

Clause 4.6 Variation to Development Standards – Height of Buildings

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 84 Development standards—general and Clause 108 Non-Discretionary Standards for Independent Living Units of the State Environmental Planning Policy (Housing) 2021 (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 height of buildings under Clause 84 and Clause 108 of the State Environmental Planning Policy (Housing SEPP 2021) in relation to the portion of the overall development proposal that relates to the ILUs. A concurrent Statement of Environmental Effects (SEE) prepared by Ethos Urban dated December 2023 is also lodged with the development application.

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 building height 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).

The extent of the building height variation relates to the rooftop portions of four (4) ILUs. This Clause 4.6 Variation Request demonstrates that, notwithstanding the variation from the height development standard:

- The proposed development achieves the objectives of the building height development standard using the objectives at clause 4.3 of the Willoughby LEP 2012:
 - The design responds to the undulating topography and accommodates the existing rock formations on the site, resulting in four (4) minimal height variations related to corners of roofs and an awning in order to maintain levels and accessibility within the design;
 - The proposal has been sited in a way to maximise separation distances from the adjoining properties. Any relocation of the form closer to the adjoining properties may result in a greater level of compliance related to height but will impact visual privacy and require the removal of floor space;
 - The proposed building height will not change the existing character nor hinder the future character of the area. The ILUs will replace the existing clubhouse form, which is currently in poor condition, with a quality design located at the rear of the site and setback from street view; and
- The proposed development demonstrates that there are sufficient environmental planning grounds to vary the control in this instance because:
 - The proposed height variations are minor in nature, representing a maximum breach of 4.425m to the 9.5m development standard under the Housing SEPP 2021;
 - All height variations comprise approximately 73.97m² when viewed from the roof area, equating to approximately 5.28% of the total roof footprint area;
 - The proposed height of the ILUs is located beneath the maximum 11.5m development standard under the Housing SEPP 2021 notwithstanding the variations to the 9.5m development standard as noted above;
 - The proposed height of the clubhouse remains within the Willoughby LEP 2012 development standard of 8.5m;
 - The height variations are a direct result of the varying topographical nature of the site;
 - Whilst the height variations will be visible from the Golf Course, they are considered to contribute to the high visual quality of the development, providing for elements of articulation, improving the overall

perception of the bulk and scale. Further, it is to be noted the variations are the result of the modular building design which has been adopted to integrate with the surrounding residential context;

- The proposed height variations are located a significant distance from adjoining neighbours and will not result in any additional instances of direct overlooking to or from adjoining neighbours Further, the maximum height of the ILUs is lower than the existing ridge line of the clubhouse building;
- The proposed height variations will result in negligible overshadowing impacts which will be contained within the Golf Course and on the site itself and will not impact adjoining neighbours; and
- Strict compliance would require a re-design within an already significantly constrained site and result in the potential loss of ILUs.

Therefore, the DA should, in our view, be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Willoughby LEP 2012. Clause 4.6 expressly allows consideration of variations from *a development standard imposed by this or any other environmental planning instrument (our emphasis)*. In this instance, the applicable development standards for the ILUs are the development standard and non-discretionary development standard found in the Housing SEPP 2021.

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



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	Housing SEPP 2021
The site's land use zone	R2 Low Density Residential (Willoughby LEP 2012)
Development standard sought to be varied	<p>This Clause 4.6 Variation Request seeks to justify contravention of the development standard set out in Clause 84 and non-discretionary development standard in 108 of the Housing SEPP 2021, in accordance with Clause 4.6 of the Willoughby LEP 2012 (LEP) which applies to contravention of development standards prescribed under the LEP or other applicable Environmental Planning Instruments.</p> <p>Clause 84 of the Housing SEPP 2021 does not contain any specific objectives for the building height development standard.</p> <p>In the absence of express objectives for the SEPP building height development standard, the objectives for Building Height under Clause 4.3 of Willoughby LEP 2012 are instructive to assess and determine the appropriateness of the proposed building height in this Clause 4.6 written request to vary the SEPP development standard, which are:</p> <ul style="list-style-type: none">• (a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,• (b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,• (c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,• (d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,• (e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,• (f) to use maximum height limits to assist in responding to the current and desired future character of the locality,• (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 achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.
Type of development standard	Numerical development standard

