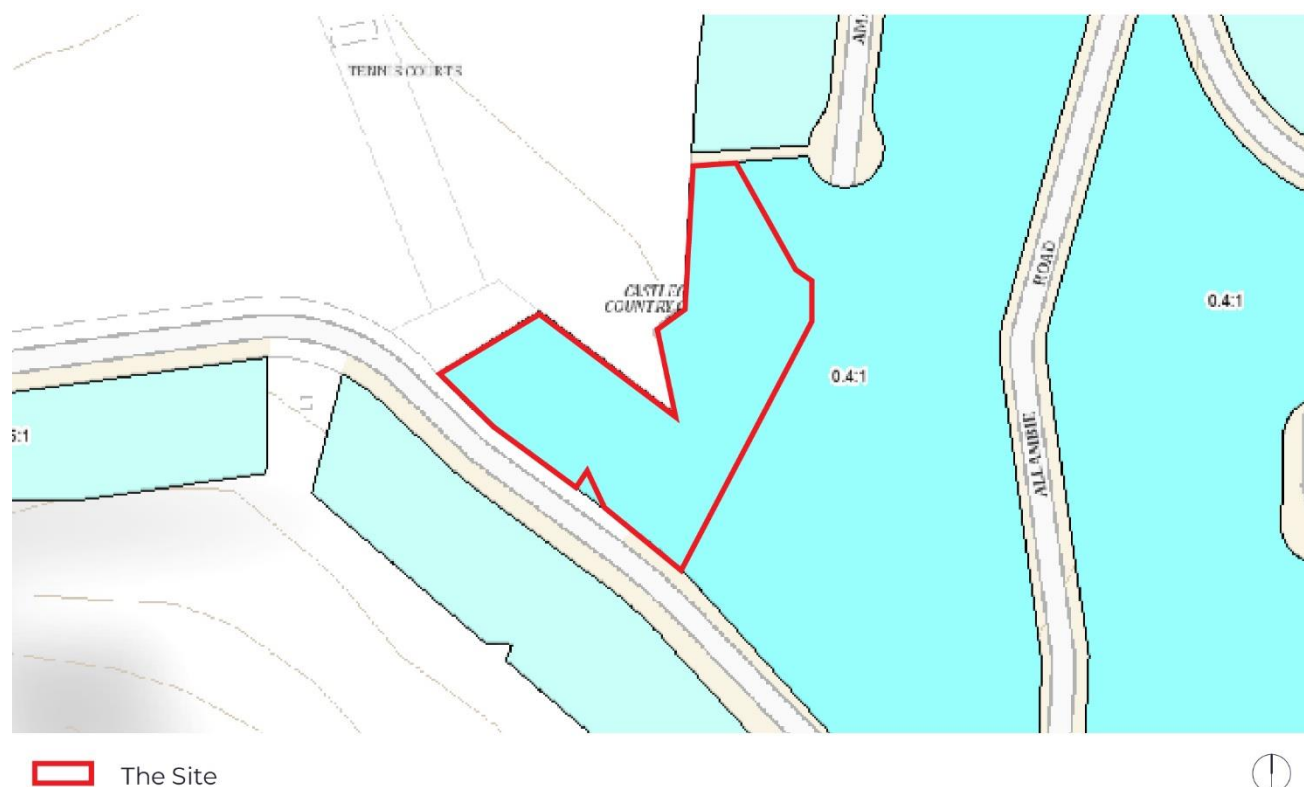


Figure 4 FSR map of the site

Source: Eplanning Spatial Viewer/Willoughby LEP 2012/Ethos Urban, with site annotation by Ethos Urban

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

The objectives of the development standard for FSR contained in Clause 4.4 of the Willoughby LEP 2012 are:

- *(a) to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives of that land,*
- *(b) to limit traffic generation as a result of that development,*
- *(c) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- *(d) to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone,*
- *(e) to permit higher density development at transport nodal points,*
- *(f) to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood,*
- *(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
- *(h) to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood,*
- *(i) to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas,*
- *(j) to encourage the consolidation of certain land for redevelopment,*
- *(k) to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.*

The proposal's compatibility with those objectives is outlined below.

