



Clause 4.6 Variation Request - Floor Space Ratio Development Standard

IRT Woonona Seniors Housing Redevelopment

4-6 Popes Road, Woonona

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Illawarra Retirement Trust (IRT) Group

Prepared by Colliers Urban Planning

9 December 2025 | 2250296



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Colliers Urban Planning acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past and present.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

Contact	Daniel West Director	daniel.west@colliers.com 0411 570 394	
This document has been prepared by		This document has been reviewed by	
Jordan Balazs	9 December 2025	Daniel West	9 December 2025
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1.0 Introduction

This Clause 4.6 Variation Request has been prepared by Colliers Urban Planning on behalf of Illawarra Retirement Trust (**IRT**) (the **Applicant**). It is submitted to the Department of Planning, Housing and Infrastructure (**DPHI**) in response to DPHI's Key Issues letter, dated 16 September 2025, following Public Exhibition of a State Significant Development Application (**SSDA**) for the redevelopment of an existing seniors housing development at 4-6 Popes Road, Woonona (the **site**) (SSD-73910208).

The SSDA seeks consent for the following description of development:

Redevelopment of the existing IRT Woonona Seniors Housing development, comprising construction of 5 buildings with 98 Independent Living Units, new basement parking and additions to the existing Flametree Residential Care Services.

Exhibition of the SSDA occurred between 29 July 2025 - 25 August 2025. The DPHI issued the Applicant a letter detailing their requests for additional information based on their review of the Environmental Impact Statement (**EIS**) documentation and submissions received during the exhibition. The DPHI requested an additional Clause 4.6 Variation Request as the proposed floor space ratio (**FSR**) for the site was noted to exceed the permissible FSR development standard for the site.

It is critical to note that the application is made pursuant to the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**). Under section 87(2)(a)(iii) of the Housing SEPP, the site is afforded an increased maximum permissible FSR, being an additional 25% of the maximum permissible FSR, as the development is used for the purposes of seniors housing, including independent living units (**ILUs**) and a residential care facility (**RCF**).

The permissible FSR on site, under Clause 4.4 of the *Wollongong Local Environmental Plan 2009* (**Wollongong LEP 2009**), is 0.5:1. As such, the maximum permissible FSR, by virtue of section 87(2)(a)(iii) of the Housing SEPP, is **0.625:1**.

Clause 4.6 of the Wollongong LEP 2009 enables the consent authority to grant consent for development even though the development contravenes the development standard imposed by the Wollongong LEP 2009 or any other environmental planning instrument, such as in this case, the Housing SEPP.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with Section 87 of the Housing SEPP is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (**EP&A Regulation**). Therefore, the SSDA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Wollongong LEP 2009.

2.0 Site and Proposed Development

2.1 Site Description

The site is located at 4-6 Popes Road, Woonona, within the Wollongong Local Government Area (**LGA**) and is legally described as Lot 71 DP 1160947 with an area of approximately 2.9ha. The site currently contains multiple buildings and internal roads associated with the existing IRT Woonona seniors housing development.

The site is located on the south-eastern edge of the Woonona town centre, with frontage to the southern side of Popes Road and the western side of Princes Highway. It directly adjoins the north-eastern boundary of Gahans Park.

2.2 Description of the Proposed Development

SSD-73910208, as exhibited, seeks consent for the redevelopment of existing Seniors Housing development at land 4-6 Popes Road, Woonona. Specifically, the exhibited development sought consent for the following:

- Construction of five (5) seniors housing buildings comprising a total of 98 dwellings:
 - Building A - 16 Independent Living Units
 - Building B - 8 Independent Living Units
 - Building C - 27 Independent Living Units
 - Building D - 32 Independent Living Units
 - Building E - 15 Independent Living Units and Social Wellness Centre
- New basement level and at grade car parking for 182 spaces.
- Additions to the existing Flametree Residential Care Facilities and connection to the basement car park.
- Demolition of internal road networks and existing car parking to be replaced in newly proposed basement.
- Retention of existing Heritage Church (Blue Gum Sanctuary) and repurposing to provide cafe and staff amenities.
- Retention of existing Camelia Lodge Independent Living Units.
- Landscaping and vegetation management in the riparian corridor.



Figure 1 *Artist's impression of the proposed development (as exhibited)*

Source: Calderflower Architects



Figure 2 *Artist's impression of the proposed development (as amended)*

Source: Calderflower Architects

2.2.1 Amended Development

Public Exhibition of the SSDA occurred between 29 July 2025 - 25 August 2025. During the exhibition, a total of nine (9) submissions were received in response to the EIS, made by the State and Local Government agencies, authorities, as well as the general public. The DPHI also issued the Applicant with a letter detailing their requests for additional information based on their review of the EIS documentation.

Since exhibition, a number of amendments have been made to the SSDA as part of design development refinement and to address issues raised in the agency submissions. This Clause 4.6 Variation Request should be read in conjunction with the amended Architectural and Landscape Plans provided at Appendix B and G of the Response to Submissions (**RtS**) and Amendment Report, respectively.

The updated description of development is as follows:

- Construction of five (5) seniors housing buildings comprising a total of **92** dwellings:
 - Building A - 16 Independent Living Units
 - Building B - 8 Independent Living Units
 - Building C - 27 Independent Living Units
 - Building D - **26** Independent Living Units
 - Building E - 15 Independent Living Units and Social Wellness Centre
- New basement level and at grade car parking for **178** spaces, **1 at grade ambulance space**, internal roads and ancillary infrastructure.
- Additions to the existing Flametree Residential Care Facilities (RCF) and connection to the basement car park.
- Demolition of internal road networks and existing car parking to be replaced in newly proposed basement.
- Retention of existing Heritage Church (Blue Gum Sanctuary) and repurposing to provide cafe and staff amenities.
- Retention of existing Camelia Lodge Independent Living Units.
- Landscaping and vegetation management in the riparian corridor.
- Temporary Vehicle Access from Princes Highway during construction for construction vehicles and to service Flametree through stages of construction.

The key changes are summarised in the RtS and Amendment Report prepared by Colliers Urban Planning. The reduction in the total units has resulted in a reduction in total gross floor area (**GFA**) across the site (inclusive of the RCF, ILUs and the heritage building) from 19,097m² (as exhibited), to **18,695m²**.

3.0 Development Standard to be Varied

3.1 Section 87 of the State Environmental Planning Policy (Housing) 2021

The development standard that is sought to be varied as part of this Clause 4.6 Variation Request is section 87(2)(a)(iii) of the Housing SEPP. The relevant development standard under the subject provision (emphasis added) is as follows:

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.

