

ADDENDUM TO THE JRPP REPORT DATED 19 OCTOBER 2015

Since finalising the above report to the JRPP, the applicant has submitted a detailed Clause 4.6 variation to address the height non-compliances. The purpose of this report is to address this Clause 4.6 variation.

Clause 40(4) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 specifies the following height controls:

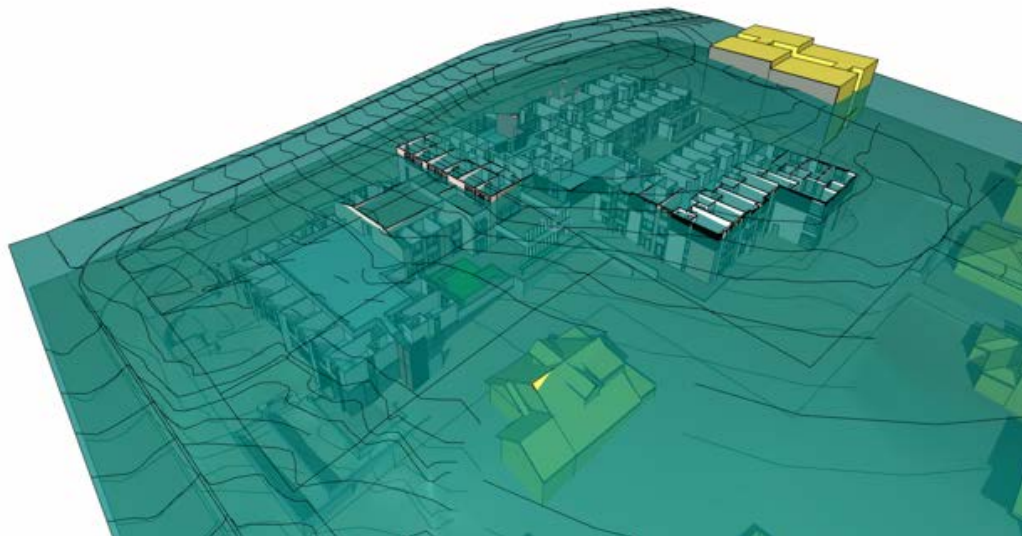
Height in zones where residential flat buildings are not permitted

If the development is proposed in a residential zone where residential flat buildings are not permitted:

- a) The height of all buildings in the proposed development must be 8 metres or less, and*
- b) A building that is adjacent to a boundary of the site (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) must be not more than 2 storeys in height, and*
- c) A building located in the rear 25% area of the site must not exceed 1 storey in height.*

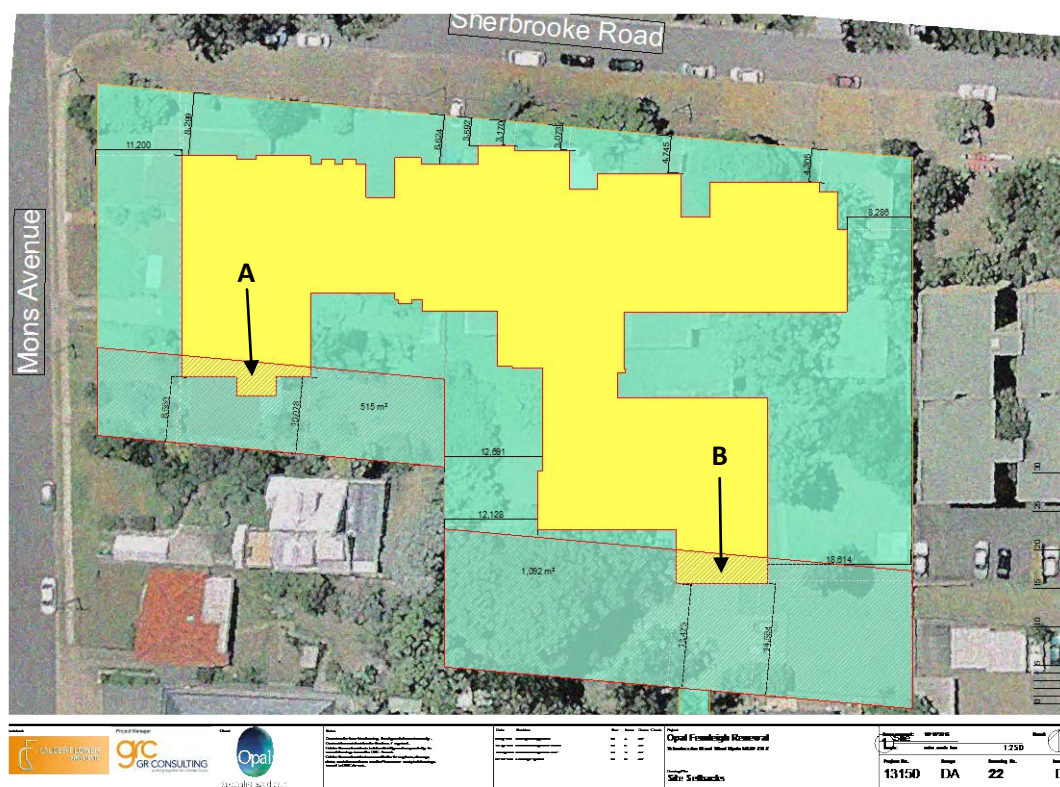
The development results in non-compliances with the above requirements. The applicant's Clause 4.6 variation has been attached to this addendum. The variations to the height control are detailed below:

