



APPENDIX KK - Clause 4.6 Request to Vary Clause 87(2)(b)(iii) - Additional FSR - State Environmental Planning Policy (Housing) 2021

SSDA-49937206 - Abel Tasman Village - Seniors Housing

INTRODUCTION

This variation request is prepared with respect to a Concept State Significant Development Application (SSDA 49937206 – Abel Tasman Village – Seniors Housing), for a Seniors Housing development, within 4 buildings, at 222 Waldron Road and 138-140 Campbell Hill Road, Chester Hill, NSW. The SSDA also includes a Stage 1 DA for the construction of Buildings A, B and E, comprising a 120 bed Residential Care Facility (RCF) and 64 x Independent Living Units (ILUs),

The request is made in accordance with *Section 35B* of the *Environmental Planning and Assessment Regulation 2021* (the Regulation), and *Clause 4.6* of the *Canterbury Bankstown Local Environmental Plan 2023*, (the LEP), with respect to a numeric breach to Clause 87(2)(b)(iii) of the SEPP, related to 'Additional Floor Space Ratio'.

In summary, the proposed quantity of "gross floor area", (GFA), across the site is 1,031.9sq.m less than the combined GFA available under the Clause to be varied and the LEP. The variation request allows for the transfer of available GFA from the E1 zoned land (where surplus GFA is available) to the R4 zoned land, by increasing the additional FSR available to this type of development on the R4 zoned land from 25% to 35.2%.

The clause to be varied is extracted in full as:

"87 Additional floor space ratios

- (1) *This section applies to development for the purposes of seniors housing on land to which this Part applies if—*
 - (a) *development for the purposes of a residential flat building or shop top housing is permitted on the land under Chapter 5, Chapter 6 or another environmental planning instrument, or*
 - (b) *the development is carried out on land in Zone E2 Commercial Centre or Zone B3 Commercial Core.*
- (2) *Development consent may be granted for development to which this section applies if the site area of the development is at least 1,500m², and the development will result in a building with one or more of the following—*
 - (a) *a maximum permissible floor space ratio plus—*
 - (i) *for development involving independent living units—up to an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or*
 - (ii) *for development involving a residential care facility—up to an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or*
 - (iii) ***for development involving independent living units and residential care facilities—up to an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the***



purposes of independent living units or a residential care facility, or both, or

(b) a height of not more than 3.8m above the maximum permissible building height.”

The numeric standard to be varied is the additional FSR of 25% available under Clause 87(2)(b)(iii) of the SEPP. By varying the additional FSR, the overall GFA available on the land subsequently increases. In this case, it is proposed to vary the additional FSR provision from 25% to 35.2% available in the R4 zoned land, in this context where the overall FSR available across the site has not been maximised.

This clause 4.6 variation request should be read in conjunction with the *Environmental Impact Statement* (EIS) prepared by Evolution Planning, dated October 2025 and the Clause 4.6 variation request, related to the Additional Height provision at Clause 87(2)(c) of the SEPP, **Appendix JJ** of the EIS.

The two variation requests are closely inter-related due to them having the same objective - to incentivise seniors housing, and since both standards need to be varied in this case, to allow for the reasonable up-take of incentivised floor space. FSR is the incentive, not additional height. The function of the clause to be varied, Clause 87(2)(b)(iii), is to accommodate the incentivised FSR, but is part of the mechanism of Clause 87, which is to incentivise the delivery of seniors housing.

PROPOSAL

The project involves the re-development of the existing seniors housing development including its expansion and intensification onto vacant land. The development is “Staged”, involving a “Concept Plan” for the entire site and a Stage 1 SSDA which will allow for the construction of 3 of the 4 proposed buildings – Buildings A, B and E. The use of the proposed development is a mixed-use development comprising “seniors housing”, “retail premises” and “neighbourhood shops”.

The current application is for the overall Concept Plan and Stage 1 Development Consent for:

- Building A - Retail tenancies at ground level facing Waldron Road and 6-7 levels above comprising 39 x Independent Living Units (ILU)s;
- Building B – Residential Care Facility (RCF) over 4-5 levels to include 120 beds;
- Building E - 4 storey building to include 25 x ILUs;
- A new site access will be included in Stage 1, located at the west side of Building A off Waldron Road leading to basement access and the main entry to Building B.
- 94 car parking spaces (including 15 disabled access spaces) are proposed at basement level below Buildings E and B and at basement/ground level below Building A.



Figure 1: Extract Proposed Concept Plan

A future DA will be lodged for Stage 2 comprising Building C, to include neighbourhood shops at ground level facing Waldron Road and 5 levels of ILUs above, over basement parking and services. A second vehicular crossing will then be provided off Waldron Road to service this building.



Figure 2: Streetscape view of Buildings A and C from junction of Campbell Hill Road and Waldron Road



Figure 3: Streetscape view from Waldron Road

APPLICATION OF STANDARD

Clause 87 of the SEPP pertains to ‘*Additional floor space ratios*’ and allows for additional FSR (and Height) to certain types of seniors housing. This clause applies to the proposed development since it comprises “*seniors housing*” and “*residential flat buildings*” and “*shop top housing*” are permitted on the land.

Clause 87 requires the satisfaction of certain pre-requisites before consent may be granted for the incentive to have effect. In this case, the site area exceeds 1,500sq.m and satisfies the first requirement.

Subclause (2)(b) states “*the development will result in a building with the maximum permissible floor space ratio plus:*”in this case an additional 25% FSR under subclause (b)(iii).

The “*maximum permitted floor space ratio*” is defined under the SEPP as:

“the maximum floor space ratio permitted on the land under an environmental planning instrument, other than this Policy, or a development control plan.”

The relevant instrument is *Canterbury Bankstown Local Environmental Plan 2023*, (the LEP). Clause 4.4 of the LEP relates to “*Floor space ratio*”. By applying the “*FSR Map*” at Clause 4.4 of the LEP, the site is the subject of two FSR provisions. Refer to the LEP FSR map extract below.

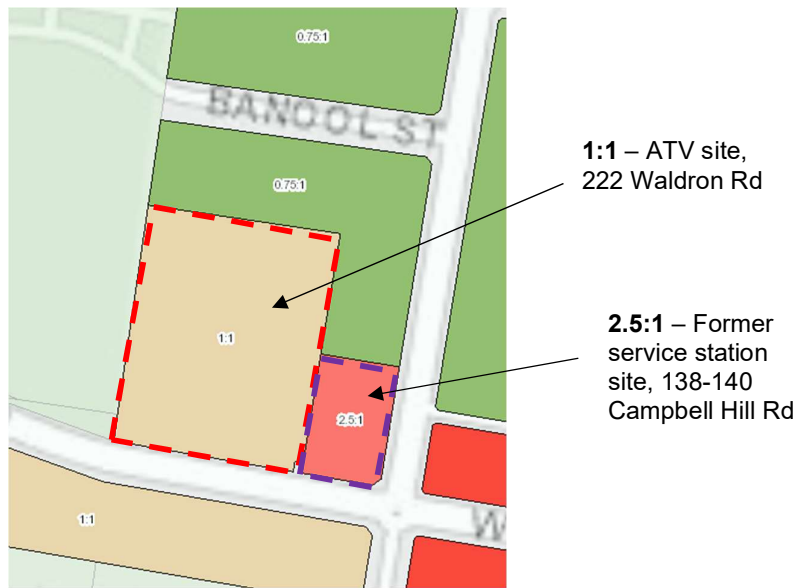


Figure 4: Extract LEP 'FSR Map'

A “maximum permitted floor space ratio” of 1:1 applies to the existing ATV site, 222 Waldron Road, and 2.5:1 to the former service station site, 138-140 Campbell Hill Road. Upon application of Clause 87 of the SEPP, specifically subclause 2(b)(iii), development consent may be granted for a development with an FSR of 1.25:1 on the current ATV site and 3.125:1 on the former service station site.

