

Appendix B – Clause 4.6 LEP Variation

Introduction

This Clause 4.6 Variation Request has been prepared to support a development application under Division 4.3 of the Environmental Planning and Assessment (EP&A) Act 1979, for the Proposed Residential Seniors Housing Redevelopment at 17A Murranar Road, Towradgi. This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 in demonstrating that:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard. This Variation Request is seeking to vary Clause 4.3(2) of Wollongong Local Environmental Plan 2009 (WLEP 2009) and should be read in conjunction with the architectural plans provided with the Development Application.*

This variation has been prepared in accordance with the NSW Department of Planning Infrastructure (DPI) guideline “*Varying Development Standards: A Guide*” dated August 2011 and addresses the ‘five-part test’ established by the NSW Land and Environment Court (LEC) to determine whether the objection is well founded.

Subject land

The subject site is located close to Towradgi Beach on the southern side of Murranar Road, east of the intersection with Pioneer Road. The area to be redeveloped includes Lot 300 DP 571212, Lot 100 DP 776493, Lot 39 DP 27386, Lot 505 DP 833242, Lot, 177 DP 13182, Lot 1 DP 704687, Lot 1 SP 11647, Lot 2 SP 11647, Lot 3 SP 11647 & Lot 4 SP 11647.

The land has a site area of approximately 27,493m². The site currently comprises the IRT Towradgi Park. All structures and surfaces are proposed to be demolished to support the new development.

The site is bound to the east and west by single detached dwellings of one and two storeys and residential flats on Murranar Road. In the broader context, the site is walking distance to Towradgi Beach, Towradgi Park Bowls Recreation Club, Ray Robinson Oval and Towradgi Train Station.

The site is zoned R2 Low Density Residential the site is surrounded by mixed development types as noted:

North	R2 Low Density Residential	One (1) and two (2) storey detached dwellings on Murranar Road
South	RE1 Public Recreation	Towradgi Beach Park and North Dalton Park



East	<i>R2 Low Density Residential & RE1 Public Recreation</i>	<i>One (1) and two (2) storey detached dwellings on Murrannar Road and Towradgi Beach Park</i>
West	<i>R2 Low Density Residential</i>	<i>One (1) and two (2) storey detached dwellings on Murrannar Road, Marlo Road and Edgar Street</i>

Applicable Environmental Planning Instrument

The applicable Environmental Planning Instrument subject to this Variation Request is the Wollongong Local Environmental Plan 2009.

Wollongong Local Environmental Plan 2009

Wollongong Local Environmental Plan 2009 (WLEP 2009) provides the key development standards applicable to the development and includes the aims and objectives for the development within the Wollongong Local Government Area. The site is zoned R2 Low Density Residential, which provides for the following zone objectives:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This Variation Request is seeking to vary the development standard Clause 4.3(2) of Wollongong Local Environmental Plan 2009 (WLEP 2009). It is considered that the proposed seniors housing development is consistent with the objectives of the R2 zone by providing seniors housing for aged people and people living with a disability, and also providing facilities on site such that provide facilities or services to meet the day to day needs of residents and the local community reinforcing the strategic intent for such a site.

Objectives of the Development Standard

To satisfy the requirements of Clause 4.3(2) and demonstrate that compliance with the standard is unreasonable or unnecessary, it is important to understand the intent and objectives of the development standard being varied.

The objectives of this clause are as follows—

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

Description of the Variation

The subject site allows a maximum building height of 9m. Small sections of the upper roof ridge and parapet breach the maximum building height of 9m by 0.7m or 7.75%. The area of the roof subject to the height breach is 335m², this represents 1.2% of the total site area (27,477m²). The maximum height breach proposed is 700mm which represents a maximum of 7.75% however most of the height breaches are in the range of 150 mm-500 mm.

Refer to architectural drawing A1802 in addition to A1500 and A1600 elevation and section series of architectural drawings. The building height plane diagram (A1802) is extracted in Figure 1 and illustrates the proposed breach areas and locations.