Objective (a): to limit the intensity of development to which the controls apply so that it will be carried out in accordance with the environmental capacity of the land and the zone objectives of that land

The proposed development is considered suitable for the environmental capacity of a large latent land holding and is in alignment with the zone objectives (R2 Low Density Residential). The zone's objectives seek to accommodate the housing needs within a low-density environment. The ILUs seek to provide for seniors housing to enable residents of Castle Cove to age in place while also providing significant amenity in the form of the neighbouring Castle Cove Golf Course and proposed neighbouring clubhouse. They 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. Further, 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.

When viewed from Castle Cove Golf Course, the ILUs will improve the existing club building's interface due to the proposal's purposeful articulation and integration with the site's natural elements.

The additional development on the site is considered to be within the environmental capacity of the road network given the clubhouse component will accommodate similar, and potentially less, traffic generation than what it currently is experiencing due expected increase in use by pedestrians and a net reduction in the floor space of the clubhouse. Further, the ILU component is considered a low intensity use due to the typical smaller household size (when compared to residential dwellings) and occupants benefitting from on-site services.

The proposal will provide for a community facility, in the form of a clubhouse that comprises an improved design and functionality from existing clubhouse, providing an ancillary facility to the Castle Cove Golf Course and a facility to meet the recreational and social needs of the ILU residents and Golf Club members, and community also aligning with the zone's objectives.

In relation to environmental capacity, Site Investigation Requests have been made to Ausgrid and Sydney Water which have outlined the required electricity, water and sewage requirements. The recommendations from Ausgrid related to the augmentation of the electricity network with the installation of a kiosk-type substation to facilitate the required power usage. This has been indicatively shown in the proposal's Architectural Drawings. Sydney Water identified that there is currently both a 250mm CICL water main and a 150mm SGW sewer main that will be required to be altered to accommodate the proposed development. The proposed development is capable of accommodating this request.

The proposal's impact on traffic generation has been assessed as part of the proposed development and is considered to be acceptable. Further information related to traffic generation is provided in response to Objective (b) below.

It should be noted that the site is not identified as a heritage item, within a heritage conservation nor is it located close by to any heritage items or areas

Further justification on the proposal's exceedance and its environmental planning grounds is further analysed in **Section 4.2**.



Figure 5 *View of the proposal from Castle Cove Golf Course*

Source: Antoniades Architecture

Objective (b): to limit traffic generation as a result of that development

A Traffic and Parking Assessment Report (TPAR) has been prepared by CJP Consulting Engineers, which is provided at **Appendix L**. The TPAR assesses the traffic, parking, access, transport and servicing components of the proposal, and the associated impacts on the surrounding road network, parking and transport environment. The TPAR found that due to the reduced size of the clubhouse, it is likely to generate less trips than the existing clubhouse. It was found the traffic flows along Deepwater Road (west) as a consequence of the proposal are expected to remain well below the threshold of 200 vehicles which is the environmental goal for a local residential street set by Transport for New South Wales (TfNSW). 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.