The building proposed on the former service station site/E1 zoned land has a GFA of 2,115.1sq.m below the maximum FSR available upon application of Clause 87(2)(b)(iii) of the SEPP.

The purpose of this variation request is to facilitate the transfer some of the available surplus GFA from the E1 land (1,083.2sq.m) to the existing ATV site/R4 zone, which creates a numeric breach to the standard at the R4 zoned part of the site.

Importantly, the proposed quantity of GFA across the entire site is 1,031.9sq.m less than the combined GFA available under the Clause to be varied, if applied holistically across the site.

The proposed development does not satisfy the development standard related to additional height at subclause (c). A separate Clause 4.6 variation request is provided to vary the height standard to enable access to the incentivised FSR, justified partly by the successful flexible distribution of GFA.

Clause 87(2)(b)(iii) of the SEPP sets a limit beyond the LEP where consent may be granted to development with a particular FSR and therefore the maximum FSR for the development is set by Clause 87(2)(b)(iii) of the SEPP. Clause 87(2)(b)(iii) prevails over the LEP and we are of the opinion that the drafters of the clause had not intended a requirement for the LEP to be varied formally under Clause 4.6 every time this incentive clause is relied upon. The variation request is therefore appropriately focused on Additional FSR provision at Clause 87 of the SEPP.

The caveat to the pre-requisites at subclause 2(b) states:

- (b) *the development will result in a building with the maximum permissible floor space ratio plus*

The use of the term “*with*”, as opposed to, ‘within’, could be interpreted as meaning the proposed FSR should be exactly the maximum available under the LEP plus the incentive, or a breach will occur. This is clearly not the intention of the clause, but is raised for completeness in the context of this variation request.



PROPOSED FSR - COMPLIANCE WITH CLAUSE 87(1)(b)(iii) - FSR

Table 1 below has been compiled using data extracted from the accompanying Schedule of Areas, prepared by BRG.

Location	87(2)(b)(iii) Max. FSR GFA	Proposed FSR / GFA	Proposed additional FSR Variation to Clause 87(2)(b)(iii)
Former Service Station Site / E1 Zone Area = 2,192sq.m	3.125:1 6,850.00sq.m	2.16:1 4,734.9 sq.m - 31% - 2,115.1sq.m	N/A
ATV Site / R4 zone Area = 10,538sq.m	1.25:1 13,172.5sq.m	1.35:1 14,255.7 sq.m +8% + 1,083.2sqm	Permitted additional FSR = 25% Proposed varied additional FSR in R4 zone = 35.2% 41%
Combined Site Area = 12,730sq.m	20,022.5 sq.m	18,990.6 sq.m - 1,031.9sq.m	N/A

Table 1: FSR/GFA Compliance

To clarify, this Clause 4.6 variation request relates to the numeric breach to the additional FSR standard under Clause 87(2)(b)(iii) of the SEPP, as it applies to the R4 zoned land only. For reference purposes, refer to the extract of the proposed Concept Plan below showing the proposed buildings and the application of the FSR standards.

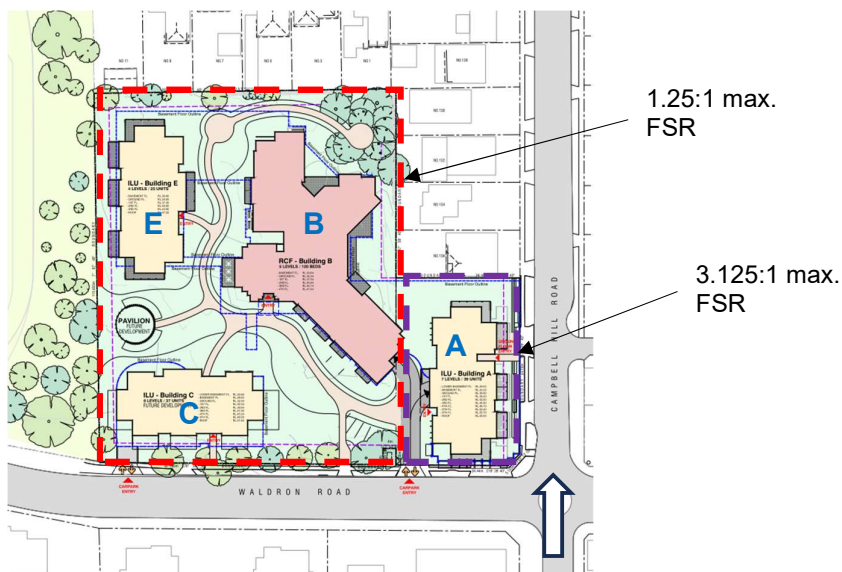


Figure 5: Extract Proposed Masterplan



PROPOSED VARIATION

The numeric standard to be varied is the additional FSR of 25% available under Clause 87(2)(b)(iii) of the SEPP. By varying the additional FSR available, the overall maximum FSR on the land subsequently increases. In this case, it is proposed to vary the additional FSR provision available on the E1 zoned land, from 25% to 35.2%.

This equates to a variation to the development standard of 41%. The degree of variation should be considered in the context of the variation being to the additional FSR provision only, not the degree the development exceeds the FSR available under the LEP plus the additional FSR available under the SEPP. For comparison purposes only, the variation to the maximum FSR available in the R4 zone is 8%.

CLAUSE 4.6 VARIATION REQUEST – ADDITIONAL FSR

To address the breach to Clause 87(1)(b)(iii) of the SEPP, the following variation request, prepared in accordance with Clause 4.6 of the LEP and Section 35B of the Regulation is provided.

The following decisions of the NSW Land and Environment Court have been referred to in the drafting of this request:

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
- *Wehbe v Pittwater Council [2007] NSW LEC 827;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

These decisions were handed down prior to the changes to Clause 4.6 in 2023, and the introduction of Section 35B to the Regulation. In light of the similar language of the amended version of Clause 4.6, these cases are still considered to be relevant.

Clause 4.6 of the LEP states:

“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 to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - a. *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - b. *there are sufficient environmental planning grounds to justify the contravention of the development standard.”*



Is the requirement a development standard?

A “*development standard*” is defined at Section 4 of the Act as:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

“... ”

(4)(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,

(b) the proportion or percentage of the area of a site which a building or work may occupy...

(e) the intensity or density of the use of any land, building or work.”

The SEPP is an environmental planning instrument and clause 87(1)(b)(iii) includes a fixed provision related to the area of buildings, captured at sub-clause (4)(a).

Clause 87(b) of the SEPP combines the “*maximum permissible building height*” under the LEP, plus the incentive of 25%, defining the maximum FSR for this particular development on this site.

Clause 87(1)(b)(iii) of the SEPP is considered to be a “*development standard*” and may be varied under Clause 4.6 of the LEP.

The clause to be varied is not expressly excluded from the operation of Clause 4.6 under the LEP or any another environmental planning instrument.

The two key threshold considerations under Clause 4.6 are whether:

1. “*Compliance with the development standard is **unreasonable or unnecessary** in the circumstances of the case; and*
2. *there are **sufficient environmental planning grounds** to justify contravening the development standard.*

[emphasis added]

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

As to whether or not compliance with the standard is “*unreasonable and unnecessary*”, in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, the consideration provided in *NSWLEC Wehbe v Pittwater* 2007 (with previously applied to SEPP 1 and earlier versions of Clause 4.6) is still of relevance and is assistance with the consideration of this question under Clause 4.6.

‘*Wehbe*’ sets out five means or progressing an argument as to why compliance is “*unreasonable and unnecessary*” as follows:



- a) the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- b) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- c) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- d) 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;
- e) 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.

We submit that it is unreasonable and unnecessary to strictly comply with Clause 87(2)(b)(iii) of the SEPP for reasons related to (a) and (c) above, in terms of:

- the consistency of the proposed development with the objectives of the development standard; and,
- the objective being defeated by compliance with the standard.

