



beam

Clause 4.6 Variation

Height of Buildings
95-97 Stanhope Road, Killara

Prepared for Levande Pty Ltd

22.06.26
24144

Beam Planning acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia. We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we work with.

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Executive Summary

Clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 enables the consent authority to grant consent for development even though it contravenes a development standard. Its objectives 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.

Clauses 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, and
- There are sufficient environmental planning grounds to justify the contravention of the development standard.

The table below provides a summary of the key matters required in a Clause 4.6 Variation set out in the Department of Planning and Environments *Guide to Varying Development Standards November 2023*.

Where is the development site?	95-97 Stanhope Road, Killara
What is proposed development?	The proposed development is for the redevelopment of the existing Lourdes Retirement Village to deliver 145 new independent living units (ILUs) and associated amenities and facilities, in addition to public domain upgrades and the creation of an Asset Protection Zone (APZ) to mitigate bushfire risks to the south and east of the site. The development also seeks the Torrens Subdivision of land, key infrastructure, alterations / upgrades and refurbishment works and upgrades to the existing residential care facility, and the adaptive reuse of the existing Headfort House, a local heritage item under Schedule 5 of the Ku-ring-gai LEP.
What is the variation?	The proposal seeks a variation to the maximum building height development standard applying to the site. The <i>State Environmental Planning Policy (Housing) 2021</i> (Housing SEPP) allows a maximum height of building of 9.5m, excluding servicing equipment, which can reach up to 11.5m for seniors housing developments where residential flat buildings are not permitted. Residential flat buildings are not permitted on the site and therefore, this maximum height applies. The proposed development includes 12 buildings as either retained and modified or new across the site, with the site sloping down to the south away from Stanhope Road. The proposal includes a Bushfire APZ to the south and east of the site in response to consultation with RFS and Planning Authorities, and therefore removes existing habitable dwellings from the southern and eastern portions of the site. All four buildings fronting Stanhope Road are below the height control, however the 8 further within the site typically range between 0-2m to the north and between 1-3m to the south above the maximum height control under the Housing SEPP. At its highest point at the southern end of Building A, which is located within the lower portion of the site the building reaches a maximum height of 18.4m. This represents a maximum variation of 6.9m to the 11.5m height control under the Housing SEPP. The areas of exceedances are away from the more sensitive interfaces at Stanhope Road and to the west of the site. They are localised, have negligible view impact, centrally located within the site, below street level and well setback from the site boundaries and limited to approximately 11.3% of the total site area, which is considered minor in nature.
Why is compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case?	The proposal achieves the objectives of the Clause 4.3 Height of Buildings standard, notwithstanding the non-compliance as: • The proposed height, bulk and scale are appropriate to the site's size, topography, bushland setting and existing character of the site and surrounds. • The height exceedance is centrally located, below and way from the street, ensuring an appropriate transition to the surrounding low density residential context and with negligible view impacts from Stanhope Road. • The proposal remains compatible with the size of the land, noting the site comprises approximately 5.29 hectares and the areas of height exceedance are confined to localised and central portions of the development away from Stanhope Road whilst retreating from bushland to the south and east to create the new APZ.

What are the sufficient environmental planning grounds to justify contravention of the development standard?

The environmental planning grounds to justify contravention of the Height of Buildings standard are:

- The proposed variation is a direct response to the bushfire constraints of the site, which currently contains existing dwellings within the Bushfire Attack Level (BAL) 40 Flame Zone. The proposal seeks to remove dwellings from high bushfire risk areas, reduce overall dwelling numbers by 27 (from 172 to 145) and create an APZ whilst upgrading built structures and firefighting infrastructure capability. Doing this enables far better housing outcome for the future residents, visitors and local community when compared to the current condition.
- Centralising the built form allows for increased biodiversity and tree retention along with larger areas of deep soil and landscaped communal open space.
- The buildings at the more sensitive interfaces of Stanhope Road and to the north-western neighbour interface are below the height control.
- The more significant height exceedances are a direct result of the site's topography, and therefore, responds directly to the natural ground levels and adopts a stepped design that assists in reducing the perceived bulk and scale.
- View impacts of the height breach are negligible to minor, with the scale and location of the site on the low side of the ridge within a bushland setting, enables the height to be managed within the site to address the bushfire risk without any unreasonable visual or amenity impacts, and as such, the increased building height will not be visible from the streetscape or neighbouring properties.
- The proposal also seeks to reduce the overall dwelling yield from that currently on the site by 27 (from 172 to 145), whilst remaining compliant with the maximum FSR development standard, which highlights the well-considered design approach to prioritise safety and good design over maximising yield.
- The proposal utilises the topography to locate parking at the semi subterranean levels instead of residential uses, instead pushing them above the height limit. This maximises the amenity of the dwellings on the site by providing them with better solar access, cross ventilation and general outlook.
- The proposal delivers high quality and contemporary seniors housing, which will be safer, accessible and more efficient to respond to the existing and future demand for the elderly population in Ku-ring-gai.

In light of the above that the consent authority can be satisfied that there are sufficient grounds to support the proposed variation.

1.0 The Development Site

The site address is 95-97 Stanhope Road, Killara and is legally described as Lot 21-22 in DP634645. The site is situated within the Ku-ring-gai Local Government Area, approximately 1.0km from Killara and 1.1km from Lindfield stations and town centres. An aerial photo of the site is provided at **Figure 1**.

The site has a total area of approximately 5.29 hectares and has a substantial street frontage of approximately 380m along Stanhope Road. The area to the north and west is characterised by low-density residential dwellings, whilst the southern and eastern boundaries is bound by an environmental conservation area. It has a significant slope of 14m from Stanhope Road to the southern boundary.

Currently, the site comprises the existing 172-dwelling Lourdes Retirement Village including 108 independent living units, 64 serviced retirement apartments, and an additional 83 bed residential aged care facility (known as the Killara Glades Care Community operated by Opal), administrative buildings and additional resident community facilities. The buildings vary in scale from one to three storeys with pitched rooves (see **Figure 2** for existing images of the site). The site includes a locally listed heritage item, Headfort House and interfaces with the Crown Blocks Heritage Conservation Area.

The site has a main vehicular access point via Stanhope Road, which connects to the internal road network of the Lourdes Village. Additional vehicular access points are located on both the eastern and western boundaries of the site via Stanhope Road to accommodate resident, visitor and emergency services access. The site is serviced by a local bus route (556) which runs through the site and provides public transportation to Lindfield and its associated local amenities and services.



THE SITE

NOT TO SCALE



Figure 1 Site Aerial



View within the site on First Ave looking west to the RCF



View within the site from Third Avenue looking north at the ILUs



View of the site from the eastern entry from Stanhope Road



View of one of the existing bus stops on the site.