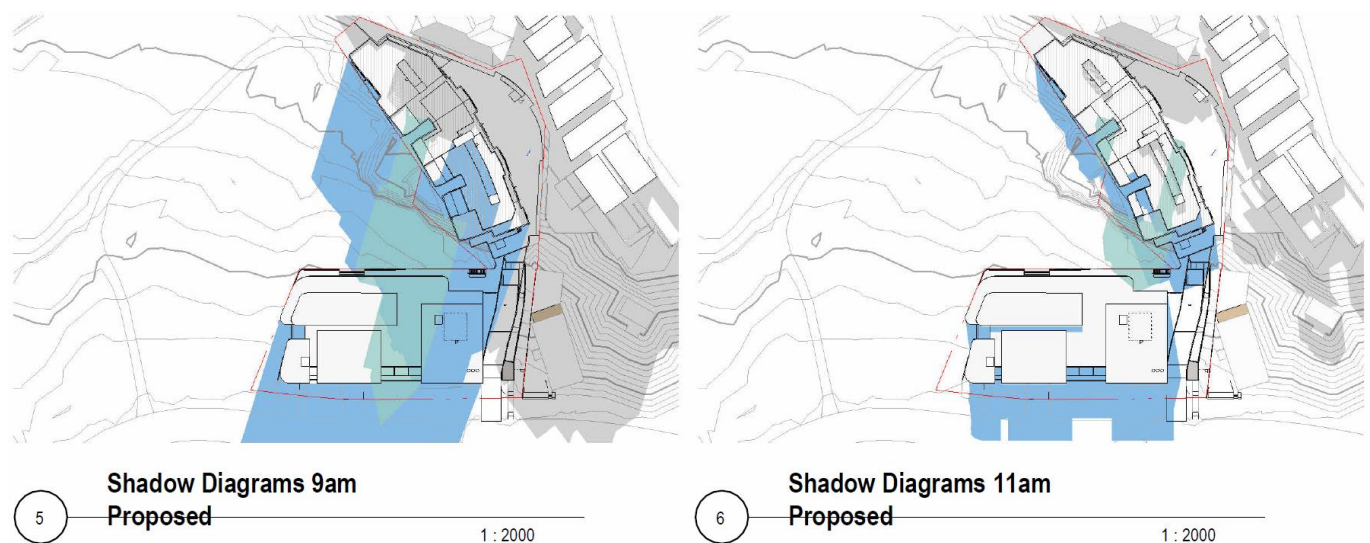
Further, the ILU component is considered a low intensity use due to the typical smaller household size (when compared to residential dwellings) and occupants benefitting from a degree of on-site services with access to the golf clubhouse.

Objective (c): to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

The proposal has been designed to respect the height and scale of neighbouring properties and has been designed responsive to the topography of the site to minimise view loss/outlook impacts to neighbours, ensure suitable privacy, and minimise overshadowing or visual intrusion. 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, has been provided at **Figure 6**. The diagrams illustrate the overshadowing is primarily contained within a minor section of 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.

The proposed ILU building design includes privacy screens where the development is subject to potential onlooking. The screening is only required for two of the ILUs which are located closest to the site's eastern boundary and will obscure the views into and outside of the site. Otherwise, privacy impacts are managed through the siting of the buildings, the setback/separation to adjoining neighbours and the orientation of dwellings and windows. It should also be noted that the height of the ILU building is lower than the current ridge-line of the clubhouse building, increasing the opportunity for views from certain neighbouring properties.

Suitable landscaped setbacks and retention of trees provides a green buffer between Deepwater Road and the clubhouse, minimising bulk and scale and breaking up the proposal's street frontage.



