



planning consultants

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**Written request for exception to a Development Standard Clause 4.3 Height of Buildings  
Development Standard of the Area 20 Precinct Plan SEPP (Sydney Region Growth  
Centres) 2006**

**Proposed Residential Flat Building Development at 9 Terry Road, Rouse Hill  
(DA No. JRPP-14-91)**

**1.0 Introduction**

DFP has been commissioned by Winter Properties Pty Ltd to prepare a request pursuant to Clause 4.6 of the SEPP Growth Centres SEPP 2006 in respect of the proposed residential flat building development at 9 Terry Road, Rouse Hill.

DFP has prepared a Statement of Environmental Effects that was lodged with the abovementioned development application that should be read in conjunction with this Clause 4.6 Variation request.

**2.0 Proposed Development**

Development consent is sought for the construction of 4 x 4 storey residential flat buildings in 4 stages including strata subdivision at 9 Terry Road, Rouse Hill. The development proposal consists of the following:

- 256 units
- 21 x 1 bedroom units
- 8 x 1 bedroom units + study units
- 179 x 2 bedroom units
- 7 x 2 bedroom units + study units
- 41 x 3 bedroom units

A total of 349 car parking spaces are provided in 1 basement level.

The residential flat building contains 4 residential levels and 1 basement level.

The basement level provides the following number of parking spaces:

- 297 resident car parking spaces
- 52 visitor car parking spaces including 1 car washing bay
- 128 resident bicycle spaces
- 22 visitor bicycle spaces

The development proposal contains a 300mm parapet which has an RL of 57.7 on Building C. Building C is at the lowest point of the development and accordingly has the highest height when measured from natural ground level to the upper most point being the parapet. The roof level of Building C is RL 57.4.



The lowest point at natural ground level below the parapet of Building C is RL 45.15. Therefore the maximum height of the building is 12.55 metres measured to the parapet and 12.25 metres measured to the roof level above.

### 3.0 State Environmental Planning Policy (Sydney Region Growth Centres) 2006

#### 3.1 Clause 4.3 Height of Buildings

Clause 4.3 Height of Buildings states:

- "(1) The objectives of this Clause are as follows:*
- (a) To establish the maximum height of buildings on land within the Area 20 Precinct,*
  - (b) To minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
  - (c) To facilitate higher density development in and around commercial centres and major transport routes.*
- (2) The height of the building on any land is not to exceed the maximum height for the land on the Height of Buildings Map."*

The Height of Buildings Map indicates that the maximum height limit is 12 metres.

Building Height is defined in the dictionary of the SEPP (Sydney Region Growth Centres) 2006 as follows:

***"Building Height (or Height of Building)** means the vertical distance between ground level (existing) at any point to the highest point of the building including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flag poles, chimneys, flues and the like."*

#### 3.2 Height of the Proposed Development

Building C is located on the lowest part of the site and the parapet at the northern most part of Building C has a maximum height of 12.550 metres, whilst the roof level at that point is 12.25 metres.

Accordingly the maximum height of the building exceeds the 12 metre height limit by 550mm. Attached to this Clause 4.6 Variation Request is a 3D CAD model of the development which indicates the areas where the development exceeds the 12 metre height limit. The 3D model indicates that it is only Building C where the height limit is exceeded by more than the 300mm parapet. The north eastern section of Block C exceeds the height limit by 500mm.

The northern parapet of Block A also exceeds the height limit, however this is less than 300mm. Similarly sections of the northern parapet of Block B and Block D also exceed the height limit by less than 300mm.

#### 3.3 Clause 4.6 Exceptions to Development Standards

Sub-clause 1 and 2 state the following:

- "(1) The objectives of this Clause are as follows:*
- (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.*



- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this Clause does not apply to a development standard that is expressly excluded from the operation of this Clause."*

Variation to the height limit is not expressly excluded from the operation of this Clause and accordingly consent may be granted.

### **3.4 Sub-Clause 4.6(3) – Written Request**

*"Sub-Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:*

- (3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *The compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and,*
  - (b) *That there are sufficient environmental planning grounds to justify contravening the development standard."*

The proposed development does not comply with the Height of Buildings Development Standard pursuant to Clause 4.3 of the SEPP (Sydney Region Growth Centres) 2006 as the proposed development exceeds the maximum height limit by 550mm at the parapet of the northern elevation of Block C, however, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request below.

