



C O N S U L T I N G

Request to Vary Clause 4.3 Height of Buildings in Tweed Local Environmental Plan 2014

Seniors Housing, TriCare Hastings Point

Prepared for TriCare (Hastings) Limited

By Planit Consulting Pty Ltd

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1 Site and Proposed Development

1.1 Site Description

The subject site comprises a single lot, legally referred to as Lot 1 DP 786570. The site is commonly known as 87-89 Tweed Coast Road, Hastings Point (refer to **Figure 1**) and includes an area of approximately 37,970m².

Located at the southern edge of the Hastings Point urban settlement, the site is irregular in shape and has a 164m frontage to Tweed Coast Road. The site is adjoined on 3x sides by public reserve, whilst an existing Shell service station and Tweed Coast Road form the eastern boundary extents.

The site is currently improved by 'Stage 1' of a Senior Housing development approved in May 2007. Stage 1 comprises 91 independent living units across three buildings, each with basement car parking. The remaining approved stages, which comprised 94 supported living units and 67 residential aged care beds across 4 buildings, has not been constructed to-date, notwithstanding a valid development consent.

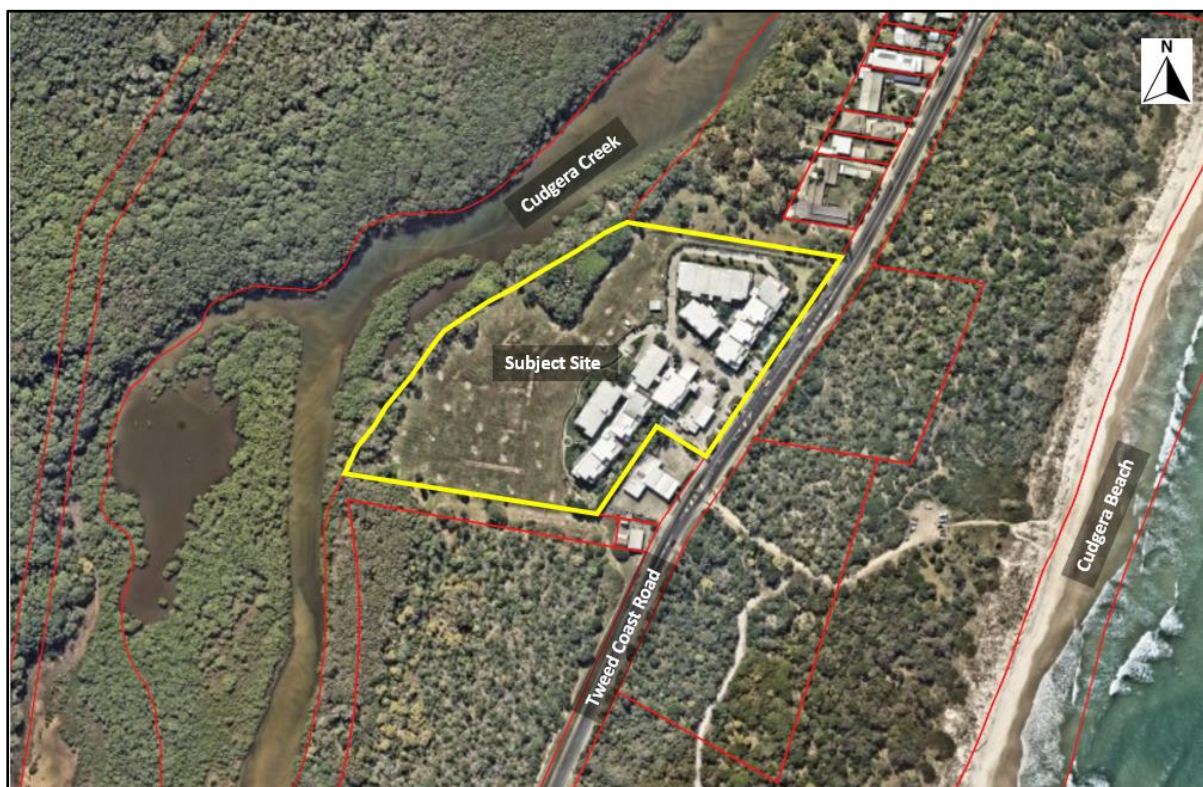


Figure 1 - TriCare Hastings Point Development Site (Source: Nearmaps)

1.2 Proposed Development

The TriCare Hastings Point Development seeks a logical and orderly extension of the existing development and community established on the site, being Stage 1. The proposed development extends the sites offering in an alternate format to the existing consent, to better reflect current best practice and care requirements.

The proposed development comprises both independent living units (ILUs) and a residential aged care home (RAC) home, that will be supported by a range of other services.

Specifically, the proposal includes:

- A 47 place RAC (Building D) comprising:
 - individual private rooms with ensuites facilities;
 - shared dining, lounge and sitting rooms;
 - café for residents;
 - kitchen;
 - serveries;
 - nurses stations;
 - offices;
 - staff room and facilities;
 - waste room; and
 - loading bay.
- 51 ILUs split across 3 buildings, including:
 - 24 ILUs in Building E
 - 18 ILUs in Building F
 - 9 ILUs in Building G.

Complimenting the ILUs and RAC buildings, the development offers a range of communal facilities for entertainment, health, active and passive recreation. These facilities include:

- Bowling Green and pavilion with bowls store, amenities, kitchen and covered seating area;
- Indoor swimming pool and spa, with amenities and viewing area;
- Perimeter walking trail; and
- Landscaped gardens.

The proposed development will provide an important contribution to supporting the need for seniors accommodation and care within the Hastings Point locality and wider Tweed Coast.

No changes to the existing Stage 1 development are proposed.

The proposed development will provide an important contribution to seniors housing opportunities within the Hastings Point locality and wider Tweed Coast. The proposed development has been designed ensuring continuity and cohesion across the site. Finally, upholding an overarching character of buildings positioned within a wider native landscape, the proposed development seeks suitable integration into the Hastings Point settlement.

Under the *Environmental Planning and Assessment Act 1979*, development consent for the proposal is being sought by way of a State Significant Development (SSD) planning pathway, given the project has an estimated development cost of greater than \$20 million and comprises both independent living and high care residential facilities.



Figure 2 – Masterplan (Source: Arqus Design)

2 Planning instrument, development standard and proposed variation

2.1 What is the environmental planning Instrument you are seeking to vary?

The subject site is identified within the Land Application Map of the *Tweed Local Environmental Plan 2014* (Tweed LEP 2014), which prescribes maximum height of buildings, maximum floor space ratio, minimum lot size and other like development standards for the subject site.

Of note, *State Environmental Planning Policy (Housing) 2021* (SEPP (Housing) 2021) is also an applicable environmental planning instrument, including provisions that establish bonus floor space and bonus height outcomes for qualifying seniors housing proposals.