View of Headfort House looking west, near First Avenue driveway



View of Headfort House looking southeast to the main façade

Figure 2 Images of Existing Buildings

2.0 The Proposed Development

This SSDA seeks approval for the staged redevelopment of the existing Lourdes Retirement Village, which will include seniors housing, residential aged care facilities and resident community facilities. Specifically, the proposed development will comprise the following scope of works:

- Staged demolition of the existing 172 seniors housing dwellings which is highly considered on existing residents and includes site preparation works, including removal of the ILUs and retirement serviced apartments within the highest bushfire risk areas;
- Significant bushfire safety measures including creation of an Asset Protection Zone (APZ) for the site, reduced dwellings to the existing retirement village, upgrades to infrastructure to support bushfire protection, improved construction materials and standards and evacuation planning to increase resident and visitor safety.
- Torrens subdivision of land to completely separate the existing partly subdivided residential aged care facility from the remainder of the retirement living site.
- Alterations to the existing residential aged care facility, including:
 - demolition of the existing connection with the hostel building and associated internal and external alterations and additions;
 - ember protection upgrades to the facades of the building to comply with relevant Rural Fire Services (RFS) requirements;
 - demolition of the buildings connecting the residential aged care to the retirement serviced apartments, including new aged care façade and service and internal alterations;
 - relocation and upgraded water tanks and sprinkler system; and
 - provision of new services infrastructure to support the subdivision.
- Construction of a new seniors housing development comprising:
 - 9 boutique seniors housing blocks with a total of 145 independent living units (ILUs) varying between 2-4 storeys in height.
 - Provision of a new community facility to support a range of social and recreational uses.
- High quality landscape works that appropriately respond to and embrace the bushland setting, enabling significant tree and biodiversity retention and avoiding impacts on remnant and contiguous bushland vegetation along the boundary adjoining Seven Little Australians Park.
- Adaptive re-use of the heritage listed Headfort house including conservation works, curtilage improvements and sympathetic surrounding built form to improve the streetscape and allow for improved appreciation of the heritage item.
- 2 consolidated 1-2 storey basements, providing car parking and associated services.
- Public domain works, including new roads and on-grade parking extensive landscaping within the APZ and throughout the site.
- Extension and augmentation of physical infrastructure and utilities as required.

An artist's impression of the proposed development is shown at **Figure 3** below.



Figure 3 Artist Impression of the proposed development

Source: PBD Architects

3.0 The Proposed Variation

This section outlines the relevant environmental planning instrument (EPI), the development standard to be varied and proposed variation.

Table 1 Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	<i>Ku-ring-gai Local Environmental Plan 2015</i> (Ku-ring-gai LEP 2015) and <i>State Environmental Planning Policy (Housing) 2021</i> (Housing SEPP)
The site's zoning	R2 Low Density Residential The objectives of this land use zone are: <i>To provide for the housing needs of the community within a low density residential environment.</i> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <i>To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai.</i>
Housing SEPP	Section 84 Development standards—general Section 84 of the Housing SEPP is contained within Division 3 Development Standards under Part 5, which applies to housing for seniors or people with a disability. Although neither Part 5 or Section 84 includes specific objectives, the intent of Section 84(2)(c) is to regulate the form and scale of development to ensure it is appropriate to its context and adjoining properties. This clause sets standards for building height and scale in zones where residential flat buildings are not permitted. Importantly, the Principles of the Policy as outlined in Section 3 of the Housing SEPP are: <i>(a) enabling the development of diverse housing types, including purpose-built rental housing,</i> <i>(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,</i> <i>(c) ensuring new housing development provides residents with a reasonable level of amenity,</i> <i>(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</i> <i>(e) minimising adverse climate and environmental impacts of new housing development,</i> <i>(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,</i> <i>(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,</i> <i>(h) mitigating the loss of existing affordable rental housing.</i> Section 84 stipulates: <i>(2) Development consent must not be granted for development to which this section applies unless—</i> <i>(c) for development on land in a residential zone where residential flat buildings are not permitted—</i> <i>(i) the development will not result in a building with a height of more than 9.5m, excluding servicing equipment on the roof of the building, and</i> <i>(ii) if the roof of the building contains servicing equipment resulting in the building having a height of more than 9.5m, the servicing equipment must—</i> <i>(C) not result in the building having a height of more than 11.5m, and</i>
The proposed variation	Due to the steep topography of the site, particularly within the central portion of the site where the majority of the dwellings are proposed away from the more sensitive interfaces and to allow for the creation of the Bushfire APZ, buildings within the central portion of the site exceed the maximum building height development standard in localised areas. At the location of the maximum variation, the proposed development reaches a maximum height of 18.4m at the southern end of Building A, which is at the lower portion of the site and the southern portion of this building. This represents a maximum variation of 6.9m (60%) variation to the 11.5m height limit under Section 84 of the Housing SEPP. The proposed maximum building height from both the north and south side of each building is provided in the following table. The proposed height and variation have been broken up into habitable and non-habitable (services and equipment) to clearly understand the variation to the applicable 9.5m habitable height control and the 11.5m service height control under the Housing SEPP.