In light of the nature and effect of the FSR standard, described further below, the two adopted 'Webhe' approaches adopted to show why the strict application of the standard is unreasonable and unnecessary are intrinsically linked. This is because one of the reasons why the development is considered to be consistent with the objectives is the action of varying the standard in itself.

'Webhe' (a) *The objectives of the standard are achieved notwithstanding non-compliance with the standard*

There are no specific objectives included at Clause 87 of the SEPP, or indeed the Part which applies specifically to this type of development. This variation request is made on the basis that the clear and unambiguous purpose of the clause to be varied is to incentivize seniors housing, an objective achieved by the award of additional FSR of up to 25%, like is available, but not fully relied on, in this case.

The purpose of the clause is reflected in the "*Housing SEPP Consultation Draft*", an information document accompanying the notification of the SEPP in 2021, which states: "*The requirements for vertical villages have been updated, including new FSR bonuses to incentivise this form of development.*"

Clause 87 of the SEPP supports the following overarching "Principles of Policy" at Section 3, in terms of:

- "...(b) **encouraging** the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, **seniors and people with a disability**, ...
- (d) **promoting the planning and delivery of housing** in locations where it will make good use of existing and planned infrastructure and services..."



[emphasis added]

The proposed breach to the standard is, in itself, a means of achieving the adopted objectives of the FSR standard. This is because the breach allows for the reasonable uptake of available 'incentivized' GFA by effectively transferring available GFA from one zone to another. This 'transfer', albeit in technical breach of the development standard, is required to achieve the underlying purpose of Clause 87 and the related Principles of the Policy highlighted above.

The argument is not one of maximising GFA at all costs, not at all, we understand the development standard is a maximum. In this case, where the ability to rely on the incentivised FSR is critical to the fundamental delivery of the project, and the significant GFA available in the E1 zone, the approach of locating GFA in breach of the FSR standard in the R4 zone, to achieve the objectives of the standard, is considered to be an appropriate response to site planning. The disparity of available GFA across the site is demonstrated using Building A as an example, outside of the R4 zone. Building A, in the E1 zone, has a GFA of 2,115sq.m, which is:

- **30% below the maximum floor space development under the SEPP; and,**
- **13% below the non-incentivised FSR standard under the LEP.**

The uptake of the full "incentivized" floor space in the E1 zone is ultimately curtailed by the height standard; and, hence the necessity to vary the FSR incentive which applies in the R4 zone to allow for the transfer of some of the available GFA, and by doing so, allowing the incentive to work.

The proposed development satisfies the related principles and the underlying purpose of Clause 87 of the SEPP without utilizing the full FSR incentive, but the variation is necessary to achieve its intended effect.

The availability of additional FSR for seniors housing, recognises the under supply of such housing and the cost and yield differentials between developing standard residential units and specialised care facilities, both which may be constructed on this site. In this case, the SEPP identifies an incentive of 25% additional FSR, which is taken to be the quantity of incentive deemed appropriate by the State government, for Clause 87 to have the desired effect of bringing about the principles of the policy - to deliver housing. ATV is a not-for-profit organisation and the incentivised FSR available under this clause is critical to the commercial feasibility and delivery of this important housing project.

The proposed additional FSR beyond the LEP equates to 4,004.5sq.m. The current proposal relies on only ~75% of the additional FSR available, and that lesser uptake on the maximum, is only available in the circumstances of this case by varying the clause.

Clause 87 supports the Planning Principle of the SEPP related to the promotion of housing in locations which are well serviced by existing and planning services and infrastructure:

- "(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services"*

The site is ideally suited to this type and density of development being in close proximity to local services in the Chester Hill town centre, where public transport is available in the form of bus and train services. This is exactly the context where the incentive for FSR should be made available to achieve the Principles of the Policy and the underlying purpose of Clause 87, in this case, through a breach to the additional FSR standard.



The proposed development is considered to be consistent with, and would not hinder, the adopted objectives of the additional FSR standard at Clause 87(2)(b)(iii) of the SEPP.

'Webhe' (c) The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Building A, in the E1 zone has an FSR of 2,115sq.m below the maximum available FSR under Clause 87 and, for comparison purposes, 745sq.m below the unincentivized FSR standard under the LEP.

If considered as a whole, the site has a potential maximum GFA of 20,022.5sq.m (including the maximum incentive of 25%). The proposed total GFA is 18,990.6sq.m. The LEP allows for a total GFA of 16,018sq.m and therefore the proposal represents the uptake of only 18% of the 25% incentive available, which is only achieved in this case by varying both the FSR and additional height provisions at Section 87 of the SEPP.

Any further reduction in the uptake of the incentivised FSR caused by the strict application of the Additional FSR standard would result in the failure of the FSR incentive to promote, deliver and encourage seniors housing, and the underlying objectives being defeated.

Clearly, this cannot be grounds alone to vary the standard and boundaries are required to sustain such an argument. In this case, the proposed development is considered to be an appropriate balance between taking up as much of the incentivised floor space as necessary to achieve the objectives of the incentive clause - the delivery of seniors housing; and, varying the FSR standard, as expanded upon below, with respect to the environmental planning grounds to justify the variation.

Compliance with Clause 87(1)(b)(iii) of the SEPP is considered to be unreasonable or unnecessary in the circumstances of this case since:

- the objectives of the standard are achieved notwithstanding non-compliance with the standard; and,
- the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

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

The proposed variation to Clause 87(1)(b)(iii) of the SEPP is considered to be justified on the following environmental planning grounds:

1. HOLISTIC DISTRIBUTION OF FLOOR SPACE

In the context of this large site, being the subject to two land use zones; two FSR standards; and two height standards, a flexible, holistic approach to the distribution of GFA across the site, is considered to be appropriate, even though such an approach involves a technical breach to the FSR standard in the R4 zoned land.

To enable the full uptake of incentivized FSR on the E1 zoned land, (where the surplus is being transferred from), three more storeys would need to be added to the current design. The additional height would have to be varied from 3.8m to approximately 14m. It is not our intention to justify the proposed non-compliance by comparing it to what is clearly an outlandish outcome, but more to demonstrate the quantity of, and the necessity for, the surplus floor space to be transferred to the R4 zoned area, to achieve the underlying purpose of the standard - to incentivise the delivery of seniors housing.



Building A has an FSR of ~ 30% below the maximum floor space and is below the incentivised FSR available under the LEP and therefore the approach of distributing GFA holistically across the site is considered to be well founded. The effect or potential impact of the additional GFA in the R4 zone is assessed as satisfactory at Item 5 below, “Likely Impacts on Neighbouring Properties”.

2. DEVELOPMENT CAPACITY OF THE SITE

The intent of the development standard has been realised without the necessity to rely on all of the incentivised GFA available across the entire site. When the development capacity of the site is expressed in terms of FSR or GFA, the proposal comprises 1,032sq.m less than the maximum available to incentivise such development.

Despite the technical breach to the development standard, the site has the capacity to accommodate the proposed development in a sustainable form in terms of its potential impacts on the site, neighbouring land and the wider environment.

3. FSR - A STATE RESOURCE.

The first of the Objects of the Act is to:

*“to promote the social and economic welfare of the community and a better environment by **the proper management**, development and conservation of the **State’s** natural and other **resources**”.*

[emphasis added]

The premise of this justification is that FSR is a state resource, made available to developers by the provisions of State and local environmental planning instruments, under which the ‘allocation’ of this resource is managed. The SEPP is a State planning instrument, this is a State significant project, and Clause 87 manages the allocation of this critical resource, used in this case by the government to incentivise seniors housing.

This variation request enables the uptake and distribution of this incentivised resource across the site, albeit in breach of Clause 87(1)(b)(iii) of the SEPP.