Matter	Comment
Numeric value of the development standard in the EPI	<p>Under Clause 84(2) and (3) of the Housing SEPP 2021, the development is subject to the following height development standards:</p> <p>84 Development standards—general</p> <ul style="list-style-type: none"> (2) Development consent must not be granted for development to which this section applies unless— <ul style="list-style-type: none"> (a) the site area of the development is at least 1,000m², and (b) the frontage of the site area of the development is at least 20m measured at the building line, and (c) for development on land in a residential zone where residential flat buildings are not permitted— <ul style="list-style-type: none"> (i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and (ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m—the servicing equipment complies with subsection (3), and (iii) if the development results in a building with more than 2 storeys—the additional storeys are set back within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site. (3) The servicing equipment must— <ul style="list-style-type: none"> (a) be fully integrated into the design of the roof or contained and suitably screened from view from public places, and (b) be limited to an area of no more than 20% of the surface area of the roof, and (c) not result in the building having a height of more than 11.5m. <p>The specific development standard to be varied is that of Section 84(2)(c)(i) in relation to the building having a height of more than 9.5m (while noting that the servicing equipment complies with the Section 84(3) criteria including the maximum height development standard of 11.5m).</p> <p>Further, under Clause 108(2) and (3) of the Housing SEPP 2021, the development is subject to the following non-discretionary development standards.</p> <p>108 Non-discretionary development standards for independent living units – the Act, s 4.15</p> <ul style="list-style-type: none"> (2) The following are non-discretionary development standards in relation to development for the purposes of independent living units— <ul style="list-style-type: none"> (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— <ul style="list-style-type: none"> (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, <p>It is noted that the following SEPP definition is relevant:</p> <p>servicing equipment includes plant, lift motor rooms and fire stairs.</p>

Difference between the existing and proposed numeric values. Variation

As noted above, the portion of the development that relates to the ILUs is subject to a maximum height of building control of 9.5m (ie building without servicing equipment) or 11.5m (with servicing equipment) under the Housing SEPP 2021.

Matter	Comment
percentage between the proposal and the EPI	<p>The proposal seeks approval for a maximum height of the building of 14.26m (which applies on the level 1 south-west corner of the building only) which includes parts of the ILU roofs and an awning. This requires a variation to the 9.5m building height development standard under Clause 84(2)(c)(i) of the Housing SEPP 2021. Notwithstanding, the proposed development (inclusive of all servicing equipment) is within the 11.5m maximum height development standard under the Housing SEPP 2021.</p> <p>The variation relates to minor portions of the building and roof form (and are not related to servicing) which are a maximum of 4.425m over the 9.5m development standard. All height variations are limited to a combined total area of approximately 73.97m² which comprises 5.28% of the total roof footprint roof area (approximately 1,400m²). The extent of the variation is illustrated in Figure 4 which shows the 9.5m height plane across the portion of the site subject to the ILUs. It should be noted that the servicing elements have been covered as they are not subject to this Variation Request (given they are below the 11.5m development standard).</p>
Visual representation of the proposed variation	<p>It is noted that the height variation applies to only four (4) parts of the ILUs, as shown in Figure 4, and which predominantly occur due to the undulating topography of the site which requires the building to be designed to 'fill' in these steep drop-off sections of the land and rock platform for consistent floor and ceiling heights.</p> <p>These four (4) parts of the building are located on the golf course side of the building and are marginally visible from adjacent properties to the north and to the east. Refer to Figure 4.</p>

