



Clause 4.6 Variation Request to Height Development Standard

Seniors Housing Development, Moruya (SSD-81932463)

11 Spencer Street, Moruya

Submitted to Department of Planning, Housing and Infrastructure
on behalf of Illawarra Retirement Trust

Prepared by Colliers Urban Planning

20 March 2026 | 2240898



'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.

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1.0 Introduction

1.1 Overview

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 support of a State Significant Development Application (**SSDA**) (SSD-81932463) for the construction of a seniors housing development and essential worker accommodation, at 11 Spencer Street, Moruya (the **site**).

The application is made pursuant to the *State Environmental Planning Policy (Housing) 2021* (**Housing SEPP**). Under section 87(2)(b) of the Housing SEPP, the site is afforded an additional 3.8m height bonus above the maximum permissible building height mapped under the *Eurobodalla Local Environmental Plan 2012* (**Eurobodalla LEP**).

The permissible maximum height on site, under Clause 4.3 of the Eurobodalla LEP, is 8.5m. As such, the maximum permissible FSR inclusive of the additional height, by virtue of Section 87(2)(b) of the Housing SEPP, is **12.3m**.

Clause 4.6 of the Eurobodalla LEP enables the consent authority to grant consent for development even though the development contravenes the development standard imposed by the Eurobodalla LEP, 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 the maximum height 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**).

This Clause 4.6 Variation Request should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Colliers Urban Planning, alongside other relevant supporting documentation prepared alongside the EIS.

1.2 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). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, 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.

In accordance with the above requirements, this Clause 4.6 Variation Request:

- Identifies the site and proposed development (**Section 2.0**);
- Sets out the relevant legislation for Clause 4.6 Requests (**Section 3.0**);
- Identifies the development standard to be varied (**Section 4.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 5.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 6.0**).

2.0 Site and Proposed Development

2.1 Site Description

The site is located at 11 Spencer Street, Moruya within the Eurobodalla Local Government Area (LGA) and is legally described as Lot 11 DP1008755. The site is broadly rectangular in shape, with a total area of approximately 18.26 hectares. A separate lot (legally described as Lot 10 DP 1008755) is located to the southwestern corner, which is excluded from the site boundary, and is occupied by a single storey dwelling and a detached garage.

The site is characterised largely as grassed land, with mature trees defining the site's northern and eastern boundaries, and vegetation dispersed throughout the site. Two creeks traverse the site, one in the northwestern corner and one across the western portion of the site and travels southwards. An aerial photograph of the site is shown at **Figure 1** below.



 The Site

 NOT TO SCALE

Figure 1 Site aerial map

Source: Near Map/ Colliers Urban Planning

The surrounding area is semi-urban, owing to its location on the edge of the built-up area of Moruya, with land to the south, west, and east remaining largely undeveloped. The area surrounding the site is summarised as below:

- **North:** The site is bound to the north by Spencer Street, beyond which lies a mix of residential properties, typically characterised as single-storey dwellings and the Moruya township. The Moruya Cemetery adjoins the site to the northwestern corner. A linear row of mature trees defines the site's northern boundary.
- **South:** Low-density residential development lies to the south of the site, located off Yarimup Place and Parkland Court.
- **West:** Dwyers Creek Road defines the western boundary of the site, beyond which is vacant land with the Racecourse Creek running parallel to the road network.
- **East:** The eastern boundary is defined by Francis Street, beyond which is generally vacant land with a small number of residential properties. TAFE NSW Moruya and the Eurobodalla Hospital site (currently under construction) are located approximately 1.3km to the northeast of the site.

2.2 Description of the Proposed Development

This SSDA seeks consent for the development of the site for the purposes of seniors housing and essential worker accommodation. Specifically, the application comprises:

- Demolition and site preparation works, including the demolition of the existing dwelling, removal of 41 trees and excavation works.
- Construction of a Residential Care Facility, including:
 - 120 aged care beds.
 - Community facilities at ground level.
- Construction of 252 x Independent Living Units (**ILUs**), in the following building forms:
 - 4 x 4-storey apartment buildings along Spencer Street, including:
 - 20 x 2-bedroom units.
 - 64 x 3-bedroom units.
 - Basement car parking comprising 84 car parking spaces.
 - 4 x 3-storey apartment buildings, including:
 - 16 x 2-bedroom units.
 - 52 x 3-bedroom units.
 - Undercroft car parking comprising 72 car parking spaces.
 - 86 x single storey villas, including:
 - 33 x 2-bedroom villas.
 - 53 x 3-bedroom villas.
 - Construction of 7 x manor houses including:
 - 14 x 1-bedroom ILUs at ground level.
 - 14 x 1-bedroom units at first floor level, for essential workers.
- Construction of 36 x 1-bed cabins, for essential workers.
- Construction of internal roads within the site, and car parking throughout.
- Construction of ancillary community facilities including a wellness hub, bistro, clubhouse, library and café.
- Landscaping and associated public domain works.
- Augmentation of, and connection to, existing utilities, as required.



Figure 2 *Visualisation of the Spencer Street Apartments*

Source: Marchese Partners

3.0 Clause 4.6 Variation Requests

Clause 4.6 of the Eurobodalla LEP 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 Eurobodalla LEP 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 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.

4.0 Development Standard to be Varied

4.1 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)(b) 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 R3 Medium Density Residential). The site is zoned part R2 Low Density Residential and part R3 Medium Density Residential in the northern portion of the site, as shown in **Figure 3** below.

