

Clause 4.6 Variation Request to Clause 40(4) Building Height of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

1.0 Introduction

This amended Clause 4.6 variation request has been prepared to accompany revised plans for the development of a Seniors Housing on land at 3 Central Road, Avalon Beach.

Clause 4.6 of the Pittwater Local Environmental Plan 2009 (LEP) provides for the variation of development standards in respect of a particular development proposal. In particular, Clause 4.6(3) prescribes:

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

This document herein has been prepared in accordance with Clause 4.6(3), in relation to the proposed breach of the building height development standard.

2.0 Development Standard to be varied

The proposal seeks a variation to the development standard contained within Cl. 40(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (henceforth referenced as Seniors SEPP).

Clause 40 Development Standards – minimum sizes and building height

(4) Height in zones where residential flat buildings are not permitted.

If the development is proposed in a residential zone where residential flat buildings are not permitted:

- (a) the height of all buildings in the proposed development must be 8 metres or less, and
- (b) a building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and

Within the Seniors SEPP, height is defined as:

Height in relation to a building, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

Extent of Requested Variation

In relation to clause 40(4)(a), the maximum height of the proposed building is 8.99m where the lift overrun is located. This represents a variation from the requirements of the Seniors SEPP of 0.99m or 12.375%. It is noted that the lift overrun makes up the only non-compliant element of the building, noting that definition of height is the 'the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point'.

In relation to clause 40(4)(b), the proposed development proposes a 3-storey element to Patterson Lane and the adjoining property at 5 Central Road, along a small portion of the eastern and western elevations.

3.0 Justification for Contravention of the Development Standard

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by clause 4.6(3).

Clause 4.6(3) prescribes that:

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating: -

- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) That there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(3)(a) 'unreasonable or unnecessary in the circumstances of the case'

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are five different ways in which an objection to a development standard may be well founded. This is further detailed in Initial Action where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies at least *one* of the five tests established in *Wehbe*, as such compliance with the building height standard is unreasonable and unnecessary in the circumstances of the case.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

The Seniors SEPP building height development standard is not accompanied by specific objectives, as such this test is not applicable to this particular standard.

Test 3 - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

In our opinion, the underlying purpose of Clause 40(4)(a) and Clause (4)(b) is to ensure seniors housing development maintains a scale and form that is consistent with surrounding residential development. The below provides a discussion on whether the proposed variations to Clause 40(4)(a) and Clause (4)(b) of the Seniors SEPP are unreasonable or unnecessary in the circumstances of the case.

Clause 40(4)(a)

The lift overrun makes up the only non-compliant element of the building, noting that definition of height is the 'the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point'. It is noted that a significant portion of the building remains compliant with the building height development standard of 8m, maintaining consistency with the height of surrounding residential development located within the R2 Low Density zone.

The lift and resultant overrun provides a necessary level of access for residents, as it provides equitable access to all areas of the building. Notwithstanding the necessity of the lift, the non-compliant element is well setback from the extremities of the building, thus would result in a negligible impact to adjoining properties

When having regard to the above, requiring strict compliance would prevent equitable access and is contrary to the aims of the SEPP, which seeks to supply and diversity of residences that meet the needs of seniors or people with a disability.

