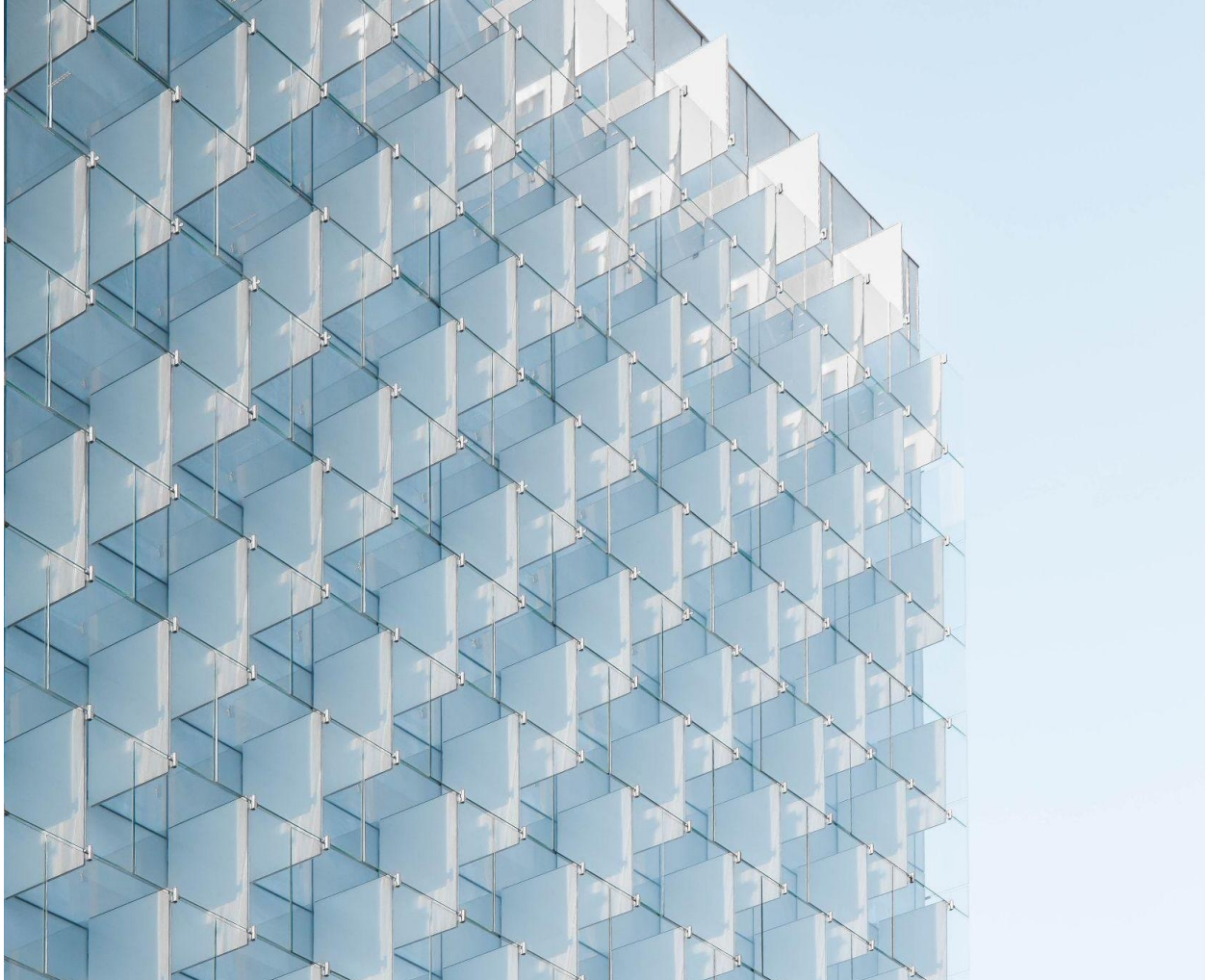


# WILLOWTREE PLANNING



8 February 2025

Ref: WTJ22-034  
Contact: Cameron Gray



## **CLAUSE 4.6 VARIATION REQUEST NON-DISCRETIONARY BUILDING HEIGHT**

**PROPOSED RESIDENTIAL AGED CARE FACILITY, INDEPENDENT  
LIVING UNITS, COMMUNITY FACILITIES AND ANCILLARY LAND USES**

Uniting War Memorial Hospital Waverley – Bronte Road, Birrell Street,  
Carrington Road & Church Street Waverley