### **3.5 Sub-Clause 4.6(4) – Justification**

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (a) *The consent authority is satisfied that:*
- (i) *The applicant's written request has adequately addressed the matters required to be demonstrated by Sub-Clause (3), and*
  - (ii) *The proposed development will be 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, and*
- (b) *The concurrence of the Director-General has been obtained."*

Furthermore, Sub-Clause 4.6(5) provides that in deciding whether to grant concurrence, the Director-General must consider:

- (a) Whether contravention of the development standard raises any matter of significance for State Environmental Planning, and
- (b) The public benefit of maintaining the development standard, and





- (c) Any other matters required to be taken into consideration by the Director-General before granting concurrence.

#### **4.0 Written Justification for the Exceedance of the 12 metre Building Height Development Standard**

This Section provides the written justification that will demonstrate why exceeding the Building Height Development Standard is appropriate in this case. The development is considered to be consistent with the zone objectives and the objectives of the height limit. The exceedance of the height limit does not generate any adverse amenity impacts on the future residents of the development or future adjoining development and accordingly it is considered that the proposal is in the public interest.

##### **4.1 Zone Objectives**

The subject site is zoned R3 Medium Density Residential and the objectives of that zone are addressed below:

- “• To provide for the housing needs of the community within a medium density residential environment.”

Residential flat buildings are permissible in this zone and accordingly are considered to be medium density residential development. The development proposal provides 256 residential units that will be located in close proximity to public open space and will be within walking distance of the existing Rouse Hill town centre, future Cudgegong town centre, future Cudgegong Railway Stations. In order to comply with the 12 metre height limit, it will be necessary to remove part of the top floor of Building C that would reduce the amount of housing provided to meet the needs of the future community.

- “• To provide a variety of housing types within a medium density residential environment.”

The subject site has an area of 2.057 hectares and accordingly there are ample opportunities to provide a residential flat building development on the site.

- “• To enable other land uses that provide facilities or services to meet the day to day needs of residents.”

The northern section of the subject site is zoned for public recreation and will contain a rain garden that is required to facilitate future development in the locality. Exceedance of the 12 metre height limit does not offend this objective.

- “• To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.”

The development proposal provides residential development in a location close to facilities such as the existing Rouse Hill Anglican School, the future adjoining open space and other facilities that will be available within both the Rouse Hill town centre and the Cudgegong Railway Station precinct town centre. The development proposal will provide residents in the locality that provide demand for these types of services. Complying with the 12 metre height limit will reduce the number of residential units that can be constructed on the site which will reduce the demand for these services as the population will be reduced.



Accordingly, it is considered that the development proposal is consistent with the objectives of the R3 zone and the exceedance of the height limit by 550mm does not affect the proposal's consistency with the zone objectives.

#### **4.2 Objectives of the Height Development Standard**

The objectives of the Height Clause are discussed below.

*“(a) To establish the maximum height of buildings on land within the Area 20 Precinct.”*

The maximum height limit on the site is 12 metres, whilst the maximum height of the development which occurs at the northern part of Building C at the parapet is 12.55 metres.

*“(b) To minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space.”*

It is the sloping nature of the site that generates the non-compliance with the 12 metre height limit. It is the northern extent of each of the 4 buildings that breaches the height limit with only the northern section of Building C exceeding the height limit by more than the extent of the 300mm parapet. The attached 3D model indicates that the breach in height limit is minimal across the extent of the whole development. The exceedance of the height limit by a maximum of 550mm will not affect the way in which the building is perceived from public places. The 12 metre building height limit provides sufficient space for a 4 storey building to be constructed and accordingly it is considered that 4 storey buildings are part of the desired future character of the locality, however the 12 metre height limit cannot be complied with where a site is sloping in nature without deleting an entire residential floor.

It is the opinion of DFP that if parts of the parapet were removed or the fourth storey of Building C was deleted, the development proposal would appear unbalanced and unresolved, reducing the visual amenity of the development.

Shadow diagrams were submitted with the development application plans and the assessment of the proposal against the provisions of SEPP 65 indicated that 180 units, or 70% of the units, received 4 hours or more of sunlight at the winter solstice and accordingly the additional building height does not cause adverse overshadowing impacts within the development.

As it is the northern face of the buildings that generally exceed the height limit, any additional shadows cast by the parapet wall will not extend the overall shadow length. The internal courtyards receive a significant amount of solar access and no shadows are cast onto the public open space located directly to the north of the development site. Accordingly it is considered that the breach of the height limit does not have an adverse impact on the visual amenity of the building, does not affect the amenity of adjoining development in terms of solar access and will not reduce the amount of sunlight available to residents on the site.

*“(c) To facilitate higher density development in and around commercial centres and major transport routes.”*

The subject site is located within close proximity to Rouse Hill town centre and the future Cudgegong Railway Station precinct which is evident in the R3 zone that allows 4 storey residential flat buildings. Compliance with the height limit would require reduction of a floor on part of Building C and deletion of parapets on the other buildings that would not be consistent with the objective of facilitating higher density in close proximity to major transport routes.