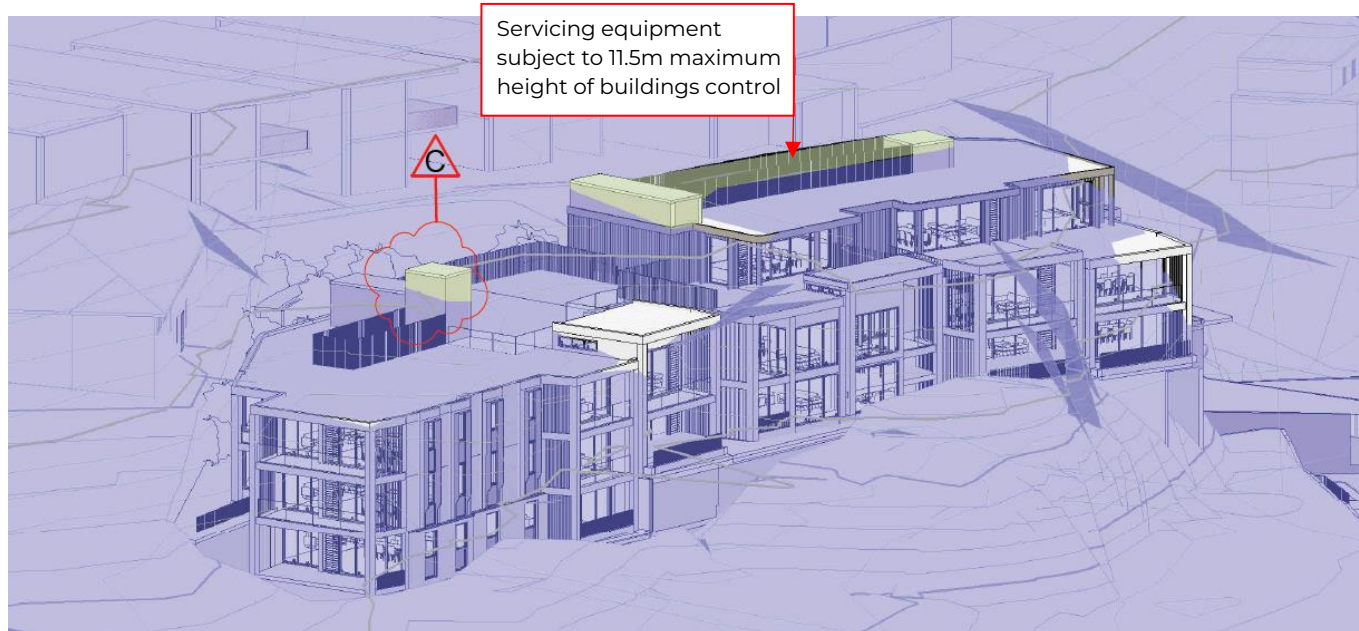


Figure 4 Building elements which vary the 9.5m height shown in white (servicing equipment subject to 11.5m height of buildings control)

Source: Antoniades Architects

3.1 Development standard applicable to club redevelopment

Willoughby Local Environmental Plan 2012

The clubhouse portion of the proposed development is subject to an 8.5m maximum height of buildings development standard contained under Clause 4.3 of the Willoughby LEP 2012 (refer to **Figure 5**). The proposed clubhouse is compliant with the control (inclusive of services).



Figure 5 Maximum height of buildings control subject to clubhouse

Source: Willoughby LEP 2012/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 WEP 2012 with respect to the height of buildings development standard under Clause 84 of the Housing SEPP 2021, are each addressed below, including with regard to the above decisions.

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

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was 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* are:

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 underlying objectives or purposes of the development standard

Importantly, Clause 84 of the Housing SEPP 2021 does not contain any specific objectives for the building height development standard.

In the absence of express objectives for the SEPP building height development standard, the objectives for Building Height under Clause 4.3 of Willoughby LEP 2012 are instructive to assess and determine the appropriateness of the proposed building height in this Clause 4.6 written request to vary the SEPP development standard.

The objectives of the development standard for Height of Buildings contained in Clause 4.3 of the Willoughby LEP 2012 are:

- (a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,
- (b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
- (c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,
- (d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,
- (e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,
- (f) to use maximum height limits to assist in responding to the current and desired future character of the locality,
- (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 achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.

Objective (a): to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape

The ILU component has been designed to ensure compatibility with the bulk and scale of the surrounding locality notwithstanding the minor height variations proposed. It sits below the maximum height of the existing ridge-line of the clubhouse building (See Figure 7). The clubhouse component has been designed to be compliant with its LEP height development standard. The portion of the site that contains the ILUs adjoins a two-storey detached residential dwelling to the north-east at 15 Amaroo Avenue and a seniors housing development comprising 15 two (2) storey ILUs which is currently under construction and located east and south-east of the site at 12 Amaroo Avenue. Further south east is 76 Deepwater Road which comprises a two storey residential dwelling. To the west is the golf course and to the south is the existing golf club parking (hard stand area), which is proposed to be developed for the new clubhouse.

Whilst the neighbouring bulk and scale is primarily 2 storeys, the change in level on the site (being approximately 5m below the adjoining properties to the north and east), means that the proposed bulk and scale of the ILUs results in a built form that is generally not only in alignment with the apparent scale of the neighbouring development but as shown in **Figure 6** below, is also for the most part, sited below the height of these buildings. In addition, the setback of the Level 2 built form serves to further minimise the perception of bulk from the neighbouring residences. It should also be noted that the ILUs are located within the rear portion of the site and therefore do not have a street frontage. Only small portions of the built form will be visible from Deepwater Road, while substantially set back from the street, while the proposed clubhouse which fronts Deepwater Road is compliant with its LEP 2012 building height (8.5m). It is to be noted that Council's Design Review Panel (DRP) had no objection to the bulk and scale of the proposed buildings.

