

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

1.0 Introduction

This Clause 4.6 variation request has been prepared to accompany a development application for the development of a Seniors Living Facility on land at 3 Central Road, Avalon Beach.

Clause 4.6 of the Pittwater 2009 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by an environmental planning instrument, provided that the development standard is not expressly excluded from the application of Clause 4.6. This clause aims to provide an appropriate degree of flexibility to the application of particular development standards so that better development outcomes may be achieved in certain situations.

This clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734.

Clause 4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows:
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development 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.
- (4) Development consent must not be granted for development that contravenes a development standard unless:
 - (a) the consent authority is satisfied that:
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by sub-clause (3), and
 - (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, and
- (b) the concurrence of the Director-General has been obtained.
- (5) 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, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director General before granting concurrence.

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
Note. Development consent for development for the purposes of seniors housing cannot be refused on the ground of the height of the housing if all of the proposed buildings are 8 metres or less in height. See clauses 48 (a), 49 (a) and 50 (a).
- (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
Note. The purpose of this paragraph is to avoid an abrupt change in the scale of development in the streetscape.
- (c) a building located in the rear 25% area of the site must not exceed 1 storey in height.

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 cl.40(4)(a), the proposed building, at its highest point, is 9.91m in height from the ceiling of the topmost floor to the ground level immediately below that point. This represents a variation from the requirements of the Seniors SEPP of 1.91m.

In relation to cl.40(4)(b), the proposed development presents with 3-storey elements to both Patterson Lane and the adjoining property at 5 Central Road.

3.0 Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), as itemised below:

Clause 4.6(3)(a)

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Assessment: It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

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, as indicated in Figure 1.



Figure 1 – Presentation of development to Central Road frontage

- The development presents with two distinct buildings separated by a generous central landscaped space. This 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 a small portion of each building, as demonstrated in the height plane diagram in Figures 2.

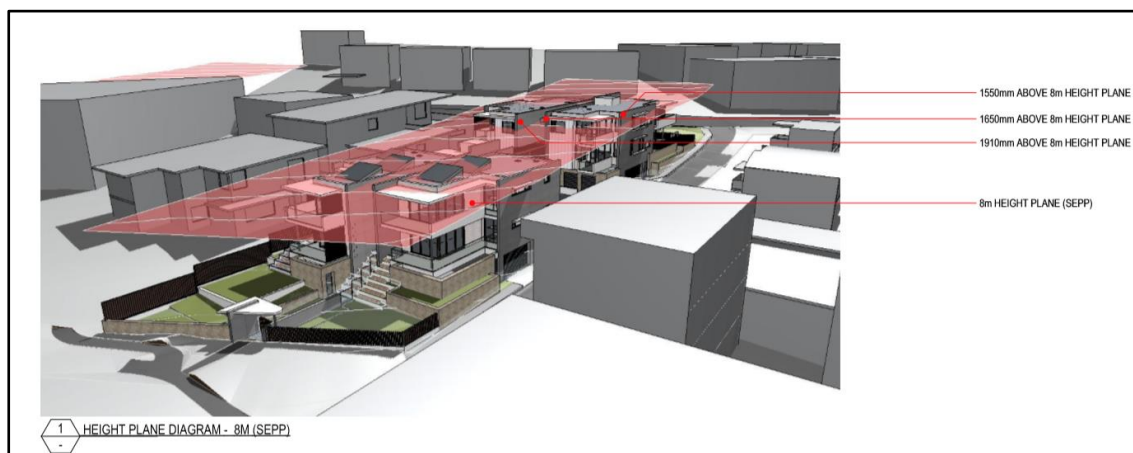


Figure 2 – Height plane diagram showing limited extent of variation

- The proposal offers significant design variation to the side elevations, resulting in a ‘layered’ appearance that 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 2.5m on the western elevation and from 1.5m to 3.25m on the laneway 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.
- The most visible 3-storey element presenting to Patterson Lane occurs at the entries to the basement car parks. The appearance of the ground floor levels of each building is reduced through the application of varied materials and finishes, as well as stepped retaining walls with high-quality landscaping.
- Retaining walls and timber fencing along the site’s western boundary 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 anticipated in the Pittwater LEP (as visible in the height plane diagram in Figure 2). 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.



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.
- Adjoining the site to the south is Dunbar Park. This park is heavily vegetated along its northern perimeter with the subject site, thus visibility of the rear elevation of the development will be reduced (see Figure 5). In response to Council’s prelodgement advice, the proposal has been set back from the site’s rear boundary to permit the provision of improved ground level terraces and associated landscaping.



Figure 5 – View of southern elevation of proposed development from Dunbar Park

- Despite the non-compliance along the length of the lot, 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.

Based on the contextual circumstances of the subject site, the specific characteristics of the subject land and the high-quality and responsive design of the proposed development, it is considered that strict compliance with the Seniors SEPP height standard is unreasonable and unnecessary in this instance.

Clause 4.6(3)(b)

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the building height development standard, which include:

- 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.

Assessment: The above assessment demonstrates that the proposed height satisfies the purpose of the control and achieves the overall aim of the Seniors SEPP which is:

(1) This Policy aims to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- (b) make efficient use of existing infrastructure and services, and*
- (c) be of good design.*

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation. Given that the proposal will not result in any adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

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)

(b) 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

December 2019