Matter	Comment																																																		
	<table><tr><th>Building</th><th>Building Height (Habitable component to the ceiling height)</th><th>Variation to 9.5m SEPP habitable height control</th><th>Building Height (services to top of roof parapet)</th><th>Variation to 11.5m SEPP building services height control</th></tr><tr><td>Building A</td><td>North: 9.08m South: 16.82m</td><td>North: complies South: 7.32m (77.1%)</td><td>North: 13.6m South: 18.4m</td><td>North: 2.1m (18.3%) South: 6.9m (60%)</td></tr><tr><td>Building B</td><td>North: 12.1m South: 12.45m</td><td>North: 2.6m (27.4%) South: 2.95m (31.1%)</td><td>North: 12.9m South: 13.3m</td><td>North: 1.4m (12.2%) South: 1.8m (15.7%)</td></tr><tr><td>Building C</td><td>North: 12.02m South: 12.31m</td><td>North: 2.52m (26.5%) South: 2.81m (29.6%)</td><td>North: 12.9m South: 13.3m</td><td>North: 1.4m (12.2%) South: 1.8m (15.7%)</td></tr><tr><td>Building D</td><td>North: 12.25m South: 12.56m</td><td>North: 2.75m (29%) South: 3.06m (32.2%)</td><td>North: 13.2m South: 13.3m</td><td>North: 1.7m (14.8%) South: 1.8m (15.7%)</td></tr><tr><td>Building E</td><td>North: 11.15m South: 15.32m</td><td>North: 1.65m (17.4%) South: 5.82m (61.3%)</td><td>North: 12.02m South: 16.34m</td><td>North: 0.52m (4.5%) South: 4.84m (42.1%)</td></tr><tr><td>Building F</td><td>North: 9.65m South: 14.1m</td><td>North: 0.15m (1.6%) South: 4.6m (48.4%)</td><td>North: 10.4m South: 15.2m</td><td>North: Complies South: 3.7m (32.2%)</td></tr><tr><td>Building H</td><td>North: 13.33m South: 16.2m</td><td>North: 3.83m (40.3%) South: 6.7m (70.5%)</td><td>North: 14.8m South: 17.8m</td><td>North: 3.3m (28.7%) South: 6.3m (54.8%)</td></tr><tr><td>Building I</td><td>8.78m</td><td>Complies</td><td>8.31m</td><td>Complies</td></tr><tr><td>Building J</td><td>North: 9.22m South: 12.12m</td><td>North: Complies South: 2.62m (27.6%)</td><td>North: 10.3m South: 14.8m</td><td>North: Complies South: 3.3m (28.7%)</td></tr></table> As shown in Figure 4 areas of exceedances are away from the more sensitive interfaces at Stanhope Road and to the west of the site. They are localised, have negligible view impact, centrally located within the site, below street level and well setback from the site boundaries and limited to approximately 11.3% of the total site area, which is considered minor in nature. Further, due to the topographical slope of the land, the variations identified above represent the absolute maximum exceedance for each building and occur only in localised areas where the land dips towards the southern part of the site. Importantly, the areas of exceedance are located substantial distances from Stanhope Road and are well setback from Stanhope Road and all site boundaries by 45-90m. As such, the proposal, including those portions of the buildings that exceed the height controls do not result in adverse visual, privacy or overshadowing impacts on the surrounding locality. Furthermore, while the development seeks a variation to the height control, it remains well below the maximum FSR permissible on the site. This is a direct result of the design approach, which seeks to concentrate dwellings within a smaller hazard free area of the site and remove the existing dwellings from the higher risk areas and create a bushfire APZ. This is a direct response to the site's environmental and bushfire constraints and will result in a more efficient and safer development, delivering improved seniors housing outcomes for residents and more broadly for the community, particularly in comparison to the ageing ILU's currently on site within higher risk bushfire prone land and not to modern bushfire construction standards. The non-compliant portion of the building is limited to 8 of the 12 buildings, the upper levels, and predominantly the southern portion of these buildings, which have been designed to be significantly setback from the street. The proposed design approach will significantly reduce the perceived bulk and scale and creates a human like built form consistent with the character of the area noting there are already 3-4 storey forms on the site. It will also assist in achieving an appropriate transition in height and massing from both the existing development and the surrounding low-density residential and bushland context.	Building	Building Height (Habitable component to the ceiling height)	Variation to 9.5m SEPP habitable height control	Building Height (services to top of roof parapet)	Variation to 11.5m SEPP building services height control	Building A	North: 9.08m South: 16.82m	North: complies South: 7.32m (77.1%)	North: 13.6m South: 18.4m	North: 2.1m (18.3%) South: 6.9m (60%)	Building B	North: 12.1m South: 12.45m	North: 2.6m (27.4%) South: 2.95m (31.1%)	North: 12.9m South: 13.3m	North: 1.4m (12.2%) South: 1.8m (15.7%)	Building C	North: 12.02m South: 12.31m	North: 2.52m (26.5%) South: 2.81m (29.6%)	North: 12.9m South: 13.3m	North: 1.4m (12.2%) South: 1.8m (15.7%)	Building D	North: 12.25m South: 12.56m	North: 2.75m (29%) South: 3.06m (32.2%)	North: 13.2m South: 13.3m	North: 1.7m (14.8%) South: 1.8m (15.7%)	Building E	North: 11.15m South: 15.32m	North: 1.65m (17.4%) South: 5.82m (61.3%)	North: 12.02m South: 16.34m	North: 0.52m (4.5%) South: 4.84m (42.1%)	Building F	North: 9.65m South: 14.1m	North: 0.15m (1.6%) South: 4.6m (48.4%)	North: 10.4m South: 15.2m	North: Complies South: 3.7m (32.2%)	Building H	North: 13.33m South: 16.2m	North: 3.83m (40.3%) South: 6.7m (70.5%)	North: 14.8m South: 17.8m	North: 3.3m (28.7%) South: 6.3m (54.8%)	Building I	8.78m	Complies	8.31m	Complies	Building J	North: 9.22m South: 12.12m	North: Complies South: 2.62m (27.6%)	North: 10.3m South: 14.8m	North: Complies South: 3.3m (28.7%)
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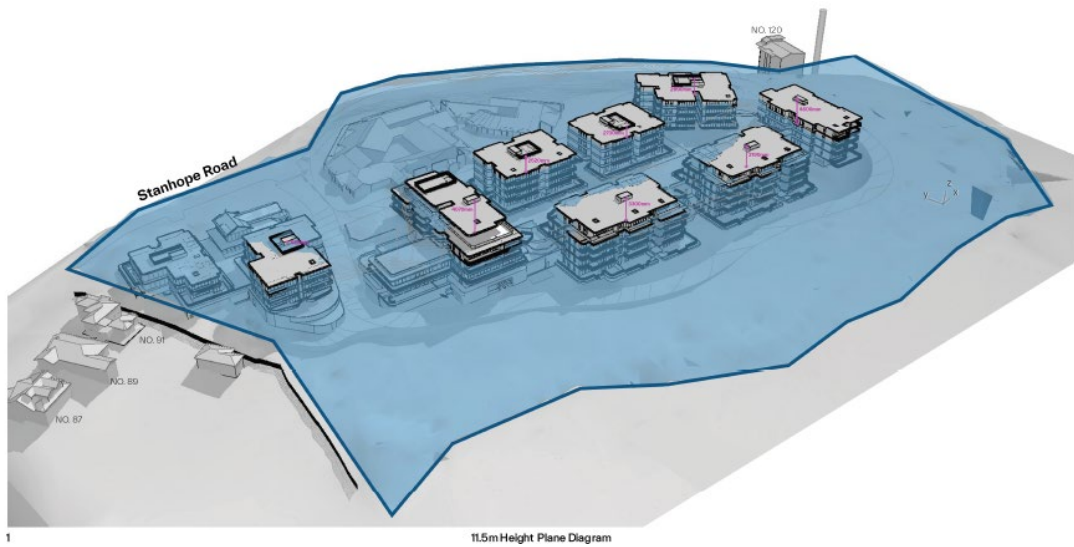
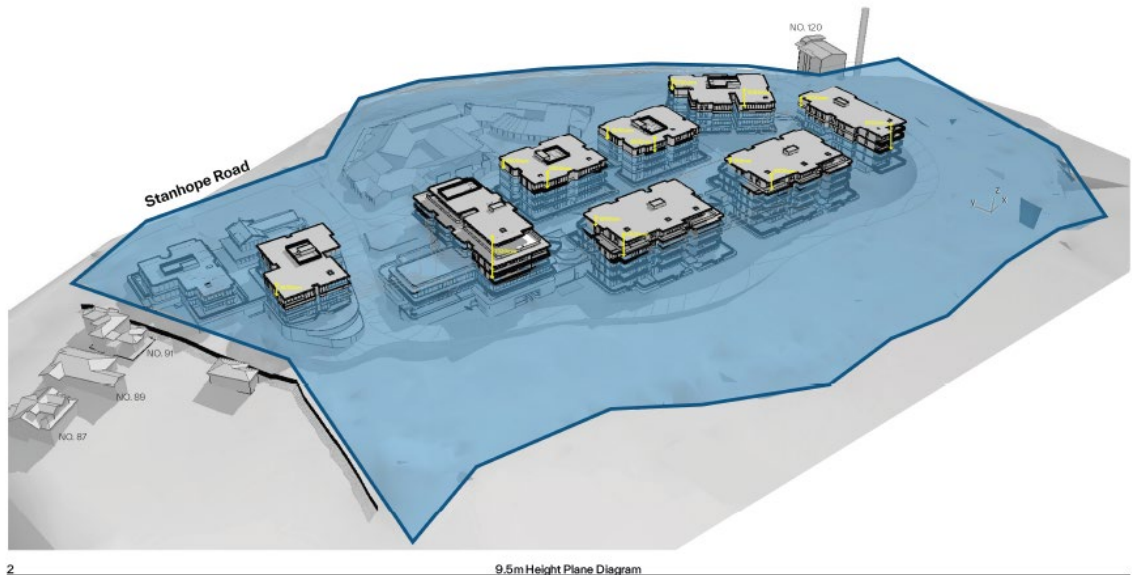


Figure 4 Proposed Variation to the Housing SEPP 9.5m habitable and 11.5m services height control
Source: PBD Architects

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Ku-ring-gai LEP 2015 provides that:

- 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 of the case, and*
 - (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

These key considerations are considered in their respective sections below.