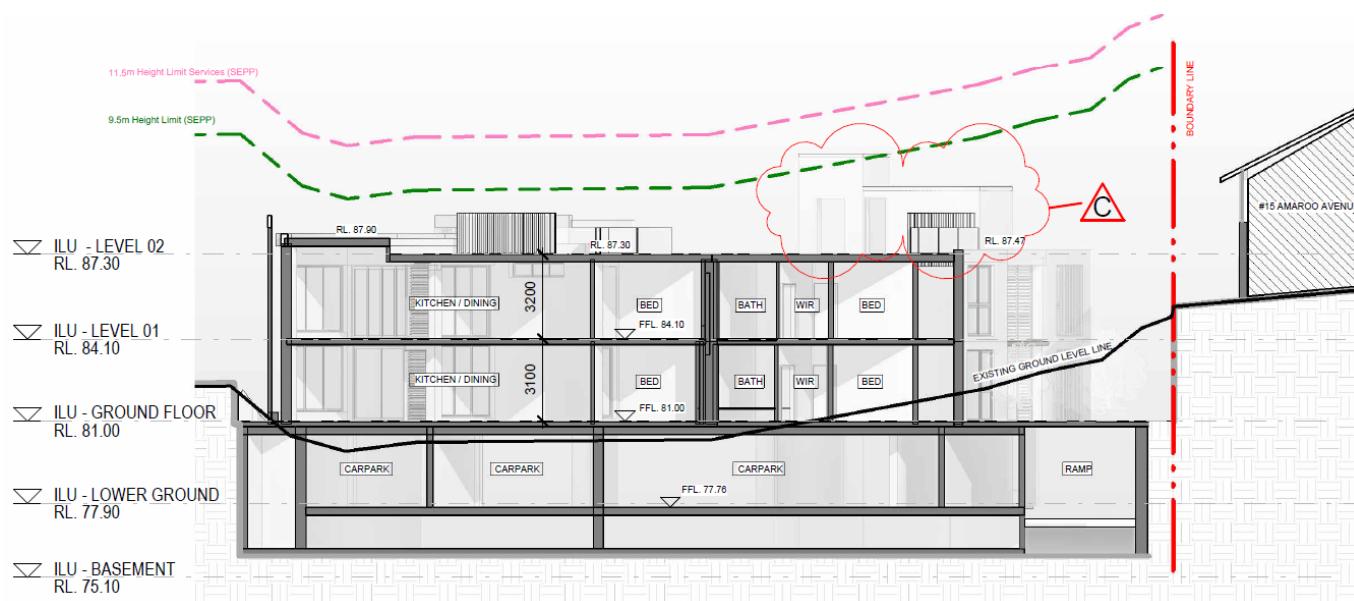


Figure 6 Section of ILUs and relationship to neighbouring property at 15 Amaroo Avenue

Source: Antoniades Architecture

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

The adjoining properties have views to the Golf Course which are already partially obstructed by the existing clubhouse which currently comprises a maximum height above the proposed ILUs (**Figure 7**).

The building height variations relate largely to portions of the ILU roofs and an awning which will have minimal impact on the views or outlook of neighbouring residences. The variations are largely contained on the north-western elevation of the ILU building and will be marginally visible from 15 Amaroo Avenue to the north and 12 Amaroo Avenue to the east.

General neighbourhood views/vistas from the dwelling house at 15 Amaroo Avenue would be retained (and are not impacted by the specific variations of the height standard) given the site topography which places the ILUs at a lower level than the house, which also assists in ensuring that there are no overshadowing impacts on neighbours.

Similarly, views/vistas from the seniors housing under construction at 12 Amaroo Avenue east of the site will be minimally impacted by the height variations but overall the visual impacts of the proposal will be improved. Again, the site topography provides that the proposed ILUs are sited down slope and include a generous setback containing communal open space and landscaping between the ILUs and the site boundary with this neighbour. Where parts of the ILU development are located closest to this boundary, privacy screens are proposed on any habitable rooms to ensure privacy is maintained and to minimise any visual intrusion. The height variations are located away from the neighbours and therefore have no privacy impact.

It is critical to note, in relation to views, that the ILUs are proposed to be sited in the location of the current Golf Clubhouse, of which portions exceed the maximum height of building development standard.

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 8**. The diagrams illustrate the overshadowing is primarily contained within the neighbouring Golf Course which already

receives ample sun given the sheer size and scale of the golf course, within the site itself or within the proposal's street frontage and on Deepwater Road. It should be noted that the 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 for the reasons cited above.



