

URBIS

Clause 4.6 Variation to Development Standard

Schedule 4 of the State
Environmental Planning Policy
(Housing) 2021

Prepared for
**Royal Freemasons Benevolent
Institution**
24 June 2024

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1. Introduction

This Clause 4.6 Variation Request (**the request**) has been prepared on behalf of the Royal Freemasons' Benevolent Institution (**the Applicant**) and accompanies a Development Application (**DA**) seeking consent for the renovation of existing seniors housing accommodation and the construction of new seniors housing accommodation at 30 Regent Street, Maitland (**the site**). A detailed description of the proposed works is provided within the Statement of Environmental Effects (**SEE**).

Clause 4.6 of the *Maitland Local Environmental Plan 2013 (MLEP 2013)* enables the consent authority to grant consent for development that contravenes development standards imposed by the MLEP 2013 or any other environmental planning instrument. Specifically, this request relates to standards set by the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*.

This report should be read in conjunction with the SEE prepared by Urbis Ltd (**Urbis**) and dated 21 June 2024 which the request supports.

The following sections of the report include:

- **Section 2:** Description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** Brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** Identification of the development standard, which is proposed to be varied, including the extent of contravention.
- **Section 5:** Detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 6:** Summary and conclusion.

The request seeks a variation to the standards set out within Schedule 4 of the Housing SEPP which is applicable to the site.

2. Site and Proposed Development

2.1. Site Description

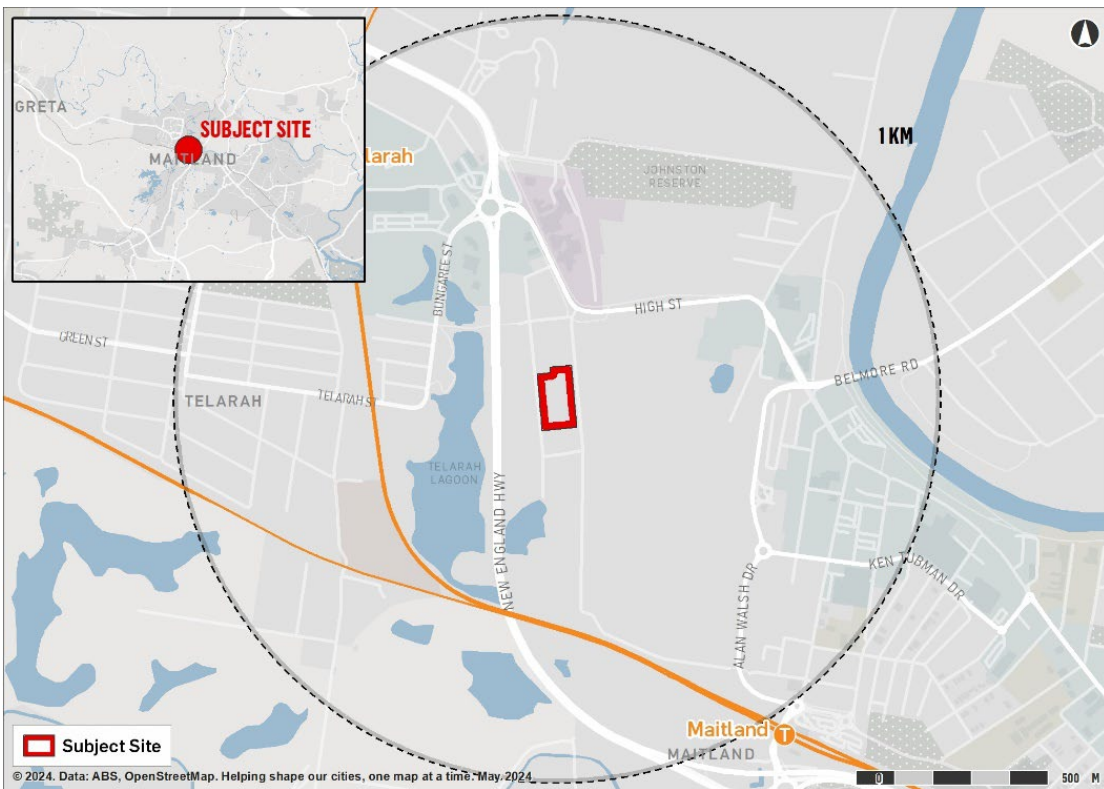
The key features of the site are summarised in the following table.