Recent amendments to SEPP Housing 2021 (effective September 2025) now enable seniors housing developments to access bonus height provisions even where the proposal does not seek or achieve an increase in floor space ratio. As a result of this amendment, the proposal is entitled to a bonus height allowance of 3.8 metres above the maximum height permitted under the Tweed LEP 2014, increasing the applicable height standard from 8 m to 11.8 m.

The development has been designed to make use of this SEPP bonus; however, the maximum proposed building height is 12.205 m, which continues to exceed the development standard (as adjusted by the SEPP bonus). Therefore, notwithstanding the application of the SEPP bonus height provision, a variation to the maximum height of buildings development standard under clause 4.3 of the Tweed LEP 2014 remains necessary. Accordingly, this clause 4.6 request is confined to seeking a variation of the height of buildings standard within the Tweed LEP 2014.

2.2 What is the site's zoning?

The TriCare Hastings Point Development site is zoned part R1 General Residential (refer to **Figure 3**).

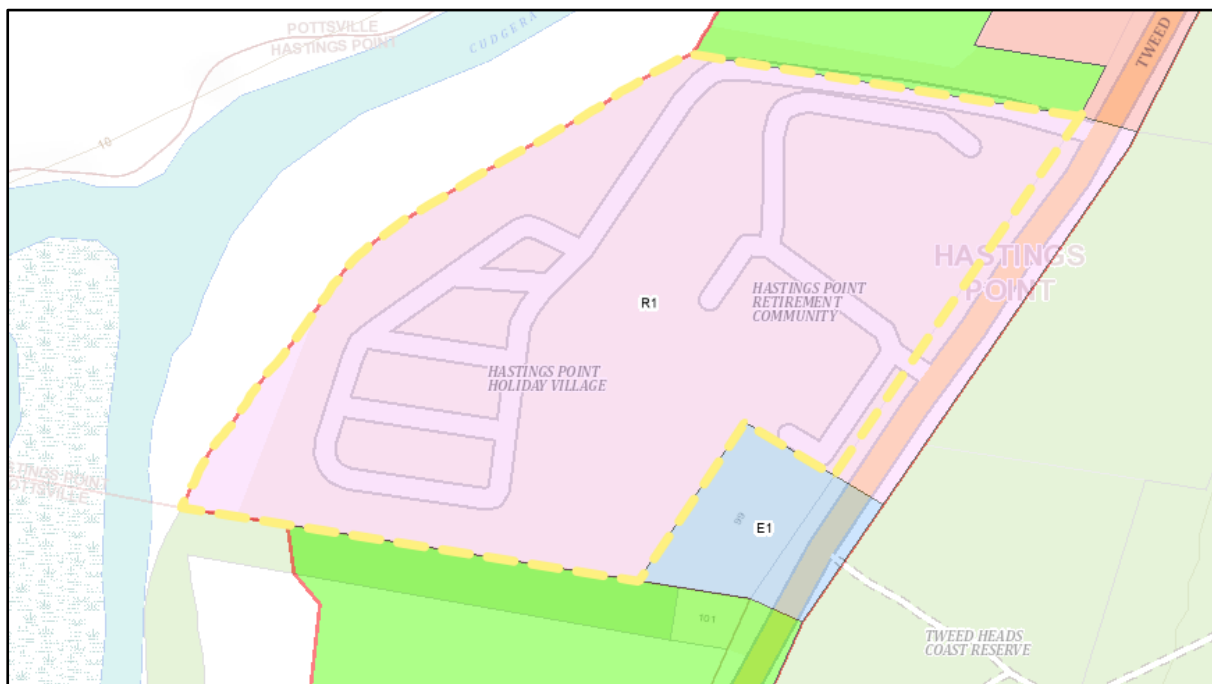


Figure 3 - Land Zoning Map (Source: NSW Planning Portal Spatial Viewer)

2.3 What is the development standard to be varied?

This request seeks a variation to 'Clause 4.3 Height of buildings' of the Tweed LEP 2014. For ease of reference, Clause 4.3 of the Tweed LEP 2014 states:

4.3 Height of buildings

(1) The objectives of this clause are as follows –

- (a) to establish the maximum height for which a building can be designed,
- (b) to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,
- (c) to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,
- (d) to encourage greater population density in less car-dependent urban areas,
- (e) to enable a transition in building heights between urban areas comprised of difference characteristics,
- (f) to limit the impact of the height of a building on the existing natural and built environment,
- (g) to prevent gross overshadowing impacts on the natural and built environment.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

2.4 What is the type of development standard?

Development standard 'Clause 4.3 Height of buildings' under the Tweed LEP 2014, is a numeric standard.

2.5 What is the numeric value of the development standard in the environmental planning instrument?

Under the Tweed LEP 2014, the TriCare Hastings Point Development site is subject to a maximum height limit of 8m as shown on the Height of Buildings Map (refer to **Figure 4**).



Figure 4 - Height of Buildings Map (Source: NSW Planning Portal Spatial Viewer)

2.6 What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The TriCare Hastings Point Development comprises 1x RAC building and 3x ILU buildings. As outlined above, the site is subject to a maximum building height of 8 m under the Tweed LEP 2014, which may now be increased to 11.8 m through application of the 3.8 m bonus height allowance permitted under Clause 87 of the Housing SEPP.

The proposal seeks an exceedance of the maximum building height enabling buildings up to a maximum height of 12.205m from the existing ground level. While this is largely consistent with the scale of the existing approved built form on the site, it exceeds the applicable LEP maximum building height by bonus-adjusted building height standard of 11.8 m by 0.405 m (approximately 3.43%).