Section 87(1) notes that this section applies to development for the purposes of seniors housing on land to which Part 5 applies (by virtue of Section 79, which includes land zoned R2 Low Density Residential and E3 Productivity Support). The site is predominantly zoned R2 Low Density Residential, with a portion of the land zoned E3 Productivity Support under the Wollongong LEP 2009, as shown in **Figure 3** below.

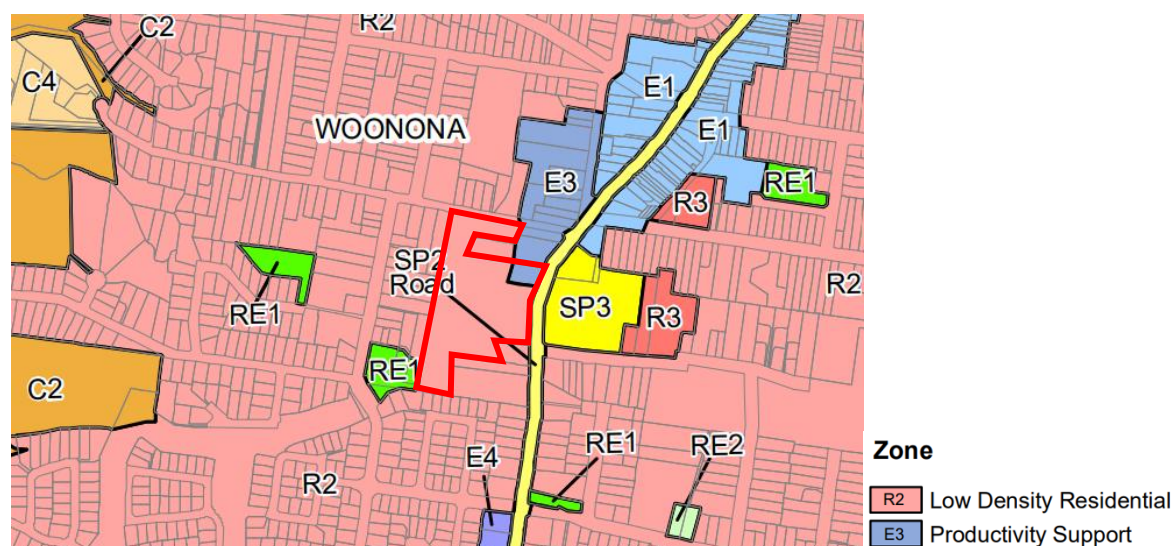


Figure 3 Land Zone Map

Source: Wollongong LEP 2009

Under the 'Land Use Table' in the Wollongong LEP 2009, residential flat buildings and shop top housing are permissible land uses in the R2 Low Density Residential. Under Schedule 1(34) of the Wollongong LEP 2009, shop top housing is an additional permitted use within the portion of the site that is zoned E3 Productivity Support, as shown in **Figure 4** below.

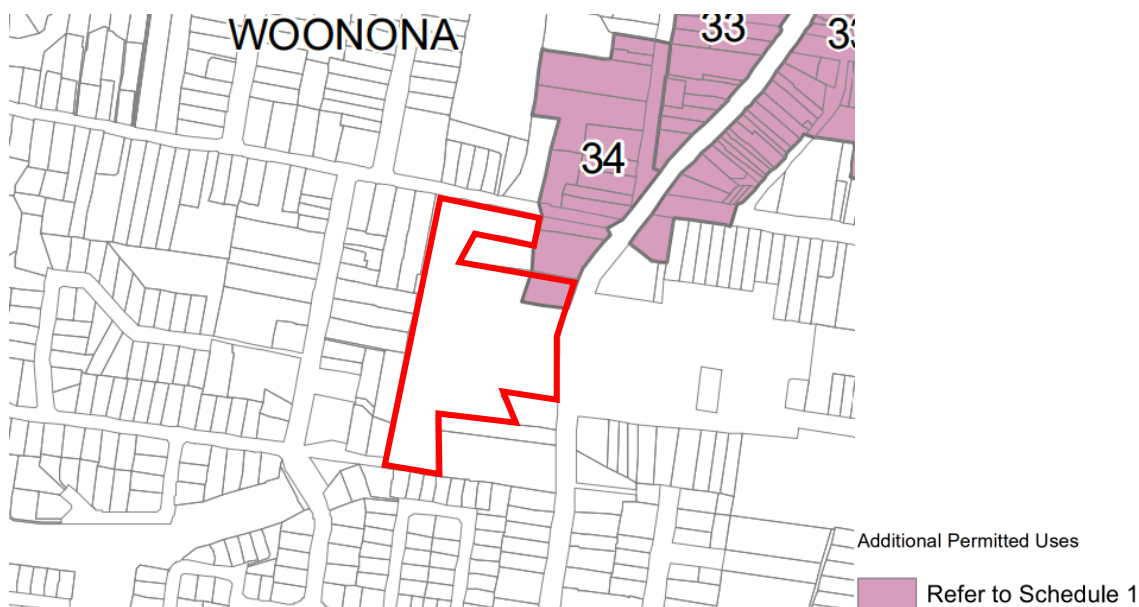


Figure 4 Additional Permitted Use Map

Source: Wollongong LEP 2009

As such, Section 87 applies to the entire site.

3.2 Nature of Variation Sought

Section 87(2) permits development for the purposes of seniors housing on land to which the section applies (as set out above), where the site area is at least 1,500m². The total site area is 29,066m².

Under Section 87(2)(a)(iii), development involving independent living units and residential care facilities is afforded an additional 25% above the permissible maximum permissible floor space ratio. Under the Wollongong LEP 2009, the site is subject to a maximum FSR of 0.5:1, as shown in **Figure 5** below.