Figure 7 Elevation showing existing clubhouse in red and proposed ILUs in purple

Source: Antoniades Architecture

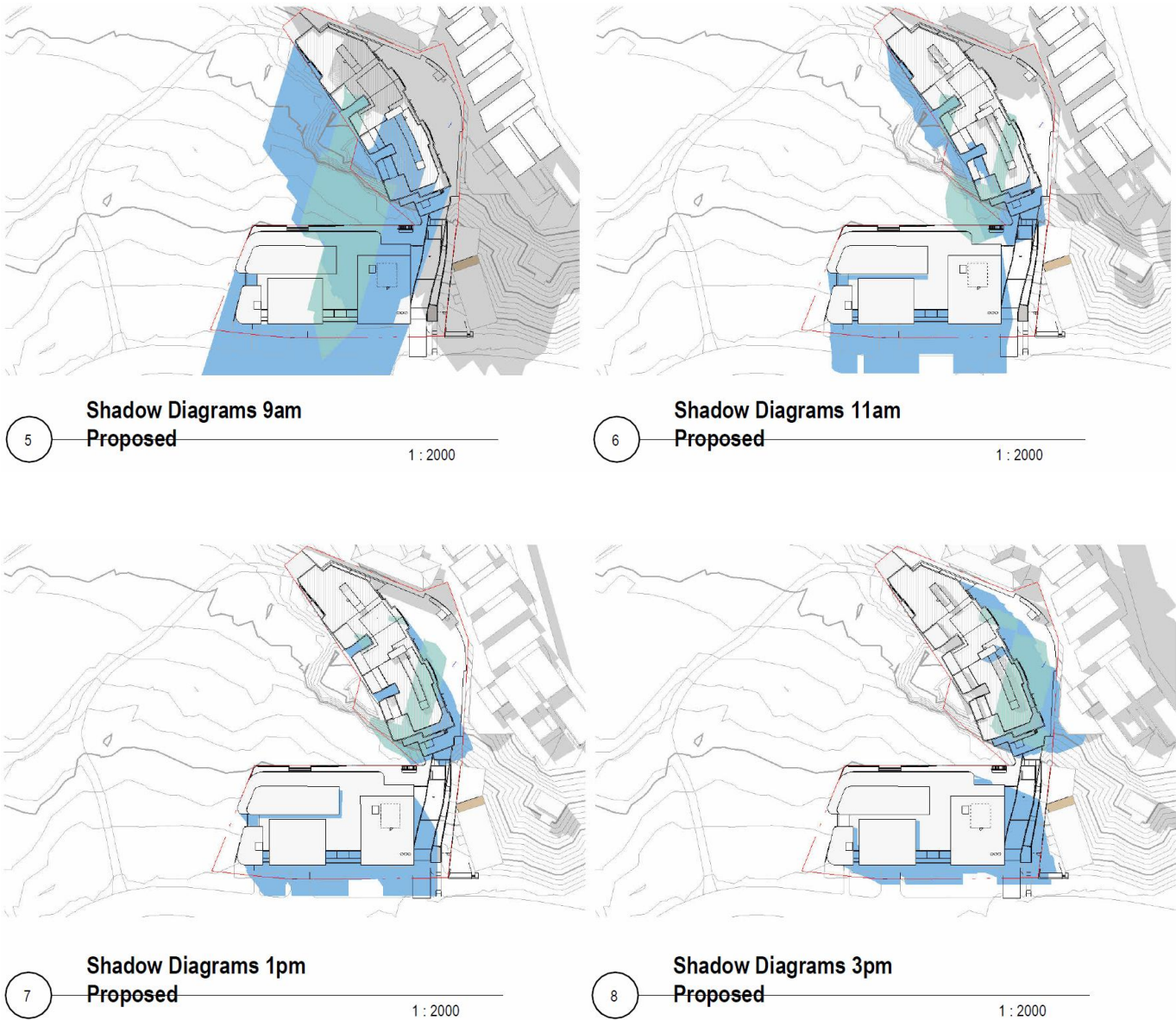


Figure 8 Existing (Green) and proposed (Blue) overshadowing impacts

Source: Antoniades Architecture

Objective (c): to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores

The proposed development has been designed by Antoniades Architects and exhibits a highly considered design with a high standard of materials, compatible with existing development and the surrounding Golf Course. The proposed height variations being located within four minor pinch points on the site do not markedly increase the bulk or create adverse visual qualities for the locality, especially given the change in topography from the site to the adjoining neighbours. Due to the configuration of the ILUs, the variations will be barely perceived from the adjoining properties and while they will be more visible from the Golf Course, the development will retain a high visual quality that has been appropriately designed in response to the site's topography and environmental constraints. The views from the Golf Course, while framed with existing trees on the course, will be enhanced from that of the existing older style, deteriorating clubhouse building.

Only minor portions of the ILUs will be visible from Deepwater Road, given its location within the rear portion of the site. No views from waterways or foreshores will be impacted. Further, the proposed height sits lower than the existing ridgeline of the Clubhouse building and therefore will improve some of the surrounding neighbour's views across the site.

Objective (d): to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development

Whilst the ILUs will be visible from the Golf Course, which is public land, the visual impact when compared to a compliant envelope which includes elements (just related to servicing) would be negligible. The views from the Golf Course are considered to be improved given the existing built form of the ageing clubhouse on the site where the ILUs are proposed is a built form which currently provides poor architectural design quality. It is noted also that the height of the existing clubhouse exceeds the proposed height of the ILUs for large parts of the current building and the existing clubhouse also exceeds, in some instances, the RLs of the height variation being considered under this Clause 4.6 written request.

