



beam

Clause 4.6 Variation

Clause 4.4 Floor Space Ratio
95-97 Stanhope Road, Killara

Prepared for Levande Pty Ltd

22.06.26
24144

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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 to vary the maximum FSR development standard of 0.3:1 prescribed under Clause 4.4 of the Ku-ring-gai LEP. The <i>State Environmental Planning Policy (Housing) 2021</i> (Housing SEPP) establishes a non-discretionary FSR standard of 0.5:1 for independent living units and 1:1 for residential care facilities. The proposal has an overall FSR of 0.48:1, and when broken down per use, the ILU's have a maximum FSR of 0.5:1 and the residential care facility has an FSR of 0.41:1 and therefore, the proposed development complies with the applicable Housing SEPP non-discretionary standards. A non-discretionary development standard, also known as a non-refusal standard, overrules a LEP standard. If the proposed development complies with a non-discretionary development standard, the consent authority cannot refuse the application on the grounds of the standard. Therefore, the consent authority cannot refuse this SSDA, despite the variation to the LEP FSR standard. Notwithstanding this, the Department has requested that a Clause 4.6 written request be prepared to address the technical variation to the LEP standard. The proposed total FSR of 0.48:1 exceeds the 0.3:1 LEP standard by 0.18:1, representing a numerical variation of 60%. Whilst the Housing SEPP non-discretionary FSR compliance negates the requirement for the Clause 4.6 under the LEP, it has been prepared for abundant caution at the Department's request.
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 4.4 Floor Space Ratio standard, notwithstanding the non-compliance as: • The proposed FSR is compatible with the substantial 5.29ha site area, its topography, environmental constraints, bushland setting, and contextual relationship with surrounding low-density residential development. • The proposed FSR is compatible with the nature and operational requirements of seniors housing, which is reinforced by the proposal's compliance with the Housing SEPP non-discretionary FSR standard of 0.5:1 for independent living units and 1:1 for residential care facilities. • The proposed floor space is appropriately distributed across the site, with lower scale development along the Stanhope Road frontage and the greater concentration of floor space located centrally down the sites slope, away from sensitive residential, streetscape and bushland interfaces. • The proposed density is appropriate to the scale and character of the locality and will not result in any unreasonable visual, privacy, overshadowing or amenity impacts.

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 proposal complies with the Housing SEPP Non-discretionary standard and therefore the consent authority cannot refuse the application on the grounds of the standard.
- The proposal seeks to reduce the overall dwelling yield from that currently on the site by 27 (from 172 to 145), whilst remaining entirely compliant with the maximum FSR non-discretionary development standard under the Housing SEPP, which highlights the well-considered design approach to prioritise safety and good design over maximising yield.
- 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 development, which is compliant with the Housing SEPP, but presents a technical variation to the FSR development standard under the Ku-ring-gai LEP.

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.



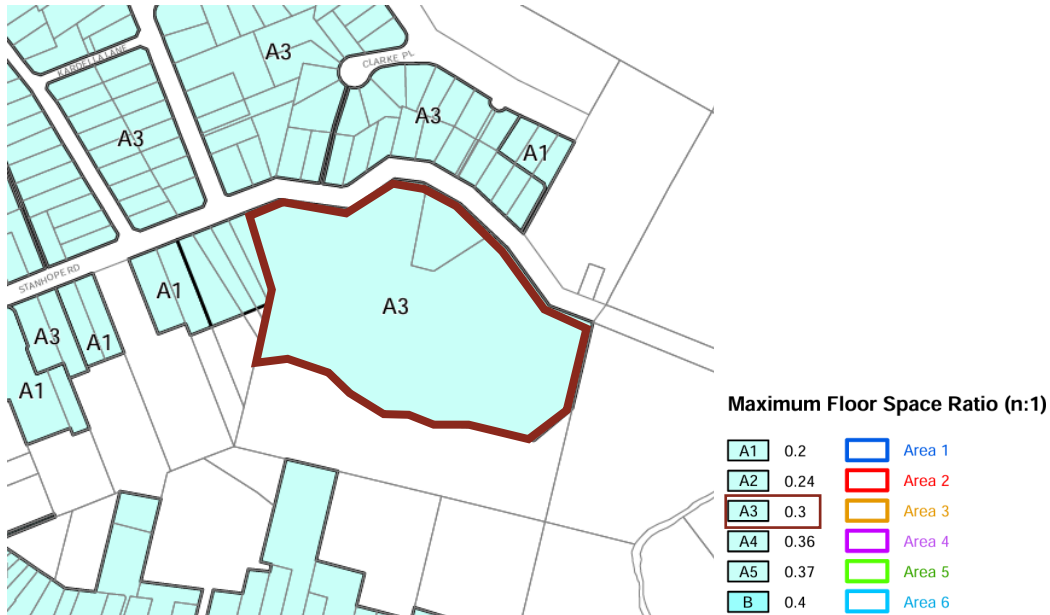
Figure 3 Artist Impression of the proposed development