The proposal will result in positive housing, social and economic outcomes and it is our submission that the “*proper*” management of FSR on this site should involve a variation to the FSR clause to “*promote the social and economic welfare of the community*”

The ‘improper’ management of FSR as a State resource would be the strict application of the FSR standard at Clause 87, leading to an inability to reasonably access the incentivised GFA, and ultimately, an opportunity lost to use this resource to deliver this project of State significance.

The site is the subject of two land use zones; two FSR standards and two height standards. The third Object of the Act is “*to promote the orderly and economic use and development of land*”. The proposed variation to the additional FSR standard to allow for the flexible distribution of GFA across the site, has additional validity in this context, and is considered to better represent the “*the orderly and economic use and development of land*” compared to a scenario where both FSR standards are strictly applied to different parts of the site.

4. DESIGN RESPONSE – BUILDING MASSING AND LANDSCAPING

The proposed development, including Buildings B, E and C in the R4 zone where the standard is to be varied, responds satisfactorily with its multiple boundary interfaces, without the introduction of any significant adverse massing impacts, usually associated with excessive FSR.



The proposed approach to site planning, influenced by the input from the SDRP, (of particular relevance to the R4 zone) involves:

- minimising site coverage;
- optimising the landscaping and communal open space opportunities;
- opening up views to the reserve from the site; and,
- appropriately responding to the R3 zoned land to north and the RE1 zoned land to the west.

The site has shared boundaries with a lower density residential zone to the north (R3) and the concentration of GFA is therefore proposed at the mid-southern parts of the site. Buildings B and E are lower in scale and are located in the northern part of the site. The annotated eastern elevation below shows how the proposed form at the northern parts of the site creates a comfortable transition in massing with the lower forms permitted under the LEP on the neighbouring R3 zoned land.

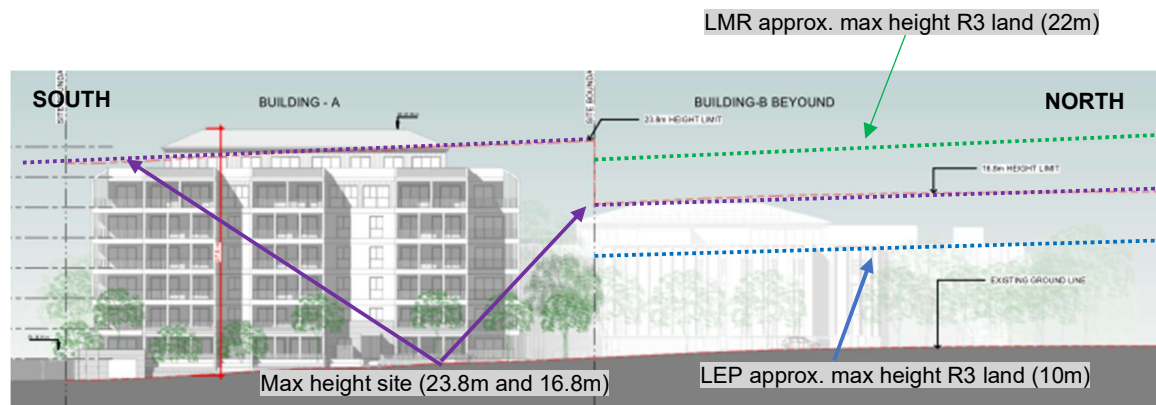


Figure 6: Building massing – North - South

Source: BRG

Although the zoning to the north of the site is of a lower density than the subject site, the LMR provisions at Chapter 6 of SEPP(Housing) allow for the development of *residential flat buildings* of 6 storeys/22m on the neighbouring R3 zoned land.

The massing and density of the proposed development is considered to be entirely consistent with the emerging character of the Centre, derived largely from the LMR standards, more so than the bonus FSR/Height provisions related to seniors housing or the base line LEP standards. Refer to Figure 7 below.

In an East-West direction, Buildings A and C sit comfortably in the emerging built form character of the centre as shown below in the extract from the Design Report, (**Appendix L**).

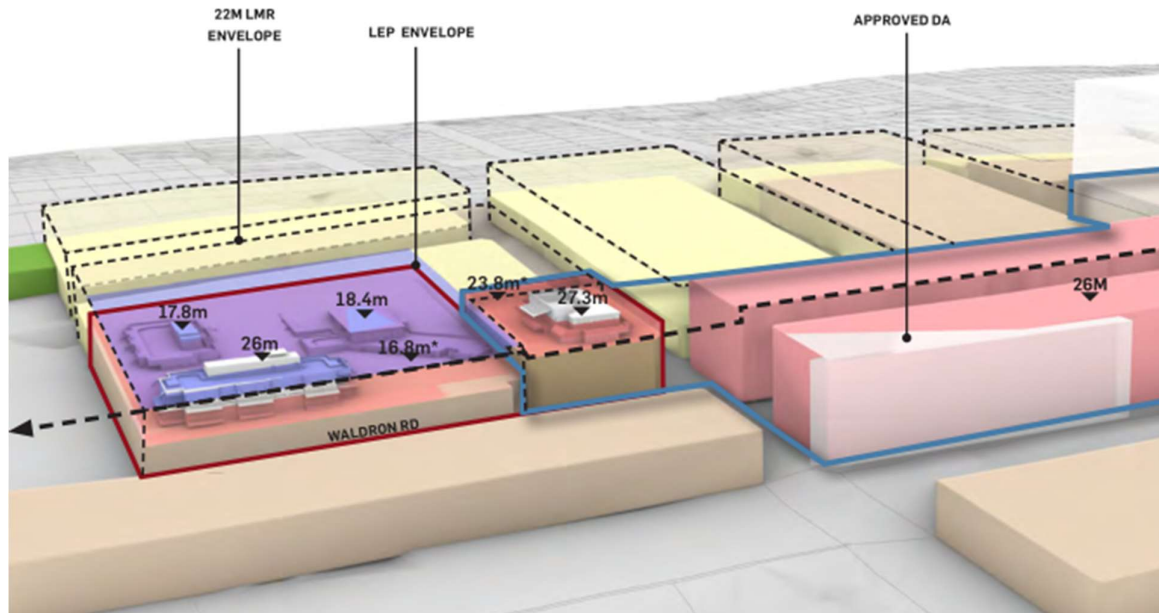


Figure 7: Building massing – East-West

Source: Urbis

Building A, located in the E1 zone and complying with the standard, suitably marks this important corner location at the entry to the centre and also identifies the development, despite the 'removal' of available GFA from this part of the site.

The site also has an interface with RE1 zoned land to the west and the proposed approach of taller, leaner buildings achieves the desired outcome of opening up outlooks from the heart of the site to the reserve.

The landscaping objectives of the project have been achieved despite the breach to the additional FSR standard in the R4 zone due to the design approach of minimising site coverage.

ATV's preference for an open, welcoming landscaped entry to the site and an overall high-quality landscaping outcome has been achieved. The proposed landscaping strategy (**Appendix C**), containing a network of interconnected parks and open spaces, is central to the overall design philosophy and provides ample opportunities for the proposed Connecting With Country Strategy, (**Appendix N**).

The proposed breach to the Additional FSR standard in the R4 zone does not hinder the ability of the project to maximise landscaping, demonstrated by the proposal exceeding all minimum criteria related to landscaped area; common open space; and, deep-soil areas.

5. LIKELY IMPACTS ON NEIGHBOURING PROPERTIES

The proposed breach to the FSR standard does not result in any significant adverse impacts on neighbouring properties, the future occupants of the proposed development, the streetscape, or the natural environment, as discussed below.

a) Overshadowing

Context

The properties to the south and southeast of the site have the potential to be overshadowed by the proposed development and include:



- Residential flat buildings at 147, 149-151 & 153-155 Waldon Road, located opposite Waldron Road to the south;
- 136 Campbell Hill Road – which has a rear boundary to the site;
- A commercial use/cafe at 220 Campbell Hill Road, located at the NE junction of Campbell Hill Road and Waldron Road; and
- An approved shop top housing development at 137 Waldron Road, (DA776/2020), of eight storeys, with retail uses at ground level and 100 apartments above.