It is expected views from the development at 12 Amaroo Avenue will be minorly impacted by the height variations but overall the visual impacts of the proposal will be improved.

Objective (e): to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping

The height variations which relate to this Clause 4.6 Variation Request are largely the result in the site's topography (with dips in topography across the site requiring portions of the ILU roofs and an awning to protrude above the 9.5m height development standard in the Housing SEPP 2021). To ensure consistent floor and ceiling levels across the development the point exceedances occur in these areas of the site where the existing ground level is lower.

Further, the site's allotment shape constrains the siting of development on the site, as the site has an unusual V-shaped configuration. Locating the development closer to the adjoining properties would result in a compliant scheme (as the point exceedance would comply with the RL at this point) but this would further restrict separation distances and have greater impact on views/outlook.

Notwithstanding the height variation, 15% deep soil area and 30% landscaped area is also achieved across the nominal ILU site area, which is the non-discretionary development standard for deep soil and landscaping for ILUs under Clause 108 of the Housing SEPP 2021.

Objective (f): to use maximum height limits to assist in responding to the current and desired future character of the locality

The 9.5m maximum height limit is set by the Housing SEPP 2021 which permits seniors housing within the R2 Low Density Residential zone. Relevant to this zone and local area, the SEPP's relevant principles and controls seek to enable diverse housing types, to encourage housing that will meet the needs of vulnerable members of the community including seniors, and to promote seniors housing in locations that will make good use of existing and planned infrastructure and services. Consistent with this, the ILU development will provide for seniors to age in place in the area, and to enjoy the social and recreation facilities available at the Golf clubhouse and adjacent Golf Course and tennis courts.

The site's undulating topography reflects the local character and means that the proposed development sits below the surrounding built form, complementing the existing and desired future character of the locality. The design has responded to the existing rock platform and has retained and celebrated this prominent feature, which contributes to the existing site character as well as the existing local character.

The proposed ILUs have also been designed to complement the new clubhouse building, to ensure that it continues to play a key role in responding to the local character of the area.

The proposed height variations respond to the current and desired future local character in that they still present a high quality residential form when viewed from adjoining properties and being located within four minor pinch points on the site do not markedly increase the bulk or create adverse visual qualities for the locality, especially given the change in topography from the site to the adjoining neighbours.

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 achieve transitions in building scale from 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.

4.1.2 Conclusion on Clause 4.6(3)(a)

Strict compliance with the maximum building height standard prescribed under Clause 84 of the Housing SEPP 2021 is considered unreasonable and unnecessary in the specific circumstances for the following reasons:

- The underlying objectives of the building height development standard are achieved, notwithstanding the variation from the Housing SEPP 2021 numerical control. Consideration has been given to relation to both the Housing SEPP 2021 overarching principles and Willoughby LEP 2012 building height objectives;
- The proposed building height is considered suitable given the specific design response results in a building bulk and scale that is responsive to topography and surrounding development, minimises visual and privacy impacts and avoids overshadowing impacts on residential neighbours. The Design Review Panel had no objection to the bulk and scale of the proposal;
- The design responds to the undulating topography and accommodates the existing rock formations on the site, resulting in some minimal variations in order to maintain levels (consistent roof levels) and accessibility within the design while respecting the site's natural features;
- The extent of the variation is largely confined to portions of the ILU roofs and an awning which are reflective of the site's topography in these locations; and
- Portions of the variations are located below the height of the existing club building that the building will replace;
- The proposed building height will not change the existing character nor hinder the future character of the area given a high visual quality design replaces an existing club building in poor condition and will complement the proposed new club building, while the ILUs are also located to the rear of the site, largely setback from street view; and
- The maximum height of the ILUs is lower than the existing ridge line of the clubhouse building.

4.2 Sufficient environmental planning grounds to justify contravening 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 are the portions of the ILU roofs and an awning in the exceedance of the development standard.

There are sufficient environmental planning grounds to justify the contravention of the maximum building height development standard in this specific instance, as described below.

4.2.1 No adverse impacts to bulk and scale of the proposed development

The site falls approximately 5 metres from east (at RL 85.17m) to west (RL 80.90m). As the maximum building height is measured from existing ground level, the 9.5m height plane slopes substantially from the rear of the site (being the south eastern boundary) to the north western boundary of the site, setting a undulating and heavily constrained height plane for a rational residential building envelope to respond to.

Accordingly, a blend of civil and architectural design has been proposed that steps the built form to the site topography to minimise the proposed height variations. These relate primarily to portions of the ILU roofs and an awning located on Level 2, illustrated in **Figure 4** above.