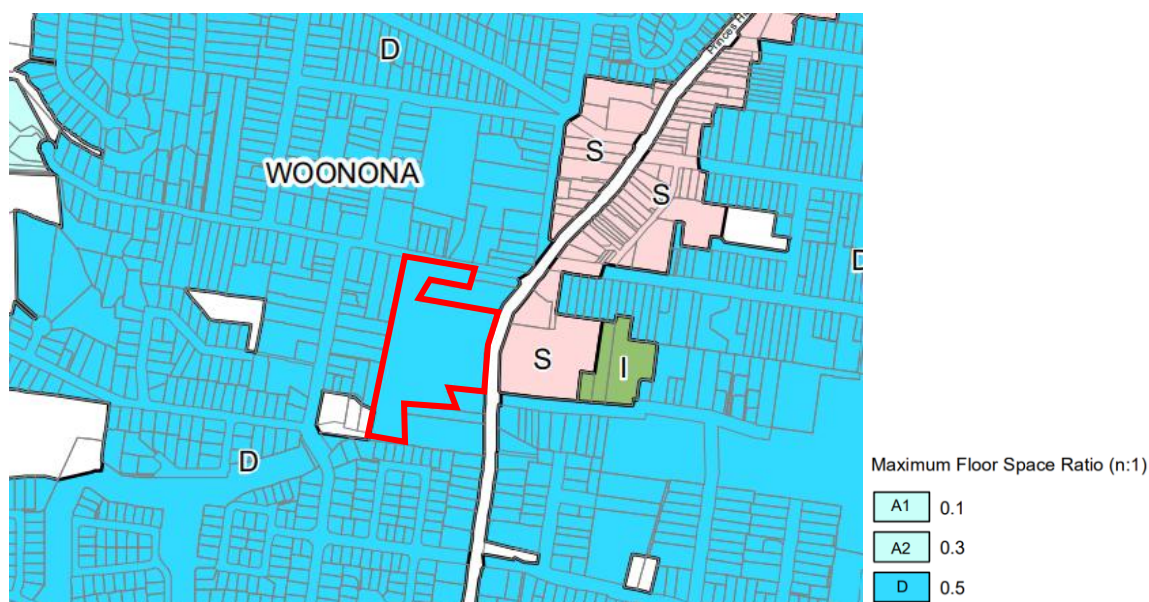


Figure 5 Floor Space Ratio Map

Source: Wollongong LEP 2009

By virtue of Section 87(2)(a)(iii), a maximum FSR of **0.625:1** is permitted, inclusive of the 25% FSR bonus.

In light of the above, the site area totals 29,066m² in area and the amended scheme provides a total GFA of 18,695m², which equates to a FSR of **0.643:1**.

The proposed FSR therefore exceeds the maximum permissible FSR, inclusive of the 25% additional FSR bonus by virtue of Section 87(2)(a)(iii), by **0.018:1**. This constitutes a variation to the development standard of **2.88%**. This is summarised in **Table 1** below.

Table 1 *Summary of Variation Sought*

Permissible FSR (LEP)	Permissible FSR (with additional 25% bonus under the Housing SEPP)	Site Area (m ²)	Proposed GFA (m ²)	Proposed FSR	FSR Increase above the permissible FSR (with additional 25% bonus under the Housing SEPP)	Percentage increase above the permissible FSR (with additional 25% bonus under the Housing SEPP)
0.5:1	0.625:1	29,066	18,695	0.643:1	0.018:1	2.88%

4.0 Clause 4.6 Variation Requests

Clause 4.6 of the Wollongong LEP 2009 is the statutory mechanism that allows the consent authority to grant consent to development that contravenes a development standard imposed by an environmental planning instrument. The clause aims to provide an appropriate degree of flexibility in applying certain development standards, to achieve better outcomes for and from development. Clause 4.6 of the Wollongong LEP 2009 provides that:

4.6 **Exceptions to development standards**

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority 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.

4.1 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under State Environmental Planning Policy 1 – Development Standards (**SEPP 1**). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (**Wehbe**). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (**Initial Action**);
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (**Four2Five**);
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

5.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to SEPP 1, the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the Wollongong LEP 2009 is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five 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**).

This Clause 4.6 Variation Request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the FSR development standard pursuant to the **First Method**.

5.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

There are no specific objectives contained within Part 5 or Section 87 of the Housing SEPP, however the underlying purpose of the provision is implied in the section itself. Namely, to incentivise seniors housing and increase its supply in zones where residential flat buildings or shop top housing is permitted and on sites that are 1,500m² or greater. This is achieved via differing and more generous FSR standards applying to ILUs (15%), RCF (20%) or ILUs + RCF (25%), as well as an additional 3.8m (or 1 storey) above the 'maximum permissible building height' (as defined in the Housing SEPP).

In accordance with Section 87(2)(a) of the Housing SEPP, the FSR standard has been utilised as intended and the purpose of the standard is achieved by way of the following:

- Seniors housing is a form of development that the NSW Government is encouraged through the Housing SEPP and identified in the NSW Housing Strategy as needing to be delivered to meet the growing demographic need of the ageing population and the baby boomer generation moving into retirement.
- The NSW Housing Strategy has identified that people aged 65 and older is projected to increase 85% over the next 25 years. The proposed development provides a modern and high amenity co-located village with ILUs and RCF, and therefore assists in meeting the housing challenge for seniors in NSW over the next 25 years. Strict compliance with the FSR development standard would therefore result in a GFA loss of at least 500m² of much-needed seniors living floorspace.

- Therefore, strict compliance would effectively inhibit the proposed development as it would substantially minimise the incentive to develop seniors housing on the site, where it is envisaged in residential zones that permit residential flat buildings or shop top housing.
- The non-discretionary FSR standards that relate to RCF and ILUs (Sections 107 and 108 of the Housing SEPP, respectively) are also achieved, when considered on a proportion base calculation, as discussed in **Section 5.1.1** below, which meets the overarching intent of Part 5 of the Housing SEPP to incentivise seniors housing in well-located areas.
- Notwithstanding compliance with the non-discretionary standards, the proposed GFA and resultant FSR is acceptable as the proposed development aligns with the Principles of Policy of the Housing SEPP (as discussed in **Section 5.1.25.1.1** below) and Clause 4.4 of the Wollongong LEP 2009, as discussed in **Section 5.1.3** below.

5.1.1 Compliance with the FSR Non-Discretionary Standards

Sections 107 and 108 of the Housing SEPP set out the non-discretionary development standards for RCF and ILUs respectively that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. These standards are set out in **Table 2** below.

Table 2 Relevant FSR Development Standards

Development Standard	Permissible FSR under the Wollongong LEP 2009	Permissible FSR under Section 87(2)(a) of the Housing SEPP	Non-Discretionary FSR Development Standard under the Housing SEPP
Residential Care Facility	0.5:1 (for the whole site)	0.625:1 (inclusive of the additional 25% FSR bonus)	1:1 (Section 107)
Independent Living Unit			0.5:1 (Section 108)

While it is acknowledged that the development standard by virtue of Section 87 prevails over the non-discretionary standards of Sections 107 and 108 of the Housing SEPP, the object of the non-discretionary standards 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.”

In this instance where RCF and ILUs are proposed together as part of a development, a GFA proportion-based calculation between the 0.5:1 non-discretionary development standard for ILUs and 1:1 non-discretionary development standard for RCFs, is a commonly accepted practice to determine a single site wide FSR. The proportion based GFA calculation is considered an equitable way to determine what an appropriate non-discretionary FSR is for the site when there are different FSRs that apply to different uses on the one site. While it is recognised the approach is not embedded in legislation, it is considered reasonable approach to reconcile multiple FSRs applying to different uses on the one site.

Table 3 provides a summary of this calculation, including the total GFA proposed on each component, the percentage of GFA across the total development, and the respective FSR based on the non-discretionary standard proportion-based method.