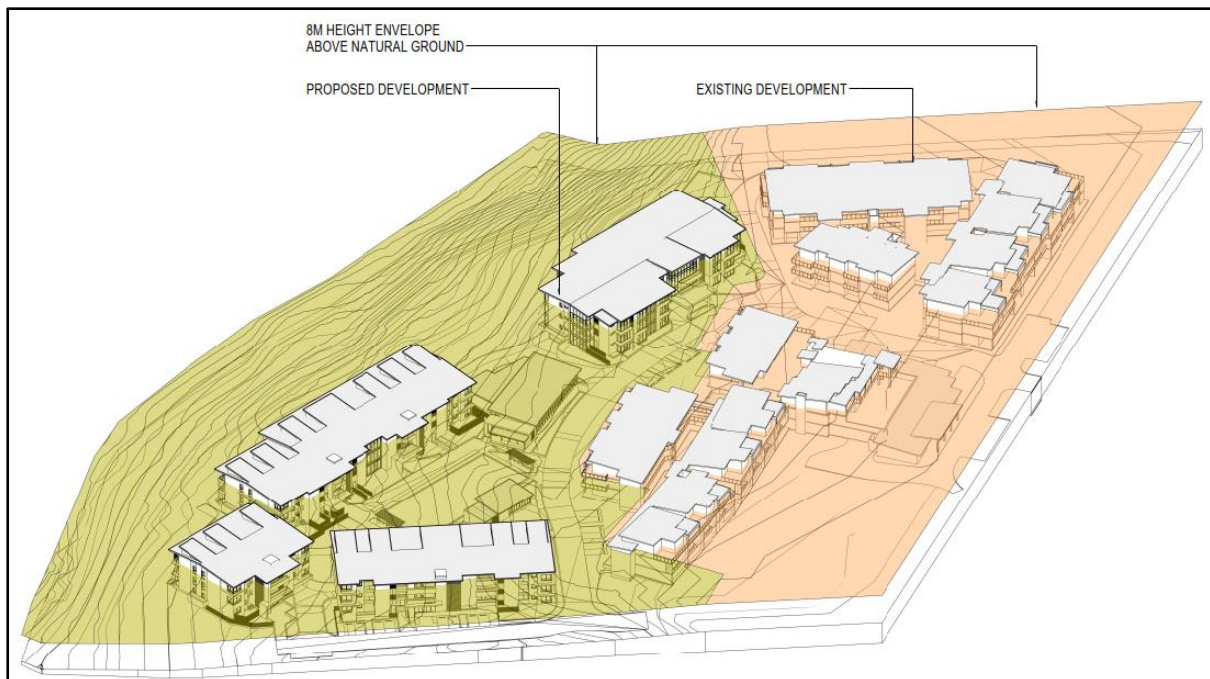


Figure 5 – Aerial View – 8m Building Height Envelope (Source: Arqus Design)

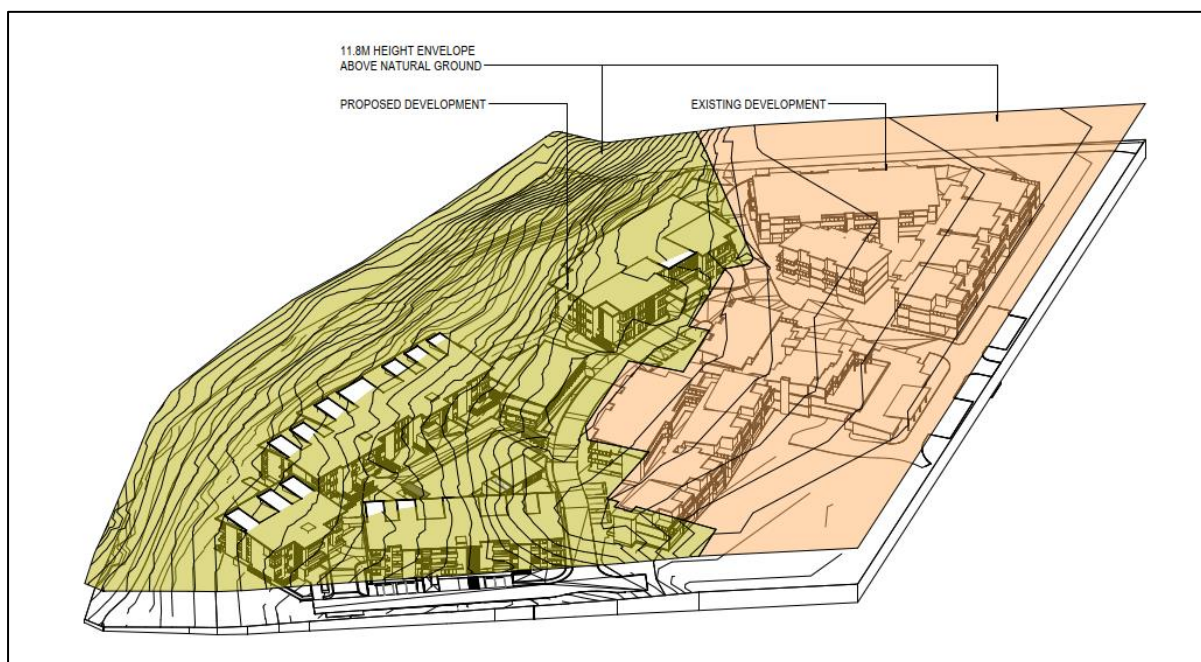


Figure 6 – Aerial View – 11.8m Building Height Envelope (Source: Arqus Design)

It should be noted that the maximum building height was modified by Tweed Shire Council post approval of the existing development. This LEP Amendment (being Amendment 11 of the Tweed LEP 2014), applied to both Hastings Point and Pottsville localities, and was not site-specific. The existing approved built form includes a maximum building height of about 11.5m.

Table 1 and **Table 2** below identify the maximum height proposed for each building and quantifies the extent of variation above the 8m and 11.8m building height standards. The greatest exceedance is highlighted in bold.

Table 1 – Maximum permitted and proposed building heights (Source: Arqus Design)

Building	Maximum Permitted Building Height (m) + SEPP bonus 3.8 m	Maximum Height from Existing Ground Level (m)	Variation (m) / Extent of Variation (%)
D	8m	12.205m	4.205 (52.5%)
E	8m	11.912m	3.912m (48.9%)
F	8m	11.580m	3.580m (44.7%)
G	8m	11.920m	3.920m (49.0%)

Table 2 – Bonus permitted height and proposed building heights (Source: Arqus Design)

Building	Maximum Permitted Building Height (m) + SEPP bonus 3.8 m	Maximum Height from Existing Ground Level (m)	Variation (m) / Extent of Variation (%)
D	11.8m	12.205m	0.405m (3.43%)
E	11.8m	11.912m	0.122m (0.95%)
F	11.8m	11.580m	-0.22m Complies
G	11.8m	11.920m	0.120m (1.02%)

As per **Table 1** the greatest variation occurs for Building D. Being a Residential Aged Care Facility, Building D is a class 9c building under the Building Codes of Australia, while the other buildings are

class 2. Class 9 buildings typically require greater floor to floor heights in response to the applicable National Construction Code requirements, contributing to the modest exceedance.

By way of background, the existing Hastings Point Retirement Village (DA06/0413 as modified) was assessed and determined under the *Tweed Local Environmental Plan 2000* (Tweed LEP 2000) framework. At that time, the Tweed LEP 2000 established the maximum building height for the site was 3 storeys. Schedule 1 of the Tweed LEP 2000 defined a maximum storey height for residential uses at 4.5m, translating to an overall height of up to 13.5m for a 3-storey development.

Also relevant at the time, Development Control Plan 48 which was adopted by Council in 2004 (and later repealed in 2008), sought to provide more detailed but flexible guidance regarding building heights. Under Section 2.2 – Acceptable Solutions, building height performance criteria were established identifying an 11m height limit for 3-storey residential development, measured from finished ground level. Though, Section 1.6 of the DCP enabled Council to approve variations of the provision, where Council was satisfied that such a variation would have only minor impact and was consistent with the aims and objectives of the plan.

The existing (Stage 1) development comprises 3x 3-storey buildings with a maximum building height of approximately 11.5m. The remaining stages, comprise an additional 4 buildings of equivalent height. While these buildings have not been built, consent to do so remains available within DA06/0413 (as modified).

2.7 Visual representation of the proposed variation (if relevant)

Building elevations and section plans for each building are provided in the **Architectural Plans** prepared by Arqus Design which are enclosed as **Appendix A** to the Environmental Impact Statement (EIS).