Table 1 Site Description

Site Characteristic	Description
Country	Wonnarua Country
Legal Description (Title Particulars)	Lot 30 in DP 1224638
Site Ownership	The site is privately owned and operated by the Royal Freemasons' Benevolent Institution.
Zoning	The site is zoned R1 General Residential
Existing Structures	The site contains a number of buildings on site including; <ul style="list-style-type: none"> ▪ Rose Cottage ▪ Pender House, Matrons and Dossie's Cottage (Heritage Item), ▪ Existing Aged Care Unit building, ▪ Curtis Wing, ▪ Independent Living Unit building.
Site Area	Approximately 1.425 ha
Site Frontage	The site has an approximate 150m frontage to Bonar Street and an approximate 160m frontage to Regent Street.
Topography	The site is relatively flat in topography.
Vegetation	The site has scattered vegetation across the site varying from mature trees to landscaped gardens.
Flooding/Overland Flow	The site is not identified as flood prone.
Heritage	The site is located within the Regent Street Heritage Conservation Area and contains three items of local heritage significance including: <ul style="list-style-type: none"> ▪ 'Benhome' ▪ 'Cintra' & Stables ▪ House A Heritage Impact Statement has been prepared to support this application and is attached under a separate cover.
Bushfire	The site is not identified as bushfire prone land.
Vehicular/Site Access	Vehicular access to the site is available via both Regent and Bonar Street.
Adjacent land uses	Adjacent land uses predominately consist of low-density residential development.

Figure 1 provides a Regional Context Map and **Figure 2** provides an aerial photograph of the site. Photographs of the existing development and surrounding context are provided in **Figure 3**.

Figure 1 Regional Context Map



Source: Urbis

Figure 2 Aerial Photograph



Source: Urbis

Figure 3 Existing Development and Surrounding Context



Picture 1 View of the site from Regent Street



Picture 2 View of site from entrance on Bonar Street



Picture 3 View from the existing development overlooking the area of the proposed extension.

Source: Urbis 2024



Picture 4 Rose cottage dwellings exterior

3. Proposed Development

The key elements of the proposed development are summarised in the table below. Reference should be made to the accompanying architectural plans and supporting documentation for further detail.

Table 2 Summary of Proposal

Key Element	Proposal
Development Types (Land Use)	The proposed land use is ' <i>seniors housing</i> ' with part of the development defined as a <i>residential care facility</i> and part of the development defined as <i>independent living units</i> . This Clause 4.6 variation request relates to the <i>independent living units</i> proposed.
Description of Development	<p>The proposed works involve the redevelopment of certain portions of the site, as specified below.</p> <ul style="list-style-type: none"> ▪ Renovate Rose Cottage and convert the space into the following: <ul style="list-style-type: none"> – 4 x 1-bedroom Staff Accommodation and/or Assisted Living units with separate kitchen, living/dining, and bathroom facilities. – 4 x additional rooms to be converted from their existing uses (dirty utility room and lounge room) to Aged Care suites. – A café with seating for approximately 30 people; – A salon with facilities to support hair and nail procedures; – A gym; and – A multi-purpose room with storage. ▪ Construct a Level 1 floor consisting of 9 x Aged Care suites over the top of the existing carpark located off Bonar Street. ▪ Minor landscaping to the existing 'Courtyard 3', Rose Cottage and Bonar Street Carpark including the removal of 2 small trees.
Site Preparation	
Demolition	Internal and external demolition is proposed as part of this application. No major earthworks are proposed.
Stormwater / drainage	A stormwater services plan has been prepared to support this application detailing any works required relating to stormwater and drainage.
Built Form & Design	
Building height	The extension proposed on the southwestern portion of the site results in a minor height increase beyond what has already been approved on site. The height of the proposed extension at the highest point is RL 21.95, with the highest point of the existing development being RL 21.81.
Number of Storeys	There is no change to the number of storeys proposed, with exception to the construction of a Level 1 extension in the southwestern portion of the site. The extension however, is in keeping with the existing development on the western portion of the site.
Number of Dwelling/Tenancies/Rooms proposed	<p><u>Rose Cottage</u></p> <ul style="list-style-type: none"> ▪ Repurpose 4 existing rooms into 1 x bedroom staff accommodation and/or Assisted Living Units. ▪ Repurpose a dirty utility room and a lounge room into 4 additional Assisted Living Units. <p><u>Additional Level 1 floor:</u></p> <ul style="list-style-type: none"> ▪ Construct 9 additional Assisted Living Units.