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

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 height control pursuant to the 'First Method' outlined in Webhe.

Given the Housing SEPP does not contain any specific objectives relating to the height of building development standard, an assessment against the objectives of the height of building development standard under Clause 4.3 of the Ku-ring-gai LEP 2013 has been undertaken. Furthermore, an assessment against the overarching principles of the policy under Section 3 of the Housing SEPP has been undertaken, demonstrating that the objectives and principles are achieved notwithstanding the non-compliance.

4.1.1 Assessment against the Principles of Policy (Housing SEPP)

As demonstrated in **Table 2**, the proposed development, inclusive of the proposed height exceedance, is consistent with and satisfies the principles of Policy prescribed under Section 3 of the Housing SEPP.

Table 2 The proposed development's alignment with the Principles of the Housing SEPP (Section 3)

Principles of Policy	Alignment
(a) <i>enabling the development of diverse housing types, including purpose-built rental housing,</i>	The proposal delivers a contemporary senior living village, comprising 145 independent living units across nine new buildings, supported by a residential aged care facility and shared community amenities. The range of dwelling sizes, configurations and infrastructure provides diverse accommodation options tailored to varying levels of care and independence, facilitating aging in place. The staged renewal of the existing retirement village ensures the continued provision of purpose built seniors housing that is contemporary, safe and aligned with current industry standards.
(b) <i>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,</i>	The development is specifically designed for seniors, including residents with varying levels of care needs, and incorporates universal design and accessibility principles throughout to support aging in place within the units, whilst incorporating a RCF that provides a higher level of care. The proposal significantly enhances safety and resilience outcomes for vulnerable occupants through comprehensive bushfire mitigation measures, including the establishment of a dedicated Asset Protection Zone (APZ), upgraded construction standards, ember protection treatments, improved servicing infrastructure, and enhanced evacuation procedures through a reduced on-site population. The redevelopment replaces ageing housing stock located within higher bushfire risk areas with safer, higher quality and more appropriately designed accommodation to support more vulnerable members of the community.
(c) <i>ensuring new housing development provides residents with a reasonable level of amenity,</i>	The design achieves a high level of residential amenity through a response to site-specific constraints, ensuring each dwelling benefits from access to outlook, natural light, privacy, and usable open space. The proposal provides extensive landscaped open space distributed throughout the site, including along its perimeter, strengthening the bushland interface and reinforcing landscape integration. An expansive range of communal amenities is also provided to support daily living, social interaction and wellbeing for residents.

Principles of Policy	Alignment
<i>(d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</i>	The site is 5.29ha and is an established seniors housing precinct already serviced by existing infrastructure networks, including roads, utilities, and community services. The proposal seeks the redevelopment of an existing retirement and RCF to substantially improve the amenity and quality of seniors accommodation balanced against the bushfire constraints and ecological and tree preservation, thereby optimising the use of established village including transport, demographic drivers and infrastructure capacity. The development also incorporates targeted infrastructure upgrades, including water supply, fire services, internal circulation, and subdivision works, to support the long-term functionality and efficiency of the site.
<i>(e) minimising adverse climate and environmental impacts of new housing development,</i>	The proposal responds to significant environmental and site constraints, particularly the significant bushfire risk, through a design approach that concentrates development within safer, central areas of the site and facilitates the establishment of a substantial Asset Protection Zone (APZ). The removal of dwellings in higher-risk areas, combined with enhanced construction standards and upgraded infrastructure, improves overall resilience to climate-related hazards. The design also seeks to retain significant vegetation and minimise impacts on adjoining bushland, including the interface with Seven Little Australians Park, thereby reducing ecological disturbance and supporting long-term environmental outcomes. The internal spaces have been designed to optimise energy efficiency through design that reduces energy and water consumption along with measures to reduce waste and encourage reuse. Leveraging the existing bus network which will be supplemented by village services reduces the use and dependence on individual cars and improves social, environmental and community outcomes.
<i>(f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,</i>	The architectural and landscape design has been carefully developed to respond to the surrounding bushland character and established low-density residential context. The built form is articulated and stepped to follow natural topography, reducing perceived bulk and scale when viewed from adjacent streets and properties. The proposed height variation is a direct response to site constraints, including steep terrain, ecology and tree preservation, and bushfire-driven design approach, rather than an outcome of overdevelopment. The result is a human-scaled built form that provides an appropriate transition between existing development, surrounding residential areas, and the bushland interface.
<i>(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,</i>	Not applicable. The proposal comprises purpose-built seniors housing and residential aged care accommodation and does not rely on short-term rental accommodation as a component of its operational model.
<i>(h) mitigating the loss of existing affordable rental housing.</i>	The proposal does not result in the loss of any existing affordable rental housing stock. Instead, it involves the staged renewal of existing seniors housing within the retirement village, replacing ageing accommodation that does not meet the needs of seniors with contemporary, higher-quality, fit for purpose dwellings that improve overall housing outcomes for the growing seniors population within the Ku-ring-gai LGA.

4.1.2 Assessment against the Height of Development Standard Objectives under Ku-ring-gai LEP

Objective 4.3(1)(a) to ensure that the height of buildings is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres

The site is not located within a centre and therefore, this objective is not directly relevant to the proposal. Irrespective of this, the proposal is consistent with the intent of the objective in that it provides a building form and scale that is appropriate to the site, its environmental constraints and its surrounding context.

The proposed height variation is not associated with the intensification of land uses or increase in density. Instead, it is a direct result of a site-specific design response to relocate existing seniors housing away from the higher risk bushfire affected land and towards the central and safer portion of the site, creating a bushfire APZ whilst maintaining compliant heights at the more sensitive interfaces to Stanhope Road and the north-west of the site.

Given the site is not located within a centre, and the height exceedance is contained within the middle of the site, away from the streets and adjoining properties, the built form is entirely appropriate for the site and is consistent with the intent of the objectives.

Objective 4.3(1)(b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity

As per the above, the site is not located within a centre and therefore, this objective is not directly applicable in the context of the site. Notwithstanding, the proposal is consistent with the underlying intent of the objective as it has been purposefully designed to provide an appropriate transition in scale to the adjoining lower density residential, open space and bushland setting surrounding the site.

As illustrated in the height plane diagram at **Figure 5**, the height variation is contained within the centre of the site and is substantially separated from the site boundaries and adjoining residential land. Due to the sloping topography, the buildings that exceed the height control are also located substantial distances from Stanhope Road. This, together with high quality landscaping and vegetation, the view impact from the height exceedance will be minor to negligible from the public domain and will maintain a scale that is compatible with low density residential character of the area.

The site has limited direct interface with adjoining residential development, with one residential neighbour located to the west. Building I, which is adjacent to the western boundary, complies with the maximum permissible building height under the LEP and adopts a substantial setback of 9-10m to the boundary. This design approach ensures a suitable transition to the neighbouring residential property and avoids any potential environmental impacts in relation to visual privacy, overshadowing and perceived bulk and scale.