For ease of reference the building elevations for each building are also provided in **Attachment A** of this report. Building perspectives within the **Architectural Plans** have not been replicated into this report due to the scale of the images.

Notwithstanding, the **Architectural Plans** have been prepared to demonstrate key considerations expressed through this report. This includes 3D views of the development in the context of the following:

- Existing 8m height plane;
- Non-discretionary 9.5m height plane (as per clause 84(2)(c)(i) of the Housing SEPP); and
- Bonus height of 11.8m permissible as per clause 87 of the Housing SEPP.

This includes the sheets noted in **Table 3**.

Table 3 – Elevation and Section Plans (Source: Arqus Design)

Aspect	Elevation & Section Plans
Overall Site	DA-2-31, DA-2-32, DA-2-33, DA-2-34
Building D	DA-D1-07, DA-D1-08
Building E	DA-E-07, DA-E-08
Building F	DA-F-07, DA-F-08
Building G	DA-G-07, DA-G-08

It is evident when reviewing these plans, that the proposed built form is consistent and compatible with the existing development established on the site under DA06/0413 (as modified).

Furthermore, given the deliberate siting of the proposed buildings centrally on the site and 'behind' the existing buildings as experienced from the streetscape, there is no direct line of site to the proposed buildings from key public viewing locations including Tweed Coast Road. Similarly, the proposed built form will not alter or impact the visual entry to Hastings Point from the south as demonstrated in the Visual Impact Assessment prepared by Envisage and enclosed as **Appendix AK** to the EIS.

3 Justification for the proposed variation

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

3.1.1 Are the objectives of the development standard achieved notwithstanding the non-compliance?

Objective (a) - to establish the maximum height for which a building can be designed.

The Tweed LEP 2014 establishes a maximum height limit of 8m for the site, which when read together with the applicable 3.8-metre bonus height allowance under the *Housing SEPP*, results in an effective maximum building height of 11.8 metres.

Clause 4.6 of the Tweed LEP provides scope for this standard to be varied, where it can be justified. In this instance, the proposal exceeds the bonus-adjusted standard by only 0.405 metres at its greatest point, representing a minor (3.43%) departure.

The objective of establishing an appropriate maximum design height is still achieved because:

- The proposal results in a clearly defined and measurable height envelope, which can be secured by condition of consent.
- The buildings exhibit a height, scale and bulk consistent with the existing and validly approved built form on the site (approximately 11.5 m high under DA06/0413 as modified).
- The proposed heights appropriately respond to site conditions, functional design requirements (including NCC-driven floor-to-floor heights for the RAC building), and the established character of the retirement village.

Accordingly, strict enforcement of the standard is unnecessary to achieve the purpose of the development standard. The exceedance in height does not undermine the intent of the control, and the proposal continues to satisfy Objective (a) notwithstanding the non-compliance.

Objective (b) - to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity.

Objective (b) is identified as containing 2x key requirements, being firstly a relationship with the land's capability, and secondly, maintaining appropriate urban character and amenity. These matters are discussed further below.

Relationship to Land Capability

The subject site is identified as distinct from the majority of land within Hastings Point locality due to its generous site area (approximately 37,970m²). In comparison, a lot size range of ~700 – 900m² prevails for the remainder of urban zoned land in the 'Southern Precinct' of Hastings Point. In addition, the site is also separated from residential land to the north by adjoining Crown Reserve. This reserve, which also shrouds the site and forms a distinct 'green break' to Pottsville in the south, provides natural landscape buffers around the site and shields the proposed development area from view from public viewpoints other than Tweed Coast Road.

Within the site, the land is largely cleared of native vegetation and the development is sited on existing cleared areas containing exotic dominated grassland. Accordingly, whilst asset protection zones are necessary to mitigate bushfire threat, the subsequent development footprint is:

- Sizeable;
- Free of ecological constraints; and
- Avoids any High Environmental Value attributes.

The development area is not mapped as flood liable land. The development area is also largely above the mapped Probable Maximum Flood (PMF) level. In addition to 'shelter in place' opportunities,

permanent high level road/pedestrian evacuation route(s) above PMF level extent along Tweed Coast Road, to the nearest emergency evacuation centre(s) at Pottsville Beach Public School is available.

The subject site benefits from access to all essential services, likewise, no limitation has been identified to accommodating the proposal within the infrastructure network.

Whilst the subject site is identified as affected by Class 3 Acid Sulfate Soils, this biophysical attribute is not identified as prohibitive, or a bar to the land's use for urban purposes. Further, environmental studies have been undertaken to inform the design and the EIS demonstrates the proposal can be accommodated by the subject site without resulting in unacceptable adverse environmental, economic or social impacts.

Acknowledging the above, the subject site includes a significant site area within a wider urban context, is connected to all urban services, is void of ecological and flooding constraints. Accordingly, no bar to the land's underlying capability for urban purposes has been identified, rather, the land's capability would be underutilised within Tweed's growth and housing context by limiting development to the 8m building height prescribed.

Maintenance of Appropriate Urban Character and Level of Amenity

As previously discussed, the scale of the site has enabled significant setbacks to be incorporated along the northern, southern and western boundaries, providing distinct visual separation and screening by adjoining native landscape. In this regard, the existing character of the subject site, is essentially confined to:

- The visual prevalence and built form appearance along Tweed Coast Road; and
- Landscaped edges to its remaining boundaries.

The proposal does not notably alter either of these character attributes.

A Visual Impact Assessment has been undertaken to determine impacts on public domain views including the southern entry to Hastings Point. The analysis is presented in **Appendix AK** of the EIS prepared by Envisage.

The Visual Impact Assessment confirms that there will be no change to the current view from the southern entry to Hastings Point or from Cudgera Creek Bridge, the 2 main potential viewpoints to the site.

The proposed buildings being similar in height, bulk and scale to the existing buildings on site which the Visual Impact Analysis suggest are not overly visually dominant within the current setting of Hastings Point. In addition, the analysis confirms through survey accuracy that the existing vegetation along Tweed Coast Road will block any views of the proposed development from Tweed Coast Road (refer to **Figure 7** & **Figure 8** below).



Figure 3-1 - Concealed Views Facing North (Source: Envisage)



Figure 3-2 - Concealed Views Facing South (Source: Envisage)

In terms of view loss, the Visual Impact Analysis indicates that the most valued views within the surrounding area are towards the coast and coastal headlands. The location of the proposed development has been tested by survey and confirmed to not result in any loss of views towards the

coast internally and external to the site from both public and private viewpoints. Some view loss to the hinterland from the existing Stage 1 development within the site occurs, though this is an existing approved outcome for the site and the loss of view is less under the proposal than currently approved.