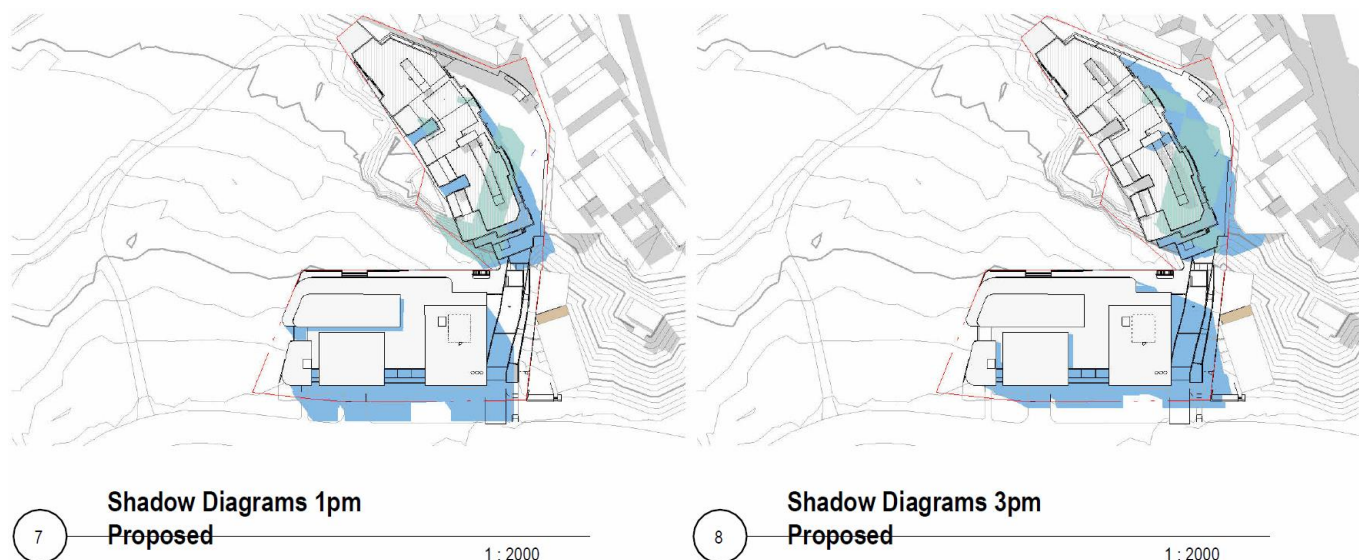


Figure 6 Existing (Green) and Proposed (Blue) Overshadowing Impacts

Source: Antoniades Architecture

Objective (d): to manage the bulk and scale of that development to suit the land use purpose and objectives of the zone

The site's zoning lends itself to a typology that predominately comprises low density housing. Notwithstanding, the proposal seeks for alternate uses being a clubhouse (permissible under the R2 Low Density Residential zone) and ILUs (which are permissible under the State Environmental Planning Policy (Housing) 2021 (Housing SEPP 2021) in land zoned as R2 Low Density Residential). 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 **Figure 7**). The clubhouse has been articulated to minimise the perception of a continuous façade and a green buffer of existing and new trees will provide adequate screening from the streetscape to further minimise the bulk and scale of the building.

The ILUs have intentionally been sited within the rear of the site which positions the built form oriented towards the Castle Cove Golf Course and within a pocket (formulated by the site's unique topography), resulting in a development that is of a comparable perceived height with the neighbouring development (refer to **Figure 8** for a section of the ILUs sitting below the residential property at 15 Amaroo Avenue) and the ridgeline of the existing club. It should be noted Council's appointed DRP has no objection to the bulk and scale of the proposed clubhouse or ILU buildings.

As noted previously, the Housing SEPP 2021 enables the development of seniors housing on land zoned R2 Low Density. The ILUs will provide for much needed housing within a built form that is sympathetic to the surrounding R2 Low Density. There is an acknowledged juxtaposition between the height control prescribed by the Housing SEPP 2021 which applies to the portion of the site where the ILUs are proposed and the FSR that applies under the Willoughby LEP 2012 to the proposal as a whole (which is lower than what is facilitated by the Housing SEPP, being 0.4:1). It should be noted that the ILUs are subject to a non-discretionary FSR development standard under the Housing SEPP 2021 which is 0.5:1. A separate Clause 4.6 variation request to the non-discretionary FSR development standard has been prepared justifying the variation associated with the ILU GFA when measured against the nominal site area which aligns with the proposed subdivision. There is therefore an overlaying of varying controls on the site (LEP versus SEPP) and a unique combination of uses on a larger landholding (club and ILU), which is not a typical or common arrangement in a R2 low density zone and hence demands a site specific and bespoke built form and design response to the site.

Refer to **Section 4.2** for further environmental planning grounds specific to the site.