All four buildings at the frontage of Stanhope Road are compliant in height, with the other buildings typically setback around 50-95m from the road and sit behind the compliant buildings as well as significant landscaping.

The establishment of the Asset Protection Zone (APZ) for bushfire creates a significant 56m setback to the southern boundary and setbacks from the eastern boundary. This area will be used for open space and landscaping, providing a buffer zone and an appropriate transition from the proposed buildings to the adjoining bushland setting.

Overall, the site's topography, generous setbacks and massing strategy, and existing and proposed vegetation, ensures that the proposed height variation is appropriately designed for the site and will not result in any adverse amenity impacts to surrounding residential properties, the streetscape, or adjoining open space. Accordingly, the proposal is consistent with this objective as it maintains an appropriate transition to the surrounding development.

Objective 4.3(1)(c) to enable development with a built form that is compatible with the size of the land to be developed

The proposed development is compatible with the size and context of the land. The subject site comprises approximately 5.29 hectares, which can accommodate the proposed built form, and has been deliberately designed to respond to the site's environmental constraints, topography and surrounding low density residential character.

As above, the proposal concentrates the proposed dwellings within the central portion of the site, away from the more sensitive interfaces to Stanhope Road and to the north-west of the site and areas of higher bushfire risk, with the creation of a bushfire APZ. This design approach allows building height and massing to be managed within the site, while maintaining appropriate separation to surrounding development. Furthermore, the taller buildings are also located at a topographical low point, with the fall of the land generally resulting in the breaches. This, together with the existing and proposed landscape, substantially reduce the buildings visual prominence from the street and minimise the perceived bulk and scale.

The design is a direct response to the site's opportunities and constraints and ultimately enables a much safer and better development outcome, while providing an appropriate transition to the lower density areas surrounding the site. As such, the proposal achieves a built form that is compatible for the site and the surrounding development and therefore, is consistent with objective 4.3(1)(c).

4.1.3 Assessment Against the Zoning Objectives

Furthermore, the proposed development (inclusive of the proposed height exceedance) is consistent with the objectives of the R2 Low Density Residential land use zone, as presented in **Table 2**.

Table 3 The proposed development's alignment with the objectives of the R2 Low Density Residential zone

Objective	Alignment
<i>To provide for the housing needs of the community</i>	The proposal will redevelop an existing old and underutilised seniors housing village that does not meet modern standards for safety or service, to deliver safe, contemporary, accessible and purpose-built

Objective	Alignment
<i>within a low-density residential environment</i>	accommodation to meet the needs of Ku-ring-gai's aging population. While the development includes some built form that exceeds the applicable height standard, the proposal has been carefully designed to maintain compatibility with the low-density residential character, whilst minimising amenity and visual impact by locating the taller buildings towards the centre of the site away from site boundaries and public domain. Further the design will increase bushfire safety from the current village for both residents and the community.
<i>To enable other land uses that provide facilities or services to meet the day-to-day needs of residents</i>	The proposed development will provide substantial amenities and facilities, which will meet the day-to-day needs of residents to improve health and wellbeing. Specifically, 24,917.4 of landscaped area is proposed throughout the development and along the southern boundary. This area will accommodate a range of communal open space, including boardwalks, community gardens, multi use sports areas, open lawns, and more. Additionally, a new clubhouse is proposed at Building A, which will comprise of a new pool, wellness hub, hair salon, resident lounge, games room, library, dining room and function hall. The existing transport services are proposed to be maintained and improved.
<i>To provide for housing that is compatible with the existing environmental and built character of Ku-ring-gai</i>	The proposal has been designed to respond to the environmental and built character of Ku-ring-gai, including the site's bushland setting, topography and surrounding low-density residential context. The built form is largely concentrated within the central portion of the site and positioned at a topographical low point, ensuring the taller elements are well set back from the more sensitive interfaces and visually contained within the landscape. This design strategy, together with the stepped built form, generous landscaping and transition in scale, will ensure the development sits comfortably within its setting and provides housing that is compatible with the existing environmental and built character of the area.

4.2 Clause 4.6(3)(b): Sufficient environmental planning grounds to justify the contravention of the development standard

Clause 4.6(3)(b) of the LEP requires the contravention of the development standard to be justified by demonstrating 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].

In this instance, the relevant aspect of the development is the proposed exceedance of the building height. There are sufficient environmental planning grounds to justify this contravention, as described below.

4.2.1 Bushfire Risk

The proposal seeks to improve the current bushfire risk to residents and the community by creating a bushfire APZ, removing dwellings from the high-risk bushfire areas, reducing overall dwellings on the site, improving construction standards to reflect the bushfire rating and improve firefighting infrastructure. The height variation is a direct result of these improvements in response to the site's bushfire risks and represents a considered and balanced planning response to the conditions affecting the existing village and local community. Following extensive consultation with the Rural Fire Service and Planning Authorities throughout a long planning and design process of approximately 8 years, the primary design objective has been to retreat development away from the areas of highest bushfire risk, incorporate an APZ, reduce dwellings and improve firefighting infrastructure.

In particular, the proposal seeks to remove 143 independent living units from land identified as Bushfire Attack Level (BAL) 40 or Flame Zone and overall reducing the dwellings on the site by 27 (from 172 to 145). Rather than replacing or intensifying development in these constrained portions of the site, the proposal consolidates residential accommodation within a safer, more central part of the site and provides a significant setback of 56m to the southern boundary to facilitate and incorporate a substantial bushfire Asset Protection Zone (APZ). Not only is the proposal providing safer residential accommodation, but the reduction of occupants on the land results in a better planning and bushfire outcome as it reduces the amount of people that would need to be evacuated in case of emergency. **Figure 6** below illustrates the proposed design approach, which evidently demonstrates a significant improvement on the existing condition.

Furthermore, the current buildings were constructed prior to contemporary bushfire construction standards, whereas the proposed building, despite their minor variation to the building height, will be designed and constructed in accordance

with the *Planning for Bushfire Protection* (PBP) and the applicable Australian Standards under AS3959 – Construction of buildings in bushfire-prone areas.

In this context, the variation allows for a much better planning and design outcome by not only reducing bushfire risk to current and future residents and the broader local community but also improving resident safety and supporting the delivery of a more safe, accessible and contemporary seniors housing development. Accordingly, the bushfire constraints affecting the site provide a strong environmental planning ground for the proposed variation to the height standard.