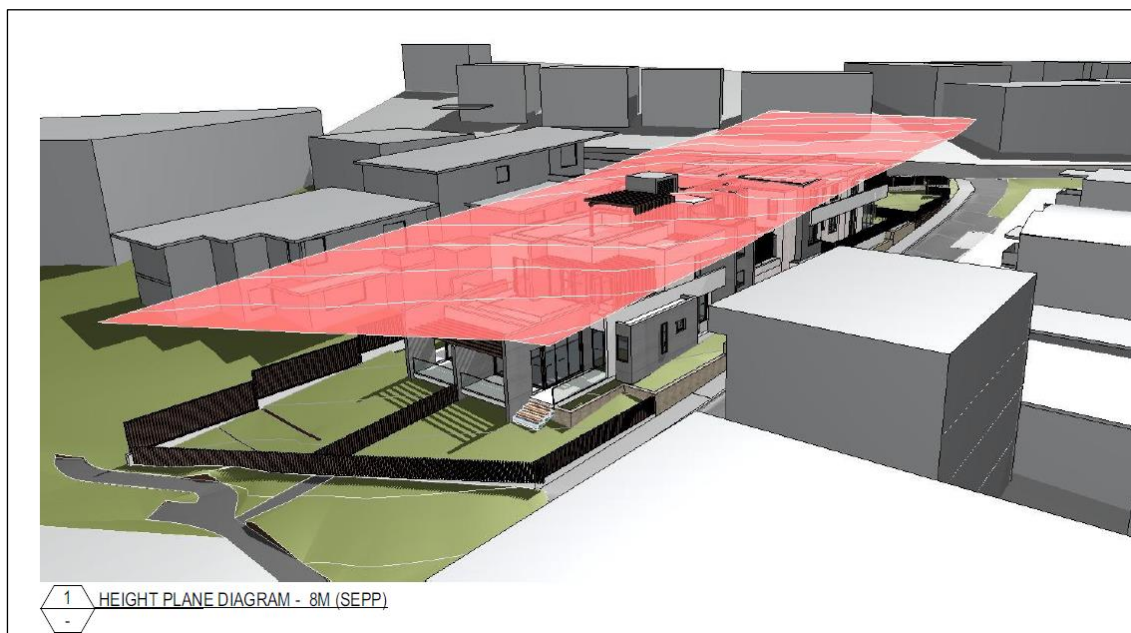


Figure 2 – Height plane diagram showing limited extent of variation, noting that the height exceedance is limited to the lift overrun only.

Clause 40(4)(b)

The non-compliant portion of the building occurs along only a small portion of the eastern and western elevations.

Despite the variation, the proposal provides a scale and form that is consistent with residential development surrounding the subject site.

The 3-storey element presenting to Patterson Lane, as well as the residential units at No. 5, largely occurs where the basement carpark is located, noting that the minor protrusion of the basement above existing ground level occurs only as a result of the topography of the site.

The extent of non-compliance on the eastern and western elevations is very minor, noting that the built form will not present as a three storey building when viewed from Patterson Lane or surrounding residential units to the west of the site. The appearance of the basement is reduced through the application of varied materials and finishes, as well as stepped retaining walls with high-quality landscaping.

The site is located directly opposite an existing 4-storey apartment building (65 Old Barrenjoey Rd) with vehicular access from Patterson Lane (see Figure 3). This laneway also provides access to a number of modern 3-storey apartment buildings presenting to Old Barrenjoey Rd. On the corner of Central Road is the Avalon Ambulance Station, which is an imposing circular brick building in the vicinity of the subject site. To the west of the subject site is a multi-level residential development, which is of a comparable scale to the proposed development.

As described above, the proposed variation meets the underlying purpose of the Clause 40(4)(b), as the scale of the proposed development is consistent with surrounding development, as such strict compliance with Clause 40(4)(b) is unnecessary in the circumstances of the case.

Clause 4.6(3)(a) ‘sufficient environmental planning grounds to justify contravening the development standard’.

The below provides a discussion on whether there are sufficient environmental planning grounds to justify contravening Clause 40(4)(a) and Clause (4)(b) of the Seniors SEPP.