Figure 7 View of the clubhouse (and ILUs in the rear) from Deepwater Road

Source: Antoniades Architecture

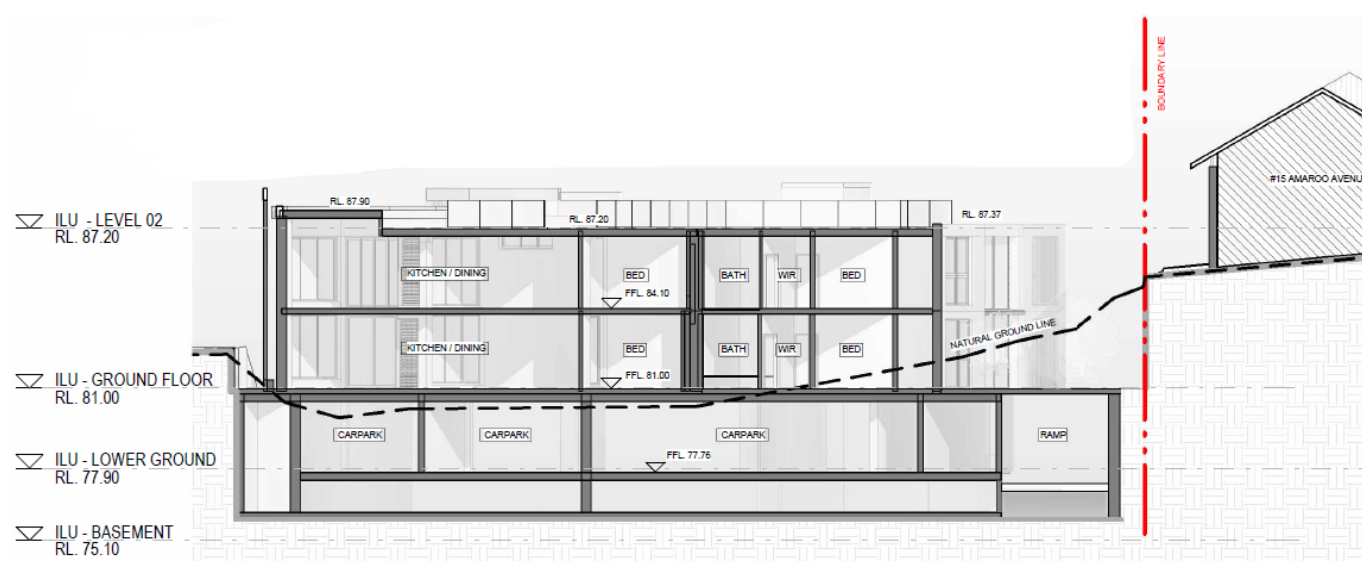


Figure 8 Section of ILUs and relationship to neighbouring property at 15 Amaroo Avenue

Source: Antoniades Architecture

Objective (e): to permit higher density development at transport nodal points

The proposal does not seek approval for higher density development at a transport nodal point and therefore Objective (e) is not applicable. The objective is more specific to allowing significant development such as high-density towers seen in Chatswood. The proposal is located in a R2 low density zone and high density development is not permitted on the site under either the LEP or Housing SEPP.

Objective (f): to allow growth for a mix of retail, business and commercial purposes consistent with Chatswood's sub-regional retail and business service, employment, entertainment and cultural roles while conserving the compactness of the city centre of Chatswood

The site is located approximately 2km from the Chatswood CBD and therefore Objective (f) is not applicable.

Objective (g): to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood

The site is not located within close proximity to the areas outlined in Objective (g) and therefore is not applicable.

Objective (h): to provide functional and accessible open spaces with good sunlight access during key usage times and provide for passive and active enjoyment by workers, residents and visitors to the city centre of Chatswood

The site is located approximately 2km from the Chatswood CBD and therefore Objective (h) is not relevant to this Clause 4.6 Variation Request.

Objective (i): to achieve transitions in building scale and density from the higher intensity business and retail centres to surrounding residential areas

The site is not within close proximity to higher intensity business and retail centres and therefore will not impact the transition in building scale between such land uses.

Objective (j): to encourage the consolidation of certain land for redevelopment

The proposed development does not seek to consolidate land.

Objective (k): to encourage the provision of community facilities and affordable housing and the conservation of heritage items by permitting additional gross floor area for these land uses.

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.

Understanding the community needs following extensive community consultation, Taylor recognises the value in providing a community facility (and Golf Pro-shop) that would negate the need for Council to construct a new facility on their land (including associated car parking) at their expense.

The existing site currently includes a clubhouse that has faced challenges to remain relevant and viable to both its members and the local community. The clubhouse is direly in need of necessary improvements and maintenance. Its redevelopment will provide a greatly improved offering to members and the wider Castle Cove community, providing for a community asset that can be enjoyed by all. The second floor of the current club is now longer in use for club/community purposes given its deteriorated condition and hence the proposal will revitalise that opportunity for access the club facilities. Renewal of the clubhouse will also ensure the Castle Cove Golf Course remains a well-maintained, high quality green space and recreation area for the local area.

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.

It should be noted that the site is not identified as a heritage item, within a heritage conservation nor is it located close by to any heritage items or areas.