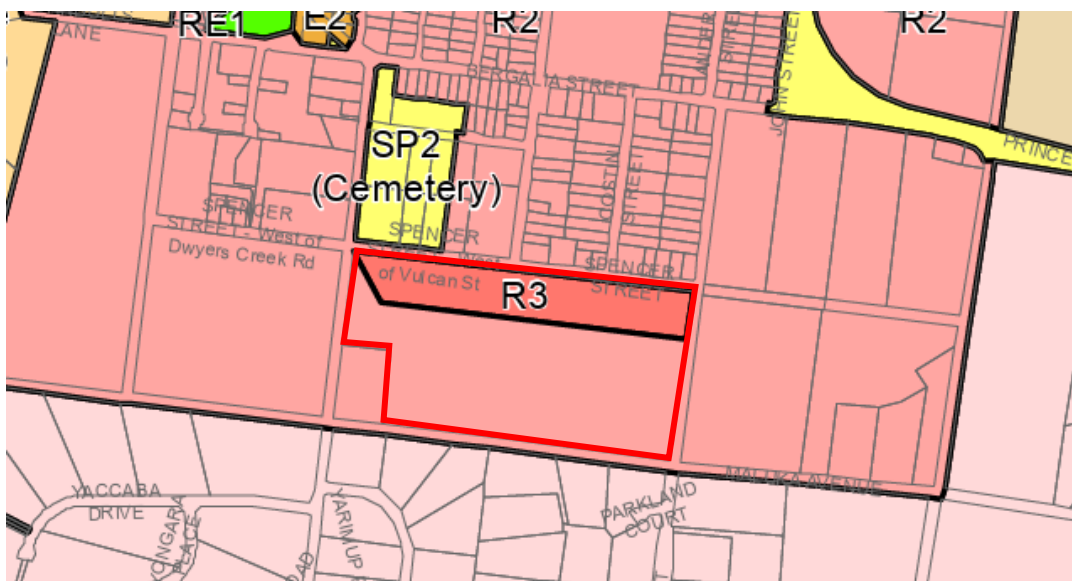


Figure 3 Land Zone Map

Source: Eurobodalla LEP 2012

Under the Eurobodalla LEP, residential flat buildings and shop top housing are permissible forms of development in the R3 Medium Density Residential zone, and shop top housing is permissible with consent in the R2 Low Density Residential zone. It is also noted that the site area is in excess of 1,500m². As such, Section 87 applies to the entire site.

Under Section 87(2)(b) of the Housing SEPP, the site is afforded an additional 3.8m height bonus above the maximum permissible building height. Under the Eurobodalla LEP, the site is identified as having a maximum permissible height of 8.5m across the site, as shown on the Height of Buildings Map (refer to **Figure 4** below).

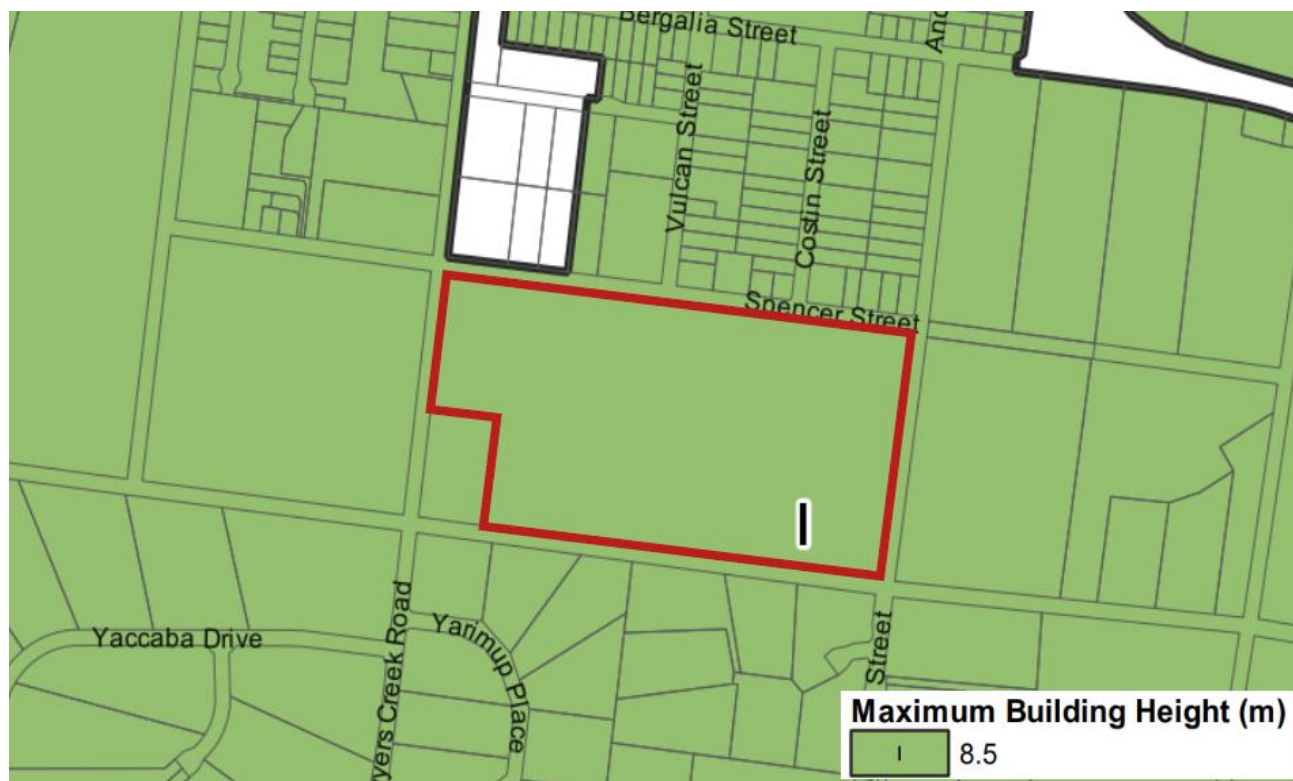


Figure 4 Height of buildings map (site identified in red)

Source: Eurobodalla LEP, markup by Colliers Urban Planning

By virtue of Section 87(2)(b), the maximum permissible height for the entire site, inclusive of the additional 3.8m bonus, is **12.3m**.

4.2 Nature of Variation Sought

The proposed built development has been designed to be generally consistent with the maximum height limits set by the Eurobodalla LEP, together with the bonus of the Housing SEPP. However, a height variation is sought for the four (4) buildings located along the northern frontage of the land (referred to as the 'Spencer Street Apartments'), which are proposed to accommodate ILUs in the form of 4 storey residential flat buildings typology.

The proposed Spencer Street Apartments seek a maximum height of 15.7m, as shown in **Figure 5**. This constitutes a variation to the development standard of up to **3.4m (27.64%)**. The exceedances range from 1.45m in the northern extent of Building F to 3.4m in the northern extent of Building E.