The additional height is minor as it seeks a variation of up to 4.425m over the 9.5m development standard. All height variations are limited to approximately 73.97m² which comprises 5.28% of the total roof footprint roof area (approximately 1,400m²). The sections below show the extent of variability in the topography in relation to the Housing SEPP 2021 height limits (11.5m with services and 9.5m without services) is provided in **Figures 9** and **10**.

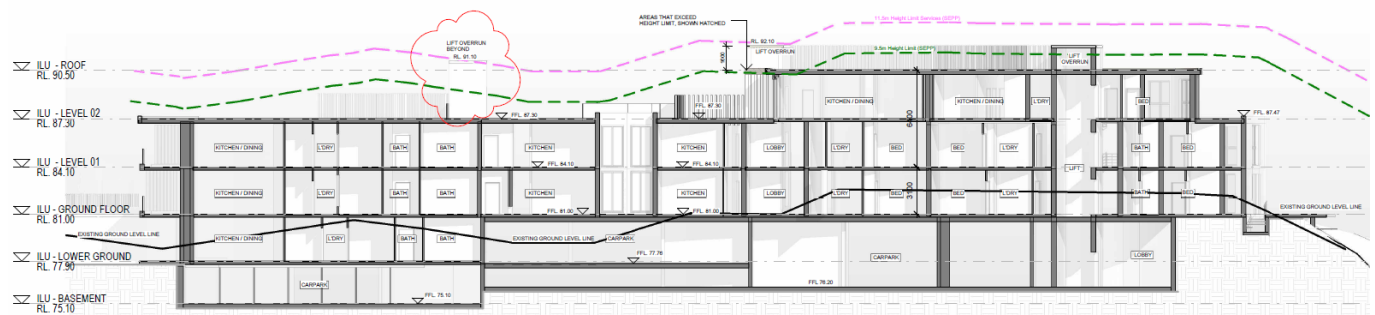


Figure 9 **North south section**

Source: Antoniades Architecture

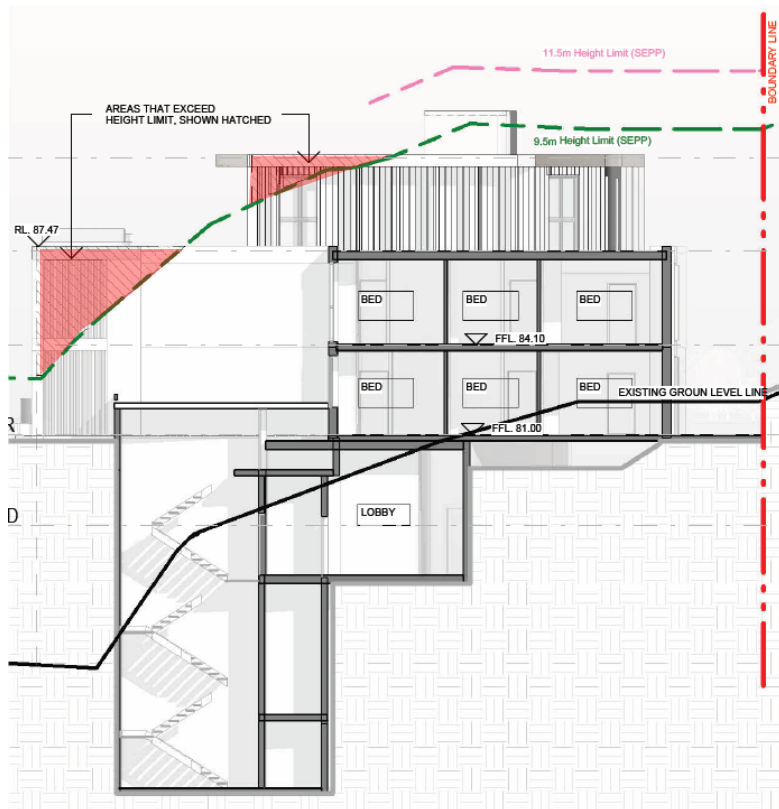


Figure 10 Section showing height variations in red

Source: Antoniades Architecture

4.2.2 Site allotment improves the siting of built form further away from boundaries where height variation occurs

The site's allotment shape together with the significant level difference across the site, constrains the siting of development on the site, as the site has an unusual V-shaped configuration. Locating the development closer to the adjoining properties would result in a compliant scheme (as the point of exceedance would comply with the RL at this point) but this would further restrict separation distances and have greater impact on views/outlook,

4.2.3 Minimal visual impact

The height variations relate to portions of the ILU roofs and an awning and will be imperceptible from adjoining residences given the location in front of the servicing equipment which is within the maximum height limit of the Housing SEPP 2021 as it subject to a maximum 11.5m height development standard.