- A review of the plans, supporting contextual information and site visits indicate that the height of the development does not result in the buildings dominating either the streetscape or the parklands to the south. More specifically, the development presents as a two-storey building to the Central Road frontage.
- The built form has been designed in response to the site’s topography which falls consistently from the street frontage to the parkland at the rear. The proposed stepped design limits the extent of height non-compliance to the lift overrun only.
- The proposal offers significant design variation to the side elevations, resulting in an articulated form which steps away from the lot boundaries into the middle of the site. Length of walls above ground level are modest, with western-facing walls limited to approximately 8m and laneway-facing walls to between 10 and 12m. Side boundary setbacks vary from 1m to 3.1m on the western elevation and from 3.25m to 4.6m on the Patterson Lane elevation. Further recessing is provided with the terraces and balcony elements in the corners of each building.
- The relatively modest building footprint ensures access to sunlight and ventilation both in the subject development and neighbouring buildings.
- Retaining walls and timber fencing along the site’s eastern and western boundaries reduces the overall appearance of height visible from the adjoining property. Variation in materials and finishes further reduces the overall impact of height to this property.
- The adjoining western property is not expected to be adversely impacted upon with regard to privacy and amenity, owing to the use of high-level windows, opaque glass windows and timber screening on balconies.
- The site’s development context offers significant variation in uses, built form, and height, with a number of buildings presenting with a scale and height greater than that of the proposed development. Specifically, the following properties should be considered in the assessment of this variation request:
 - The rear portion of the site is directly opposite an existing 4-storey apartment building (65 Old Barrenjoey Rd) with vehicular access from Patterson Lane (see Figure 3). This laneway also provides access to a number of modern 3-storey apartment buildings presenting to Old Barrenjoey Rd. On the corner of Central Road is the Avalon Ambulance Station, which is an imposing circular brick building in the vicinity of the subject site. To the west of the subject site is a multi-level residential development, which is of a comparable scale to the proposed development.



Figure 3 – Rear of apartment building at 65 Old Barrenjoey Rd.

- Close to the site in Central Road is the Maria Regina Catholic Primary School, which also presents with a 3-storey building to the street frontage (see Figure 4). Other residential properties located opposite the site to the north take advantage of the height of the land and thus are reasonably dominant in the streetscape.



Figure 4 – Maria Regina Catholic Primary School in Central Road

- Adjoining the site to the west is a 2-3 storey apartment building. Further to the west is the Maria Regina Catholic Church, which presents with dominant brick buildings to Central Road with significant height towards the rear of the site. These are substantial buildings providing a varied streetscape form in the immediate vicinity of the subject site.
- The proposal offers an appropriate height response to the Central Road frontage. In doing so, the development achieves the aim of Clause 40 4(b), being to avoid an abrupt change in the scale of development in the streetscape.

- The recessed nature of the height variation ensures that it will not be visible from the public domain and will therefore not be responsible for any unreasonable streetscape impacts.
- The height will not be responsible for any unreasonable overshadowing or privacy impacts to neighbouring properties.
- The height variation will not obstruct significant views.
- The overall bulk, scale and appearance of the proposal is consistent with and complementary to the site's varied development context.
- The height variation has been well integrated into the high-quality and articulated design aesthetic of the built form and will positively contribute to locality.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.

Other Matters for Consideration

Clause 4.6(4)(a)(i)

The applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3).

Assessment: The above section of this report provides an appropriate response to the requirements of sub-clause (3).

Clause 4(a)(ii)

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

It is noted that the Seniors SEPP building height development standard is not accompanied by specific objectives

Compliance with the objectives of the R2 Low Density Residential zone is demonstrated below.

Objective 1 - *To provide for the housing needs of the community within a low density residential environment.*

Response – The proposed seniors housing development provides 7 independent living units for seniors, which will meet the housing needs of the community where senior residents are looking to downsize and wanting to remain in the area.

Objective 2 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Response - The proposed development will not hinder the attainment of other land uses to meet the day to day needs of the residents.

Objective 3 - *To provide for a limited range of other land uses of a low intensity and scale, compatible with surrounding land uses.*

Response – The proposed development provides 7 independent living units for seniors which is of low intensity and scale, as well as compatible with surrounding residential uses.

As described above, the proposal is in the public interest because it is consistent with the relevant objectives of the zone.

Clause 4.6(5)(a)

In deciding whether to grant concurrence, the Director-General must consider

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

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979 (Act).

The proposed height variation allows for the increase of supply and diversity of seniors housing within a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

The proposed height is therefore consistent with the aim of the Seniors SEPP and the Act.

Clause 4.6(5)(b)

(a) the public benefit of maintaining the development standard.

Assessment: There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

Clause 4.6(5)(c)

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above.

4.0 Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 3 Central Road, Avalon and is requested to be looked upon favourably by the consent authority.

Urban Strategies

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