Figure 8: Shadow context plan (Affected properties identified)

Source: Nearmaps

The following detailed description of the affected buildings and their context in relation to the site, is provided below to establish a basis for the assessment.

The residential apartment buildings to the south are located in the R4 zone, the same as the ATV site. The three properties have a rear boundary to the rail corridor and present to Waldron Road in 2-3 storey forms with facades including balconies, windows to principal living areas, and secondary room windows, such as bedrooms and WCs.



Figure 9: Elevated view from north (Affected properties identified)
147 Waldron Road

Source: Nearmaps

Only the eastern part of the northern elevation of 147 Waldron Road contains balconies and windows to principal living areas. The ground level of the units are elevated above street level by ~2m. The western part of the north elevation comprises bedroom and other secondary windows.



Figure 10: Northern elevation 147 Waldron Road

149-151 Waldron Road

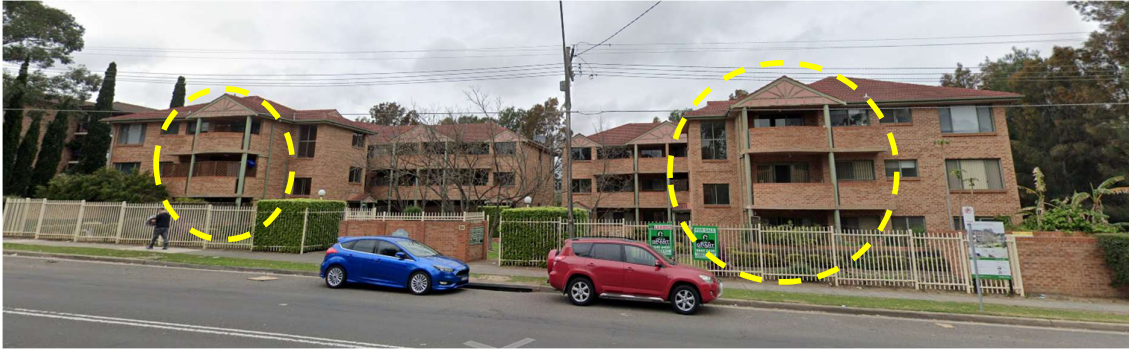


Figure 11: North elevation 149-151

There are six apartments on the northern elevation of 149-151 Waldron Road, (as indicated above), which have the potential to be overshadowed by the proposed development

The landscaping in front of this site does not appear to be used for, and is not particularly designed for, communal open space purposes. The open space at the front of 149-151 Waldron has its benefits in terms of providing physical separation between buildings and creating a pleasant outlook for residents.

153-155 Waldron Road

The development includes a number of principal living room windows and balconies, as shown below, facing Waldron Road.



Figure 12: North elevation 153-155 Waldon Road

The common open space at the front of the property is not used for passive recreation purposes. Refer to Figure 13 below.



Figure 13: Common open space front setback 153-155 Waldron Road

Overshadowing Assessment

Summary

The existing development does overshadow any residentially zoned land. Proposed Buildings A and C will overshadow a limited number of apartments (balconies/windows) and the front setback areas of the properties on the opposite side of Waldron Road, but only on or around mid-winter, and only for short periods in the morning between 9am-11am (depending on the building) and in the afternoon at 3pm, during mid-winter.

Building A - The building will cast additional shadow on the approved development at 137 Waldron Road after 1pm, reaching the residential levels between 1pm and 2pm.

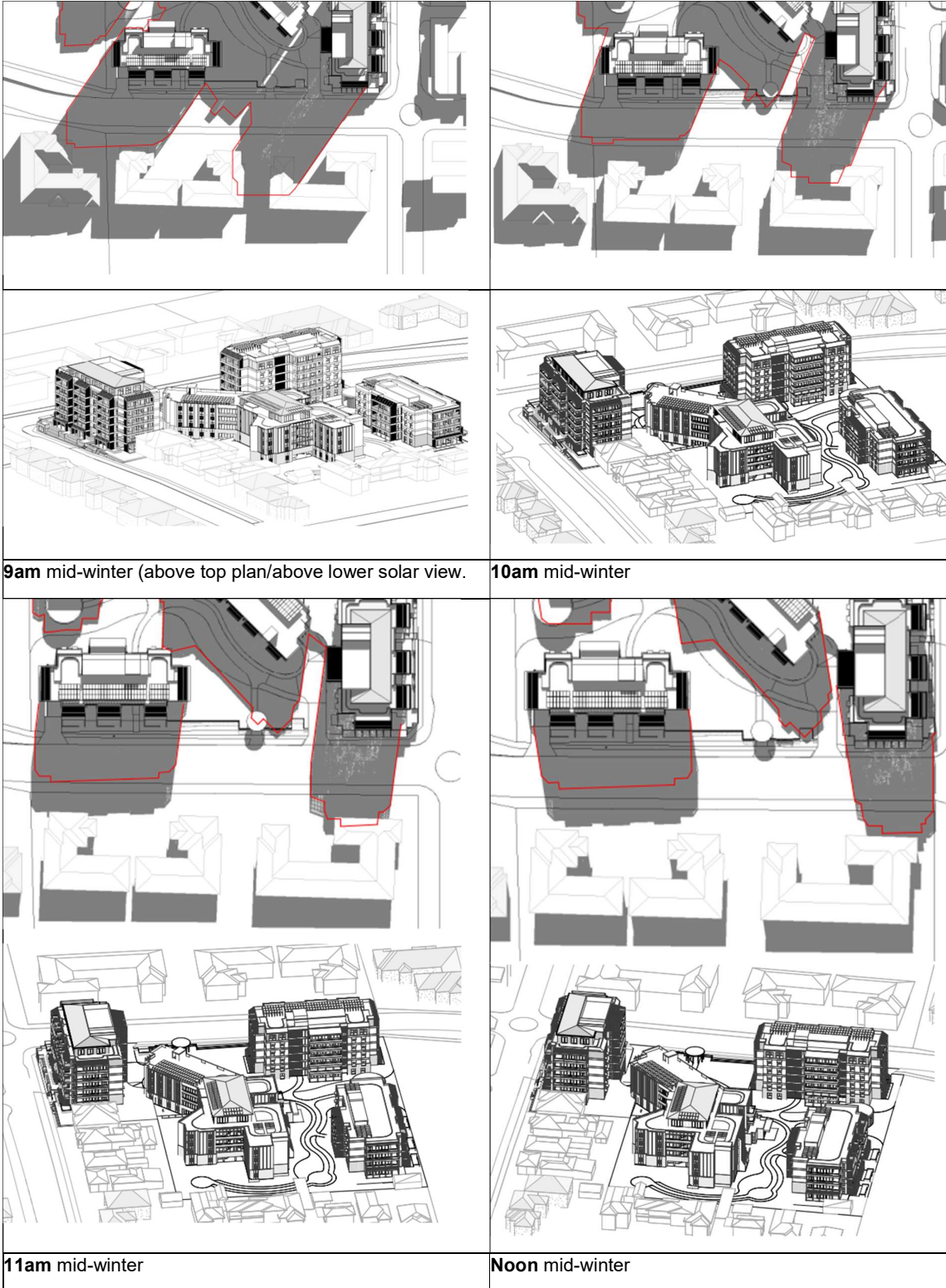
Building B - The building does not overshadow any neighbouring properties, except for shadow on the rear of 136 Campbell Hill Road with occurs from 3pm. The rear open space and elevation of 136 Campbell Hill Road will have unfettered solar access for the rest of the day between 9am and 2pm mid-winter.