#### 4.3 The Grounds of the Objection to the Height Limit

The proposed variation to the Height Development Standard has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary for the following reasons:

1. The breach of the height limit is generated by the slope of the site which is evident that the height limit is breached along the façade at the lowest point of natural ground level of each of the 4 buildings. This is demonstrated in the attached 3D model. The 12 metre height limit does not contemplate construction of 4 storey buildings on sloping sites.
2. The maximum exceedance of the height limit is 550mm which occurs in the central section on the northern elevation of Building D, which is the lowest point on the site. When this section of the building is viewed in context with the remainder of the 4 storey development, the exceedance of the height limit will not be visually perceivable.
3. The numerical non-compliance with the height limit equates to 4.6% which is considered to be a minimal non-compliance.
4. The exceedance of the height limit does not reduce the amount of solar access available to the units within the development, nor to the open space within the development. This is the case as the exceedance of the height limit is limited along the northern sections of the building and not the southern edges where the shadows will be cast.
5. The exceedance of the height limit will not exacerbate loss of solar access to adjoining properties.
6. Compliance with the height limit would require the deletion of an entire floor of Building C and the deletion of the parapets from Building A, B and D. The height limit can be complied with along the southern ends of Block C and accordingly compliance would be achieved if half the floor of Block C was removed. This would result in a very unbalanced and unresolved built form which would have a detrimental visual impact when viewed from Terry Road and from the open space to the north. Deletion of the parapets on Blocks A, B and C would result in a poor built outcome.
7. The exceedance of the height limit will not reduce views from adjoining properties or within the development itself.
8. The proposal is considered to demonstrate good urban design, is not excessive in terms of bulk and scale and will provide a positive contribution to the streetscape, and
9. The non-compliance is considered to be minor and does not involve the construction of a whole additional floor.

The encroachments are generally limited to the northern extent of the parapet walls with the exception of the northern elevation of Block C, which is located on the lowest point of the site. The desired future character of the area is for 4 storey residential flat buildings and the proposal is compatible with this character. The exceedance of the height limit will not be discernable as the land directly to the north is zoned for Open Space and accordingly there will be no other residential flat buildings adjoining the location where the height limit is exceeded. Accordingly, there will be no future development adjoining this development to judge the height exceedance against. The development will be read as a 4 storey residential flat building adjoining the open space and rain garden.



#### 4.4 Director-General's Consideration

As indicated above, Sub-Clause 4.6(5) of the SEPP (Growth Centres) 2006 also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

- “(a) Whether contravention of the Development Standard raises any matters of significance for State Environmental Planning”*

The breach of the height limit is not of state or regional significance.

- “(b) The public benefit of maintaining the development standard”*

There is a public benefit in allowing the proposed development to proceed with the maximum building height of 12.55 metres. The additional height is generated by the slope of the site. If the development was required to comply with the height limit, half of Block C would be required to be reduced to 3 storeys in height and the parapets of Building A, B and C would be required to be deleted. Deletion of half a floor of Block C would result in an unbalanced and unresolved built form and deleting the parapet walls would result in a poor built outcome. It is not in the interest of the public to construct unresolved, unbalanced buildings purely to ensure compliance with the 12 metre building height, especially given that the proposal is for a 4 storey building in a locality where the height limit allows 4 storey residential flat buildings. Deleting the units from Block C and the parapets from the buildings would result in a development that would be out of character and of poor built form which is certainly not in the public interest.

- “(c) Any other matters required to be taken into consideration by the Director-General before granting concurrence.”*

Deleting a floor would not assist in providing residential units in a locality close to future public transport options and would not be in the interest of housing affordability.

#### 5.0 Conclusion and Recommendation

We have assessed the proposed residential flat building against the relevant statutory provisions of Clause 4.6 of the SEPP (Growth Centres) 2006 and prepared this written request which provide written justification that complies with the 12 metre height of building development standards is unreasonable and unnecessary in this circumstance. The non-compliance with the height limit by a maximum of 550mm is generated by the slope of the land and is limited to the northern extent of each of the buildings which represents the lowest point beneath each building. To require compliance with the 12 metre height limit would require the removal of half a floor of Block C and deletion of all parapet walls which would result in an unbalanced and unresolved built form that would not be consistent with the desired future character of the locality. Furthermore, compliance with the development standard would not be in the interest of providing a range of housing types within close proximity to the existing Rouse Hill town centre or the future Cudgegong Railway Station and would not be in the interest of housing affordability.

Accordingly, the justification within this written request is considered to be well founded and the development is worthy of consent.