Key Element	Proposal
Access and Parking	
Vehicle and pedestrian access	Vehicle and pedestrian access are not proposed to be changed as part of this application.
Car parking	The development will continue to provide 40 car spaces and one minibus space. A Traffic Impact Assessment has been prepared to support this application and is provided under a separate cover.
Waste Vehicle Servicing	Waste collection will take place via a collect and return strategy from the sites Bonar Street frontage. The waste collection will be serviced by a private contractor.
Landscaping and Public Domain	
Landscape area	Minor landscaping to the existing 'Courtyard 3', Rose Cottage and Bonar Street Carpark including the removal of 2 small trees.
Trees Removed	2 small trees are proposed to be removed, identified as T38 & T39 within the Arboricultural Advice letter attached under a separate cover.
Fencing	The existing 1800mm palisade fence and footing is proposed to be removed along the eastern boundary. The existing hedging will be enhanced and the heritage wall and fence will remain.

4. Planning Instrument, Development Standard and Proposed Variation

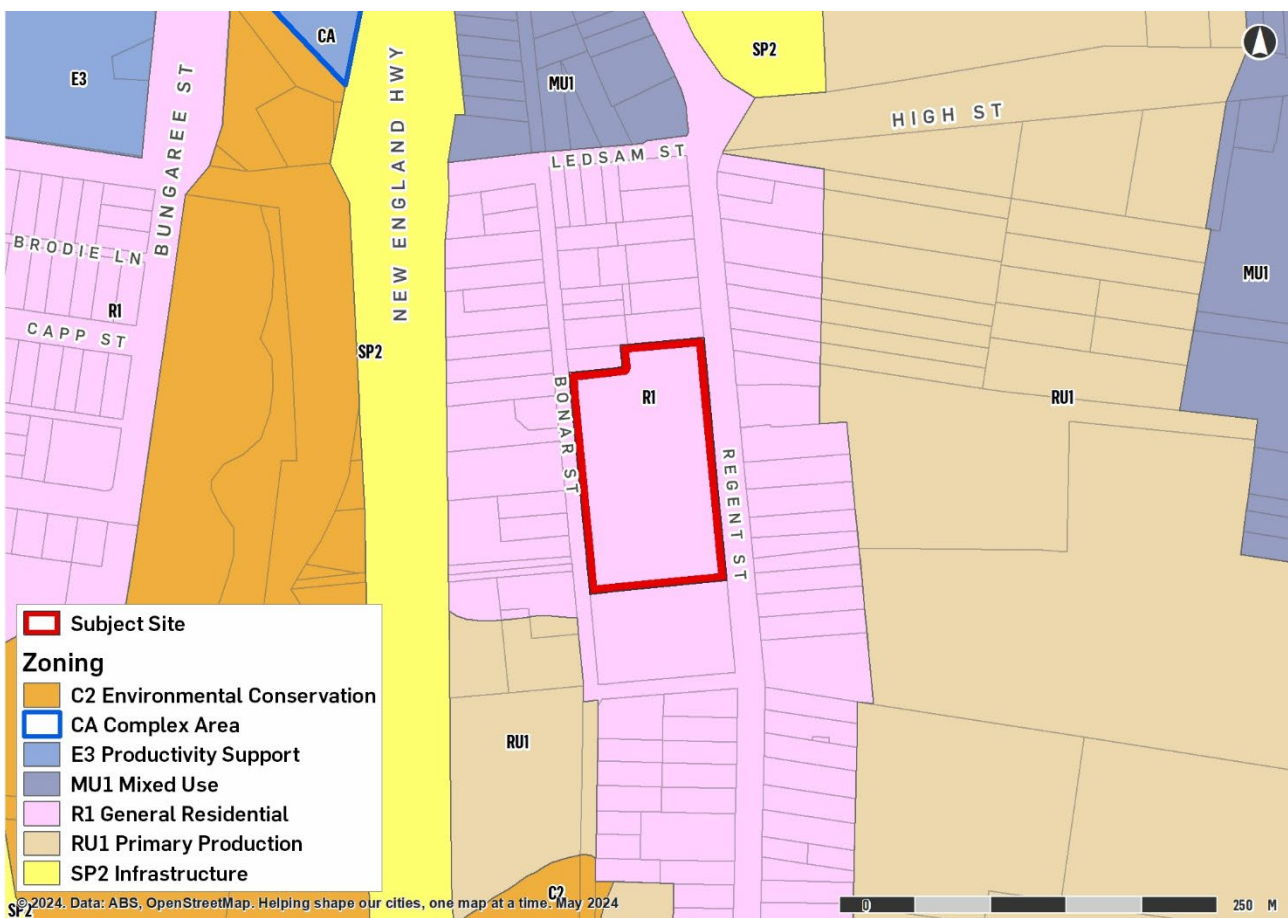
4.1. What is the Planning Instrument you are seeking to vary?