Whilst portions of the building elements that vary the height limit will be visible from the Golf Course, they are considered to result in a design which is articulated and adds visual interest when viewed from a public place and nestled within a landscape setting (in this instance, the Golf Course) and a significant and attractive improvement when compared to the visual impact of the current existing clubhouse



Figure 11 *Approximate location of height variations, as viewed from the Castle Cove Golf Course*

Source: Antoniades Architecture/Ethos Urban

4.2.4 No additional overshadowing to adjoining neighbours

The 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 shadow 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.

4.2.5 No privacy impacts to adjoining neighbours

The height variation relates to four (4) portions of the ILU facades, which face the Golf Course and therefore will not cause any visual privacy impacts to the adjacent residential dwellings, nor will they result in any instances of direct overlooking from adjoining neighbours.

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 2** below.

Table 2 *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 public benefits that will respond to the site's proximity to the Golf Course, while delivering additional seniors housing in the Willoughby LGA.</p> <p>Strict compliance with the Housing SEPP 2021 9.5m development standard would not promote the social and economic welfare of the community, as it would result in a reduced building height that is compliant in floor space under the Housing SEPP 2021 and provides an appropriate built form transition and generous setbacks.</p> <p>Strict compliance would result in a substantial redesign of multiple ILUs for little net environmental impacts that is still within the maximum height of buildings control when servicing is considered (i.e. 11.5m) (despite the variation subject of the Clause 4.6 Variation Request not being related to servicing).</p>

Object	Comment
(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 height variations will not impact the ecologically sustainable principles of the development.
(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 Golf Course. Further, the ILUs will provide for support and care in a medium density form that is respective of the surrounding built form.</p> <p>If the proposal adopted strict compliance with the 9.5m height development standard, this would result in a substantial redesign of the ILUs. Accordingly, the proposed development promotes the orderly and economic use of the land by providing seniors housing co-located with a clubhouse that aligns with the purpose and principles of the Housing SEPP 2021.</p>
(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 conversation 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 height variations are considered to improve articulation and add visual interest to the built form when viewed from the Golf Course. Council's DRP has no objection to the bulk and scale of the proposed buildings.
(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 height of buildings development standard contained in Clause 84 of the Housing SEPP 2021 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 84 and Clause 108 of the Housing SEPP 2021 applies a maximum 9.5m height development standard and non-discretionary standard across the site with respect to the ILU building. The proposal includes elements which protrude the height limit and relate to portions of the ILU roofs and an awning which are the result of the site's undulating topography.

The proposed development achieves the objectives of clause 4.3 of the Willoughby LEP 2012. In the absence of specific height objectives under Clause 84 or Clause 108 of the Housing SEPP 2021, the Clause 4.3 objectives are instructive to this Clause 4.6 written request and are met as follows:

- The design responds to the undulating topography and accommodates the existing rock formations on the site, resulting in four (4) minimal height variations related to portions of the ILU roofs and an awning in order to maintain levels and accessibility within the design;
- The proposal has been sited in a way to maximise separation distances from the adjoining properties. Any relocation of the form closer to the adjoining properties may result in a greater level of compliance related to height but will impact visual privacy and require the removal of floor space;
- The proposed building height will not change the existing character nor hinder the future character of the area. The ILUs will replace the existing clubhouse form, which is currently in poor condition, with a quality design located at the rear of the site and setback from street view; and

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

- The proposed height variations are minor in nature, representing a maximum breach of 4.425m to the 9.5m development standard under the Housing SEPP 2021;
- All height variations comprise approximately 73.97m² when viewed from the roof area, equating to approximately 5.28% of the total roof footprint area;
- The proposed height of the ILUs is located beneath the maximum 11.5m development standard under the Housing SEPP 2021 notwithstanding the variations to the 9.5m development standard as noted above;
- The proposed height of the clubhouse remains within the Willoughby LEP 2012 development standard of 8.5m;
- The proposed height variations will largely be screened from view due to the location of the servicing equipment and therefore will have negligible visual impact on adjoining properties;
- The height variations are a direct result of the varying topographical nature of the site;
- Whilst the height variations will be visible from the Golf Course, they are considered to contribute to the high visual quality of the development, providing for elements of articulation, improving the overall perception of the bulk and scale. Further, it is to be noted the variations are the result of the modular building design which has been adopted to integrate with the surrounding residential context;
- The proposed height variations are located a significant distance from adjoining neighbours and will not result in any additional instances of direct overlooking to or from adjoining neighbours. Further, the maximum height of the ILUs is lower than the existing ridge line of the clubhouse building;
- The proposed height variations will result in negligible overshadowing impacts which will be contained within the Golf Course and on the site itself and will not impact adjoining neighbours; and
- Strict compliance would require a re-design within an already significantly constrained site and result in the potential loss of ILUs.

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