Source: PBD Architects

3.0 The Proposed Variation

The proposed development complies with the applicable Housing SEPP non-discretionary FSR standards. However, 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 (Ku-ring-gai LEP 2015)</i>
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>
Development standard sought to be varied Ku-ring-gai LEP 2015	Clause 4.4 Floor Space Ratio The objectives of this clause are: (a) <i>to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,</i> (b) <i>to provide for floor space ratios compatible with a range of uses,</i> (c) <i>to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,</i> (d) <i>to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed use zones.</i> The maximum floor space ratio under Clause 4.4 is 0.3:1 (refer to Figure 4).  Figure 4 Map - Sheet FSR_014 (site outlined in red)
Housing SEPP	Section 107 and Section 108 of the Housing SEPP – Non-discretionary standards Section 107 and 108 of the Housing SEPP establishes non-discretionary development standards for hostels and residential care facilities, and independent living units, respectively. Where a proposal complies with a specific standard, the consent authority cannot require a more onerous standard for that matter or refuse consent on that grounds.

Matter	Comment
	In relation to density and scale, section 107 provides a non-discretionary maximum FSR of 1:1 for residential care facilities, while section 108 provides a non-discretionary maximum FSR of 0.5:1 for buildings containing independent living units. Accordingly, an FSR of up to 0.5:1 applies as the maximum for the Independent living units, and 1:1 as a maximum for the residential care facility. Where these standards are both satisfied and achieved, the application cannot be refused on the grounds of density and scale, nor can the more onerous 0.3:1 FSR standard under the Ku-ring-gai LEP 2015 be applied as a basis for requiring lower density.
The proposed variation	The proposed development has a total FSR of 0.48:1, and when broken down per use, the ILU's have a maximum FSR of 0.5:1 and the RCF has a maximum FSR of 0.41:1. Therefore, both uses respectively comply with the relevant Housing SEPP non-discretionary standard of 0.5:1 for ILU's and 1:1 for RCF's. Accordingly, the application cannot be refused on the grounds of density and scale, and a more onerous standard cannot be imposed in relation to this matter. Notwithstanding the operation and purpose of the non-discretionary development standard, the Department has requested the preparation of a technical written request under clause 4.6 of the Ku-ring-gai LEP 2015 in relation to the 0.3:1 FSR standard. This request has therefore been prepared in response to this request, noting that it should not be required as the proposed development is compliant with the Housing SEPP non-discretionary development standard. The proposed total FSR of 0.48:1 exceeds the LEP standard by 0.18:1, representing a technical numerical variation of 60%. It is emphasised that the variation is technical in nature because the proposal remains below and fully compliant with the applicable Housing SEPP maximum of 0.5:1 for ILU's and 1:1 for RCF's. The proposal also represents an overall reduction in development density currently existing on the site. This outcome is a result of the design approach, which seeks to concentrate dwellings within smaller hazard free areas 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 safe 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 modern bushfire construction standards. Therefore, while the proposal results in a minor and technical variation to the Ku-ring-gai LEP, it is iterated that it remains fully compliant with the Housing SEPP and is appropriate in nature, particularly for the following reasons: • The proposed floor space is appropriately distributed across the site, with lower scale development along the Stanhope Road frontage and the greater concentration of floor space located centrally, away from sensitive residential, streetscape and bushland interfaces. • The proposed density is appropriate to the scale and character of the locality and will not result in any unreasonable visual, privacy, overshadowing or amenity impacts.

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.

The following subheadings demonstrate how the proposed height variation achieves the above-listed objectives notwithstanding the non-compliance.

Objective 4.4(1)(a) to enable development with a built form and density that is compatible with the size of the land to be developed, its environmental constraints and its contextual relationship

The subject site has an area of approximately 5.29 hectares and is capable of accommodating the proposed FSR of 0.48:1 without resulting in an excessive or inappropriate density. In fact, the proposal results in a reduction to the overall density on the site, which is a direct response to the bushfire constraints that apply to the site.

The proposed density and distribution of floor space are the result of a site-specific design response to the site's environmental and bushfire constraints. The proposal relocates existing independent living units away from higher-risk bushfire affected areas and consolidates development within the central and safer portion of the site. This enables the establishment of an appropriate Asset Protection Zone and provides improved separation between the proposed buildings, adjoining bushland and surrounding residential land.

Although the proposed FSR exceeds the 0.3:1 standard under the Ku-ring-gai LEP, it remains below the 0.5:1 non-discretionary standard applying to independent living units under the Housing SEPP. The proposal also represents an overall reduction in the density currently existing on the site.

The proposed floor space has been distributed to maintain lower-scale development at the more sensitive interfaces with Stanhope Road and the adjoining residential property to the west. The development is further reduced in built form and scale through the site's topography, substantial boundary setbacks and existing and proposed landscaping. Accordingly, the proposed built form and density is entirely compatible with the size of the site, its environmental constraints and its contextual relationship with surrounding development, open space and bushland.