This Clause 4.6 variation request seeks to vary the *State Environmental Planning Policy (Housing) 2021 (Housing SEPP)*.

4.2. What is the Site's Zoning?

As shown in **Figure 4 below**, the site is zoned R1 General Residential. Development for the purposes of seniors housing is permitted with consent in the R1 General Residential zone under the Land Use Table in MLEP 2011.

Figure 4 Aerial Photograph



Source: Urbis

4.3. What is the Development Standard to be Varied?

This section of the Clause 4.6 variation request seeks to vary Schedule 4 *Standards concerning accessibility and usability for hostels and independent living units* of the Housing SEPP, including Part 1 *Standards concerning accessibility and usability of hostels and independent living units* and Part 2 *Additional standards for independent living units*. This is referenced as the 'standard to be varied' for the purposes of this part.

The standards set out in this Part apply to any seniors housing that consists of hostels or independent living units.

Specifically, the following standards are proposed to be varied:

‘7 Bedroom

At least one bedroom in a dwelling must have the following—

- (a) a clear area, not including a circulation space, sufficient to accommodate—
 - (ii) for an independent living unit—a wardrobe and a queen-size bed,**
- (b) a clear area around the area for the bed of at least—
 - (i) 1,200mm at the foot of the bed, and*
 - (ii) 1,000mm on each side of the bed,**

17 Main area of private open space

The main area of private open space for an independent living unit must be located on—

- (a) the same floor as the entry to the dwelling, or*
- (b) a floor serviced by a private passenger lift accessible only from inside the dwelling.*

18 Kitchen

(4) The kitchen must have the following fittings—

- (a) a bench that includes at least one work surface that is—
 - (i) at least 800mm long, and*
 - (ii) clear of obstructions, and*
 - (iii) not in the corner of the room,**
- (b) a lever tap set with the lever and water source that is within 300mm of the front of the bench,*
- (c) a cooktop next to the work surface,*
- (d) an isolating switch for the cooktop,*
- (e) an oven that—
 - (i) has operative elements between 450mm and 1,250mm above the finished floor level, and*
 - (ii) is next to the work surface,**
- (f) at least one double general power outlet located within 300mm of the front of a work surface.*

(5) The cupboards must—

- (a) not be entirely located in the corner of the bench or the corner of the room, and*
- (b) face where the user of the fixture is likely to be.*

(8) The lever tap set, cooktop, isolating switch, oven and double general power outlet must—

- (a) *not be in the corner of the bench or the corner of the room, and*
 - (b) *face where the user of the fixture is likely to be.*
- (9) *Cabinetry below a work surface must be able to be easily removed to allow wheelchair access to the work surface.*

19 Laundry

- (1) *A laundry in an independent living unit must be located on—*
- (a) *the same floor as the entry to the dwelling, or*
 - (b) *a floor serviced by a private passenger lift accessible only from inside the dwelling.*
- (2) *The laundry must have the following—*
- (a) *a circulation space that complies with AS 1428.1 at the approach to any external doors,*
 - (b) *an appropriate space for an automatic washing machine and a clothes dryer,*
 - (c) *a clear space in front of each appliance of at least 1,550mm,*
 - (d) *a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013,*
 - (e) *a continuous accessible path of travel to the main area of private open space or any clothes line provided for the dwelling.*
- (3) *The space specified in subsection (2)(c) may overlap with a door swing or the circulation space for a door.*
- (4) *For laundry facilities in a cupboard, the cupboard must be capable of being fitted with “D” pull cupboard handles in the following locations—*
- (a) *for below-bench cupboards—towards the top,*
 - (b) *for overhead cupboards—towards the bottom,*
 - (c) *for floor-to-ceiling doors—between 900mm and 1,100mm above the finished floor level.*
- (5) *In this section—laundry includes laundry facilities in a cupboard.*

4.4. Type of Development Standard?

The proposed development standards sought to be varied are both numerical and non-numerical.