—

Prepared by Willowtree Planning Pty Ltd  
on behalf of Uniting NSW.ACT

Clause 4.6 Variation -Non-Discretionary Building Height

Proposed Residential Aged Care Facility, Independent Living Units, Community Facilities and Ancillary Land Uses  
Uniting War Memorial Hospital Waverley – Bronte Road, Birrell Street, Carrington Road & Church Street, Waverley



In the spirit of reconciliation and recognition, Willowtree Planning acknowledges the Traditional Owners of this Country throughout Australia and their continuing and ongoing connections to land, waters and community. We show our respect to Elders – past and present. We acknowledge that we stand on this Country which was and always will be recognised as Aboriginal Land. We acknowledge the Traditional Owners of the Lands in this Local Government Area, belonging to the local Aboriginal People, where this proposal is located upon.

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## PART A PRELIMINARY

### 1.1 INTRODUCTION

This Clause 4.6 variation request (Variation Request) has been prepared in support of a Development Application (DA) for the proposed Residential Aged Care Facility (RACF), Independent Living Units (ILU), community facilities and ancillary land uses at Uniting War Memorial Hospital Waverley, Bronte Road, Birrell Street, Carrington Road & Church Street, Waverley (Subject Site).

The Subject Site is zoned R3 Medium Density Residential and SP2 Infrastructure (Health Service Facilities), pursuant to the *Waverley Local Environmental Plan 2012* (WLEP2012), and is located within the Waverley Local Government Area (LGA). The proposed development is permissible with consent within the R3 and SP2 zones and is considered contextually appropriate. The proposal is generally consistent with the objectives and provisions of WLEP2012.

The purpose of this written request is to seek a variation to the building height non-discretionary development standards contained in Clause 107(2)(a) & (b) of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

It is noted that pursuant to Clause 4.4, Clause 6.13 of WLEP2012 and Clause 87 of the Housing SEPP, the Subject Site is afforded building heights which substantially exceed those permitted under Clause 107 of the Housing SEPP.

Clause 4.6 of the WLEP2012 enables the consent authority to grant consent for development even though the development would contravene a development standard imposed by the WLEP2012 or any other EPI. As such, this Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed under the Housing SEPP. It considers various planning controls, strategic planning objectives and existing characteristics of the Subject Site and concludes that the proposed non-compliance is the best means of achieving the objects of encouraging orderly and economic use and development under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

### 1.2 RATIONALE OF VARIATION FROM DEVELOPMENT STANDARDS

This Variation Request has been submitted to assess the proposed non-compliance with Clause 107(2)(a) & (b) and has been prepared in accordance with the requirements of Clause 4.6 of WLEP2012 which includes the following objectives:

- (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.



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Clause 107(2)(a) & (b) is reproduced below:

- (2) The following are non-discretionary development standards in relation to development for the purposes of hostels or residential care facilities—*
- (a) no building has a height of more than 9.5m, excluding servicing equipment on the roof of a building,*
- (b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m—*
- (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and*
- (ii) is limited to an area of no more than 20% of the surface area of the roof, and*
- (iii) does not result in the building having a height of more than 11.5m,*

Under the provisions of Clause 107(2)(a) & (b) of the Housing SEPP, the RACF is subject to a maximum building height of 9.5m and servicing equipment height of 11.5m. **Table 1** below summarizes compliance with the standards below.

The proposed development seeks a variation to the non-discretionary building height prescribed under the Housing SEPP. This Variation Request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards prescribed by WLEP2012.

### 1.3 DEVELOPMENT STANDARD VARIATION

The proposal consists of RACF within Building A at the Subject Site, the height of which is shown in **Table 1** below.

TABLE 1: BUILDING HEIGHT			
Standard	Numeric Value	Proposed	Maximum Variation
Building Height	9.5m	15.9m	67%
Servicing Equipment Area	20% of the surface of the roof area	66.2%	231%
Servicing Equipment Height	11.5m	22.m	99%

It is noted that pursuant to Clause 4.4, Clause 6.13 of WLEP2012 and Clause 87 of the Housing SEPP, a maximum building height of 21m is afforded which exceeds the non-discretionary development standard.