In summary of the findings within the Visual Impact Assessment, the proposal, including its building height particulars, maintains an appropriate urban character and level of amenity as:

- The proposed height variation and built form outcome, including buildings up to 3 storeys, is consistent with the approved Seniors Housing Community Village on the site, including the existing (Stage 1) development as constructed and established community expectations for development on the site;
- Impacts associated with building height such as amenity, overshadowing, visual impact and visual privacy are all demonstrated through the various technical studies to be effectively managed through setbacks, siting and orientation of the proposed buildings;
- All buildings have been designed to reflect the coastal landscape aesthetic of Hastings Point and provide a contemporary design considerate of and complementary to the design of the existing Stage 1 development; and
- Building articulation further reduces the scale of the built form providing opportunities to define building addresses and achieve a human scale compatible with the existing urban context.

Considering the above, the proposed building heights appropriately relate to the site's capability to provide and maintain an appropriate urban character and level of amenity. Given the site's scale, context, existing approved built form, and demonstrated capacity to comfortably accommodate three-storey development, strict adherence to the height standard is considered unreasonable and unnecessary to achieve the objective and would not result in any improved planning or amenity outcome.

Objective (c) - to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities.

The Tweed Local Government Areas urban settlement involves a range of centres with distinct roles and functions, drawn from their location and biophysical attributes. These characteristics have resulted in higher order centres being realised in Tweed Heads, Tweed Heads South, Kingscliff and Murwillumbah. Expressed through the Tweed LEP frameworks, the more urbanised structure of the Tweed Heads locality includes heights of up to 45m/15x storeys in height, whilst portions of Kingscliff possess a 13.6m height provision (equating to up to 4x storeys) as well as land unrestricted in its building height (being the Tweed Valley Hospital site).

Specific to Hastings Point and the wider Tweed Coast, urban land is largely characterised by residential-led development, up to 4x storeys in building form. This is expressed in the Tweed LEP 2014 through building heights ranging from 8 – 13.6m. These heights reflect the urban nature of the Tweed Coast's settlements, as well as their interrelationship with higher order centres, such as Kingscliff. To realise the established vision as a coastal settlement, the Hastings Point Locality Plan, as expressed through Section B23 of the Tweed DCP 2008, identifies building heights across its precincts (generally 2 or 3x storeys).

In considering the above, whilst taller buildings are sought than the mapped height provision specific to the subject site, the proposal is not identified as 'taller development' in the context of Hastings Point more broadly, nor the string of settlements along the wider Tweed Coast.

As detailed within section 3.5 of the EIS, all essential services and broader urban support facilities are available to the subject site. Specifically:

- Reticulated water infrastructure is available, and no trunk infrastructure upgrades or the like is identified as necessary to support the proposal;
- Reticulated wastewater infrastructure is available and the additional infrastructure demand is able to be accommodated within the Hastings Point Wastewater Treatment Plant network;
- Stormwater infrastructure is available, and discharge will be mitigated to less than the pre-development discharge rate with the installation of proposed infiltration pits;

- Electricity, NBN and telecommunications infrastructure is available, and no trunk infrastructure upgrades, or the like identified as necessary to support the proposal;
- Bus services are available, including a public bus stop (B603) located directly outside the site, serviced by regular routes that connect to Pottsville and other nearby centers. A private on-site bus service is also provided by Tricare, offering residents direct transportation to the Pottsville town centre and broader regional facilities;
- The Pottsville town center includes all required services for independent living units as specified under Clause 93(5) of the *State Environmental Planning Policy (Housing) 2021*;
- Local services are also embedded within the existing development, including on-site amenities such as a hairdresser, gym and café; and
- A service station is located directly adjacent to the site and a general store is located approximately 750m north of the site.

As previously identified, the Hastings Point locality and wider Tweed Coast community utilise higher order urban support services located in the Kingscliff locality, including but not limited to:

- Tweed Valley Hospital (A major referral and teaching hospital, providing a wide range of inpatient, day only and outpatient services in a brand new, state of the art facility);
- NSW Tafe Kingscliff Campus;
- Kingscliff Library;
- Tweed Regional Aquatic Centre – Kingscliff Centre, which provides heated indoor and outdoor pools;
- Kingscliff Community Hall; and
- Kingscliff Shopping Village, Kingscliff Health Medical Centre, specialist retail stores and office services.

The Kingscliff Town Centre is located approximately 13km north of the subject site, ensuring ready access to comprehensive urban support services.

In summary, the site is located within an established urbanised area, well supported by local and regional urban services. The building heights sought are not identified as comprising 'taller development' acknowledging the context of the LGA and Tweed Coast. Acknowledging the above, the proposal provides a logical extension of the established 3-storey built form character of the site and maintains alignment with the urban structure and service availability of the locality. Requiring a reduction of this height to achieve the stated objective would not improve planning outcomes and is therefore considered unreasonable and unnecessary.

Objective (d) - to encourage greater population density in less car-dependent urban areas.

The 2021 census recorded a resident population of 661 in Hastings Point, resulting in a population density of about 317 persons per km². Based on an average number of people per household of 1.7, the proposed development will increase the overall population density of Hastings Point to about 374 persons per km².

The site has a current built density of about 24 dwellings per hectare and an approved density under DA06/0413 (as modified) of about 49 dwellings per hectare, excluding the approved 67 bed RAC facility. The approved density increases to about 66 dwellings per hectare if the RAC beds are factored into the equation.

The proposed development will yield a reduction to the approved density resulting in an overall site density of about 42 dwellings per hectare.

Given the deliberate siting of the proposed buildings centrally on the site and 'behind' the existing buildings as experienced from the streetscape (Tweed Coast Road), there is no direct line of sight to the proposed buildings from key public viewing locations including Tweed Coast Road. Consequently, the proposed increase in density is not considered likely to result in an increased intensity or 'feel' of the place. An increase in intensity is mitigated through the placement of buildings, as well as the topography, intervening vegetation within the adjoining Crown Reserves, setbacks and compatibility of the built form with the existing Stage 1 development at the front of the site. That is, the proposed density will not result in or drive changes in the established built form on the site.

As outlined above, the existing Hastings Point Retirement Community includes on-site amenities such as a hairdresser, gym and café for residents. A service station is located directly adjacent to the site and a general store is located approximately 750m north of the site.

A public bus stop (B603) is conveniently located directly outside the site, serviced by regular routes that connect to Pottsville, Kingscliff and other nearby centres. TriCare also operates a private on-site bus service offering residents direct transportation to nearby centres. Both Pottsville and Kingscliff include all required services for independent living units as specified under Clause 93(5) of the *State Environmental Planning Policy (Housing) 2021*.

Dedicated pedestrian and cycling footpaths are also located along the front of the site, providing off-street connectivity to Pottsville and Kingscliff.

The proposal encourages increased population density in a manner that is supported by public transport, active transport, onsite services and nearby town centres. The proposed built form does not heighten the perceived intensity of the locality and remains consistent with the approved three-storey character of the site. Reducing height to comply strictly with the mapped LEP standard would not advance the objective and is therefore unnecessary and unreasonable.

Objective (e) - to enable a transition in building heights between urban areas comprised of different characteristics.