Table 3 Summary of proportion-base calculations for FSR

Land Use	GFA (without heritage building, based on a proportion base calculation)*	Percentage of GFA within the total GFA	Proportion Base Calculation based on Non-Discretionary Standards***	GFA with 315m ² heritage building (based on proportion base calculation)**	Percentage of GFA within the total GFA	Proportion Base Calculation based on Non-Discretionary Standards***
Residential Care Facility	5,293m ²	28.79%	0.288:1	5,383.72m ²	28.79%	0.288:1
Independent Living Units	13,087m ²	71.20%	0.356:1	13,311.28m ²	71.20%	0.356:1
TOTAL	18,380m²	-	0.644:1	18,695m²	-	0.644:1

* The proportion base calculation involves distributing the GFA of the ILUs and RCF, based on their share of the total GFA.

** The heritage building (café use), which is proposed to serve the entire development, is then subject to the same proportional FSR assessment, so that the calculation fairly reflects this components' contribution within the development.

*** The proportional method is then applied to the applicable non-discretionary FSR standards for ILUs (0.5:1) and RCFs (1:1).

The updated proposed development, as set out in **Section 3.2**, proposes a GFA of 18,695m², which results in a corresponding FSR of 0.643:1.

As such, the FSR of the site is less than the non-discretionary FSR standard for ILUs and a RCF of the Housing SEPP, as calculated proportionately at 0.644:1.

Given the object of the non-discretionary standard is that, if complied with, it prevents the consent authority from requiring more onerous standards for the matters (e.g. FSR), compliance with the applicable FSR development standard of section 87 at 0.625:1 would be more onerous than compliance with the GFA proportion based non-discretionary FSR of 0.644:1.

Accordingly, the proposed FSR of 0.643:1 is compliant with GFA proportion based non-discretionary FSR of 0.644:1 and therefore the planning purpose of this prevents the consent authority from requiring a reduction in FSR, such as compliance with the applicable FSR development standard at 0.625:1.

Notwithstanding the above, it is noted the proposed development also complies with all the other non-discretionary standards of Sections 107 and 108, with regard to communal open space, landscaping, deep soil, solar access and car parking for various users. An assessment against Section 107 of the Housing SEPP is provided in the RtS and Amendment Report prepared by Colliers Urban Planning. An assessment against Section 108 of the Housing SEPP is provided in the EIS submitted alongside the SSDA.

5.1.2 Section 3.0 Principles of Policy

Importantly, notwithstanding compliance with the non-discretionary standards, the proposed development directly aligns with Section 3.0 Principles of Policy in Chapter 1 of the Housing SEPP as discussed in **Table 4** below.

Table 4 Assessment against section 3 Principles of Policy

Principles of Policy	Assessment
(a) enabling the development of diverse housing types, including purpose-built rental housing,	The proposed development will reflect the desired future built form character of the urban context, as the site is zoned R2 Low Density Residential and E3 Productivity Support, where residential flat buildings and shop top housing are permissible under the Wollongong LEP 2009. Notably, the proposed development has had regard to the Housing SEPP which provides an increased floor space ratio (an additional 25%) above the maximum permitted FSR under the Wollongong LEP 2009. The proposed FSR only seeks a minor exceedance to this standard of 2.88%. This provision intended to incentivise higher density seniors housing in appropriate zones.
(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,	The proposed development has therefore had regard to the State policy (and is made pursuant to the Housing SEPP), to deliver an upgraded seniors housing development on IRT's existing site to ensure it meets modern day standards of seniors housing, provides additional capacity to meet the needs of the growing and ageing population and provides

	a development that is commensurate with the residential zone and the surrounding context. This is in accordance with Principle 3(a) and (b).
(c) ensuring new housing development provides residents with a reasonable level of amenity,	In accordance with Principle 3(c) the proposed ILUs adopt a modulated form that has been designed to sit comfortably within the landscape through stepped massing and strong landscape integration. The proposed built form has been strategically separated to provide sufficient landscaping and retain view corridors through the site towards the Escarpment to the west. The non-discretionary standards that promote a good level of amenity for residents have been complied with. This is discussed further in Section 6.0. Further, the individual units have been designed with private open space that have been oriented to maximise outlook for residents, with views of the Escarpment to the west, and the coast to the east. The proposed built form within the western portion of the site (Building A and Building B) have been significantly setback from the western boundary in comparison to the existing built form that was (as of recently) on the site, with the shortest distance between the new built form and the habitable room within the adjacent dwellings being 13.483m from Building B and the longest distance being 20.075m from Building A.
(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,	In alignment with Principle 3(d), the proposed development in its current design has already been considered and accounted for given that it is a permissible land use on the site and has generally been designed in accordance with the built form controls. Through the provision of seniors housing and an increase in aged care services, this is consistent with the aims and objectives of the Wollongong strategic planning documents, and the increased density afforded by Section 87 of the Housing SEPP. Further, the subject site is located in an area with good access to existing infrastructure and services including public transport options, retail facilities, medical facilities and open space areas. The proposed development distributes floor space across the site and is compliant with the non-discretionary standards under the Housing SEPP. Further, given the nature of seniors housing development and its residents, it is considered that this land use would not result in an increase in land use intensity from that of a market residential development, and in most cases, it would result in a less intensive land use.
(e) minimising adverse climate and environmental impacts of new housing development,	In accordance with Principle 3(e), the proposed development has been designed to maximise solar access internally for all habitable rooms, adjoining development and open space. The proposed development has been amended since exhibition, to reduce the GFA of Building D, set back the upper level and increase the building setback from the southern boundary, which will reduce the overshadowing impacts of the proposed development upon the neighbouring properties to the south of the site. Updated sun studies have been prepared and provided at Appendix B of the RtS and Amendment Report The solar access received to the primary living spaces at the adjacent property to the south (460 Princes Highway) remains unchanged from the existing conditions between 9am and 3pm at mid-winter, for the northern unit, and improves to more than 1 hour for the central unit. Further, sustainability features such as energy-efficient design, solar panels and deep soil zones have been incorporated into the design. Refer to Section 6.3 for discussions on flood affectation.
(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,	In accordance with 3(f), the proposed development has been designed with regard to the existing and future development in the area, topographical change and the zone objectives. As the proposed development utilises the higher FSR and height development standards pursuant to Section 87, it is critical to note that the additional GFA is integral to achieving this articulated and contextually responsive design. Through appropriate building articulation and setbacks, the proposed development reflects the objectives of the R2 zone, while acknowledging the existing density of surrounding development.
(g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,	Principles of Policy 3 (g) and (h) are not applicable to the proposed development as they relate to development for the purposes of build to rent, short term accommodation and affordable rental housing. Therefore, the proposed development is consistent with the relevant Principles of Policy of the Housing SEPP without needing to achieve all principles.
(h) mitigating the loss of existing affordable rental housing.	