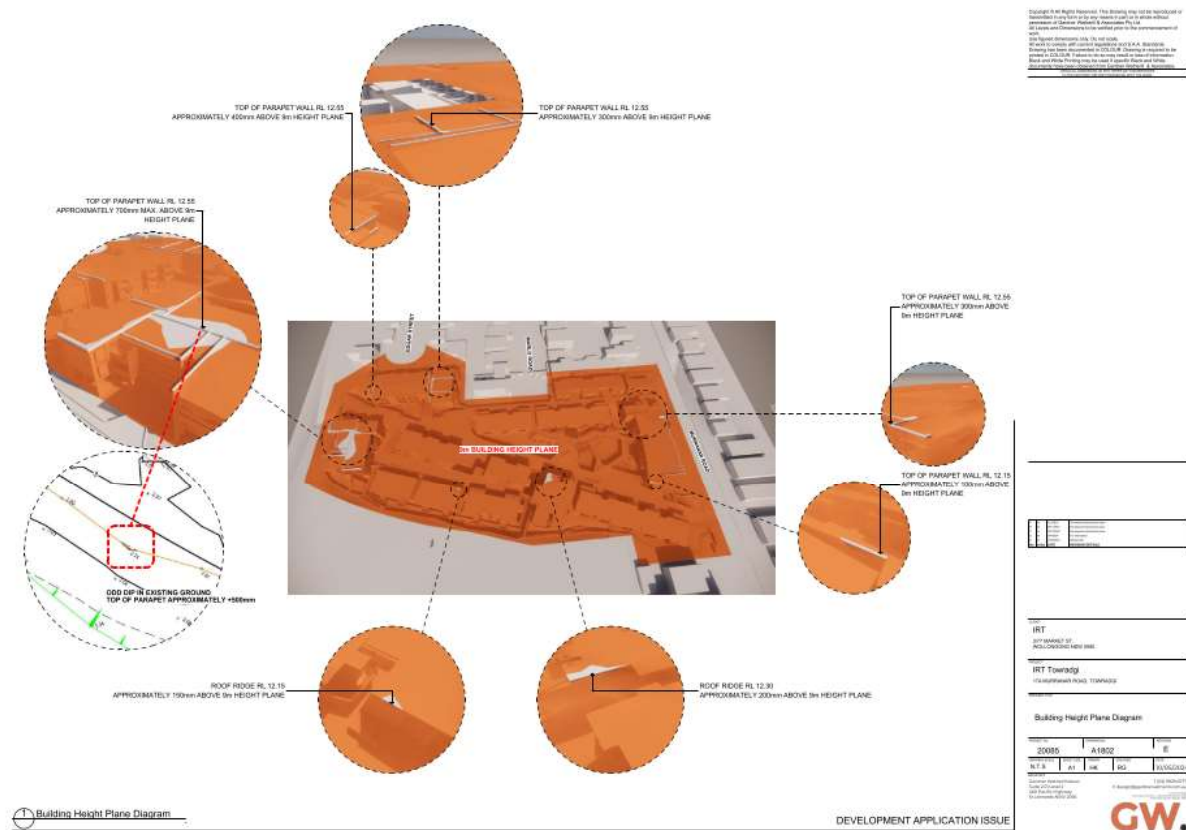


FIGURE 6: BUILDING HEIGHT PLANE DIAGRAM (GW ARCHITECTS)

How is compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

In *Wehbe v Pittwater Council* [2007] NSWLEC827 (*Wehbe*), Preston CJ identified five (5) ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. While *Wehbe* related to objections 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 because subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

The five (5) ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard (First Way)*
2. *The underlying objective of purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way)*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way)*

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way)

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

Additionally, of note, in the judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the standard was unreasonable or unnecessary, rather that the applicant's written request adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

In this regard, this written request establishes and adequately addresses the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary because the objectives of the standard are achieved irrespective of the non-compliance and accordingly justifies the variation under the **First Way** outlined in *Wehbe*, as follows.