Objective 4.4(1)(b) to provide for floor space ratios compatible with a range of uses

The proposal is consistent with this objective, as the proposed FSR is compatible with the nature, operational requirements and built form characteristics of seniors housing. The development comprises independent living units and the existing residential care facility, supported by communal, recreational and resident amenity facilities that are integral to the operation of the seniors housing village. These uses have different spatial and functional requirements from conventional low-density residential development and therefore warrant an FSR that appropriately responds to the proposed use.

This is recognised by the Housing SEPP non-discretionary development standard, which permits an FSR of up to 0.5:1 for independent living units and 1:1 for residential care facilities. The proposed total FSR of 0.48:1 complies with that standard, confirming that the proposed density and scale are compatible with the seniors housing use.

Further, and as previously noted, the proposal will result in an overall reduction in the density currently provided on the site. The proposed floor space has been carefully distributed to meet the operational requirements of the seniors housing village, while avoiding higher-risk bushfire-affected areas and maintaining substantial landscaped separation from surrounding residential land and adjoining bushland.

Accordingly, the proposed FSR is compatible with the particular characteristics and functional requirements of seniors housing. The proposal demonstrates that the FSR framework under the Housing SEPP appropriately accommodates this land use and development form and is therefore consistent with objective 4.4(1)(b).

Objective 4.4(1)(c) to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai

The site is not located within an identified centre and therefore, this objective is not directly applicable to the proposal. Nonetheless, the proposed development is consistent with the broader intent of ensuring that development density is appropriate to its locality and surrounding context.

The proposal achieves an FSR of 0.48:1, which complies with the Housing SEPP non-discretionary standard of 0.5:1 for independent living units. This establishes that the proposed density and scale are appropriate for the proposed use and in fact will result in an overall reduction in the dwelling density currently provided on the site.

The proposed floor space is distributed across the site to provide an appropriate transition to surrounding lower-density residential development and the adjoining bushland setting. Buildings along Stanhope Road frontage adopt a lower scale, while buildings containing a greater proportion of the proposed floor space are centrally located and substantially separated from the street and site boundaries. Building I, adjacent to the western residential boundary, maintains a setback of approximately 9-10 metres and an appropriately moderated scale to minimise any interface impacts.

The proposed Asset Protection Zone also provides a setback of approximately 56m from the southern boundary, together with substantial separation from the eastern boundary. These areas will accommodate landscaping and open space and provide an effective transition between the proposed buildings and adjoining bushland.

The site's substantial area, topography, generous setbacks, building distribution and landscaping ensure that the proposed FSR is appropriate for the scale of the surrounding development and will not result in any unreasonable visual, privacy, overshadowing or amenity impacts. The proposal is therefore consistent with this objective.

Objective 4.4(1)(d) to ensure that development density provides a balanced mix of uses in buildings in the employment and mixed-use zones

The site is zoned R2 Low Density Residential and is not located within an employment or mixed use zone. This objective is therefore not applicable to the proposed development. Notwithstanding, the proposal includes a considered mix of facilities ancillary to the seniors housing use, including communal residential amenities, retail spaces and communal open space. These facilities support the day-to-day needs, wellbeing and social interaction of residents and are appropriately integrated with the primary seniors housing use of the development.

4.1.1 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 2 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 within a low-density residential environment</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 accommodation to meet the needs of Ku-ring-gai's aging population. 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.

Objective	Alignment
<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, 24,917.4m ² of landscaped area is proposed throughout the development and along the southern boundary adjacent to the surrounding bushland. 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, and Headfort House will be adaptively reused as a café while maintaining the chapel use.
<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 technical exceedance of the floor space ratio under the LEP. There are sufficient environmental planning grounds to justify this contravention, as described below.

4.2.1 Compliance with Housing SEPP Floor Space Ratio Non-Discretionary Standard and a Reduction in Dwelling Density

While the proposed development includes a technical variation to the LEP FSR standard, it is important to emphasise that the proposed development entirely 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.

A non-discretionary development standard, also known as a non-refusal standard overrules a LEP standard. If the proposed development complies with a non-discretionary development standard, the consent authority cannot refuse the application on the grounds of the standard. Therefore, the consent authority cannot refuse this SSDA, despite the variation to the LEP FSR standard.

Compliance with the Housing SEPP FSR standard demonstrates that the overall bulk, scale and density of the development remains within the current planning framework of the site. The variation to the LEP but compliance with the Housing SEPP is therefore not a product of overdevelopment or an attempt to achieve a density beyond that contemplated by the applicable controls.

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 development, which is fully compliant with the Housing SEPP, but presents a technical variation to the LEP, 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 technical variation is not used to maximise development potential, but to deliver a better and more positive outcome for the site and community.

4.2.2 Delivery of Seniors Housing

The proposed development comprises 145 independent living units. While the proposed development seeks 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. The proposal will replace older housing stock with a high-quality seniors housing development that optimises the use of the land and increases the village's 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.

Accordingly, the proposed development, including the minor technical exceedance, 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 proposal's full compliance with the Housing SEPP, the reduction in density, and the delivery of seniors housing provides sufficient environmental planning grounds to justify the contravention to the FSR LEP development standard.