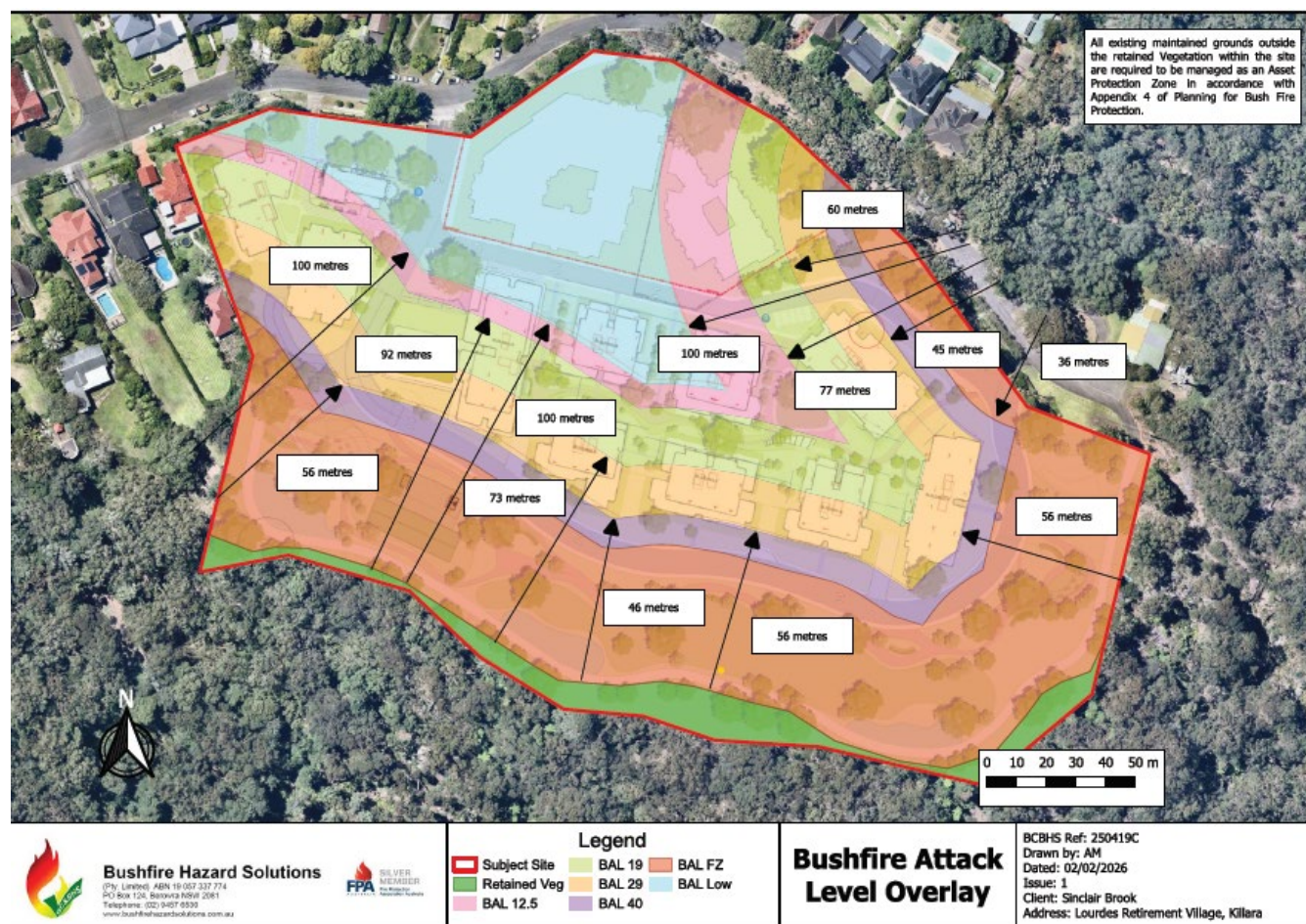


Figure 5 Bushfire overlay on the proposed development

Source: Bushfire Hazard Solutions

4.2.2 Amenity Impacts to Neighbouring Properties

Given the dense bushland setting surrounding the site, the proposal has a limited interface with adjoining residential neighbours. The nearest residential neighbours are located to the north-west of the site at 87-91 Stanhope Road Killara, with 91 Stanhope Road being the only directly adjoining residential property.

All four buildings fronting Stanhope Road are compliant with the height control to be highly considerate of these more sensitive interfaces. The proposed development has been carefully designed to maintain an appropriate relationship with neighbouring residential land. Specifically, the building closest to the north-western boundary, being Building I has been designed to comply with the applicable building height development standard and is two storeys in height. This ensures a suitable transition in built form and assists in maintaining an appropriate interface that is suitable for the low density residential character of the area.

As illustrated in the overshadowing diagrams a **Figure 6**, minor overshadowing will occur to the rear bushland areas of three properties to the west of the site at 87-91 Stanhope Road during the early morning period between 9:00am and 11:00am on the Winter Solstice. Some additional overshadowing will occur on the dwelling at 91 Stanhope Road during this time, noting it is similar to what would be expected to occur if a dwelling house was built adjacent to their property. Importantly, the shadows only occur for no more than two hours, and each affected property will continue to receive a minimum of three hours of sunlight during midwinter, and the majority of the shadow cast by the proposed development will fall within the site boundary.

Accordingly, the proposal will not result in unreasonable amenity impacts to neighbouring residential properties. The overshadowing impacts are predominantly caused by the height compliant building, are minor, fast moving, and acceptable in the context of the site and surrounding bushland setting. The proposed height variation does not result in any additional unacceptable impacts in terms of solar access, visual bulk, privacy or the interface with adjoining residential land.