Building C - Due to the height and orientation of Building C to follow the alignment of Waldron Road, the overshadowing impact of the development is greatest at this point. Whilst the proposed envelope for Building C will create additional overshadowing as a result of the breach to the height standard, the sun view diagrams clearly show that the northern elevations of the building's opposite will receive direct solar access for approximately 5 hours - more than double the minimum requirement under the ADG. The front setback areas of the properties opposite are also overshadowed for limited periods but do not comprise principal areas of common open space or private open space.

Detailed Assessment

Extracts from the mid-winter shadow plans and corresponding sun-eye views, prepared by BRG (DWGS A3DA45-48/A3DA57-59) are provided below. Existing shadow diagrams have not been provided since the existing development has no significant shadow impact.

No additional overshadowing will occur on neighbouring properties on the summer solstice, nor during the equinox, as a result of the proposed development.



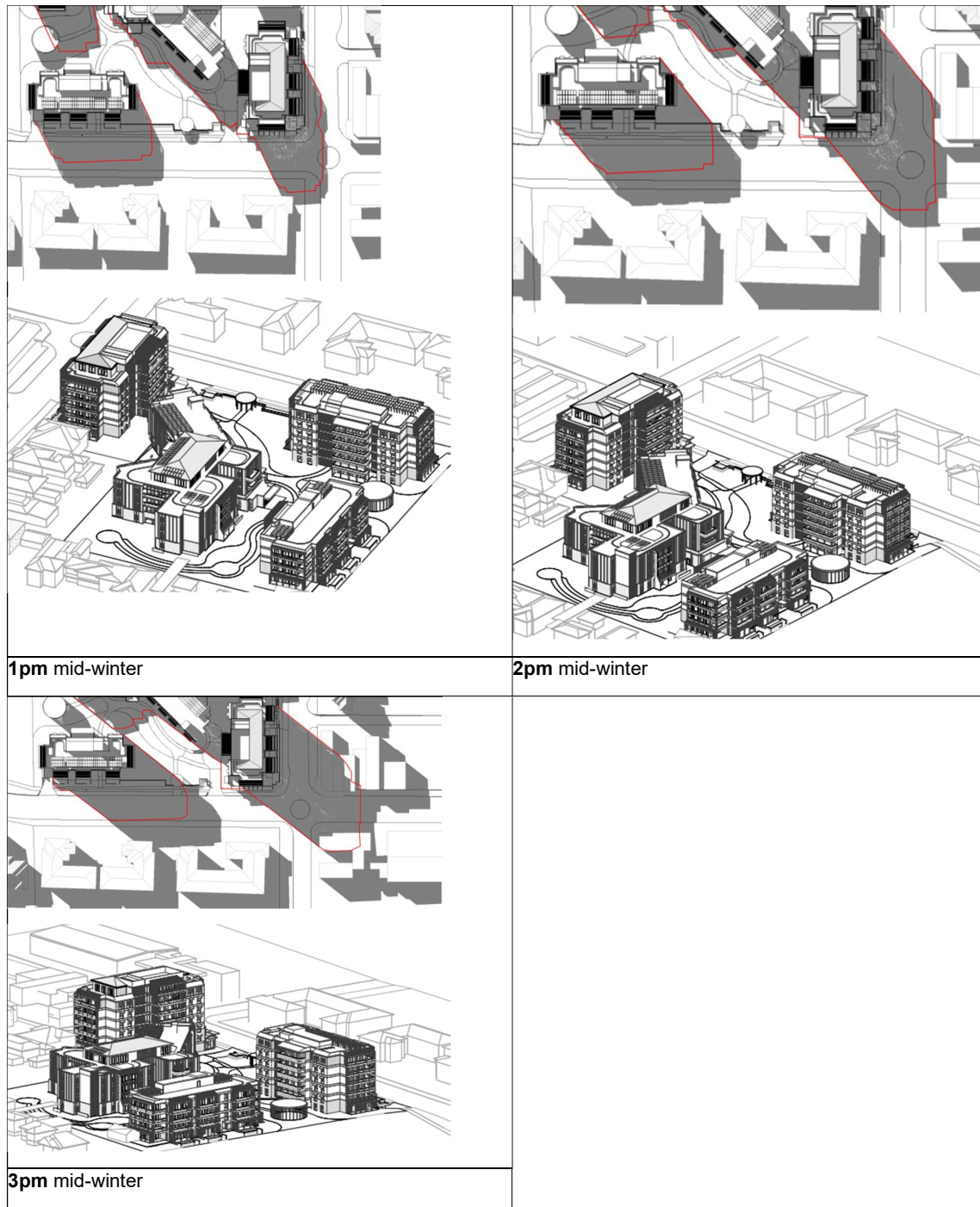


Figure 14: Extracts mid-winter solar modelling

Source: BRG

To assess the degree of overshadowing we refer to Part 3B of the Apartment Design Guide (ADG)

“Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access”



“3D Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)”

“4A Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter DCP adopts ADG”

“Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%”

The ADG provides guidance with respect to balcony design to ensure adequate solar access, as shown below.

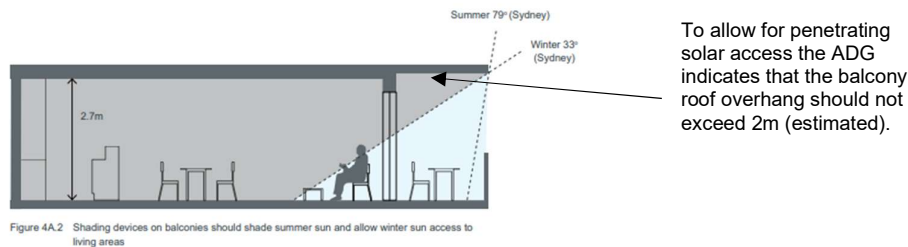


Figure 15: Extract ADG - Solar Access Balcony Design Source: Part 4A ADG.

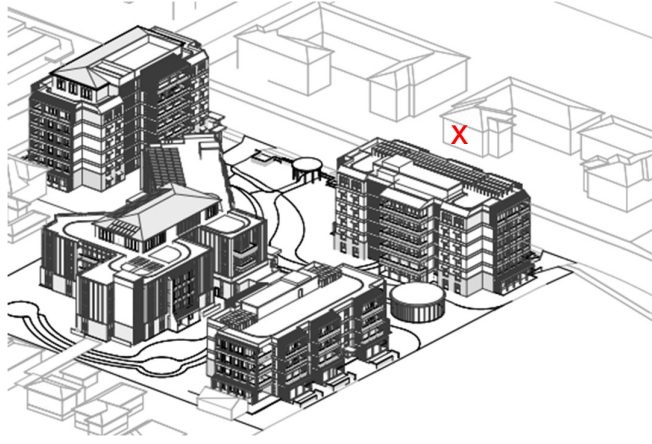
The reason for the reference to this design guidance is to understand the existing solar access performance of the affected balconies opposite. The affected balconies at 149-151 Waldron Road and 153-155 Waldron Road each have roof overhangs over balconies estimated to be 3m and therefore the windows serving them may already be in shade during mid-winter.

The degree of proposed overshadowing and solar access to the affected property is described in Table 2 below.