5.1.3 Clause 4.4 of the Wollongong LEP 2009

The above analysis demonstrates that the principles of the Housing SEPP are achieved notwithstanding the variation to the development standard. Whilst not considered necessary for the purposes of Clause 4.6, but in order to further reinforce that the objectives of the standard are achieved in circumstances where Section 87 of the Housing SEPP does not contain specific objectives, the table below provides a consideration against the objectives of the FSR development standard in Clause 4.4 of the Wollongong LEP 2009.

Table 5 *Assessment against clause 4.4 of the Wollongong LEP 2009*

Objective	Assessment
(a) to provide an appropriate correlation between the size of a site and the extent of any development on that site,	The site has an area of approximately 29,066m². The GFA of approximately 18,695m². It is considered that the proposed development provides an appropriate correlation with the size of the site. The proposed development achieves this through a built form strategy that distributes floor space across multiple buildings, responds sensitively to the key site constraints including riparian vegetation and the heritage item, and delivers high levels of amenity, landscape integration, and building articulation.
(b) to establish the maximum development density and intensity of land use, taking into account the availability of infrastructure to service that site and the vehicle and pedestrian traffic the development will generate,	The proposed development is expected to accommodate the proposed ILUs and RCF and associated ancillary uses, without exceeding servicing capacity. This is due to the following: • Vehicle access is maintained from Popes Road only, in line with Council's traffic management requirements, to avoid direct access and in turn traffic impacts on Princes Highway; • The proposed development consolidates on-grade parking into a shared basement level, reducing traffic and congestion within the ground plane and supporting safe and efficient circulation for service, emergency and visitor vehicles; and • The site is well serviced by public infrastructure, being approximately 200m from the Woonona local centre and 1.2 km from Woonona Railway Station. The proposed development for seniors housing is expected to result in a minor increase in additional vehicular trips. As detailed in the Transport and Accessibility Impact Statement (Appendix GG of the EIS), the proposed redevelopment is anticipated to generate a net additional 28 trips in the AM peak period and 42 trips in the PM peak period. This is expected to cause a maximum increase of 3 metres in queue and 3 seconds in delay, which are considered negligible impacts. As such, it is concluded that the traffic impacts of the proposed development will not adversely impact the surrounding road network. In regard to parking, the proposed development incorporates 178 car parking spaces at basement level and 1 space for ambulance parking at ground level, which exceeds the requirement of the Wollongong City Council Development Control Plan 2008 (the DCP) and the Housing SEPP. As such, the proposed development aligns with the additional density contemplated by applicable planning policy and guidelines.
(c) to ensure buildings are compatible with the bulk and scale of the locality.	The proposed development adopts a built form strategy that is compatible with the bulk and scale of the surrounding locality, particularly the Princes Highway streetscape and the R2 Low Density Residential area to the west. The proposed buildings present a three to four storey form, consistent with the desired future character established by the applicable planning controls, including the 3.8m height bonus by virtue of Section 87(2)(b). The development incorporates setbacks, articulation and landscaping to further soften its presentation to the street and surrounding properties. Building A and B have been strategically setback from the western boundary, which improves amenity to the adjacent residential properties, in comparison to the existing location of the built form. Building D has been redesigned to improve overshadowing impacts to the adjacent properties to the south of the site. As such, the proposed bulk and scale of the development is compatible with the predominant character of the surrounding area.

6.0 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Wollongong LEP 2009 requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention.

The environmental planning grounds relied on in the written request under clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action at [24]).

In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60].

There are sufficient environmental planning grounds to justify a flexible approach to the application of the FSR standard as it applies to the site.

6.1 Ground 1: Building Height and Built Form

6.1.1 Building Height

In accordance with Section 87(2)(b) of the Housing SEPP, the site is afforded a maximum building height of 12.8m across the majority of the site, where the site is zoned R2 Low Density Residential, and 14.8m within the northeastern portion of the site where the land is zoned E3 Productivity Support. As shown in **Figure 6**, the proposed development is largely compliant with the maximum permissible building height by virtue of Section 87(2)(b) of the Housing SEPP, including at Building B (with the exception of the lift overrun), the RCF, part of Building C and part of Building D.



Figure 6 3D View with Height Plane

Source: Calderflower Architects

Minor non-compliances are limited to Building A (by 3.25m) for plant and floorspace, part of Building B (by 1.725m) for plant, the eastern portion of Building C (by 2.67m) for plant and floorspace, the eastern portion of Building D (by 2.58m) for plant and floorspace, and Building E (by 2.77m in the R2 zone, and 0.72m in the E3 zone) for plant. This clearly illustrates how the built form has responded to the topographical change across the site. A Clause 4.6 Variation Request pursuant to Section 87(2)(b) of the Housing SEPP has been prepared by MMJ Planning and is included at **Appendix E** of the RtS and Amendment Report.

While the FSR proposed will result in a minor exceedance to the maximum height development standard for the site, by virtue of the Wollongong LEP 2009 and the bonuses afforded by Section 87 of the Housing SEPP, the resultant bulk and scale is considered appropriate, as discussed below.

Further, strict compliance with the height and FSR development standard would result in the removal of at least 500m² of ILU floorspace, and therefore a significant reduction in seniors housing for negligible environmental benefit, would be contrary to Section 87 of the Housing SEPP that incentivises seniors housing and provides an additional building height and floor space in order to facilitate its supply to the community.

6.1.2 Built Form

The design has evolved in response to the submission raised at exhibition, with the GFA of Building D being reduced by 588m², through the removal of the south western corner of the building, setback of the southern elevation and the recessing of the upper level, in order to improve the solar access for the neighbouring dwellings at the site’s southern interface, as discussed at **Section** Error! Reference source not found.6.2.2 below. This has also limited the height non-compliance of Building D to the eastern portion of the building only, and allows the proposed development to comply with the proportion based non-discretionary standard of the Housing SEPP for ILUs and RCF, whilst maximising amenity for the southern neighbours.

The upper-level setback at Building D also provides a softer built form transition to the heritage item that sits to the north of the building, as well as the adjacent residential development to the south, which is a 2-storey terraced property. The transition in building height and the distribution of GFA across the site ensures the development appropriately responds to the prevailing scale of the surrounding residential context, by stepping down to the adjacent lower scale buildings.

The new built form across the site have been designed with generous setbacks, in particular Building A and Building B from the western boundary, to achieve sufficient visual privacy for the existing residential development to the west. This is discussed further in **Section 6.2.1**.