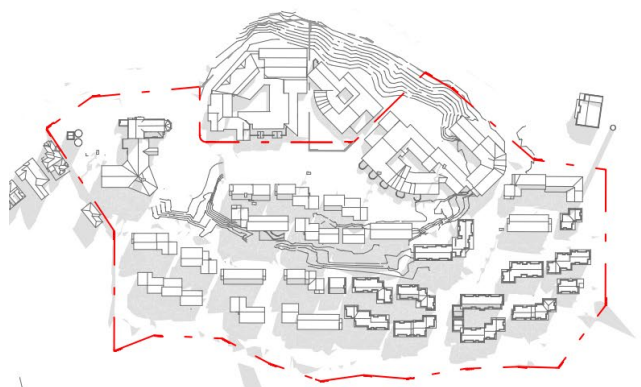


| Existing



| Proposed

9am

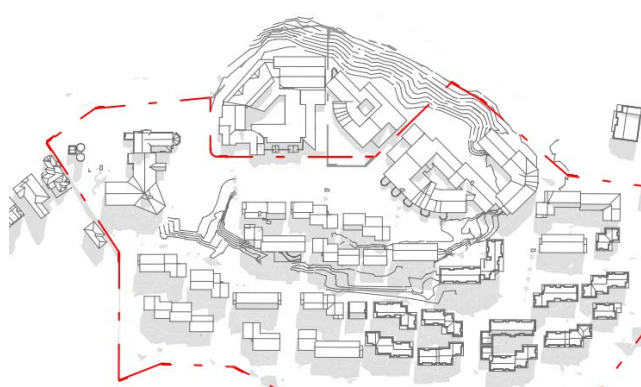


| Existing



| Proposed

10am



| Existing



| Proposed

11am

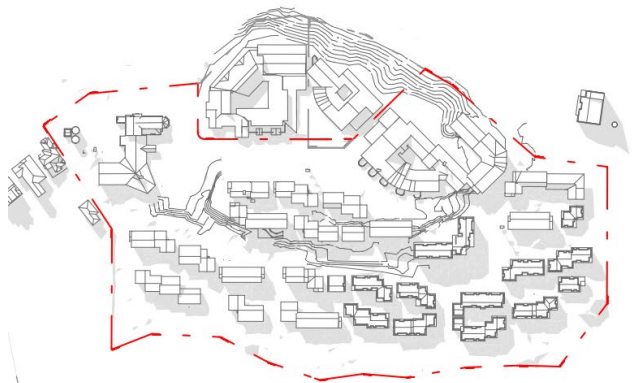


| Existing

12pm

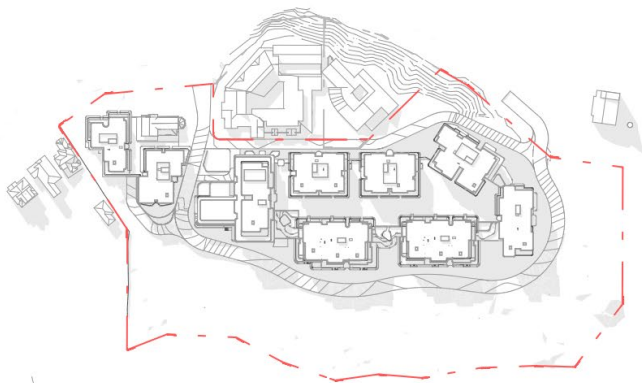


| Proposed

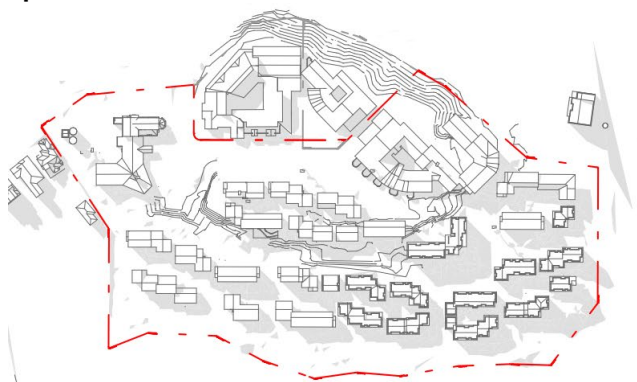


| Existing

1pm



| Proposed

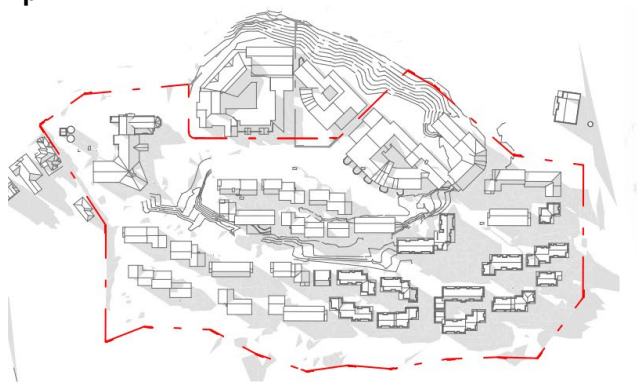


| Existing

2pm



| Proposed



| Existing

3pm



| Proposed

Figure 6 Existing vs Proposed Overshadowing Diagrams

Source: PBD Architects

4.2.3 Site Topography

The proposed height exceedances are largely a result of the site's natural topography. The land is irregular in shape and slopes in multiple directions but predominantly down from the north at Stanhope Road to the south to bushland, with a significant fall of 14m from the north towards the southern boundary of the site. This creates a site-specific constraint in applying a uniform height plane across the land.

The proposal has been designed to respond to the more sensitive interfaces, sloping terrain, as well as the bushfire constraints (as detailed in **Section 4.2.1**). However, the change in ground level results in a portion of the upper levels of certain buildings projecting above the maximum permissible building height particularly to the south. This is not a consequence of excessive bulk or scale, but rather a site-specific response to reducing height at the more sensitive interfaces, the topography and bushfire risk.

The areas of height exceedance are located within the central portion of the site, which are significantly setback from Stanhope Road as illustrated in the section diagrams provided in **Figure 7**. This, together with high quality landscaping and vegetation, the view impact from the height exceedance will be minor to negligible from the public domain and will maintain a scale that is compatible with low density residential character of the area.

Accordingly, the site's topography provides for an appropriate environmental planning ground for the height variation, as it directly contributes to the height variation, while also assisting with limiting the visual and environmental impacts of the development.



Figure 7 Section diagrams illustrating the natural slope of the land

Source: PBD Architects

4.2.4 Visual Impact

A Visual Impact Assessment has been prepared by Urbaine and is provided at **Appendix L** of the EIS. The assessment demonstrates that the proposed exceedance of the height of buildings development standard will be largely imperceptible from key public viewpoints within the surrounding road network, public open spaces and nearby local heritage items.

Urbaine assessed a total of 19 representative public viewpoints and concluded that the proposal would result in nil to minor visual impacts, which is summarised in **Table 4**. This is primarily due to the fact that the buildings have been scaled accordingly to respond to the natural topography of the site. The existing buildings located at the front of the site along the sensitive interface of Stanhope Road, which currently comply with the height limit assist in screening the proposed new development. and the sensitive interfaces. Furthermore, the established and mature landscape surrounding the site assists in screening the visual bulk and scale of the proposed development.

Of the 19 viewpoints, it is emphasised that only 2 views were identified to having a negligible-minor impact, 4 having a negligible impact and the remaining 13 having a nil impact as they are not visible. The viewpoints that are identified as having a negligible or negligible to minor impact are excerpted at **Figure 8** and are generally located at Stanhope Road, Rosebery, Northcote, Archbold Road and Lindfield Oval.

A summary of the proposed developments impact on these views and its reasonableness is provided below;

- **Viewpoint 3 – Stanhope Road (negligible impact):** This viewpoint is from the existing and proposed entry to the retirement village on Stanhope Road. Building A, being the clubhouse building which, is visible from this angle. Due to its careful design as a 3–4 storey building from this viewpoint, with the upper level setback from the building edge,

Building A will continue to present as a predominantly low-scale building while appropriately marking the entry to the site. It is also largely screened by existing and proposed vegetation whilst being a substantial distance away from Stanhope Road. Accordingly, the proposal is considered reasonable from this public viewpoint.

- **Viewpoint 4 – Stanhope Road (negligible-minor impact):** Due to the deliberate design decision to retain landscaping between Headfort House and Stanhope Road, the proposal will result in limited visual impact. It is acknowledged that the top portion of Buildings J will be visible from this angle, however, it is largely screened by the existing building and established landscaping on the site. In this context, where landscaping remains the dominant visual element, the resulting negligible to minor impact is considered reasonable.
- **Viewpoint 5 – Rosebery Road (negligible-minor impact):** This viewpoint is from the corner of Stanhope Road and Rosebery Road. As illustrated, the majority of the proposed development is screened by existing and proposed development and landscaping. The only visible portion of the proposal is Building I, which has been designed as a low-scale, 2 storey building with a significant setback of 18.4-20.6m from Stanhope Road. It will therefore appear as a built form that is consistent with the surrounding streetscape and local character. Accordingly, the resulting negligible to minor impact is considered reasonable, as the public domain character will remain substantially unchanged.
- **Viewpoint 6 – Rosebery Road (negligible impact):** The proposal is assessed as having a negligible impact, with only a small segment of roofline visible above the existing tree line and the remainder of the development obscured by vegetation and surrounding dwellings. The impact is therefore considered reasonable, as the development will not materially alter the enclosed suburban character of Rosebery Road.
- **Viewpoint 11 – Northcote Road (negligible impact):** This viewpoint is from Northcote Road, looking northward. The development is largely concealed from view from this vantage point, with only a small portion of roof visible. Given that the dominant visual character remains existing dwellings and mature vegetation, the visual impact is considered negligible and reasonable.
- **Viewpoint 14 – Lindfield Oval (negligible impact):** This viewpoint is from Lindfield Oval, oriented north-west. From this location, a small segment of roofline will be visible above the tree line in the background, while the remainder of the proposal will be obstructed by dense foliage. Given the open foreground of Lindfield Oval and the dominant vegetated backdrop, the negligible impact is considered reasonable from this viewpoint.