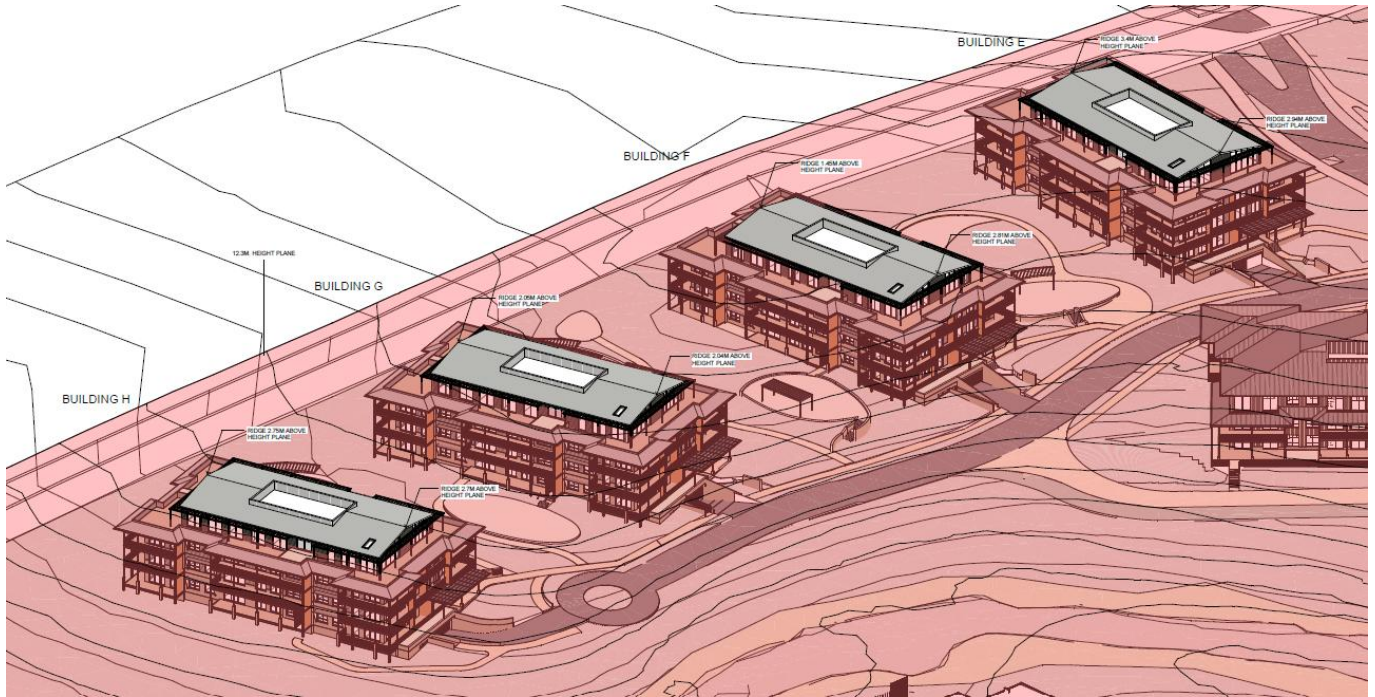


Figure 5 Proposed height against height plane (Spencer Street Apartments)

Source: Marchese Partners

This Clause 4.6 Variation Request also pertains to the 120-bed RCF, located within the northeastern portion of the site. The proposal results in a non-compliance to the building height control ranging from 0.7m – 1.55m. The variations at the RCF relates to the lift overrun, as well as parts of the roof form at the northern wing of the RCF, which are directly attributable to the sloping nature of the natural ground level and variability within the site (refer to **Figure 6**).

The proposed RCF seeks a maximum height of 13.85m, which constitutes a variation to the development standard of up to **1.55m (12.6%)**. The maximum exceedance in the height plane relates to the lift overrun to the roof plant. It is further noted that the lift overrun occupies 0.74% of the roof area of the proposed development.

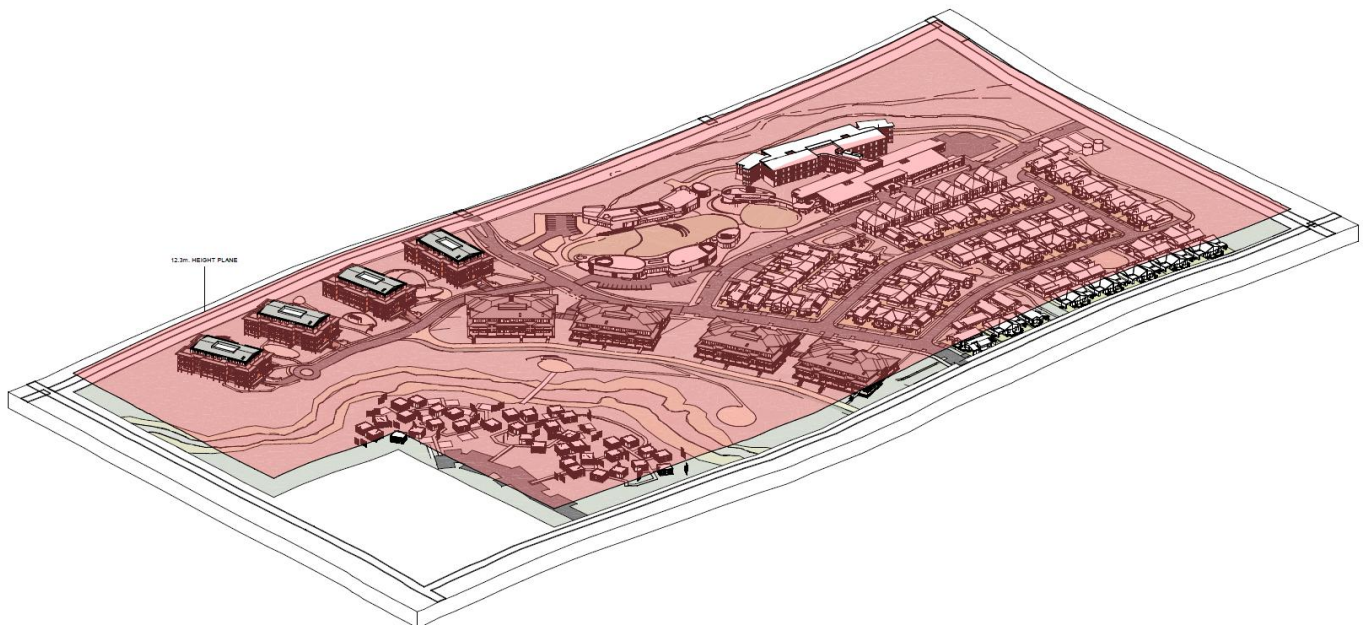


Figure 6 Proposed exceedances against height plane (site wide)

Source: Deicke Richards

A summary of the extent of the variations across the site, is set out in **Table 1** below.