6.1.3 Setbacks

While there are no prescribed setback controls relating to seniors housing and the site, the proposed development accommodates generous setbacks to all boundaries, particularly those with residential interfaces, in order to protect residential amenity for existing and proposed residents, as discussed further below.

The updated design of Building D has been setback at ground level, and at the upper level (fourth level), which further seeks to protect residential amenity in terms of solar access of adjoining residential development, but also reduces the visual prominence of the building in the context of the heritage item, and views from Princes Highway.

The proposed setbacks between the site boundary and habitable rooms are as follows:

Table 6 Proposed setbacks between habitable rooms

Boundary	Existing	Proposed (to Site Boundary)	Proposed (to Habitable Rooms at Ground Level)
Western boundary	6.8m	6.8m	13.48m – 20.08m
Southern boundary	6.8m	9.74m	12.70m-14.22m

In comparison to the existing built form that is not afforded significant setbacks, the proposed development is a clear improvement. Accordingly, the setbacks adopted will assist in reducing perceived visual impact of the development on adjoining residential development and the proposed development is considered to provide an appropriate built form in the context of surrounding development.

It is evident that the proposed GFA and minor exceedance in the FSR development standard by 2.88% will not impact the proposal's ability to ensure sufficient setbacks to the north, west and south boundaries, and represents a clear betterment to the existing setbacks.

6.2 Ground 2: Amenity Impacts

Notwithstanding compliance with the non-discretionary development standards, the proposed development has been designed to achieve a high level of residential and environmental amenity, consistent with the objectives of the Housing SEPP and the Apartment Design Guide, as relevant to the ILUs in the form of residential flat buildings. This is detailed in the subsections below.

6.2.1 Visual Privacy

The proposed development has been articulated in response to the site's context and the desire to optimise amenity both within the development and to adjoining properties. As part of the DPHI's Key Issues letter following exhibition, concern was raised regarding adequate privacy for the neighbouring development to the west of the site, by way of appropriate landscaping and façade measures.

The design has since been amended to improve the landscape buffer (1.5m wide) along the western edge of the site, with an increase in the planting and climbing plants along the existing 2.8m high boundary wall, which will provide a natural and more sympathetic privacy buffer between the site and the neighbouring development (refer to **Figure 7** for an illustrative image of the proposed boundary treatment).



Figure 7 *Proposed Boundary Treatment*

Source: Arcadia

Further, as shown in the amended architectural plans prepared by Calderflower Architects (Appendix B of the RtS and Amendment Report), the western façade treatment of Building A and Building B has been revised with privacy screens

and louvres, to ensure visual privacy to and from the site. Together with the generous building setbacks from the western boundary, the proposed development is considered to provide an appropriate level of visual privacy to the surrounding residential receivers.

As such, the minor exceedance in the FSR development standard by 2.88% does not result in adverse privacy impacts to adjoining properties.

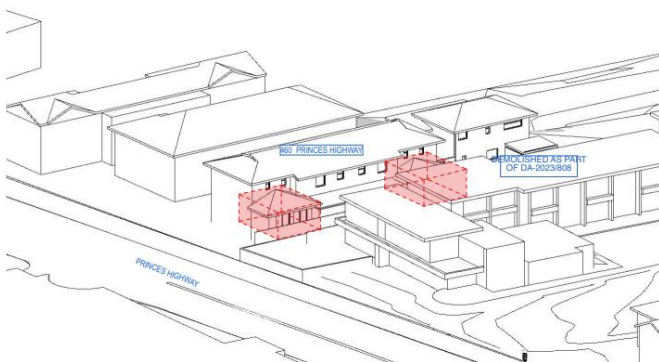
6.2.2 Overshadowing and Solar Access

Amended overshadowing and solar access studies have been undertaken by Calderflower Architects at Appendix B of the RTS and Amendment Report, to demonstrate the potential impact of the proposed development on adjoining properties, which compares the existing development to the proposed development during the winter solstice.

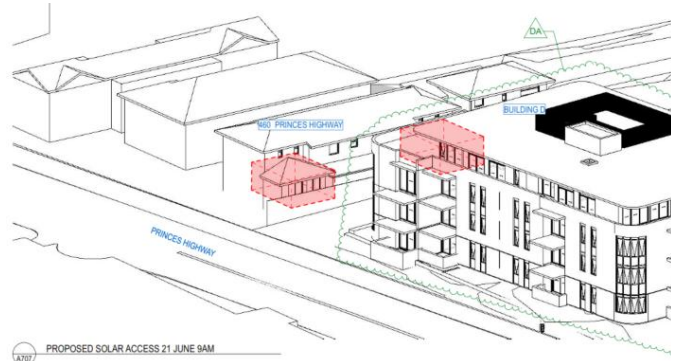
It is acknowledged that the proposed development (i.e. Building D) does partly overshadow the rear portion of the rear private open spaces and habitable rooms of the southern adjoining properties, however following amendments to the design to remove the south western corner of the building, the setback of the upper level, and the building setback from the southern boundary, the solar access received to the primary living spaces within the units remains unchanged, or represents an improvement.

The primary living space at the eastern unit of 460 Princes Highway still receives more than 2 hours of solar access. The solar access received in the primary living space at the central unit of 460 Princes Highway represents an improvement in solar access, in comparison to the solar access received in the context of the existing buildings on site (now demolished as part of DA-2023/808), as shown between 2pm – 3pm. This is illustrated at **Figure 8** below.

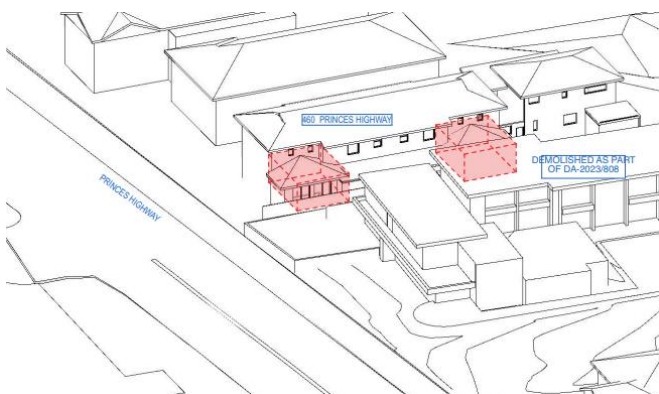
As such, the minor exceedance of the FSR development standard sought (being 2.88%) has little effect upon the component of the proposed development that gives rise to overshadowing to the adjoining southern properties on 21 June.