- The maximum 8m to the underside of the uppermost ceiling of all buildings is demonstrated in the following figure. That part of the building which breaches the height control is restricted to a small section in the middle of the building and at the rear of the building. This is demonstrated in the following figure. That part of the building which breaches the control is shown in white on the following plan. The yellow represents the adjoining buildings in relation to the 8m control. The maximum breach would be equivalent to 0.961m.



- The development ranges between 2 and 3 storeys adjacent to the side boundaries.

The applicant has provided the following figure to determine the rear 25% of the site. This arrangement is supported by Council. There are two small sections of the building that are located in the rear 25% of the site. The area marked A is equivalent to 2 storey and the area marked B is equivalent to 3 storeys.



The considerations under Clause 4.6 are discussed below:

1. Written request provided by the applicant.

The applicant has provided a written request seeking to justify the variation to the development standard. This has been attached.

2. Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant's written request has demonstrated that compliance with the development standard would be unreasonable and unnecessary as the development complies with the objectives of the standard. The written request has also considered the environmental planning grounds that are particular to the circumstances of the proposed development.

3. The proposed development is in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The objectives of the height control and the zone objectives have been addressed in the applicant's submission.

4. Concurrence of the Director General has been obtained.

Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-General's concurrence for exceptions to development standards.

Conclusion

The applicant has demonstrated satisfactorily that the development complies with the objectives of the height control and the objectives of the R2 zoning. In respect to height, the development is considered to be in the public interest and that strict compliance with the height control would be unreasonable and unnecessary. In this instance, there are sufficient environmental planning grounds to justify contriving the development standard. These grounds are particular to the circumstance of the proposed development on this site. To accept a departure from the development standard in this context would promote the proper and orderly development of land as contemplated by the controls applicable to the R2 zoned land and the objectives of the EP&A Act.

The report dated 19 October 2015 has referred the application for the Panel's determination albeit in the body of the report advising the Panel that this DA should be refused for four reasons. The second reason was that the applicant had not submitted an appropriate Clause 4.6 variation in respect to the height variation. This is no longer applicable as the clause 4.6 variation has now been received and is considered appropriate.

Similarly, the 3rd reason in the body of the report that Council considered to be a further reason why the application should be refused related to the site planning and built form outcomes not meeting the provisions of Clause 33 (neighbourhood amenity and streetscape) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. Given that the amended plans are in accordance with the Panel's resolution from its meeting held on 20th August 2015 and that the clause 4.6 variation is satisfactory, this reason for refusal is no longer applicable.

In Council's view, however, the other 2 reasons for refusal remain valid. These reasons are as follows:

- (1) The application is not satisfactory for the purposes of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the use of the site for a residential care facility is prohibited by virtue of the proposal not being able to satisfy clause 26 (Location and access to facilities) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.
- (2) The application is not satisfactory for the purposes of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 as it is not in the public interest.

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