Building / Location	Overshadowing	Solar Access (hrs. est. btw 9-3))
136 Campbell Hill Road	The rear open space and elevation of 136 Campbell Hill Road will begin to be overshadowed at approximately 2.30pm but will have unfettered solar access for the rest of the day between 9am and 2pm mid-winter.	5 hours
220 Campbell Hill Road - Commercial	Side elevation of café overshadowed for 1-hour late afternoon.	N/A – Commercial use



Figure 16: Side elevation 220 Campbell Hill Road

137 Waldron Road - (Approved shop top housing)	Building A starts to shadow the site from 2pm and will reach the residential levels of the approved development by approximately 2.30pm.	5 hours
147 Waldron Road	The shadow cast on this property is created by Building A which complies with the FSR standard.	3.5
149-151 Waldron Road	The shadow cast on this building at 9am is introduced by Building A which complies with the FSR standard. The northern elevation of this building will have unfettered solar access during mid-winter between 10am -2pm.  Figure 17: Extract 2pm mid-winter By 3 pm the shadow cast by Building C falls on the part of the building containing balconies and windows, as shown above (x) and Figure 8 above, and parts of the front setback area of 149-151 Waldron Road. The landscaping in front of this site does not appear to be used for, and is not particularly designed for, communal open space purposes. The open space at the front of 149-151 Waldron has its benefits in terms of providing separation between buildings and creating a pleasant outlook for residents.	4 (north elevation - east side) 5 (north elevation - west side)



	The amenity introduced by the landscaped scapes will not be hindered by the anticipated brief and infrequent overshadowing.	
153-157 Waldron Road	The shadow cast on this building by Building C occurs only between 9am and 10am mid-winter for approximately half an hour. The shadow will fall on the north facing elevations, and an internal east elevation, and over parts of the front landscaped setback area. The building is clear from overshadowing by 10am and then has unfettered solar access for the rest of the day. As shown at Figure 17 above, the front setback zone is not one of high amenity or practical function and is not used as principal common open space. Due to the position of the publicly reserved land to the land, there is no future potential for additional overshadowing on this land.	5.5

TABLE 2: OVERSHADOWING

Despite non-compliance with the FSR standard in the R4 zone, the proposed development will result in only minor additional overshadowing on neighbouring properties. The overshadowing created by the proposed development will occur only for a brief period of approximately ½ hour in the morning (9am) and the same in the afternoon (3pm), mid-winter only.

The north facing properties opposite Waldron Road and 136 Campbell Hill Road will continue to receive solar access for more than double the minimum duration required under the ADG and DCP. Given the limited duration of the shadow and the limited time of the year it will occur, the proposed development is not considered to result in any significant or unreasonable adverse overshadowing impacts.

Visual Privacy

To proposed development does not result in any significant adverse overlooking or privacy related impacts as a result of the proposed breach to the FSR standard in the R4 zone.

In the context of this variation request, Part 3F of the ADG pertaining to Visual Privacy is considered with respect to the relationship between buildings within the site and the northern site boundary with respect to Building E. The ADG does not apply to the RCF (Building B) in terms of separation to boundaries. Building E has a front boundary and a side boundary and Building A complies with the standard.

The western site boundary to the reserve is a side boundary and therefore the ADG technically applies. The building separation guideline is considered to be of limited relevance at this location since the side boundary has an interface with a public reserve with no buildings, (with no likelihood of any future buildings), in the vicinity of the boundary. The design approach in this location is for the development to create a relationship with the reserve not further segregate the uses by greater physical separation.

The visual privacy relationship of the RCF with neighbouring development is considered below in the context of the design principles under the *Seniors Housing Guidelines*.

BUILDING E



Building E satisfies Part 3F of the ADG except for the north ground-floor balustrade edge, which has a setback of 7.6m. The guideline is 9m, (including an extra 3m to account for the zoning interface at this location). No significant privacy issues are introduced given: the non-compliant portion is at ground level; the area between the balustrade and the northern boundary will be landscaped, including canopy vegetation; and, the site is defined at that location by a solid 1.8m fence.

BUILDING B

Building B is setback to varying degrees to the adjacent northern and eastern site boundaries which, in the context of the proposal, are considered to be rear and side boundaries, respectively. Figure 18 below shows the setbacks to boundaries in the context of the proposed landscaping plan.



Figure 18: Building B - Setbacks to boundaries

The *Seniors Housing Design Guide 2023*, (SHDG), at Section 12.7 includes privacy related design objectives and guidance for RCFs, as follows:

“Objective

12.7.1 To respect the visual and acoustic privacy of neighbours and occupants.

Guidance

12.7.2 Provide generous setbacks that are informed by the position and location of neighbour’s outdoor open space and windows.

12.7.3 Plant screen planting that acts as acoustic buffers as well as providing privacy and separation from the boundary fence.

12.7.4 Provide deeper courtyards for elevations or resident wings to face in towards to reduce overlooking to neighbours. Provide landscaping against open rail fences to screen resident spaces for privacy”

Figure 14 below shows an extract of a typical level of Building B at its closest location to the eastern boundary. The minimum building setback at this location is 4.6m. No privacy impacts are introduced at this location since the elevation at this location comprises a solid corner wall.



Figure 19: Building B - Setbacks eastern boundary (detail)

A small sitting area is proposed on each level with an east facing window setback from the boundary by 6.4m.

Building B is considered to satisfy the related objectives by not introducing any significant adverse or unreasonable privacy impacts on the neighbouring dwellings to the east, and north, for the following reasons:

- The setback closest to the eastern boundary forms part of the pedestrian network around the site and is landscaped along the eastern edge. Two, (2) x 'Banksia ericifolia' trees with mature heights and spreads of 15m/4m are proposed at the location of the sitting area; and, a 'Cape Chestnut' tree of (10m/6m) between the bedrooms at this location, shown above, and the eastern boundary. A selection of shrubs and groundcover plants define the pathway in the setback area. The use of planting to screen sightlines is consistent with the design guidance;
- The closest rooms to the east boundary at each level have a single window orientated obliquely to the boundary, like the rest of the residential wing at this location, with a minimum direct sight line of 6m.
- The communal open space at the roof level, like the rest of the building, is recessed back from the external building line by raised, non-trafficable, planter boxes, blocking any downward sightlines.
- The windows in Building B will be double glazed, thereby minimising noise transfer;
- Building B sits below the neighbouring ground level further reducing opportunities for overlooking;
- The sitting areas with a facing the eastern boundary are relatively small and are designed to accommodate furniture facing away from the window.
- The windows facing the northern boundary are setback 12m, providing ample separation to satisfactorily mitigate any privacy related impacts on the lower-density residential land to the north. The setback zone in this location comprises a deep-soil landscaped area, comprising dense plantings and the retention of the trees at the north-west corner of the site.



PRIVACY BETWEEN BUILDINGS WITHIN THE SITE

All buildings comply with the building separation criteria within the site at Part 3F of the ADG, except for the distance between Buildings A and B. Refer to **Appendix H** of the EIS - ADG Compliance Table.

Building A is not located on part of the site where a breach to the FSR standard occurs, but is considered in this context since excessive FSR in the R4 zone could have the potential to introduce privacy impacts between the buildings.

To mitigate any significant privacy related impacts and satisfy the objectives of Part 3F, privacy louvres have been added to the windows of the small lounges and residential rooms at the southern end of the RCF to obstruct sightlines to and from the private balconies and bedrooms on the western side of Building A, as shown below.