The subject site is distinct from most other land within Hastings Point due to its large lot size (approximately 37,970m²) and it is largely separated from the other residential land by adjoining Crown Reserve. Though, a single row of residential lots does extend to the north of the site, along Tweed Coast Road, which are characterised by a low density mix of one and two storey developments.

The transition in building heights between the site and adjacent low density residential lots has been established for over 15x years by the 3 storey residential flat building typology of the Stage 1 Hastings Point Retirement Village buildings.

The proposed buildings are of a similar height, bulk and scale to the existing development. The existing development is well established, and is not overly visually incongruent, or dominant within its setting. It is identified that the proposal would result in a further, and final built form character for the subject site, that is consistent with the established character.

No impact on the established characteristics is anticipated by the proposal on the visual experience from the public domain given the potential visibility is very limited.

The proposed buildings are of a similar height, bulk and scale to the existing development, which is not overly visually dominant, and does not present a stark contrast within its current setting in Hastings Point. Furthermore, the potential visibility of the proposal is very limited, due to surrounding landform, existing extensive native vegetation and intervening structures, including the existing three storey buildings of the existing Tricare development.

Given the above, compliance with the maximum height limit of the height standard would not result in any improved transition or urban design outcome. The existing and proposed buildings already achieve the objective, and strict adherence to the mapped standard is considered unreasonable and unnecessary..

Objective (f) - to limit the impact of the height of a building on the existing natural and built environment.

The proposed design is responsive to the environment and climatic conditions, with buildings centrally sited on existing cleared areas containing exotic dominated grassland and providing large setbacks to site boundaries to facilitate asset protection zones, landscaping and ecological restoration works.

As detailed previously, no notable restrictions to the subject sites capability to accommodate urban purposes has been identified. Specifically, the proposed buildings incorporate generous setbacks to existing natural environment areas with biodiversity value. Further, mitigation measures, such as an Acid Sulfate Soil Management Plan, have been pursued to limit the impact of the proposal on the existing natural environment. Of direct relevance to the proposed building heights:

- Shadow diagrams detail no adverse overshadowing of sensitive natural areas, nor unreasonable impacts on the built environment.

- Visual impact has been assessed, concluding no adverse effect on Tweed's scenic landscapes, nor unreasonable impacts on the built environment, such as loss of view sharing.
- The proposal includes an articulated building envelope with varied and stepped forms, modulated skyline, application of fine grain elements (including screens and sun shade elements) and incorporation of plant service areas to enhance the buildings articulation and modulation within its built and natural environment setting.
- Density generated by the additional building height does not exceed any identified thresholds for urban services, such as provision of water, sewer, or the traffic network.

The use of natural materials ties the building into the natural surroundings and through the orientation on the site, promotes engagement between the users and the landscape within the site and that beyond in the borrowed landscape.

As outlined above, the proposal limits impacts on both the natural and built environment through sensitive siting, appropriate setbacks, architectural modulation, and robust environmental management measures. The minor exceedance of the height standard does not result in any unacceptable impacts, and therefore the objective is satisfactorily achieved notwithstanding the non-compliance.

Objective (g) - to prevent gross overshadowing impacts on the natural and built environment.

Although presenting a minor exceedance to the maximum height of building control, the development results in acceptable levels of overshadowing and privacy to neighbouring land and Stage 1. This is achieved primarily through:

- Generous setbacks to all site boundaries and adjoining vegetation areas, ensuring sunlight access for both environmental and residential receptors;
- Considerable building separation, particularly between proposed buildings and existing Stage 1 structures, reducing potential overshadowing and overlooking; and
- Considered placement of lift overruns and rooftop services away from roof edges, minimising any shadow projection beyond the immediate building footprint.

The generous lot size allows potential impacts associated with height, such as overshadowing and overlooking, to be minimised through significant setbacks to boundaries, building separation, built form and landscape design.

Shadow diagrams for the 21st June winter solstice are provided in the Architectural Plans enclosed within **Appendix B** of the EIS confirm that:

- the development does not preclude a minimum of 2 hours of sunlight to the principal private open space areas of neighbouring residential properties, consistent with accepted planning benchmarks; and
- overshadowing of natural areas is minimal and does not adversely affect environmental values or ecological processes.

The proposal does not give rise to any gross or unreasonable overshadowing impacts. Through appropriate siting, separation, and architectural design, the development achieves the intent of Objective (g) despite the minor numerical non-compliance with the height standard.

3.1.2 Are the underlying objectives or purpose of the development standard not relevant to the development?

The collective objectives of clause 4.3 of the Tweed LEP 2014 are intended to strategically distribute land use and built form intensive across the LGA through prescribed height limits, as well as manage character through the bulk and scale of buildings. Further, the objectives seek to guide development to ensure a positive contribution towards the envisaged density of land, without creating adverse environmental impacts.

These objectives are considered relevant to the development and are addressed in **Section 3.1.1** of this report.

As highlighted under **Section 2.1** of this report, the Housing SEPP now provides a bonus height allowance of 3.8 metres for eligible seniors housing developments regardless of whether the maximum FSR is achieved. This reflects a clear State planning intention to facilitate seniors housing supply by enabling appropriate building height outcomes where local height controls may otherwise constrain feasibility or design flexibility..

While the proposal exceeds the LEP's mapped 8 m height limit, it is generally consistent with the building scale anticipated through:

- the 3.8 m bonus height allowance under the Housing SEPP, and
- the existing approved built form on the site under DA06/0413 (as modified), which permits buildings of approximately 11.5 m.

Whilst the underlying objectives of the development standard is directly relevant to the Proposal, compliance with the prescribed 8m maximum height of buildings provision is unreasonable and unnecessary in this instance. Specifically:

- A valid existing development consent remains in place which facilitates building height approximately 1x storey taller than the LEPs maximum height of building provision;
- Whilst not determined by Council to be 'substantially the same' as the existing consent, the proposal undoubtedly forms an evolution of this consent to meet contemporary seniors housing standards and expectations. In this regard, the intent of the development consent has not been abandoned, rather, realised in an alternate, contemporary manner;
- In the context of site-specific investigations, it is identified that the maximum height of buildings imposed gives rise to the underutilisation of the land for its capability and current context; and
- The proposal will make a significant and positive contribution towards the LGAs identified seniors housing demand, consistent with the strategic objectives underpinning the Housing SEPP and broader housing supply priorities.

The underlying purpose and objectives of the development standard remain relevant, but strict adherence to the 8m height standard is unnecessary to achieve them. The proposal appropriately satisfies the intent of Clause 4.3 and delivers an outcome that is consistent with both the established and approved character of the site, as well as the State's clear policy direction to support seniors housing development.

3.1.3 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The intent and purpose of Clause 4.3 of the Tweed LEP 2014 is not defeated or thwarted if the proposed variation were supported. As described through **Section 3.1.1** and **Section 3.1.2** of this report, the proposal satisfies each of the objectives of the height standard notwithstanding the numerical non-compliance.