4.5. What is the Non-Numerical Value of the Development Standard In the Environmental Planning Instrument?

The values of the development standard are proposed to be modified are highlighted in **red** below:

‘7 Bedroom

At least one bedroom in a dwelling must have the following—

- (a) a clear area, not including a circulation space, sufficient to accommodate—
 - (ii) for an independent living unit—a wardrobe and **a queen-size bed**,
- (b) a clear area around the area for the bed of at least—
 - (i) 1,200mm at the foot of the bed, and
 - (ii) 1,000mm on each side of the bed,

17 Main area of private open space

The main area of private open space for an independent living unit must be located on—

- (a) **the same floor as the entry to the dwelling**, or

18 Kitchen

(4) The kitchen must have the following fittings—

- (a) a bench that includes at least one work surface that is—
 - (i) at least 800mm long, and
 - (ii) clear of obstructions, and
 - (iii) **not in the corner of the room**,

(5) The cupboards must—

- (a) **not be entirely located in the corner of the bench or the corner of the room**, and
- (8) **The lever tap set, cooktop, isolating switch, oven and double general power outlet must—**
- (a) **not be in the corner of the bench or the corner of the room, and**
 - (b) **face where the user of the fixture is likely to be.**
- (9) **Cabinetry below a work surface must be able to be easily removed to allow wheelchair access to the work surface.**

19 Laundry

(1) A laundry in an independent living unit must be located on—

- (a) the same floor as the entry to the dwelling, or

(2) The laundry must have the following—

- (e) **a continuous accessible path of travel to the main area of private open space or any clothesline provided for the dwelling.**
- (4) **For laundry facilities in a cupboard, the cupboard must be capable of being fitted with “D” pull cupboard handles in the following locations—**
- (a) **for below-bench cupboards—towards the top,**
 - (b) **for overhead cupboards—towards the bottom,**
 - (c) **for floor-to-ceiling doors—between 900mm and 1,100mm above the finished floor level.**

4.6. What is the extent of the variation?

Standard	Proposal – extent of Variation
<p>7 Bedroom</p> <p>At least one bedroom in a dwelling must have the following—</p> <p>(a) a clear area, not including a circulation space, sufficient to accommodate—</p> <p>(ii) for an independent living unit—a wardrobe and a queen-size bed,</p>	<p>A queen size bed (1,520 x 2,030 mm) cannot fit into the bedroom with clear area for circulation space in Unit 2.</p> <p>However a king size single bed (1,050 x 2,000 mm) can fit into the bedroom of Unit 2 and is provided as an alternative.</p>
<p>17 Main area of private open space</p> <p>The main area of private open space for an independent living unit must be located on—</p> <p>(a) the same floor as the entry to the dwelling, or</p>	<p>Assisted living units do not have private open space located on the same floor of the dwelling.</p> <p>Alternatively, given the existing open space of the Rose Cottage, it is proposed that the assisted living units will have a shared open space dedicated only for the staff in lieu of private open space. This aims to enhance the original heritage and planting fence along Regent Street, while removing the 1.8m metal fence.</p>
<p>18 Kitchen</p> <p>(4) The kitchen must have the following fittings— (a) a bench that includes at least one work surface that is—</p> <p>(i) at least 800mm long, and</p> <p>(ii) clear of obstructions, and</p> <p>(iii) not in the corner of the room,</p> <p>(5) The cupboards must—</p> <p>(a) not be entirely located in the corner of the bench or the corner of the room, and</p> <p>(8) The lever tap set, cooktop, isolating switch, oven and double general power outlet must—</p> <p>(a) not be in the corner of the bench or the corner of the room, and</p> <p>(b) face where the user of the fixture is likely to be.</p> <p>(9) Cabinetry below a work surface must be able to be</p>	<p>The proposed kitchens will serve staff and have been designed to be compact in size therefore does have a kitchen bench with cupboard, cook tops and taps in the corner of the room and cabinetry below a work surface that is not readily easy to be removed.</p>