Objective of the Development Standard:

Under WLEP 2009, Clause 4.3(2) has the following objectives in relation to the Maximum Building Height development standard:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

Correlation between the height and the floor space.

The site area is 27,493m² with an allowable FSR for development on the site is 0.5:1 (13,746.5m²). The development proposes an FSR of 0.404:1 (11,096m²) and as such, the development is within the afore-mentioned FSR of 0.5:1 and complies with the applicable development standard in this regard.

The breach of the maximum height is due to the uneven topography on the site, the increased floor level height in response to flooding and the relative rise in storeys of the building. The noncompliance is minor being associated with the parapet and very upper of the roof ridge.

High Quality Urban Form

The creation of the new community at IRT Towradgi Park provides opportunities for an inclusive senior housing residential estate whereby the proposal seeks to incorporate and provide a comprehensive open space network throughout. Much of the design focuses on integration of the development into the natural setting, but at the same time responding to inherit site constraints such as flooding. The design and layout of the development establishes community activity and open space at its core, as well as the creation of a free-flowing road network convenient access to meet resident's needs.

Site constraints such as easements across the property are recognised and highlighted through the orientation of the streets and open space network, providing opportunities for varied activities and different groups within the community. A series of residential design and place making principles have been developed to assist in creating a sense of place across the proposal and reinforcing the social strategy which is predominantly community based. A number of focal points are created throughout including the resident clubhouse, the central core communal open space area and even the neighbourhood shop/café which will provide for community gathering assets which are linked by clear and comprehensive pedestrian pathway networks throughout.

A pedestrian oriented design is fundamental to the success of the open space network. Pedestrian orientation is focused both as through site links engaging the open space network and along the streets with clear connections to the riparian corridor along the east. Raised pedestrian thresholds and boardwalks are provided to enable a clear hierarchy of pedestrian priority across the community estate. The Towradgi Walk is an extended perimeter walkway around the development; a place for the daily stroll, regular exercise regime and dog walking to name a few.

The amenity of the street network is enhanced by strong lines of trees to the roadway which provide shade, green amenity and a buffer between the road and the footpath.

The central park or "Village Green" is the heart of the community. The area offers active and passive recreation through open lawn areas, leisure walks, the feature timber arbour garden rooms, a BBQ/ entertainment area and community gardens.

This design accommodates informal recreation with substantial open space areas through the proposal designed for creative outcomes in harmony with the natural environment. The design reinforces the sense of place by exploring the existing landscape character.

The layout and built form of the proposed seniors housing development is domestic in character and will incorporate dwellings that have been designed to reflect the suburban amenity of the Towradgi coastal area. The overall built form of the proposal provides an appropriate high amenity and urban scale of the two storey form. These residential buildings have a simple, yet interesting elevation, with a combination of materials, articulation and landscape. The shadows cast by the buildings and their form will complement the design and character of these structures.



The design of the buildings, the articulation and supporting elements, together with the materials/colours to be used will combine to create an attractive visual appearance. The use of the site in respect of both orientation and layout will further provide visual interest for this proposal.

All of the dwellings have been designed to satisfactorily meet the required BASIX criteria, thereby providing good thermal performance and ventilation. The individual site areas around the dwellings allow for pleasant ground level private open spaces, together with appropriate privacy for residents internally. The use of well-proportioned outdoor/entertainment areas and their positioning (relative to primary living areas and landscaped gardens) will enhance private open space amenity.

In summary, the urban design of the proposed development will be modern/contemporary and will make a positive contribution to the existing and evolving built forms within the locality. The scale and character of the built form provides an appropriate human scale complemented with developed open space recreational opportunities and streetscapes that encourage a sense of community and association.

The breach of the standard does not result in an inconsistency with this objective.