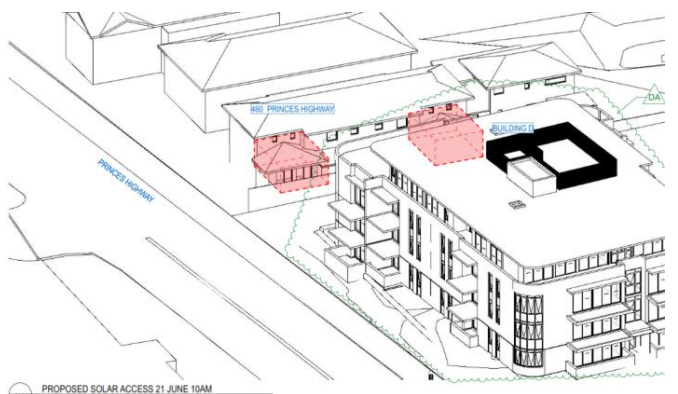
Existing Access to 460 Princes Highway 9am



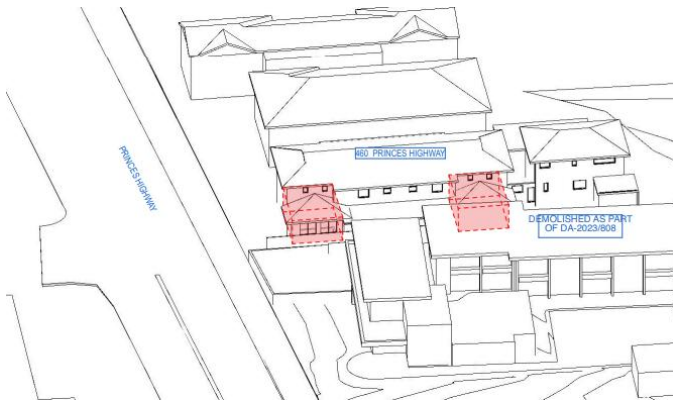
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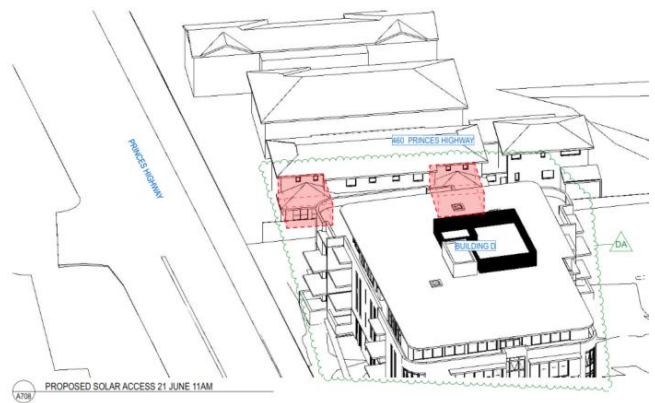
Existing Solar Access to 460 Princes Highway 10am



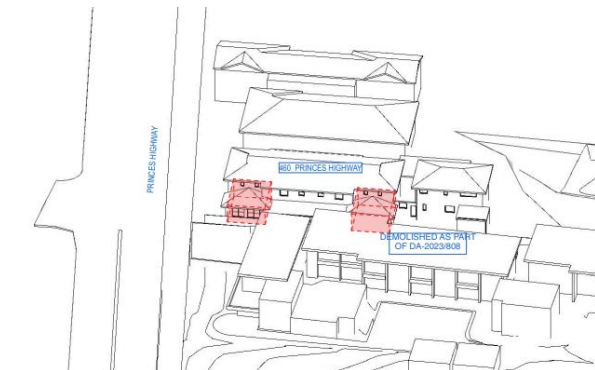
Amended Solar Access to 460 Princes Highway 10am



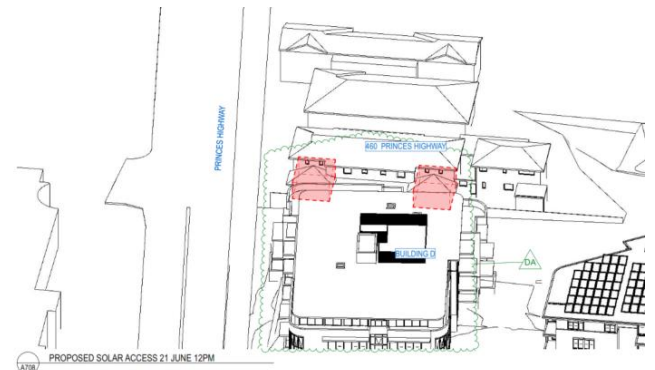
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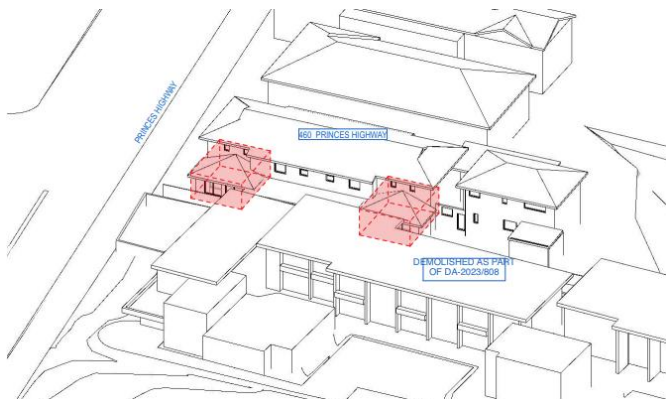
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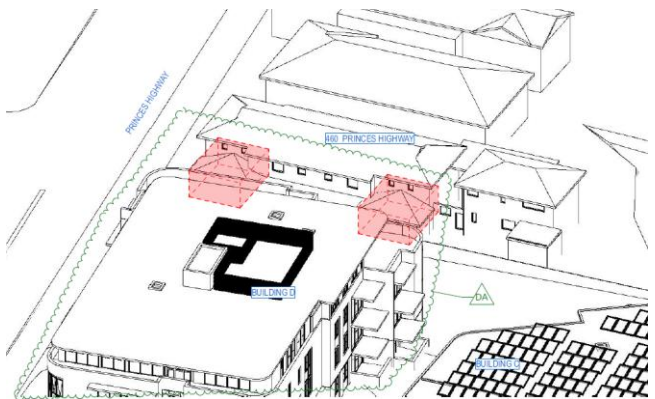
Existing Solar Access to 460 Princes Highway 12pm



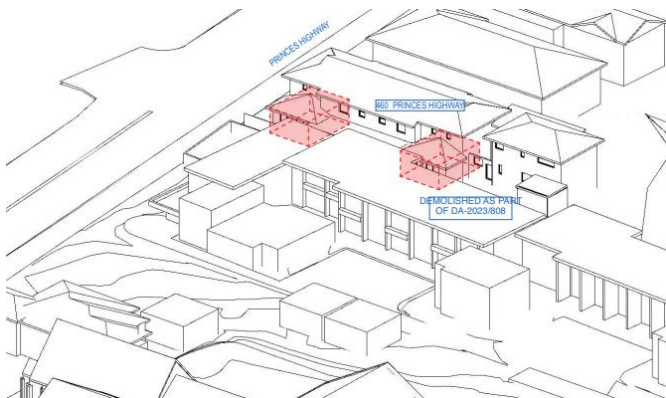
Amended Solar Access to 460 Princes Highway 12pm