Standard	Proposal – extent of Variation
<p><i>easily removed to allow wheelchair access to the work surface.</i></p> <hr/> <p>19 Laundry</p> <p>(1) A laundry in an independent living unit must be located on—</p> <p>(a) the same floor as the entry to the dwelling, or</p> <p>(2) The laundry must have the following—</p> <p>(e) a continuous accessible path of travel to the main area of private open space or any clothesline provided for the dwelling.</p> <p>(4) For laundry facilities in a cupboard, the cupboard must be capable of being fitted with “D” pull cupboard handles in the following locations—</p> <p>(a) for below-bench cupboards—towards the top,</p> <p>(b) for overhead cupboards—towards the bottom,</p> <p>(c) for floor-to-ceiling doors—between 900mm and 1,100mm above the finished floor level.</p> <hr/>	<p>The proposed common laundry is to service staff occupying the ILU's.</p> <p>With the use of the ILU's for assisted accommodation, the existing laundry facility will service the resident needs.</p>

5. Justification For the Proposed Variation

5.1. How is Compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

Key Question	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	<p>Whilst there are no specific objectives outlined for Schedule 4, it can be assumed that the underlying objective of Schedule 4 is to ensure adequate provisions are in place to ensure residents/users of the development are provided a functional space within a reasonable level of amenity.</p> <p>As has been noted within this request, the proposed ILU's are not new builds and are instead a conversion of existing rooms within the Rose Cottage building. The proposal remains largely compliant with majority of the controls set out within Schedule 4 of the Housing SEPP with exception to the abovementioned controls.</p>
b) Are the underlying objectives or purpose of the development standard not relevant to the development?	Not relied upon.
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required?	<p>Whilst there are no specific objectives outlined for Schedule 4, it can be assumed that the underlying objective of Schedule 4 is to ensure adequate provisions are in place to ensure residents/users of the development are provided a functional space within a reasonable level of amenity.</p> <p>As noted within this report, the proposed ILU's respond to the existing constraints of the site and have the sole objective of supporting staff who work within the residential aged care facility that is located on the property.</p> <p>The proposal would be unable to be delivered if it were to comply with the requirements of Schedule 4 of the Housing SEPP.</p> <p>The Housing SEPP does not include specific objectives for the non-discretionary development standards. Having regard to the principles of the Housing SEPP, it can be assumed however, that the underlying objective or purpose of the standard is to ensure adequate provisions are in place to ensure residents/users of the development are provided a functional space with a reasonable level of amenity.</p>
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	<i>Not relied upon.</i>
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	<i>Not relied upon.</i>

5.2. Are there sufficient environmental planning grounds to justify contravening the development standard

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering whether there are sufficient environmental planning grounds to justify contravening the development standard. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and ...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”.

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development. There are other relevant pieces of information pertaining to justifying a variation to the development standard. These are: There is an absence of environmental harm arising from the contravention of the development standard given:

- The development achieves the underlying objective or purpose of the development standard as an acceptable level of amenity is provided for staff living within the ILU's.
- The exceedance is necessary to facilitate the safe and functional units whilst delivering a high-quality seniors housing development with a quantum of units suitable for the site under the planning controls of the MLEP 2011 and the Housing SEPP.
- When viewed in context of the development as a whole, the non-compliances would predominantly be minor internal non compliances and would not be readily visible from the public domain, as such, the proposed non-compliance will not result in any adverse visual impact and the exceedance is supportable.
- Various measures have been put in place to ensure the amenity of staff living in the ILU's is maintained and the amenity of adjoining neighbours is protected. Residents are not permitted to create any unreasonable noise or nuisance in any communal areas that is likely to interfere with the enjoyment of any other residents, any other person using the accommodation, neighbouring properties or the public.
- The proposed minor variations to Schedule 4 of the Housing SEPP will allow for the delivery of a high-quality seniors housing development with significant social benefits.
- The development is consistent with the objectives of the R1 General Residential zone in the MLEP2011.
- The proposal satisfies the principles of the Housing SEPP..

In conclusion, there are sufficient environmental planning grounds to justify the non-compliance with the minimum private open space requirement, and as such, strict compliance with the development standard is not considered necessary.

6. Conclusion

For the reasons outlined in this written request, the clause 4.6 request is well-founded. The specific development standards within Part 1 and Part 2 of Schedule 4 of the Housing SEPP are unreasonable in the circumstances of the development, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of these standards should be applied.

The proposed delivers high-quality ILU's for the use of staff to support the previously approved aged care facility use on site. The ILU's have been designed to ensure staff have the highest amenity possible considering the existing constraints of the site. The proposed non-compliances are considered acceptable for these reasons.

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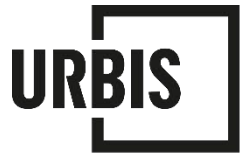
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