The development standard is, however, inconsistent with the approved development outcome, the established building height and established community expectations for development on the site. It is therefore reasonable that the existing approved heights guide the design of a seniors housing outcome for this proposal.

Requiring strict numeric compliance with the mapped 8 m control would not improve planning outcomes and would, in fact, thwart several key planning objectives, including:

- Clause 1.2 Aims of the Plan, which seek to promote housing diversity and orderly development; and
- The intent of the Housing SEPP, which expressly facilitates increased height for seniors housing through the 3.8 m bonus provision.

As detailed in **Section 3.1.1** of this report, Clause 4.6 of the Tweed LEP provides scope for this standard to be varied, where it can be justified. Whilst the buildings proposed are taller than the design measurement prescribed, the proposal maintains a similar scale to its surrounds, context, and is entirely compatible with the existing and valid consent applicable to the site. Accordingly, rigid application of the standard to uphold this objective is considered unreasonable and unnecessary.

The subject site is identified as distinct from the majority of land within Hastings Point locality due to its generous site area and the surrounding Crown Reserve shrouds the site, provides natural landscape buffers around the site and shields the proposed development area from view from public viewpoints other than Tweed Coast Road.

The subject site includes a significant site area within a wider urban context, is connected to all urban services and is void of ecological and flooding constraints. Accordingly, no bar to the land's underlying capability for urban purposes has been identified, rather, the land's capability would be underutilised within Tweed's growth and housing context by limiting development to the 8m building height prescribed.

Impacts associated with building height such as amenity, overshadowing, visual impact and visual privacy are all demonstrated through the various technical studies, to be effectively managed through setbacks, siting and orientation of the proposed buildings

Forcing numeric compliance with the 8m height control would thwart achievement of the wider strategic objectives, including Clause 1.2 Aims of the Plan. Mandating compliance would require deletion of multiple apartments and a decrease in communal open space. Such a reduction would not tangibly reduce the 'common' construction costs, and therefore result in a price increase for the remaining homes.

The Applicant submitted a Section 4.55 (2) modification application on 25 June 2020 seeking consent for modifications to the staged seniors living development approved on the site, in line with the current application. The modification application was determined by way of refused by Council on 7 July 2021, largely on the basis it was not satisfied the proposed development could be characterised as substantially the same development as the development for which consent was originally granted.

Relevantly, compliance with Clause 4.3 – Height of Buildings was considered by Council. In this instance Council's development assessment report found (emphasis added):

"DA06/0413 was approved under the Tweed Local Environmental Plan 2000 (TLEP 2000) where clause 16 permitted a three (3) storey height limit. There were various submissions in relation to the height in the original application, however given the proposal complied with height requirements, the objections based on height were not considered to warrant refusal.

The subject site is currently mapped as having a maximum building height of 8m. Stage 1 of the development is constructed, with heights up to 11m. These buildings are located to the front of the site. The modification seeks to increase the height of the buildings in Stages 2-5 (Buildings D, E and G) from that which was approved. This is in part attributed to an increased Design Flood level on the site. Notwithstanding this increase in height, the proposal remains compliant with the 11m height limit current at the time the consent was granted, is not considered to contravene the objectives of the standard, or the zone, and the development remains substantially the same in relation to height."

In relation to the visual setting, Council's development assessment report also considered Control 1 within Part 5 of the DCP which requires submission of a photo montage demonstrating how this view may be impacted upon and measures to mitigate impacts and found:

"Given the proposed built form is consistent with approved heights, and includes an updated materials palette, this control was not considered applicable to the proposed modifications."

Pursuing a reduced built form would underdeliver on the land area available, free of significant constraints. This outcome is identified as inconsistent with State priorities, the relevant emerging strategic planning provisions to increase housing diversity and delivery in immediate proximity to services; and be unnecessary and without evidence.

Thus, not supporting the height proposed with the development would:

- Delay necessary upgrades to aged care services being provided at the site for existing residents and the broader community;
- Remove homes and beds from the pipeline of potential seniors housing supply within the area;
- Place additional pressure on where substantial housing need, including diverse housing need such as seniors housing and residential aged care, could be accommodated in Hastings Point to meet the current and forecast demand/growth estimates;

- Appear inconsistent with State priorities, the relevant strategic planning framework and locality planning; and
- Be unnecessary and not based on evidence.

3.1.4 Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?

While the 8m standard has not been abandoned and contributes to the low density 1 and 2 storey character within the R2 zoned portions of Hastings Point, it is considered that this standard in conflict with the existing development consent which remains valid which facilitates building height approximately 1x storey taller than the maximum height of building provision. It is also considered in conflict with the existing (Stage 1) development which establishes a 3 storey built form character on the site, frontage to Tweed Coast Road and transition to adjacent low density residential development to the north.

This is in the context of the subject site being one of only two R1 zoned lots in Hastings Point. The other R1 zoned lot is located within the northern precinct of Hastings Point and has a maximum height limit of 13.6m.

As discussed previously, the subject site is distinct from most other land within Hastings Point due to its large lot size, R1 zoning and existing established 3 storey residential flat building typology.

Furthermore, Tweed Shire Council is accepting of variations to the maximum height of buildings, where it has been demonstrated that the proposed variation achieves the objectives of Clause 4.3 including maintaining appropriate urban character and amenity.

As outlined previously, Council considered a Section 4.55 (2) modification application in 2020 seeking consent for modifications to the staged seniors living development approved on the site, in line with the current application. In its assessment Council found the proposed 3 storey built form was not considered to contravene the objectives of the standard or the zone.

In summary, supporting the proposed variation does not undermine the intent of Clause 4.3, nor is it inconsistent with Council's own consideration of a 3 storey built form on this site.

3.1.5 Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?

The R1 General Residential zoning does reflect the site, existing character and future desired character for the area. Accordingly, the zoning is not considered unreasonable or inappropriate for the site.

However the 8m height restriction is not considered reflective of the existing approved built form, and unnecessarily inhibits the R1 zone objectives.

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

Yes. There are clear and sufficient environmental planning grounds to justify the contravening of the development standard, namely being:

- A valid and long-standing planning approval exists on the site. A Seniors Housing development was approved on the subject land in June 2008 (DA06/0413 as modified), under the Tweed LEP 2000 where clause 16 permitted a 3 storey height limit. This established a higher building envelope on the site than the current LEP allows;
- Stage 1 of the development, was constructed in 2009, incorporating the 91 independent living units across three buildings with basement car parks. These buildings establish the 3 storey residential flat building typology at the front of the site, and contribute to the streetscape character of the southern entry to Hastings Point;