The proposed development represents the culmination of a rigorous and comprehensive planning and design process, that demonstrates the ideal built form to be developed on the Subject Site. The proposed development provides a design response that is based on a clear understanding of the spatial and urban context of the Subject Site and the neighbourhood character. The proposed non-compliance with the non-discretionary building height does not relate to an increased FSR on the Subject Site above what is contemplated by Clause 87 of the Housing SEPP and Clause 6.13(4)(b) of WLEP2012, such that it can be considered an overdevelopment of the Subject Site.



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The height of the RACF is a result of the need to co-locate these services with the ancillary and community facilities in the central building of the Subject Site to ensure that adequate care may be provided, and operational efficiencies are maximised. Given the nature of the ancillary and community facilities, these are required to be provided at the lower floors to enable equitable access for all at the Subject Site and the community, which results in the RACF being located above and the exceedance of the non-discretionary building height.

As above, Building A is subject to a maximum building height development standard of 21m pursuant to the relevant provisions of WLEP2012 and the Housing SEPP. Building A has generally been designed to comply with this development standard (with the exception of a minor variation which is addressed in **Appendix 12**), and therefore the servicing equipment exceeds the non-discretionary development standard. It is not physically possible to locate the servicing equipment below the roof of the building, the height of which is established by Clause 4.4, Clause 6.13 of WLEP2012 and Clause 87 of the Housing SEPP. Compliance with the servicing equipment height would result in the deletion of the servicing equipment which therefore prevents the operation of the RACF in its entirety.

In its current form, the proposal therefore represents the most efficient use of the Subject Site which responds to the building height development, compared to a development which is entirely compliant with the non-discretionary standards.



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## PART B THRESHOLDS THAT MUST BE MET

### 2.1 INTERPRETING CLAUSE 4.6

Clause 4.6 of WLEP2012 facilitates exceptions to strict compliance with development standards in certain circumstances. Clause 4.6(3) states (our emphasis added):

*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.*

*Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be **accompanied by a document setting out the grounds** on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b)*

Accordingly, a successful Clause 4.6 variation must satisfy the below:

#### First Limb – cl 4.6(3)

Clause 4.6(3) provides that the consent authority must be satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the following:

- a. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)); and
- b. that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)). To this end the environmental planning grounds advanced in the written request must justify the contravention, not simply promote the benefits of carrying out the development as a whole: *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15].

In the decision of *Rebel MH v North Sydney Council* [2019] NSWCA 130 (**Rebel**) Payne JA held (our emphasis added):

*“Although it was unnecessary finally to decide the correct construction of cl 4.6(4) in Al Maha, I agree with the construction advanced in that case by Basten JA, with whom Leeming JA agreed, at [21]-[24]. **Properly construed, a consent authority has to be satisfied that an applicant's written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).** Clause 4.6(3) requires the consent authority to have “considered” the written request and identifies the necessary evaluative elements to be satisfied. To comply with subcl (3), the request must demonstrate that compliance with the development standard is “unreasonable or unnecessary” and that “there are sufficient environmental planning grounds to justify” the contravention. It would give no work to subcl 4.6(4) simply to require the consent authority to be*



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*satisfied that an argument addressing the matters required to be addressed under subcl (3) has been advanced.”*

Accordingly, a consent authority must be satisfied:

- a. that the Clause 4.6 variation application addresses the matters in Clause 4.6(3); and
- b. of those matters itself which means that there is greater scope for a consent authority to refuse a Clause 4.6 variation.

These matters are addressed in **Sections 4.3** and **4.4** of this Variation Request.

This written request has been prepared under Clause 4.6 to request a variation to the non-discretionary building height development standard at Clause 107(2)(a) & (b) of the Housing SEPP.





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## PART C STANDARDS BEING OBJECTED TO

### 3.1 OVERVIEW

The Subject Site is zoned R3 Medium Density Residential and SP2 Infrastructure (Health Service Facilities) and is subject to the underlying objectives of the varied standard as well as the R3 and SP2 zones under WLEP2012.

### 3.2 CLAUSE 107(1) OBJECT

Clause 107(1) of the Housing SEPP identifies the following object:

- (1) *The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

### 3.3 PROPOSED VARIATION TO DEVELOPMENT STANDARDS

The DA seeks approval for the proposed RACF, ILU, community facilities and ancillary land uses at the Subject Site. The proposal would **exceed the non-discretionary building height applicable to RACF**. It is noted that this Clause is limited to the RACF only, however Building A which comprises the RACF on the Subject Site also includes ILUs, Community Facilities and Ancillary uses.