Views and Solar Access

The proposed development incorporates a range of products in various locations and orientation throughout. A strong emphasis has been placed into the design work by GW to ensure that each dwelling receives an appropriate level of solar access throughout the winter solstice and other months of the year. Various measurable is for appropriate solar access are contained within the SEPP (Housing 2021) and Wollongong DCP 2009, of which all compliance controls have been exceeded. This incorporates not only internal solar access to primary living areas such as living, dining and kitchen spaces, but also external private open space areas and courtyards/balconies proposed. It is considered that the proposed development design is responsive to solar access and optimal residential amenity objectives in this regard.

Due to the orientation of the site, appropriate setbacks have been considered to adjoining properties at the western boundary to ensure that any overshadowing impacts are limited. The designers of the development have taken this into account in maintaining reasonable setbacks and have provided shadow diagrams that show the existing development to the south of the site will maintain sufficient solar access. None of the adjoining properties will be impacted notably by overshadowing given the excessive setbacks adopted to the western edge in order to respect the existing properties and built forms located at this position.

85% of dwellings within the proposed development are to be cross ventilated. This is a very high percentage for a development of this nature and is a credit to the project architects GW in accommodating a development layout and building breaks that responds to passive heating and cooling objectives.



The development has been designed to ensure the privacy of adjoining development is maintained. Windows have been offset where possible or appropriate design treatments to ensure there will be no loss of amenity to the adjoining property owners.

The proposed setback distances are sufficient to provide a reasonable separation between the buildings and the built form has been articulated to ensure there is appropriate spacing between the units. The extensive landscaping and deep soil zone located at the sides and rear of the site will mitigate adverse impacts on these elevations.

Accordingly, these measures will ensure the privacy and amenity of future occupants is protected, along with that of the adjoining property owners surrounding the site.

The breach of the standard does not affect consistency with this objective.

Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes, there are sufficient environmental planning grounds in the circumstances of the case to justify contravening the development standard. These include:

- The site is of sufficient width, depth and size to accommodate the proposed height, without resulting in any significant adverse impacts on the public domain or any adjoining properties;
- The scale of the existing development and proposed seniors housing development is considered appropriate within the strategic planning context of the zone and is consistent with the relevant zone objectives;
- The area of the roof subject to the height breach is 335m², this represents 1.2% of the total site area (27,477m²). The maximum height breach proposed is 700mm which represents a maximum of 7.75% however most of the height breaches are in the range of 150 mm-500 mm.
- As detailed in the height plane diagram, the height breaches are minor and are located in central areas of the building which are not obvious from surrounding public viewpoints at Murranar Road, Marlo Road and Edgar Street.
- The proposal satisfies the objectives and development controls in relation to the maximum permitted height contained within the R2 zone objectives and Clause 4.3 of the *WLEP 2009*;
- Non-compliance with the standard will not result in any adverse environmental impacts; and
- The development as proposed will allow for the orderly and economic use of the subject land.



Is the proposed development in the public interest because it is consistent with the underlying intent of the development standard and the objectives for development in the zone

Yes, the proposal will provide a refurbished IRT Seniors Housing facility to meet the needs of the local community. The development is consistent with the underlying intent of the development standard as noted, and the objectives for development in the zone, as noted.

Does contravening the development standard raise any matters of significance for the State or regional environmental planning?

No, contravening the development standard in this case does not raise any matters of State or Regional planning significance.

Is the objection well founded?

For the reasons outlined in the previous sections above, the objection is considered to be well founded in this particular instance. Granting an exception to the development standard can therefore be supported in the circumstances of the case.

The proposed development will be consistent with the outcomes envisaged in the zoning and policy framework. The development is also compatible with the relevant objectives specified in Section 1.3 of the EPAA 1979.

Conclusion

This Clause 4.6 Variation Request has been prepared to support a development application for a Residential Seniors Housing Redevelopment at 17A Murrarar Road, Towradgi. This request satisfies the requirements of Clause 4.6 of the Wollongong Local Environmental Plan 2009 (WLEP 2009) and demonstrates that compliance with the standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify varying the standard in this instance.