Table 1 Proposed Building Height and Extent of Variation

Building	Proposed Maximum Height (m)	Minimum variation (m / %)	Maximum variation (m / %)
Building E	15.7	+2.94m (23.9%) in the southern extent	+3.4m (27.64%) in the northern extent
Building F	15.11	+1.45m (11.79%) in the northern extent	+2.81m (22.85%) in the southern extent
Building G	14.35	+2.04m (16.59%) in the southern extent	+2.05m (16.67%) in the northern extent
Building H	15.05	+2.7m (21.95%) in the southern extent	+2.75m (22.36%) in the northern extent
RCF	13.85	+0.7m (5.69%) at the northern wing of the RCF	+1.55m (12.6%) at the lift overrun

The remainder of the built development proposed either complies, or is significantly below, the development standard owing to the varied nature of scales and typologies, inclusive of the 3.8m height bonus that applies to the entire site.

The Department should consider that it is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Decisions in respect of *Micaul Holdings P/L v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskorich v Waverley Council* (65% exceedance of FSR) reinforce this position. A detailed assessment is undertaken below.

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 State Environmental Planning Policy No. 1 – Development Standards (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 Eurobodalla LEP 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 maximum building height development standard pursuant to the **First Method**.

5.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard (**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 more generous height and FSR standards, including the 3.8m additional height above the maximum permissible height. In accordance with Section 87(2)(b) of the Housing SEPP, the height 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 height development standard would result in the loss of the uppermost floor level across the Spencer Street

Apartment buildings, as well as the majority of the upper level of the RCF, totalling a GFA loss of at least 3,938.04m² 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 proposed development incorporates a mix of building typologies for seniors living, which provides a varied building height across the site, aligning with the needs of future residents seeking housing diversity and choice. Due to this diversity in building typologies, almost all of the built development across the site is considerably below the 12.3m height development standard (including the Valley Apartments at 3-storeys and the manor houses and villas at 1-storey). The southern wing of the RCF is 3.5m below the 12.3m height standard, which demonstrates that the height exceedance to the north of the RCF is a direct result of the varied topography of the site.
- This demonstrates that the exceedance to the building height development standard of Section 87 does not result in a built form or scale that exceeds what is intended under the Housing SEPP. Therefore, the underlying purpose of the standard is achieved notwithstanding the exceedance in building height.
- Given the maximum exceedance at the RCF relates to the lift overrun in the centre of the floorplate, which occupies only 0.74% of the surface area of the roof of the RCF, with minor exceedances at the northern wing of the RCF, directly attributable to the varied topography of the site, adverse amenity impacts upon adjoining properties and the locality in terms of overshadowing, visual privacy, views, built form and density are minimised.
- The proposed FSR for the entire site sits at 0.26:1, which is significantly lower than the non-discretionary standards that apply to seniors housing developments under the Housing SEPP (1:1 for RCF floorspace under Section 107 and 0.5:1 for ILU floorspace under Section 108). This demonstrates that the removal of much needed floorspace in this isolated area of the site in order to comply with the height standard is unnecessary, as the FSR demonstrates that the proposed development does not represent overdevelopment on site and aligns with the intent of Part 5 of the Housing SEPP.
- The proposed height is acceptable as the proposed development aligns with the Principles of Policy of the Housing SEPP and Clause 4.3 of the Eurobodalla LEP, as discussed in **Section 5.1.1** below.
- The objectives of Clause 4.3 of the Eurobodalla LEP, relating to maximum building height, are still achieved, as discussed in **Section 5.1.2** below.
- The objectives of the relevant land zone of the Eurobodalla LEP are still achieved, as discussed in **Section 5.1.3** below.

5.1.1 Section 3.0 Principles of Policy

Importantly, the proposed development directly aligns with Section 3.0 Principles of Policy in Chapter 1 of the Housing SEPP as discussed in **Table 2** below.

Table 2 Assessment against Section 3.0 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 R3 Medium Density Residential, where residential flat buildings and shop top housing are permissible under the Eurobodalla LEP and Part 5 of the Housing SEPP.
(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,	Notably, the proposed development has had regard to the Housing SEPP which provides an increased maximum height of 3.8m above the maximum permitted FSR under the Eurobodalla LEP. The proposed height of the Spencer Street Apartments seeks a maximum exceedance to this standard of 3.4m (27.64%) at Building E, 2.81m (22.85%) at Building F, 2.05m (16.67%) at Building G and 2.75m (22.36%) at Building H. The proposed height of the RCF seeks a maximum exceedance to this standard of 1.55m (12.6%). This provision intended to incentivise higher density seniors housing in appropriate zones. The proposed development has therefore had regard to the State policy (and is made pursuant to the Housing SEPP), to deliver a seniors housing development on IRT's existing site that meets modern day standards of seniors housing, meets 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,

The masterplan has been designed in the context of the surrounding area, responding to key view corridors internal and external to the site. The masterplan considers a height and density approach that responds to neighbouring interfaces, site topography and is orientated towards amenity. The medium density apartments and RCF have been nestled into the landscape and undulating terrain as the site falls towards the two creeks. The density of the proposed development has been purposefully located so there is a gentle transition in bulk and scale between typologies and when viewed from neighbouring sites. In accordance with Principle 3(c), the proposed built form across the site seeks to maximise residential amenity through appropriate separation distances that maximises communal open space and provides visual interest, the positioning and orientation of the buildings to take advantage of the key views including the creek lines and provision of appropriate private open space for the units.

The proposed development has been designed to maximise solar access internally for all habitable rooms and open space. The non-discretionary standards for ILUs and RCF, as per Sections 107 and 108 of the Housing SEPP, as well as the Apartment Design Guide (**ADG**) have been complied with, with respect to solar access, for the proposed buildings across the site.

(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. There has been a longstanding planning intent for the site to provide urban expansion to the town of Moruya. In 2006, the NSW State Government required all councils to prepare a comprehensive LEP for their LGA by 2011. Part of the LEP had been prepared by translating, where appropriate, the zones and provisions of the Urban LEP 1999 and Rural LEP 1987, into the required format of the *Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument)*. Most zonings were transferred into like-for-like zones, including the site, which was zoned Urban Expansion 10, to its current zoning, which is part R2 zone, and part R3 zone under the *Eurobodalla Local Environmental Plan 2012 (LEP 2012)*, to identify where urban development could be provided.

It demonstrates a longstanding vision for urban growth in this location and confirms that the site is a logical and suitable place for development.

Through the provision of seniors housing and an increase in aged care services, this is also consistent with the aims and objectives of the Eurobodalla 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, being in close proximity to the Eurobodalla town centre, as well as medical facilities including the under-construction Eurobodalla Regional Hospital. The site is readily accessible by public transport, and IRT will dedicate a private, shuttle service that will run frequently through the site, connecting residents to facilities and services within the town and key locations.