The development in its proposed built form and scale will provide housing supply that is purpose built to satisfy the function of the use and is compatible and responsive in form and scale with the desired future character of the area, site-specific provisions and existing development in the locality. The proposed non-compliances will not have an adverse impact on the area.

The height of the RACF is a result of the need to co-locate these services with the ancillary and community facilities in the central building of the Subject Site to ensure that adequate care may be provided, and operational efficiencies maximised. Given the nature of the ancillary and community facilities, these are required to be provided at the lower floors to enable equitable access for all at the Subject Site which results in the RACF being located above and the exceedance of the non-discretionary building height.

As above, Building A is subject to a maximum building height development standard of 21m pursuant to the relevant provisions of WLEP2012 and the Housing SEPP. Building A has generally been designed to comply with this development standard (with the exception of a minor variation which is addressed in **Appendix 12**), and therefore the servicing equipment exceeds the non-discretionary development standard. It is not physically possible to locate the servicing equipment below the roof of the building, the height of which is established by Clause 4.4, Clause 6.13 of WLEP2012 and Clause 87 of the Housing SEPP.

Curtailing the non-discretionary building height of the proposal to the current prescribed standard would prevent the proposal from meeting the servicing requirements of the RACF and the relocation of the



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ancillary and community facilities to other buildings within the Subject Site, resulting in a significant reduction in the accessibility of such services and overall efficiency of the Subject Site. Further, such a change would result in additional height non-compliances having regard to Clause 108 of the Housing SEPP as these areas are relocated within other buildings.

In its current form, the proposal therefore represents the most efficient use of the Subject Site which responds to the building height development, compared to a development which is entirely compliant with the non-discretionary standards. The proposed variations would not result in any adverse amenity impacts. The Subject Site is zoned R3 and SP2 under the provisions of WLEP2012, whereby the proposed development is permissible with consent.

This Variation Request has been prepared in accordance with the object of Clause 107(2)(a) & (b) of the Housing SEPP and the relevant zone objectives of WLEP2012.

It is noted that Section E7 of the Waverley Development Control Plan 2022 (WDCP2022) includes controls which allow for the building height permitted under WLEP2012 to be exceeded. The proposed variations align with the intent of these controls and would in no way result in non-compliances in this regard.



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## PART D PROPOSED VARIATION TO STANDARDS IN CLAUSE 107(2)(A) & (B) OF THE HOUSING SEPP

Pursuant to Clause 4.6 of WLEP2012 exception is sought from the non-discretionary building height standard applicable to the Subject Site pursuant to Clause 107(2)(a) & (b) of the Housing SEPP.

### 4.1 OBJECTIVES OF THE STANDARD

A key determinant of the appropriateness of a Clause 4.6 Variation to a development standard is the proposal's compliance with the underlying objectives and purpose of that development standard.

Pursuant to Clause 4.6 of WLEP2012, the proposal seeks exception to the non-discretionary building height pursuant to Clause 107(2)(a) & (b) of the Housing SEPP.

Clause 107(1) of the Housing SEPP sets out a specific objects which is responded to in **Table 2** below:

TABLE 2: CONSISTENCY WITH THE CLAUSE 107(1) OBJECT	
Objective	Response
<i>The object of this section is to identify development standards for particular matters relating to development for the purposes of hostels and residential care facilities that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</i>	The proposed development does not prevent the application of the non-discretionary development standard that is identified.

### 4.2 OBJECTIVES OF THE ZONE

The Subject Site is zoned R3 Medium Density Residential and SP2 Infrastructure (Health Service Facilities) pursuant to WLEP2012. Therefore, consideration has been given to the R3 and SP2 zone objectives in **Table 3** below:

TABLE 3: CONSISTENCY WITH THE ZONE OBJECTIVES	
Objective	Response
<b>R3 Medium Density Residential</b>	
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	The proposed development will provide a substantial contribution to the need for seniors housing within the medium density residential environment.
<i>To provide a variety of housing types within a medium density residential environment.</i>	The proposed development will provide a range of seniors housing offerings both in scale and function.