4.1.2 Conclusion of clause 4.6(3)(a)

In summary, notwithstanding the variation from the permissible FSR under the Willoughby LEP 2012, the proposed development meets the overall objectives of the Willoughby LEP 2012 and the principles of the Housing SEPP as it:

- Will result in a development that comprises a similar number of visitors by car and similar traffic generation with respect to the clubhouse, and a low traffic generation from a limited number of ILUs and is hence within the environmental capacity of the road network;
- Accommodates seniors living which is considered a low intensity use due to the typical smaller household size and occupants benefitting from on-site services;
- Ensures that the development is carried out considering the environmental capacity of the land, being a large latent landholding with a synergistic co-location of land use (ILUs and clubhouse);
- Proposes a built form that is of a bulk and scale generally consistent with the R2 Low Density Residential zone, purposefully locating the two (2) storey clubhouse along the Deepwater Road frontage to respond to neighbouring residential properties;

- 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;
- Council's appointed Design Review Panel have reviewed the proposal and have no objections related to the bulk and scale;
- Only minor portions of the ILUs will be visible from Deepwater Road, given its location within the rear portion of the site;
- The proposal will provide for community floor space that is ancillary to the Castle Cove Golf Course and therefore provides wider public benefits beyond the site itself;
- The proposal could be made compliant through the deletion of the community floor space which is considered a sub-optimal outcome for the community; while conversely, deletion of the ILU space would mean that the new clubhouse could not be delivered.
- Results in acceptable traffic generation that will not cause adverse impacts to the surrounding road network; and
- Proposes a built form that minimises the amenity impacts including loss of privacy, overshadowing or visual intrusion of adjoining residential properties.

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 FSR 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.

The site planning has specifically responded to provide a built form that is of a bulk and scale generally consistent with the R2 Low Density Residential zone, purposefully locating the two (2) storey clubhouse along the Deepwater Road.

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 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.

The bulk and scale of the clubhouse is considered to significantly improve (when compared to the existing situation) as a result of the proposal's design to lower the height (of the existing), reduce the GFA and relocate the facility to the Deepwater Road frontage. As noted previously, the articulation of the proposal's Deepwater Road frontage has resulted in a built form that is compatible with the surrounding residential character and scale. Importantly, Council's appointed Design Review Panel have reviewed the proposal and have no objections related to the bulk and scale.

4.2.2 Minimal traffic generation change from existing clubhouse

The proposed clubhouse floor area is minorly increased (87.8m²) from the existing floor area and therefore it is noted there will be no significant increase in traffic generation. The redevelopment of the clubhouse will enable the provision of accessible car spaces and will encourage more walk in users from the ILUs proposed and surrounding users from the immediate locality.

4.2.3 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.

4.2.4 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.

4.2.5 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.

4.2.6 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.

4.2.7 FSR development standards as they relate to the golf clubhouses

A desktop assessment of Golf Courses and Clubs has been undertaken across Greater Sydney which has found that sites with clubhouses which were affiliated with Golf Courses zoned RE1 Public Recreation (the same as the Castle Cove Golf Course), such as Moore Park Golf Course, Gordon Golf Club and Northbridge Golf Club (highlighted in green in **Table 2** below), are zoned RE1 (as they were located on the same grounds as the Golf Courses themselves). A similar finding was identified for golf courses zoned RE2 Private Recreation. It is therefore apparent that golf clubs which serve an essential ancillary function to golf courses are frequently and often not constrained by a FSR development standard.

By virtue of the fact the site subject to the proposal is on a separate allotment to the golf course and is zoned R2 Low Density Residential, an FSR development standard of 0.4:1 was applied to the site despite its existing primary function to provide a clubhouse which is ancillary to the Golf Course.

The LEP FSR development standard for the site is similar to that of the FSR applicable to the residential houses across Allambie Road (north east of the site) despite the fact that the site is a large landholding currently accommodating a non-residential land use which serves and is ancillary to the adjoining golf course. The FSR development standard for the site is therefore considered to be an "unusual fit" for the site given low density residential houses are not proposed and given the large latent landholding which has the opportunity to provide a co-location of beneficial uses – meeting housing demand and a much-needed revitalised clubhouse facility.