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,

The Spencer Street Apartments at which the variation is proposed, is not immediately adjacent to existing residential development, rather bounded by Moruya Cemetery to the north. As such, the proposed Spencer Street Apartments are not considered to create any adverse overshadowing or solar access impacts to any neighbouring development. Further, sustainability features such as energy-efficient design, solar panels and deep soil zones have been incorporated into the design.

The maximum exceedance at the RCF is restricted to the lift overrun, with minor exceedances along the roof at the northern wing of the RCF, which do not relate to increased density on the site. The RCF is substantially setback from the northern boundary and therefore, there are no environmental impacts to existing residential dwellings to the north of the site as a result of the minor exceedances to the compliant height plane.

(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,

In accordance with 3(f), the proposed development adopts a modulated form that has been designed to sit comfortably within the landscape through stepped massing and strong landscape integration.

The proposed Spencer Street Apartments have been setback from the northern boundary by 10m, with the northern boundary defined by retained mature landscaping and trees that provide a distinct visual buffer between the proposed development and the surrounding area. The uppermost level at the Spencer Street Apartments has been recessed from all building elevations, in order to reduce the visual impact of the four-storey development.

	<p>The maximum exceedance at the RCF is limited to a discreet lift overrun, with minor exceedances along part of the roof form directly attributable to the varied natural ground level, which do not relate to increased density on the site.</p> <p>Through appropriate building articulation and setbacks, the proposed development reflects the objectives of the R3 zone, while acknowledging the existing density of surrounding development.</p>
(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.	

5.1.2 Clause 4.3 of the Eurobodalla LEP

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 height development standard in Clause 4.3 of the Eurobodalla LEP.

Table 3 Assessment against Clause 4.3 of the Eurobodalla LEP

Objective	Assessment
(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,	<p>The proposed building height has been designed to be consistent with the existing and desired future character of the locality and with the strategic vision for the height and form of development in the Eurobodalla LEP.</p> <p>The area immediately north, east and west is generally zoned R2 Low Density Residential. It is noted that land to the south is zoned RU4 Primary Production Small Lots and generally includes already established lots with residential premises.</p> <p>The immediate land use to the north of the proposed Spencer Street Apartments is occupied by the Moruya Cemetery, a locally listed heritage item under Schedule 5 of the Eurobodalla LEP (Item no. 1123). Notwithstanding this, the buildings have been afforded generous setbacks from the street frontage, at 10m, to reduce the visual impact when looking from the north.</p> <p>The Spencer Street Apartments are designed as a slender built form, being 4 storeys in height, with separation distances between the built form (between 26.5m – 30m) that enable view corridors through the site, and communal open space for the residents. The uppermost level of each building is proposed to be recessed from all building elevations to provide a stepped built form transition that reduces the visibility of Level 4 from the northern boundary, owing to the site topography.</p> <p>The RCF largely complies with the 12.3m building height standard of section 87(2)(b) of the Housing SEPP (except for the lift overrun and parts of the roof form attributable to the varied natural ground level across the site). This demonstrates that the exceedance to the building height development standard of section 87 does not result in a built form or scale that exceeds what is intended under the Housing SEPP.</p> <p>As such, the exceedances in height above the development standard is considered appropriate in the context of the existing and future character of the locality.</p>
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.	<p>As discussed in Section 6.3, the variation to the development standard does not result in any significant environmental impacts. Principally, the following is noted:</p> <ul style="list-style-type: none"> • The generous setbacks ensures that the proposed development is sufficiently separated from the northern boundary, including the heritage listed cemeteries (Item no. 1123), and residential properties to the north of the RCF siting, and will not visually dominate it. • No views will be obstructed by the proposed height variation. The slender built form of the proposed Spencer Street Apartment will enable view corridors through the site from the northern boundary. • The design implements generous setbacks to ensure sufficient building separation is achieved and by extension, sufficient visual privacy.

- The residential properties within and surrounding the site achieve sufficient solar access in alignment with the design criteria stipulated in the ADG.

5.1.3 Land Use Table of the Eurobodalla LEP

The areas to which the variation proposed pertain to the northwestern and northeastern portions of the site. As illustrated in **Section 4.2**, the maximum permissible height by virtue of Section 87(2)(b) of the Housing SEPP, and the areas that contravene the maximum building height control, are generally limited to the land mapped in the R3 Medium Density Residential zone under the Eurobodalla LEP, at which residential flat buildings and shop top housing are permissible.

The objectives of the R3 Medium Density Residential zone are set out in **Table 4**, and it is demonstrated hereby that the proposed development and corresponding variation will not contradict the objectives of the zone.

Table 4 Assessment of consistency with the R3 Medium Density Zone Objectives

Objectives	Assessment
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	The proposed variations to the maximum height development standard are generally proposed in the part of the land zoned R3 Medium Density Residential. The proposed development seeks to deliver purpose-built ILUs in a medium-density format to address the local demand for seniors housing in Moruya.
<i>To provide a variety of housing types within a medium density residential environment.</i>	The proposed development will deliver a variety of housing that is diverse and supports the senior population of Moruya. If full compliance were to be achieved with the 12.3m height standard in this instance, this would effectively result in the loss of 3,938.04m ² of GFA, with the removal of the uppermost level from all apartment buildings, and the upper level of the RCF, which undermines the broader strategic directive at both a State and Local Government level to deliver additional seniors housing supply in well-located areas. Further, the proposed FSR for the entire site sits at 0.26:1, which is significantly lower than the non-discretionary standards that apply to seniors housing developments under the Housing SEPP (1:1 for RCF floorspace under Section 107 and 0.5:1 for ILU floorspace under Section 108). This demonstrates that the removal of much-needed floorspace in this isolated area of the site in order to comply with the height standard is unnecessary, as the FSR demonstrates that the proposed development does not represent overdevelopment on site and aligns with the intent of Part 5 of the Housing SEPP.
<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 ancillary community buildings that seek to serve the needs of the residents. The proposed height variation does not restrict the development of this facility.
<i>To encourage tourist and visitor accommodation in areas of demand subject to controls to ensure the adequate protection of a permanent residential housing supply and amenity.</i>	Not applicable as the development proposes seniors housing development.
<i>To encourage walking, cycling and the use of public transport.</i>	The proposed development will provide a seniors housing development that benefits from its proximity to public transport services and accessible walkways to such services, as well as future private bus services that will serve the residents only and connect them to key destinations in the locality. The proposed height variation does not limit these facilities from being provided.