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<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed development includes a number of community and ancillary land uses that provide facilities and services to meet the day to day needs of future residents of the Subject Site and residents of the surrounding area.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	Pedestrian links have been created throughout the Subject Site and significant bicycle facilities provided to encourage walking and cycling.
<i>To increase or preserve residential dwelling density.</i>	The proposed development substantially increases residential dwelling density at the Subject Site, providing 218 new ILU and 105 aged care beds.
<i>To encourage the supply of housing, including affordable housing, that meets the needs of the population, particularly housing for older people and people with disability.</i>	<p>The proposed development will provide a substantial contribution to affordable housing and housing for older people including residential aged care to allow for ageing in place and keeping a cohesive community for all residents.</p> <p>The proposed development provides more than double the number of required affordable housing units.</p>
<i>To provide development that is compatible with the desired future character and amenity of the surrounding neighbourhood.</i>	The proposed development has been designed to be consistent with and enhance the desired further character of the surrounding area whilst minimising amenity impacts.
<i>To promote development that incorporates planning and design measures that reduce the urban heat island effect.</i>	<p>Significant canopy planting and landscaping is provided to assist in reducing the impacts of the urban heat island effect.</p> <p>The proposal to introduce a full geothermal heating and cooling system will reduce the need for traditional air conditioning and will assist in reducing the impacts of urban heat island effect.</p>
<i>To improve the urban tree canopy by providing high levels of deep soil planting and additional landscaping.</i>	<p>As above, significant canopy planting and landscaping is provided.</p> <p>Canopy cover will increase to 35.45% of the Subject Site area (40.18% excluding the Hospital) (from current canopy cover of 27%).</p>
<b>SP2 Infrastructure</b>	
<i>To provide for infrastructure and related uses.</i>	The proposed development provides for uses listed within the SP2 zone on the Subject Site and is compatible with the provision of infrastructure.
<i>To prevent development that is not compatible with or that may detract from the provision of infrastructure.</i>	



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### 4.3 ESTABLISHING IF THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

Subclause 4.6(3)(a) (refer to **Section 2.1**) emphasises the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances.

The ways in which compliance with a development standard may be held to be “unreasonable or unnecessary” are well established. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*), Preston CJ provided a non-exhaustive list through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6.

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

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).*
- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).*
- *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).*
- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).*

It is sufficient to demonstrate only one of these methods to satisfy clause 4.6(3)(a) of LCLEP 2009 (*Wehbe*, *Initial Action* at [22], *Rebel* at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

However, in this case, it is demonstrated that the First Method has been satisfied, and the objectives of the standard are achieved notwithstanding the non-compliance with the numerical standard.

When considering whether a development standard is appropriate and/or necessary, one must take into account:

- The nature of the proposed variation;
- The site context; and



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- The design of the proposed development.

Following the decision in *Initial Action*, it was established that Clause 4.6 does not require an applicant to demonstrate that a development which contravenes a development standard have a better (or neutral) environment planning outcome than a development that complies with the development standard.

By providing a building at the height proposed, a site layout is achieved that enables the appropriate positioning and servicing of the RACF.

The standard is therefore unreasonable and unnecessary in the circumstances of the case. The abovementioned justifications are considered valid, and in this instance the proposed Clause 4.6 Variation is considered to be acceptable. The proposed development represents a more efficient use of the Subject Site. The objectives of the relevant clause and the zones would be upheld as a result of the proposed development. In light of the above, the application of the non-discretionary height development standard is therefore unreasonable and unnecessary in response to the proposed development.

#### **4.4 SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD**

In *Initial Action*, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under Clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The environmental planning grounds to justify the departure of the development building height development standard are as follows:

- The variation to the height control facilitates the orderly and economic use of land by permitting a design and built form which responds to, and is consistent with, the site-specific controls for the Subject Site. Strict compliance would require a design which was not orderly or economic if it was enforced by requiring all service elements to be removed and relocation of essential facilities. The Chief judge held in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at para 23 that environmental planning grounds are matters which go to and further the objectives of the EPA Act, one of which is the orderly and economic development of land, as outlined above;
- Should compliance with the development standard be enforced, the effective operation of the seniors housing and efficiency of the Subject Site in providing additional housing supply would be significantly reduced;
- The proposal is consistent with the desired future character of the Subject Site within the area and generally complies with the relevant built form controls; and
- The proposal has been designed to be sympathetic and respectful to the existing surrounding amenity, particularly in regard to visual bulk, privacy, overshadowing and sunlight access.

For the reasons outlined above, it is considered that the proposed variation to the non-discretionary building height in Clause 107(2)(a) & (b) is appropriate and can be clearly justified having regard to the matters listed within Clause 4.6(3)(b) under WLEP2012.



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#### 4.5 OBJECTIVES OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

All planning determinations made under the EP&A Act are required to be made with regard to the objects of the Act in accordance with section 1.3 of the EP&A Act. **Table 4** below assesses the proposed development against the objects of the EP&A Act.