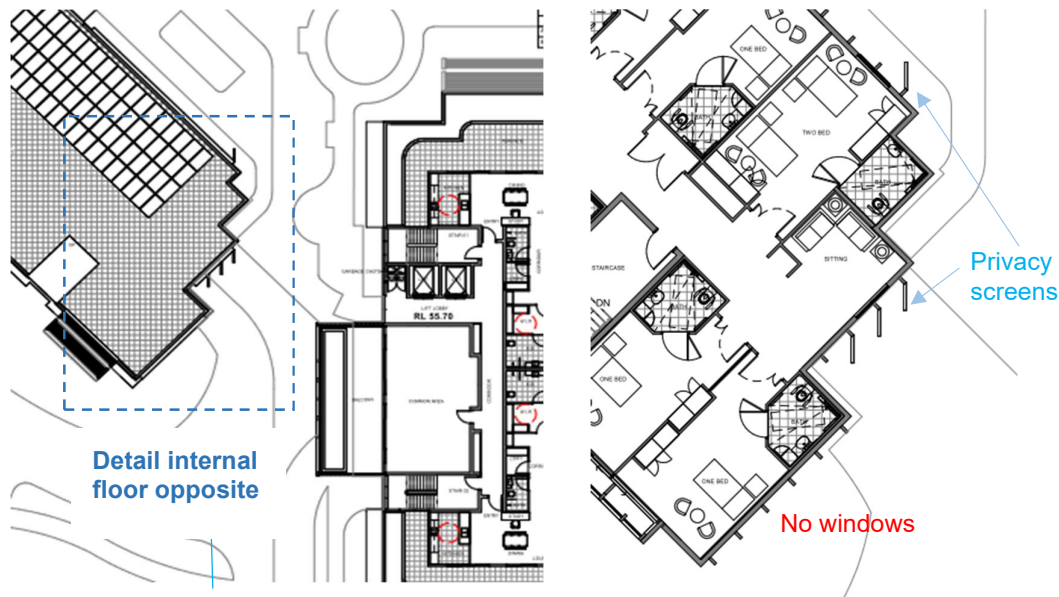


Figure 20: Buildings A-B: Separation Distances

The southern roof open space area of the RCF has the potential to overlook the private west facing balconies in Building A, if it were to be used. The southern roof area is accessible but unlikely to be frequented often given the more attractive amenities and landscaped spaces at the northern end. If deemed necessary, and to clarify, we do not believe further mitigation is necessary, a rail may be installed on the roof, ~2-3m back from the building edge at this location, which would restrict access and remove any direct sightlines from the roof to the sensitive areas of Building A.

To conclude this section, the breach to the FSR standard on the R4 zoned land does not create any significant or unreasonable privacy related impacts, either outward to neighbouring properties or within the development.

b) Parking and Traffic Generation

The proposed development provides on-site parking to satisfy the SEPP(Housing). Parking in the R4 zone is provided entirely below ground level thereby not contributing to the overall massing of the buildings.

The intensity of the development, usually gauged by floor area and/or occupancy, is below what the planning framework anticipates for this site, by being 1,032sq.m below the maximum GFA available.



With respect to traffic generation, the Traffic Report, provided at **Appendix V** of the EIS, concludes:

“... The Waldron Road intersections previously analysed have been reanalysed with SIDRA for the additional development traffic flows shown on Figures 2 and 3. The analysis found that the intersections would continue to operate at their existing satisfactory or better levels of service, with similar average delays per vehicle. SIDRA output summaries are provided in Appendix B.

6.20 Therefore, the road network will be able to cater for the traffic from the proposed development”

The variation to the Additional FSR standard does not increase the intensity of the development so that it results in unacceptable traffic conditions and local road intersections. Furthermore, the traffic generation of a development of the same GFA, which complies with the standard in terms of the distribution of GFA across the site, would have the same traffic impact.

c) Other Potential Impacts

The proposed non-compliance to the Additional FSR standard in the R4 zone does not introduce any significant adverse impacts with respect to the loss of views; the loss of trees, (given the design approach focuses on minimizing site coverage, resulting in increased canopy cover); or, significant adverse visual impacts.

The proposed development will of course result in a changed visual environment, which we submit is an improved outcome, in light of the considered approach to site planning and the superior landscaping design and streetscape outcomes.

6. CBLEP 2023 - FSR OBJECTIVES

For completeness, the objectives related to FSR, at Clause 4.4 of CBLEP 2023, are addressed as follows:

- (a) *to establish the bulk and maximum density of development consistent with the character, amenity and capacity of the area in which the development will be located,*

Comment: The maximum density, as it relates to FSR, is established by Clause 87 of the SEPP. The proposed development relies on only 75% of the additional FSR available and is therefore below the maximum density for this site of development on this site. The reason why the variation is necessary is to allow for a transfer of surplus GFA from one part of the site to the another, and as discussed elsewhere in this request, may be accommodated to be in keeping with the emerging character of the Centre and without significant adverse impacts on neighbouring properties or the wider environment.

- (b) *to ensure the bulk of non-residential development in or adjoining a residential zone is compatible with the prevailing suburban character and amenity of the residential zone,*

Comment: N/A

- (c) *to encourage lot consolidations in commercial centres to facilitate higher quality built form and urban design outcomes,*

Comment: The proposed variation relates to the R4 zoned part of the site, which is not in the commercial centre. The development fully supports this objective in so far as it being a large consolidated lot, located partly in the local centre, and by achieving a high-quality design outcome.



- (d) to establish the maximum floor space available for development, taking into account the availability of infrastructure and the generation of vehicular and pedestrian traffic,

Comment: Refer to 5(c) above - Traffic and Parking.

- (e) *to provide a suitable balance between landscaping and built form in residential areas.*

Comment: The proposed high-quality landscaping outcome has been achieved despite the necessity to vary the additional FSR available in the R4 zoned land. The proposed development exceeds all the minimum numeric requirements in the related planning instruments and guidelines with regard to 'landscaped area'; 'common open space'; and, 'deep-soil areas'.

The separation between Buildings A and C on the Waldron Road streetscape, emphasises the landscaping against the proposed built form, maximising permeability and views into the heart of the site.

7. STRATEGIC PLANNING

Due to the relationship between the purpose of Clause 87 (to incentivise) and the proposed variation, to allow enough access to incentivised FSR to deliver the project, these strategic grounds relate directly to the breach. The variation to the FSR standard unlocks the incentive available to deliver the project which directly supports the following overarching strategic planning directions:

Greater Sydney Region Plan: A Metropolis of Three Cities

- *Objective 10 Greater housing supply*
- *Objective 11 Housing is more diverse and affordable*
- *Objective 12 Great places that bring people together*
- *Objective 14 A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities*

South District Plan

- *Planning Priority S3 Providing services and social infrastructure to meet people's changing needs*
- *Planning Priority S5 Providing housing supply, choice and affordability, with access to jobs, services and public transport*

City Canterbury-Bankstown Local Strategic Planning Statement – Connective City 2036

City Directions

- *The local centres of Revesby, Chester Hill and Yagoona will provide urban services to a wide catchment and provide additional housing.*
- *E6.10.134 Increase the stock of accessible dwellings*

Canterbury-Bankstown Housing Strategy 2020

Guiding Principles

- *New housing is best located within walking distance of centres, open space and places of high amenity.*



- *New housing will need to provide a variety of dwelling types, sizes and price points to meet the needs of a diverse and aging population."*

8. PUBLIC INTEREST

The delivery of this project is of significant interest to the State, Canterbury-Bankstown Council, the community at large, and, of course the existing ATV residents and staff.

Although no longer a mandatory consideration under Clause 4.6, the proposed development (including the proposed variation to the height standard) is firmly in the public interest which constitutes a valid environmental planning ground to uphold the variation request.

We use the term 'valid' in light of the decision of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, which confirmed that the variation request must relate to the part of the development which breaches the development standard, as opposed to the consideration of the proposed development as a whole.

In this case, there is a direct nexus between the underlying purpose of the standard to be varied (to incentivise FSR), the public interest (the achievement of the Principles of the Policy) and the non-compliant part of the development in terms of the additional height available.

The non-compliance with the additional FSR standard at Clause 87(b)(iii), goes to the essence of the Clause, which is to incentivise seniors housing with additional FSR.

This Clause 4.6 variation request, will allow the developer to utilise enough incentivised FSR to deliver this important project, satisfying the specialised housing needs of the aging community, supporting the Principles of the Plan (SEPP Housing) and the clear strategic planning prerogatives for this type of housing.

This is achieved with a proposed with an FSR in excess of the maximum GFA available in the R4 zone under Clause 87(2)(b)(iii) of the SEPP, but within the development capacity of the site; and, without the introduction of significant adverse environmental impacts on neighbouring residents or the wider environment.

Conclusion

Strict compliance with Clause 87(2)(b)(iii) of SEPP(Housing) 2021 is considered to be unreasonable and unnecessary and there are satisfactory environmental planning grounds to warrant a variation to the development standard, in the circumstances of this case.

Subject to the mechanisms of Clause 4.6 of the LEP, the proposed development satisfactorily addresses Clause 87(2)(b)(iii) of the SEPP, and consent may be granted.



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Principal

24 October 2025

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