Ethos Urban would advance that the bespoke nature of the site – being a large latent landholding in the middle of a low-density zone, as well as the unique co-location of land uses (an ancillary golf club house) and much needed senior housing is conducive to not applying a blanket low density zone FSR control to the site. It is conducive to an appropriately balanced site analysis and master planned approach to the site, which then determines an appropriate floorspace that is able to be accommodated within the environment opportunities and constraints of the land. This site analysis/master planning approach is what the project team has done to determine an appropriate built form (and floorspace/FSR) for the site.

Further, the proposal and scale of the FSR variation benefits from the outlook and enjoyment of the extensive green area of the adjacent Castle Cove Golf Course, in line with the inherent intention of an FSR measure to ensure a balance of built form and open space.

Table 2 Precedent FSR standards for other Golf Clubs in Sydney

Golf Course Name	Land Zoning of Golf Course	Land Zoning of Club House	FSR standard for Club House (LEP)
Castle Cove Golf Course (the site)	RE1	R2	0.4:1
Moore Park Golf Course	RE1	RE1	No FSR
Gordon Golf Club	RE1	RE1	No FSR
Northbridge Golf Club	RE1	RE1	No FSR
Cumberland Golf Course	RE2	RE2	No FSR
Chatswood Golf Course	RE2	RE2	No FSR
Avondale Golf Club	RE2	RE2	No FSR
Pymble Golf Club	RE2	RE2	No FSR
North Ryde Golf Club	RE2	RE2	No FSR
Woolooware Golf Club	RE1	RE2	0.45:1
Cronulla Golf Club	RE2	RE2	0.45:1

4.2.8 Consistency with Objects of the EP&A Act

The proposal's consistency with the objects of the EP&A Act is provided in **Table 3** below.

Table 3 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	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. 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.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	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.
(c) to promote the orderly and economic use and development of land	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 respective of the surrounding built form. 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.
(d) to promote the delivery and maintenance of affordable housing	N/A.

Object	Comment
(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 conversation area or identified to comprise specific aboriginal cultural heritage. Notwithstanding, an Aboriginal Cultural Heritage Assessment Report has been prepared by Unearthed (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. It is further noted that the Design Review Panel has no objections to the bulk and scale of the proposed development.
(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 development standard contained in Clause 4.4 of the Willoughby LEP 2012 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.

Clause 4.4 of the Willoughby LEP 2012 applies a maximum 0.4:1 FSR development standard across the site with respect to the ILUs and the clubhouse.

The proposed development achieves the objectives of clause 4.4 of the Willoughby LEP 2012, because:

- The proposed intensity of development is suitable in terms of the land uses, which can be appropriately managed;
- 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 proposal will result in an acceptable traffic generation that can be accommodated by the surrounding road network and intersections;
- 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;
- Council's appointed Design Review Panel have reviewed the proposal and have no objections related to the bulk and scale;
- The proposal will provide for community floor space that is ancillary to the Castle Cove Golf Course and therefore provides wider public benefits beyond the site itself;
- The proposal could be made compliant through the deletion of the community floor space which is considered a sub-optimal outcome for the community; and
- The proposal will not impact on the growth of commercial development of the city centre of Chatswood nor will it impact the city centre's primary character and land use, which is a specific objective of the FSR development standard, though of less relevance in this instance.

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 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;
- 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 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 clubhouse component comprises a gross floor area that is only 87.8m² more than the existing built form and is considered to generate similar traffic generation. It is expected that the redevelopment will also encourage more walk-in users from ILUs and local residents, thereby allowing varied and sustainable forms of transport to access the site;
- 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, which is enabled by the partnering with the seniors housing;
- Typically clubhouses, which are considered to be an ancillary use to a golf course, have been located on the same site as the golf course and which are not subject to a floor space ratio control (due to the recreation zoning). Therefore, the proposal should be afforded the flexibility apparent and appropriate to other metropolitan clubhouse developments; and

- The proposal will enable the orderly and economic use and development of the land, resulting in the redevelopment of the clubhouse which exhibits clear signs of aging and portions unusable due to its poor condition. The orderly redevelopment of the site therefore offers a clear public benefit in terms of much needed housing, a more sustainable and design responsive club form, and a new facility for club members and the wider community.

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.