Further, Section 87 generally applies to sites across NSW that benefit from a higher permissible height, with the bonuses tied to residential flat buildings and shop top housing being permissible on the land under an environmental planning instrument. As such, the maximum building height for such building typologies would generally lend itself to a higher multi-storey development.

The site has a mapped maximum height of 8.5m, and the bonus of Section 87 enables a 3-storey development on site. The exceedance to the height in this area does not contravene the objectives of the R3 zone, and results in an additional floor level to provide much-needed seniors housing. As such, the maximum variations of 3.4m (27.64%) at Building E, 2.81m (22.85%) at Building F, 2.05m (16.67%) at Building G and 2.75m (22.36%) at Building H, as well as the minor variation of up to 1.55m (12.6%) at the RCF, are considered acceptable from a policy perspective.

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

Clause 4.6(3)(b) of the Eurobodalla LEP requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. 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 contravention of the height of building development standard in this specific instance, as described below.

6.1 Ground 1: Built Form and Urban Design

6.1.1 Built Form

The proposed development generally complies with the 12.3m height development standard of Section 87 of the Housing SEPP, with the exceedance limited to part of the uppermost level and the plant space at the Spencer Street Apartments, with the maximum exceedance relating to the lift overrun at the RCF, as well as minor exceedances along the roof form, which are directly attributable to the sloping nature of the natural ground level and variability within the site.

The design of the development with respect to massing is considered to respond appropriately to the curtilage of the site and surrounds. The proposed Spencer Street Apartments are considered to provide opportunities to promote good vertical articulation, thereby enhancing the architectural quality and visual appearance of the development when viewed from the public domain.

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. The proposed Spencer Street Apartments have been setback 10m from the northern boundary of the site, which seeks to reduce the visual prominence of the buildings in the context of the Moruya Cemetery, identified as a locally listed heritage item. Further, the development provides an appropriate built form through the stepped height of the development, with the uppermost level recessed from all elevations of the building. The RCF is substantially setback from the northern boundary.



Figure 7 Proposed Visualisations

Source: Marchese

The four Spencer Street Apartments and RCF are the only buildings across the entire site that has a proportion of its form exceeding the height development standard as prescribed by the Housing SEPP. All other buildings on the site comply with the relevant height control.

Further, as the maximum height exceedance at the RCF is restricted to a discreet lift overrun and the minor exceedances along the roof attributable to the varied natural ground level, it does not relate to increased density on the site above what is contemplated by Section 87 of the Housing SEPP. Indeed, substantial parts of the proposed development (the front of the RCF, Valley Apartments, the villas and manor houses), are located below, or comply with, the 12.3m height standard of the Housing SEPP. This is notable on a site with undulating topography and reflective of the appropriateness of the scale of the proposed development.

It is also noted that Section 84 of the Housing SEPP contemplates an additional 2m of building height above the 9.5m building height development standard for servicing equipment (including plant), where it is limited to 20% of the surface area of the roof. Whilst this provision relates only to residential zones where residential flat buildings are not permitted, and therefore does not apply to the subject site, this suggests that additional building height for plant and services, including the lift overrun, is contemplated for seniors housing. The maximum height exceedance at the RCF equates to 1.55m (12.6%) above the compliant height plan, which occupies 0.74% of the roof.

Strict compliance with the height development standard would result in the loss of the uppermost floor levels of the Spencer Street Apartments, and the upper level of the RCF, totalling a GFA loss of at least 3,938.04m² of much-needed seniors living 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 in order to facilitate its supply to the community.

The proposed development incorporates a mix of building typologies and height variance across the site, which provides diversity in supply for future residents. The redistribution of the 3,938.04m² of seniors living floorspace to ensure a height compliant scheme would undermine the principles of the masterplanning process and IRT's vision for the site to ultimately provide a mix of housing types for the local community.

Further, the proposed FSR for the entire site sits at 0.26:1, which is significantly lower than the non-discretionary standards that apply to seniors housing developments under the Housing SEPP (1:1 for RCF floorspace under Section 107 and 0.5:1 for ILU floorspace under Section 108). This demonstrates that the removal of much-needed floorspace in this isolated area of the site in order to comply with the height standard is unnecessary, as the FSR demonstrates that the proposed development does not represent overdevelopment on site and aligns with the intent of Part 5 of the Housing SEPP.

As such, despite the contraventions of the height development standard by up to 27.64% at the Spencer Street Apartments, and up to 12.6% at the RCF to account for the lift overrun, the resultant bulk and scale is considered appropriate.

6.1.2 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 form and massing of buildings have been enhanced through provision of generous building separation in accordance with the ADG. Each internal building interface of the Spencer Street Apartments will comply with the minimum building separation requirement of the ADG, being between 26.5m and 30m, which enables sufficient landscaping and public domain. The design of more slender apartment buildings enables greater public domain, landscaping provision and deep soil, to promote residential amenity, and complies with the ADG requirements.

The proposed landscaping appropriately mitigates the building height exceedances of the ILUs in the northwestern portion of the site, including the retention of the existing tree line along the northern boundary, which acts as a visual buffer between the site and the surrounding area. Similarly, the RCF is substantially setback from the northern boundary as a result of the Asset Protection Zone (**APZ**) requirements advised throughout the masterplanning process, which will enable managed landscape within the northwestern portion of the site.

The proposal will provide a positive impact on the streetscape and is considered to provide an appropriate built form in the context of the surrounding development. As such, the proposed variation of up to 27.64% at the Spencer Street

Apartments and up to 12.6% at the RCF, does not reduce the development's ability to provide appropriate built form and urban design.

6.2 Ground 2: Topography

The natural ground level undulates across the site, but generally increases from west to east. The protrusion above the 12.3m height plane is partly attributed to the irregular ground level of the site, which can be seen in **Figure 5** and **Figure 6**. As illustrated in **Figure 5**, the Spencer Street Apartments are to be sited on an area with a higher natural ground level, in comparison to the surrounding buildings. The areas of exceedance along the RCF are also directly attributable to the rising natural ground level across this portion of the site.

Despite the significant fall in topography, the majority of the proposed development generally complies, or is considerably below, the 12.3m building height standard, with the Valley Apartments proposed at 3-storeys, the manor houses proposed at 2-storeys and the villas proposed at 1-storey. The majority of the RCF is also considerably below the 12.3m height standard, with the exception of the lift overrun and parts of the roof form at the northern wing. Specifically, the southern wing of the RCF is 3.5m below the 12.3m height standard at its tallest point, which demonstrates a clear variation in topography that has resulted in the height exceedance.