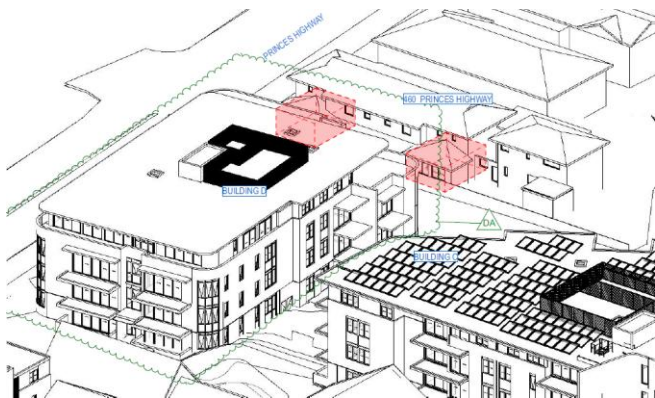
Existing Solar Access to 460 Princes Highway 1pm



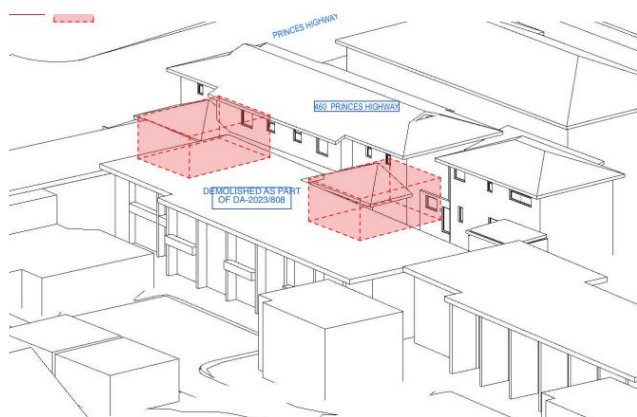
Amended Solar Access to 460 Princes Highway 1pm



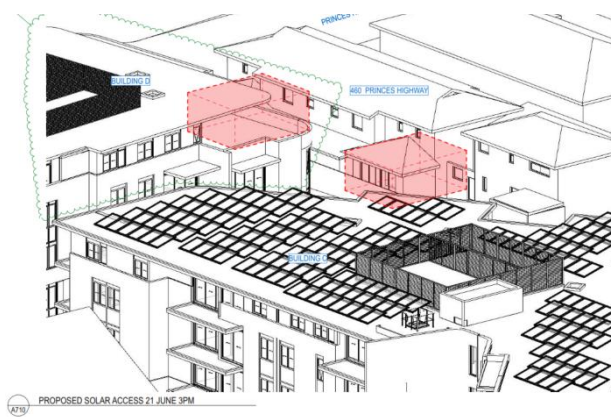
Existing Solar Access to 460 Princes Highway 2pm



Amended Solar Access to 460 Princes Highway 2pm



Existing Solar Access to 460 Princes Highway 3pm



Amended Solar Access to 460 Princes Highway 3pm

Figure 8 Comparison of the Submitted and Proposed Solar Access to 460 Princes Highway

Source: Calderflower

Further, despite the minor non-compliance in FSR, the built form benefits from sufficient separation distances that enable the proposed units within the scheme to achieve more than 2 hours of solar access, whilst retaining key view corridors through the site, towards the Escarpment to the west, to promote high levels of residential amenity.

This demonstrates that the proposed GFA and resultant FSR, which seeks only a minor variation to the development standard by 2.88%, provides an appropriate density for the site, with appropriate setback and separation distances, that ensure different areas across the site have adequate amenity.

6.2.3 Landscaping

Commensurate with the high-quality architectural design, the proposed development supports the delivery of a significant quantum of new high quality communal open space and landscaping within and around the site.

The landscaping provision, communal open space and deep soil proposed within the development are noted to comply with the non-discretionary development standards under Section 107 and 108 of the Housing SEPP, as illustrated in Appendix FF of the RTS and Amendment Report and within the Environmental Impact Statement submitted with the original SSDA.

The proposed development has sought to maximise the landscaping and open space provision throughout the site, seeks to foster a sense of community, provide view corridors through the site towards the Escarpment to the west, soften the proposed built form, and enhance the heritage significance of the locally listed heritage item.

As such, the proposed GFA and resultant FSR (which results in a variation to Section 87 of the Housing SEPP by 2.88%) still allows the landscaping and open space standards to be achieved, whilst promoting high quality amenity for residents.

6.3 Ground 3: Flood affectation

Building E is located on a part of the site that is affected by an overland flow path and an existing flood storage area. It is proposed to realign the overland flow path via diversion channel around Building E on its northern side. As detailed in the Flooding SSDA Response from ACOR Consultants dated 4 December 2025, modelling has demonstrated the diversion channel has successfully managed overland flow through the site without adversely impacting adjacent properties and maintaining equivalent on-site storage capacity.

The proposed FSR variation of 2.88% therefore has no adverse impact upon flooding matters on the site or off-site. Indeed, should Building E be deleted from the proposed development in order to retain the existing non-developed situation for this part of the site, it would result in a loss of 2,420m² of GFA, resulting in an FSR of 0.56:1, significantly below the 0.625:1 FSR development standard. This correlates to a loss of 15 ILUs together with the social well-being centre for no environmental benefit.

7.0 Conclusion

The assessment above demonstrates that compliance with the FSR development standard contained in Section 87 of the Housing SEPP is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the FSR development standard:

- The proposed development complies with the non-discretionary FSR development standard of Section 107 and 108, being 0.644:1 when calculated on a proportion basis, and therefore prevents the consent authority from requiring more onerous standards for that matter.
- The proposed development will directly assist in meeting the current and growing need for modern seniors housing that will allow residents to age in place in Woonona;
- The site is already in use as an IRT seniors housing, and the proposed development represents an orderly intensification of this use that is compatible with the surrounding residential context.
- The development provides a range of support facilities and services including community and café spaces to meet the day-to-day needs of residents; and
- The proposed development is located on a large, well-serviced site within walking distance of the Woonona local centre and public transport, minimising impacts on surrounding residential properties while supporting increased housing choice for older people.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the Wollongong LEP 2009 and may grant development consent notwithstanding the contravention of the FSR development standard at Section 87(2)(a)(iii) of the Housing SEPP.



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