- The remaining approved stages, which comprise 4 additional 3 storey buildings, have not been built. Nevertheless, consent to do so remains valid under DA06413 (as modified). The approved envelope remains part of the legitimate expectations for built form on the site.;
- Whilst not determined by Council to be 'substantially the same' as the existing consent, the proposal undoubtedly forms an evolution of this consent to meet contemporary seniors housing standards and expectations. In this regard, the intent of the development consent has not been abandoned, rather, realised in an alternate, contemporary manner;
- Notwithstanding the technical numerical variation, the proposed development remains consistent in terms of the existing 3 storey built form approved and established on the site and is not considered to contravene the objectives of the standard, or the R1 zone. The numerical exceedance is minor and does not generate any unacceptable environmental, amenity or character impacts;
- Environmental studies have been undertaken to inform the design, scale and proposed heights can be accommodated by the subject site without resulting in unacceptable adverse environmental, economic or social impacts;
- The site is unusually capable, being large, unconstrained, separated from adjoining residential areas by Crown Reserve, and able to accommodate height without adverse amenity or overshadowing impacts. Limiting the site to the mapped 8 m control would underutilise the land relative to its capability and strategic housing role.
- The Housing SEPP now expressly supports increased building height for seniors housing.
- Recent amendments (effective 2025) provide a 3.8 m bonus height allowance for eligible seniors housing developments. The proposal aligns with this strategic intent, with the maximum height proposed (12.205 m) only 0.405 m above the bonus-adjusted limit of 11.8 m, representing a modest 3.43% variation. This demonstrates that the proposal is broadly consistent with the height outcome promoted by NSW Government policy for seniors housing delivery.
- The proposal will make a notable positive contribution towards the LGAs housing needs and services.

The combination of a valid existing approval enabling three-storey development, the State's explicit policy direction enabling bonus height for seniors housing, the site's substantial capability, and the minor and well-managed nature of the variation constitutes strong, clear and compelling environmental planning grounds to justify contravention of the mapped 8 m development standard.

3.3 Is there any other relevant information relating to justifying a variation of the development standard?

By resolution at its meeting of 15 April 2021, Council declared an emergency situation with respect to the lack of housing availability and affordability in the Tweed community. In response, multiple strategic planning processes are currently on-foot at a State and LGA level to provide a longer-term growth 'blueprint' and unlock housing opportunity to address this concern. As expressed within the Tweed Growth Management and Housing Strategy – Issues Paper, housing issues within the Tweed LGA include:

'Ageing population: Tweed Shire is characterised by an older population, with over a quarter of residents in Tweed Shire aged 65 years and older as of the 2021 Census. Corresponding to the high incidence of residents aged 65 years, Tweed Shire recorded a higher average age (45.1 years) when benchmarked to New South Wales (39.7 years)'p8.

'Average household size: The average household size in Tweed in 2021 was 2.3 residents per household, slightly lower than the NSW average of 2.4 residents per household. Less than 30% of the dwelling stock in Tweed Shire consist of two bedrooms or less. This suggests there may be a disconnect between the population profile and dwelling stock available to meet this need. The supply of dwelling stock available for individuals and/or couples looking to downsize is likely to become more competitive over time as the proportion of lone person households increases and the population profile continues to age' p9.

"Average household sizes are decreasing; however, the proportion of separate houses making up the dwelling stock in the Tweed continues to increase. This has implications for achieving housing diversity, choice and affordability into the future." p10.

Whilst not published since 2019, the North Coast Housing and Land Monitor, documents an ongoing trend for the past 15x years within the Tweed of housing delivery shortfall (generally achieving only 60% of projections), as well as diversity shortfall (generally 85% single dwelling stock, as opposed to the established target of 60%).

Acknowledging the cumulative impacts of the above, the proposal provides a critical opportunity to deliver fit-for-purpose housing and unlock housing availability. The importance of delivery is magnified acknowledging the proposal's direct response to Tweed's ageing demographic, lack of housing diversity, and lack of housing stock of 2x bedroom units or less. In this regard, significant merit is identified justifying variation of the development standard. The merit established is further underlined noting the limited environmental constraints identified within the development footprint, and lack of negative impacts measured within supporting specialist assessments. Specifically:

- The development footprint is largely located outside of PMF flooding and with access to evacuation centres. This is a key parameter for sensitive development types, such as seniors housing, and a scarce land attribute within Tweed's urban settlements;
- Visual Impact Assessment has confirmed that no notable adverse impacts are anticipated to be experienced from key public or private domain locations as a result of the building heights sought; and
- The building heights sought do not give rise to inferior environmental outcomes, nor disrupt the Hastings Point locality comprising a small coastal village nestled within a natural landscape.

A Senior Housing development was approved on the subject land in May 2007. Stage 1 of the development was constructed in 2009, incorporating 91 independent living units across three buildings with basement car parks.

TriCare subsequently purchased the site in 2011 and currently operate the existing development.

The remaining stages, which comprised 94 supported living units and 67 residential aged care beds across 4 buildings, have not been built. Nevertheless, the consent remains valid.

TriCare has reviewed the balance of the approved development and concluded that the design no longer responds to the contemporary vision of senior living needs and requirements, including but not limited to:

- The quality of accommodation;
- Allowance for lifestyle amenity;
- Provision of greater passive and active communal spaces; and
- The support and encouragement of age in place principles.

Accordingly, TriCare has elected to review the balance of the master plan and embark on a new delivery outcome for the balance stages of the seniors housing community.

The proposal seeks an exceedance of the maximum building height enabling buildings up to a maximum height of 12.205m from the existing ground level.

As previously noted, recent amendments to the Housing SEPP provide a 3.8 m bonus height allowance for eligible seniors housing developments, regardless of whether the maximum FSR is achieved. These reforms expressly support uplift in building height where doing so facilitates the delivery of seniors housing.

The proposed maximum building height of 12.205 m exceeds the bonus-adjusted height of 11.8 m by only 0.405 m (3.43%), demonstrating strong alignment with the intent and scale of height outcomes promoted by the Housing SEPP.

This reinforces a clear State planning direction: height should not be a barrier to delivering seniors housing on capable sites.

The site has previously been tested for and approved for development of a 3 storey built form and the 3 storey built form has been established on the site though construction of Stage 1.

The proposed development outcome is comparable to the approved development outcome and does not result in development at the site that is inconsistent with the established building height or established community expectations for development on the site. Furthermore, impacts associated with building height such as amenity, overshadowing, visual impact and visual privacy are all demonstrated through the various technical studies to be effectively managed through setbacks, siting and orientation of the proposed buildings.

The proposed development is well below the maximum allowable floor space ratio. This outcome, along with the proposed siting and design of the proposed built form, enables an alignment of building scale and helps mitigate impact on the surrounding built environment

The proposed Seniors Housing development:

- Is consistent with objectives of the land use zone and facilitates the orderly and economic development of the site;
- Provides a contemporary, logical and orderly extension to the existing TriCare Hastings Point Retirement Community and supporting services at the site;
- Incorporates significant setbacks, building separation and landscaping to ensure the environmental dominance of the Southern Entry to Hastings Point is maintained and the proposed buildings are consistent with the established character; and
- Represents a significant investment in terms of jobs and monetary injections into the local area during construction and operation of the project.

Environmental studies have been undertaken to inform the design and the EIS demonstrates the proposal can be accommodated by the subject site without resulting in unacceptable adverse environmental, economic or social impacts.



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