Overall, the proposed development has been designed with consideration of the sites sloping topography and the local streetscape, with the concentration of taller building in the centre of the site, located behind the existing and compliant buildings along Stanhope Road, which minimises visual impacts from adjoining sites and from the public domain, making the proposed building height and scale compatible with the surrounding environment. Building setbacks are consistent with the setbacks of other residential developments on Stanhope Road and is supported additionally by the existing landscape buffer, ensuring that the proposed development does not cause adverse visual impacts to Stanhope Road and remains sympathetic to the street character.

Therefore, while the numerical height variation appears substantial, the actual visual impact of the exceedance from the public domain is minor to none. The non-compliant elements are generally located below street level, centrally within the site, screened by existing and proposed vegetation, and separated from key viewpoints.

Table 4 Summary of view loss ratings

Viewpoint		View Location	Value of View	Extent of Impact
1	Stanhope Road	Standing position from Stanhope Road facing north	Low	Nil
2	Stanhope Road	Standing position from Stanhope Road facing southwest	Low	Nil
3	Stanhope Road	Standing position from Stanhope Road facing southward adjacent to the subject site driveway.	Low	Negligible
4	Stanhope Road	Standing position from Stanhope Road facing south-southeast	Low	Negligible - Minor
5	Rosebery Road	Standing position from intersection of Rosebery Road and Stanhope Road oriented towards the southeast	Low-Medium	Negligible - Minor
6	Rosebery Road	Standing position from Rosebery Road oriented southward at its junction with Kardella Lane	Medium	Negligible
7	Stanhope Road	Standing position from Stanhope Road oriented eastward at its junction with Redgum Avenue	Medium	Nil
8	Stanhope Road	Standing position from Stanhope Road oriented eastward at the intersection oof Garnet Street	Low-Medium	Nil

Viewpoint		View Location	Value of View	Extent of Impact
9	Nelson Road	Standing position from Nelson Road and Treatts Road	Medium	Nil
10	Northcote Road	Standing position from Northcote Road oriented towards the east	Low-Medium	Nil
11	Northcote Road	Standing position from Northcote Road looking northward	Low	Negligible
12	Tryon Road	Standing position from Tryon Road oriented north, at the intersection with Nelson Road.	Medium	Nil
13	Archbold Road	Standing position from the intersection of Archbold Road and Tryon Road, with Eastern Arterial Road looking towards the north-west.	Medium	Nil
14	Lindfield Oval	Standing position from Lindfield Oval oriented northwest	Medium	Negligible
15	Damour Avenue	Standing position from Damour Road directed westward towards the T-junction with Robinson Street.	Medium	Nil
16	Springdale Road	Standing position from Springdale Road oriented south-west at the intersection with Monash Avenue	Medium	Nil
17	Boardwood Avenue	Standing position from the eastern verge along Boardwood, oriented southwest toward the junction with Springdale Road	Low-Medium	Nil
18	Springdale Road	Standing position from Springdale Road looking south, from the intersection with Rosebery Road	Medium-High	Nil
19	Killara Park	Standing position from Killara Park, positioned at the Bert Oldfield Oval and oriented towards the southeast	Medium-High	Nil



Viewpoint 3 – Stanhope Road



Viewpoint 4 – Stanhope Road



Viewpoint 5 – Rosebery Road



Viewpoint 6 – Rosebery Road



Viewpoint 11 – Northcote Road



Viewpoint 14 – Lindfield Oval



Figure 8 Key viewpoints identified as having a negligible/negligible to minor impact (existing on the left and proposed on the right)
Source: PBD Architects

4.2.5 Compliance with Floor Space Ratio control

While the proposed development includes a variation to the maximum height of buildings standard, it is important to emphasise that the proposed development complies with the applicable non-discretionary FSR development standards under Section 107 and 108 of the Housing SEPP, being 1:1 for RCF's and 0.5:1 for ILU's.

Compliance with the FSR control demonstrates that the overall bulk, scale and density of the development remains within the current planning framework of the site. The height variation is therefore not a product of overdevelopment or an attempt to achieve a density beyond that contemplated by the applicable controls, but instead, it arises from the redistribution of permissible floor space particularly in response to the site's topography and bushfire constraints.

The proposal achieves an appropriate balance between built form, landscaped area, open space and amenity. By concentrating the building mass within a smaller and safer portion of the site, the development is able to provide greater setbacks, retain and enhance the landscape buffer, establish a bushfire APZ and improve outcomes on neighbouring properties and public domain.

Therefore, in this context, the proposed variation facilitates an improved planning and design outcome without resulting in any unreasonable increase in bulk and scale that is not already anticipated on the site. The development remains consistent with the intended scale and density of the site, while achieving a safer and more responsive built form arrangement that supports high quality and efficient seniors housing whilst being more considerate of the neighbours and streetscape.

Rather than intensifying or increasing density on the site, the proposal actually results in a reduction to the overall dwelling yield, allowing for a more appropriate, safe and high-quality housing outcome for older residents. This reinforces that the contravention is not used to maximise development potential, but to deliver a better and more positive outcome for the site and community.

4.2.6 Delivery of Seniors Housing

The proposed development comprises 145 independent living units, which is an overall reduction in yield by 27 dwellings reflecting RFS consultation, it will revitalise an aged and underutilised site that is not currently operating at its fully capacity and retain and upgrade the existing 83 bed RCF. The proposal will replace older unit stock with a high-quality seniors housing development that optimises the use of the land and increases the villages contribution to meeting the needs of Killara's growing elderly population whilst dramatically improving residents, visitors and the local communities bushfire safety.

The proposal will facilitate the delivery of a contemporary, accessible and well-designed retirement village, supported by a range of communal amenities that promote social interaction, wellbeing and ageing in place. It will also provide essential support services for older residents and includes upgrades to the existing co-located residential care facility, enabling it to operate more safely and effectively.

The proposed height variation is an integral part of the site-specific planning response, as it specifically enables the redistribution of density away from the more sensitive interfaces and high bushfire risk areas and into a safer, more central part of the site. This allows the proposal to deliver contemporary seniors housing, while achieving improved safety, accessibility and useability of the site.

Accordingly, the proposed development, including the minor height exceedance within the central portion of the site, is directly linked to the broader planning objective of delivering much-needed seniors housing whilst considering the design response to the more sensitive interfaces and substantially improving bushfire safety for future residents, visitors and the community. The proposal represents a better development outcome for the site and will assist in addressing both current and future demand for seniors.

In light of the above, it is clear that the bushfire constraint, site's topography, design responses to the more sensitive interfaces, the minimal visual and amenity impacts posed, together with the delivery of much needed seniors housing, provides sufficient environmental planning grounds to justify the contravention to the height of building development standard.