Strict compliance with the 12.3m height development standard could result in adverse design and planning outcomes, with the removal of an entire ILU storey across the Spencer Street Apartment buildings and the majority of the upper level of the RCF.

Accordingly, the variation proposed is considered appropriate in this context, would be largely imperceptible from the public domain and is not considered to give rise to any adverse amenity impacts upon adjoining properties or the public domain, as discussed below.

6.3 Ground 3: Amenity Impacts

6.3.1 Visual Impact

The built form proposed by the development (including the proposed height variation) has been designed to seamlessly integrate with the surrounding low density residential development in the locality. In this regard, the design, scale, form, materiality and finishes, colour palette, along with its intended placement, setbacks, and overall setting, all exhibit a contemporary design approach that would be in keeping with the prevailing bulk and scale of the surrounding area.

The exceedance in height relates to part of the upper floor level of each of the Spencer Street Apartments, which have been recessed from all building elevations, in order to create a stepped built form that minimises the visual impact of the buildings from the public domain. The exceedance also relates a portion of the RCF, including a discreet lift overrun that is located at the roof and is not visible from the residential properties to the north (see **Figure 15**), as well as minimal exceedances along the roof form at the northern wing of the RCF, as a result of an undulating topography.

The visual impact of the development is also softened by the established and proposed street trees along the site boundaries. The canopy will create a consistent green frontage that screens key sightlines from the public domain to ensure that the buildings read as part of a landscaped corridor, rather than a dominant built form element.

A VIA has been prepared by Urbaine Design Group (**Appendix M** of the EIS) to provide an assessment of visual impact, with consideration of the proposed variation to the maximum permissible height control. Visual impacts are considered to be reasonable, given the project's strategic merit, the maximum height permissible and the provision of significant areas of open space.

The VIA confirms that whilst the site will be most visible from the immediately surrounding streetscapes, the most impacted viewers within the immediate visual catchment to the north and east will experience a negligible to moderate impact due to the proposed landscaping, which aims to maintain the integrity of the natural environment.



Figure 8 Existing site photo from Vulcan Street

Source: Urbaine



Figure 9 Photomontage from Vulcan Street looking towards the Spencer Street Apartments (to the right)

Source: Urbaine



Figure 10 Visual impact from Vulcan Street (in cyan with red outline)

Source: Urbaine

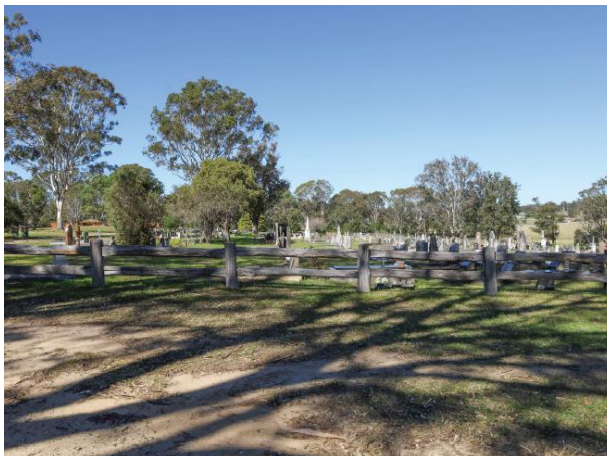


Figure 11 Existing site photo - Rose Street

Source: Urbaine

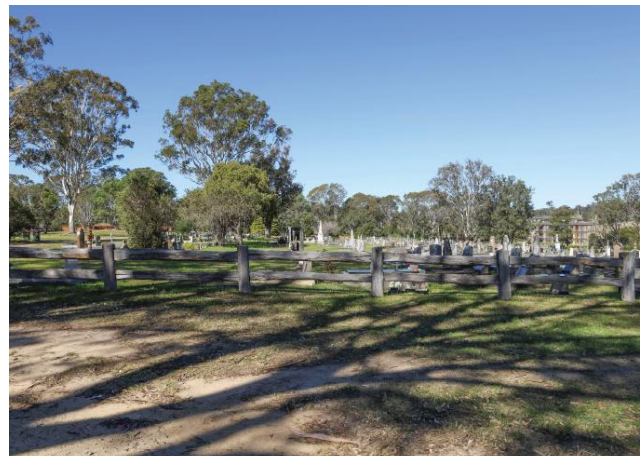


Figure 12 Photomontage of Proposal

Source: Urbaine



Figure 13 Visual impact in cyan with red outline

Source: Urbaine



Figure 14 Existing site photo – Costin Street

Source: Urbaine



Figure 15 Photomontage of Proposal

Source: Urbaine



Figure 16 Visual impact in cyan with red outline

Source: Urbaine

Importantly, the VIA found that:

- The Spencer Street Apartments and RCF do not block views to any scenic or highly valued features in the landscape or heritage items.
- Whilst the Spencer Street Apartments are visible in close views and greater than other buildings proposed within the development, the ILUs are not dissimilar in form or character to other developments present within the immediate and wider visual catchment.

- The significance of visual effects that would be caused by the proposed development are negligible to moderate and are appropriately mitigated through extensive landscaping along the northern boundary and through the design of the built form.

As such, the proposed variation to the maximum permissible height by 3.4m (27.64%) at Building E, 2.81m (22.85%) at Building F, 2.05m (16.67%) at Building G and 2.75m (22.36%) at Building H, as well as up to 12.6% at the RCF to account for the lift overrun, is not considered to create any adverse visual impacts.

6.3.2 Privacy

The additional height proposed as part of this development, beyond the height development standard, will not cause any detrimental impact on privacy as separation to future buildings within the site is substantial and in accordance with the Apartment Design Guide's design criteria for building separation.

The extensive landscaping across the site boundaries, and throughout the site, will ensure that privacy is achieved to the residential properties within the site. There are no immediate adjacent residential properties that are directly impacted by the proposed Spencer Street Apartments, as the cemetery lies to the immediate north of the site. The RCF is positioned with a significant setback from the northern boundary, which coupled with the existing and enhanced tree line along the boundary, will not create any adverse privacy impacts to existing residents.

As such, the proposed variation to the maximum permissible height by 3.4m (27.64%) at Building E, 2.81m (22.85%) at Building F, 2.05m (16.67%) at Building G and 2.75m (22.36%) at Building H, as well as up to 12.6% at the RCF to account for the lift overrun, is not anticipated to result in any visual privacy impacts.