TABLE 4: EP&A ACT OBJECTIVES	
Objective	Response
<i>(a) 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,</i>	The proposed development will provide an appropriate transition in urban form to the surrounding development within the locality. An appropriate mix of finishes and materials have been employed to ensure a high-quality urban form is achieved when viewed from the street and surrounding sites with minimal impacts on the amenity of the built environment.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i>	The proposal can be constructed and maintained without health and safety risks to future tenants and has been designed to maximise the sustainability of the proposed development.
<i>(c) to promote the orderly and economic use and development of land,</i>	<p>The proposed development will make use of the floor space ratio permissible on the Subject Site, resulting in an economically beneficial development without unacceptable economic, environmental or social impact.</p> <p>The minor variations facilitate the orderly and consistent design of the building which would be lost if strict compliance was to be required.</p>
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	<p>The proposed development provides all required affordable housing.</p> <p>The proposed development provides more than double the number of required affordable housing units.</p>
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	The proposed development has been sited so as to result in minimal impacts on the surrounding environment.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	The proposed development has been sited and designed to maintain the heritage significance of the Subject Site and surrounding conservation areas.



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**TABLE 4: EP&A ACT OBJECTIVES**

Objective	Response
<i>(g) to promote good design and amenity of the built environment,</i>	The proposed development will provide an appropriate transition in urban form to the surrounding development within the locality. An appropriate mix of finishes and materials have been employed to ensure a high quality urban form is achieved when viewed from the street and surrounding sites with minimal impacts on the amenity of the built environment.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposal can be constructed and maintained without health and safety risks to future tenants.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	The application will be required to be submitted to the Department of Planning, Housing and Infrastructure (DPHI).
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The application would be subject to the relevant public notification requirements.

#### 4.6 MATTERS OF STATE AND REGIONAL SIGNIFICANCE

The proposed non-compliance will not give rise to any matters of significance for State or regional environmental planning. They will also not conflict with any State Environmental Planning Policy or Ministerial Directives under section 9.1 of the EP&A Act.

Planning Circular PS 08-014, issued by the former NSW Department of Planning, requires that all development applications including a variation to a standard of more than 10% be considered by full Council rather than under delegation.

#### 4.7 SUMMARY

For the reasons outlined above, it is considered that the variation to Clause 107(2)(a) & (b) is well-founded in this instance and is appropriate in the circumstances. Furthermore, the Variation Request is considered to be well-founded for the following reasons as outlined in Clause 4.6 of WLEP2012, *Four2Five Pty Ltd v Ashfield Council* and *Wehbe v Pittwater Council*:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the





#### Clause 4.6 Variation –Non-Discretionary Building Height

Proposed Residential Aged Care Facility, Independent Living Units, Community Facilities and Ancillary Land Uses  
Uniting War Memorial Hospital Waverley – Bronte Road, Birrell Street, Carrington Road & Church Street, Waverley



- circumstances (refer to **Section 4.3**);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4**); and
  - The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.5**).

Overall, it is considered that the proposed variation to the non-discretionary building height is entirely appropriate and can be clearly justified having regard to the matters listed within Clause 4.6 of WLEP2012.



#### Clause 4.6 Variation –Non-Discretionary Building Height

Proposed Residential Aged Care Facility, Independent Living Units, Community Facilities and Ancillary Land Uses  
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## PART E CONCLUSION

For the reasons outlined above, it is requested that DPHI support the Variation Request, which seeks approval for non-compliance with Clause 107(2)(a) & (b) of the Housing SEPP for the following reasons:

- The development is consistent with the objectives of the particular standard (refer to **Section 4.1**);
- The development is consistent with the objectives for development within the zone and long term strategic intentions to maintain and preserve employment land (refer to **Section 4.2**);
- Compliance with the development standard is unreasonable and unnecessary in the circumstances (refer to **Section 4.3** as part of the First Limb satisfied);
- There are sufficient environmental planning grounds to justify contravening the development standard (refer to **Section 4.4** as part of the First Limb satisfied);
- The Proposal is consistent with the objectives of the EP&A Act (refer to **Section 4.5**); and
- The development does not give rise to any matter of significance for the State or regional environmental planning and is consistent with the visions and objectives of the relevant strategic plans (refer to **Section 4.6**);

Given the justification provided above, the Variation Request is well founded and should be favourably considered by DPHI.