6.3.3 Overshadowing and Solar Access

The proposed variation to the height will not generate significant overshadowing impacts for existing or future residential properties. As illustrated in **Figure 17**, the proposed Spencer Street Apartment buildings, nor the RCF, do not result in any overshadowing to existing properties within the immediate area. Overshadowing is limited to within the site, which demonstrates that all buildings within the site receive sufficient solar access between 9am and 3pm on 21 June. Over 2 hours of solar access is received for 71.7% of the apartments across the site between 9am and 3pm on 21 June.

The Spencer Street Apartments cause overshadowing to the northernmost Valley Apartment buildings between 9-10am, and at 3pm. Notwithstanding the variation to the building height, the proposed Spencer Street Apartments allow sufficient solar access to the adjacent buildings.

It is noted that the area of the apartment buildings that exceed the height limit do not contribute to the shadow cast, and the maximum variation to the development standard of 27.65% does not impact the development's ability to achieve the solar access requirements of the ADG.

Further, the area of the lift overrun that exceeds the maximum height is limited to the centre of the RCF floorplate, which does not cause additional overshadowing beyond the shadows cast from the compliant envelope. The RCF is set at three stories and is largely compliant with the 12.3m height standard, with a minor exceedance in height proposed for the lift overrun located centrally on the roof, as well as minimal exceedances at the northern wing of the RCF, where the natural ground level varies.

Due to the stepped lower scale of the building towards the internal road frontage and sufficient separation distances between the RCF and the manor houses to the south, the shadow cast on the manor houses is only limited to 9am. After 10am, the shadow cast shifts towards the east, with the shadow remaining in the site boundary and the internal road network. As such, the proposed height does not result in any adverse overshadowing and solar access impacts and the location of the height exceedances would not result in greater impacts.



Figure 17 Shadow Diagrams – 21 June

Source: Marchese Partners

6.4 Ground 4: Economic Viability

The maximum permissible height of 12.3m (inclusive of the 3.8m height bonus of Section 87(2)(b)), would enable a three-storey development across the site. Seniors housing developments in the form of residential flat buildings require lift facilities to access the upper levels.

Strict compliance with the development standard at the Spencer Street Apartments would remove one level of much-needed ILU floorspace (approximately 1,894.4m² across four (4) buildings), where a lift in a three-storey development would not be particular viable from an economic standpoint. The maximum exceedance at the RCF is restricted to a

discreet lift overrun, which is required to service the 3-storey building, as well as minimal exceedances along the roof at the northern wing of the RCF. Strict compliance with the height standard at the RCF would require the removal of the majority of upper level, as the encroachment relates to the resident rooms on the upper level at a height below what could reasonably be managed through reduction of the roof structure or bulkheads and lowered ceilings. This would result in the removal of 2,043.64m² of floorspace from the RCF, equating to approximately 30 rooms.

The redistribution of a total of 3,938.04m² of floorspace would be challenging as it would fundamentally undermine the principles of the masterplanning process and IRT's vision to providing a diverse mix of housing that serves the needs of the seniors community.

The intent of the proposed development is to provide a mix of housing typologies that contribute to diverse housing supply and choice for residents. Further, the proposed FSR for the entire site sits at 0.26:1, which is significantly lower than the non-discretionary standards that apply to seniors housing developments under the Housing SEPP (1:1 for RCF floorspace under Section 107 and 0.5:1 for ILU floorspace under Section 108). This demonstrates that the removal of much-needed floorspace in order to comply with the height standard is unnecessary, as the FSR demonstrates that the proposed development does not represent overdevelopment on site and aligns with the intent of Part 5 of the Housing SEPP.

As such, the proposed variation to the maximum permissible height by 3.4m (27.64%) at Building E, 2.81m (22.85%) at Building F, 2.05m (16.67%) at Building G and 2.75m (22.36%) at Building H, as well as up to 12.6% at the RCF to account for the lift overrun, is necessary for the viability of the scheme.

7.0 Conclusion

The assessment above demonstrates that compliance with the maximum building height development standard as per 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 maximum building height development standard, the proposed development is appropriate for the following reasons:

- The proposed development is consistent with the Principles of Policy (Section 3 of the Housing SEPP) given it seeks to provide additional housing in accordance with the bonus height provisions. To not allow the variation to the maximum building height would ensure the underlying purpose of the Principles of Policy would be thwarted as it would not encourage seniors housing, nor promote its delivery.
- The proposed FSR for the entire site sits at 0.26:1, which is significantly lower than the non-discretionary standards that apply to seniors housing developments under the Housing SEPP (1:1 for RCF floorspace under Section 107 and 0.5:1 for ILU floorspace under Section 108).
- Compliance with the development standard would be unreasonable and unnecessary, because:
 - The variation is consistent with the objectives of the EP&A Act.
 - The proposed development and variation achieve a seamless streetscape notwithstanding the non-compliance.
 - The proposed development incorporates a mix of building typologies across the entire site, which provides a diversity in building height and aligns with the needs of future residents seeking housing diversity and choice.
 - The majority of the development is compliant, or substantially below the 12.3m height standard (including part of the RCF, the Valley Apartments at 3-storeys, the manor houses at 2-storeys, and the villas at 1-storey).
 - Given the maximum exceedance at the RCF is restricted to the lift overrun in the centre of the floorplate, which occupies only 0.74% of the surface area of the roof of the RCF, with minor exceedances to parts of the roof at the northern wing of the RCF due to the varied topography of the land, adverse amenity impacts upon adjoining properties and the locality in terms of overshadowing, visual privacy, views, built form and density are minimised.
 - The proposed development represents a better outcome than the existing site.
 - The topography of the site requires a variation to the control.
 - The proposed development and variation are consistent with the R3 Medium Density Residential zoning.
- There are sufficient environmental planning grounds to justify the contravention, including:
 - The objectives of the standard are achieved notwithstanding non-compliance with the standard.
 - The variation is compatible with the height, bulk and scale of the existing and proposed character of the locality.
 - The variation will not result in any visual, view, privacy or solar access impacts.
- The non-compliance with the development standard does not raise any matters of State and Regional planning significance.
- The non-compliance does not result in any adverse environmental impacts and where required, any environmental impacts can be appropriately mitigated.

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 Eurobodalla LEP and may grant development consent notwithstanding the contravention of the maximum building height development standard.

Therefore, the SSDA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Eurobodalla LEP.



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