

APPLICANT'S WRITTEN REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD
CLAUSE 4.6 HEIGHT OF BUILDINGS DEVELOPMENT STANDARD
PROPOSED RESIDENTIAL FLAT BUILDING DEVELOPMENT
16B PELICAN ROAD, SCHOFIELDS

1.0 Introduction

Universal Property Group Pty Ltd has prepared a request pursuant to clause 4.6 of Schedule to the State *Environmental Planning Policy (Sydney Region Growth Centres) 2006* in respect of the proposed Residential Flat Building development at 16B Pelican Road, Schofields.

2.0 SEPP (Sydney Region Growth Centre) 2006

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) of the SEPP2006 states the objectives of the clause as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

A response to these provisions is contained within this submission however, it is generally argued that the proposed development is consistent with these objectives.

2.2 Subclause 4.6(2) – Consent may be granted

Subclause 4.6(2) provides that:

- (2) 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.*

The height of building development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

2.3 Subclause 4.6(3) – Written Request

Subclause 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) that 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 SEPP2006, however, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request.

2.4 Subclause 4.6(4) – Written Request

Subclause 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 subclause (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, subclause 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 or regional 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.”*

The Applicant contends that the proposed development is a form of development that is most appropriate for these greenfield sites as they will have minimal, if any, detrimental impacts on the surrounding amenity or the long term development potential of these lands.

As part of any consideration of this matter the Director-General can confidently accept the following considerations:

The variation of the height development standard is a relatively minor local matter, being less than 10% variation of the height standard, which is likely to result in no environmental impacts. It is noted that

The remainder of this written request for exception to the development standard addresses the matters required under subclauses 4.6(4) and 4.6(5) of the SEPP2006.

2.5 The Nature of the Variation

Clause 4.3 of SEPP2006 sets out the building height limit as follows:

- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The building height map indicates that the height limit for the subject site is 16 metres

The SEPP2006 defines ‘height’ as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding

communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The proposed development has a maximum height of 18 metres which exceeds the height limit by 1.8 metres, representing a proposed variation of 11.25%.

2.6 The Objectives of the Development Standard

(1) The objectives of this clause are as follows:

- (a) to establish the maximum height of buildings for development on land within the Alex Avenue and Riverstone Precincts,*
- (b) to 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 the local centre, the neighbourhood centres and major transport routes while minimising impacts on adjacent residential, commercial and open space areas,*
- (d) to provide for a range of building heights in appropriate locations that provide a high quality urban form.*

The subject design seeks to provide a building form which is generally compatible with the approved and proposed building forms for development of lands in this locality. The design and building form directly relates to the topography of the land, the serviceability of the site and the need for a quality design outcome. Further, the design and positioning of the proposed buildings on the site is unlikely to result in any significant impacts on neighbouring lands with regard to overshadowing, privacy and visual impact.

2.7 The Objectives of the Zone

The land use table of SEPP2006 states the objectives of the R3 Medium Density Residential Zone as follows:

- To provide for the housing needs of the community within a medium density residential environment.*
- To provide a variety of housing types within a medium density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- to support the well being of the community, by enabling educational, recreational, community, and other activities where compatible with the amenity of a medium density residential environment.*

The subject proposal is consistent with the objectives for the zone as it provides for a mix in housing type at a medium to high density yield and is in a location which is walking distance to public transport and future essential services.

2.8 The Grounds of the Objection

The proposed variation to the 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 basis for the height non-compliance is :
 - I. roof structures including the planter boxes, parapets, lift and stair wells, lift over runs and shade cloth structures are required for the communal roof garden on the roof of the buildings. These elements will improve the amenity of the occupants and assist in preserving privacy to the units below;

-
- II. slope of the land to the west creates a height protrusion which is accentuated due to desirability for the corner elements to accommodate basement access;
 - III. the use of lift overruns and their ability to be included as part of architectural roof elements; and
 - IV. the extent of this height non-compliance is limited to the standard roof top elements particularly where the land slopes away to the west.
2. There is unlikely to be any adverse visual or acoustic privacy impacts;
 3. There will be no adverse overshadowing impacts on surrounding premises as the site adjoins vacant lands. Essentially the development is isolated from other residential development.
 4. The proposal will not result in the loss of any views from adjoining properties due to the sites relative isolation;
 5. The proposal is considered to demonstrate good urban design, is not excessive in terms of bulk and scale and provides a positive contribution to the streetscape; and
 6. The non-compliance is relatively minor, being between 1m and 1.8m, and does not involve the construction of a whole additional floor. The desired future character for the areas is for 5 storey residential flat buildings and the proposal is compatible with this character. The breach in the height limit will not be discernible as there is no current or future adjoining residential development to judge it against. The development will be read as a 5 storey residential flat building which steps down a slope to future 5 storey buildings to be constructed in the future stages of this Bathla development.

2.9 Director-General's Considerations

As indicated above, subclause 4.6(5) of the SEPP2006 also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,”

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

“(b) the public benefit of maintaining the development standard,”

There is a public benefit in allowing the development to proceed. If the development was required to comply with the height limit part of an additional storey would have to be removed from two buildings. Once other development in the R3 zone is constructed to a similar height of 16m the elevated five storey development on the site would not be out of character.

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

Deleting part of a floor in order to ensure all roof elements fall under the 16m height control would not assist in providing housing choice or housing affordability or enable the floor space ratio to be achievable.

Compliance with the height control would result in a smaller squatter building form on the land which although possibly achieving the FSR for the site, would result in a less desirable building form with regard to both external and internal amenity.

3.0 Conclusion and Recommendations

The proposed residential flat building complex has been assessed against the relevant statutory provisions of clause 4.6 Appendix 4 of SEPP2006 and this submission provides justification that compliance with the height of building development standard is unreasonable or unnecessary in the circumstances of the case.

The non-compliance is due to the topography of the land, provision for suitable accessible points and to provide useable rooftop common open space through the provision of planter boxes and lift overruns on the roof garden. A 5 storey residential flat building is the nature of development that would be anticipated in a location with a 16 metre height limit. To require compliance with the 16 metre height limit would require the removal of part of a storey over the three buildings. Given the sites relative isolation and the potential of future residential development by the Bathla Group on adjoining lands, the additional 1.8m of height will **not** cause any adverse amenity impact resulting in overshadowing or privacy impacts.

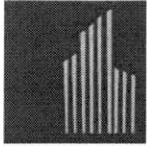
Accordingly, the justification within this written request is considered to be well founded.

Mr Chris King

Senior Planner

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2 February 2015

The General Manager
Blacktown City Council
62 Flushcombe Road
Blacktown NSW 2148

Attention: Melissa Parnis

Dear Sir,

RE: JRPP-14-1907, Residential Flat Building Development at proposed Lot 16B in a subdivision of Lot 16, DP 31797, Pelican Road, Schofields

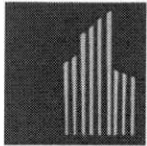
Reference is made to Blacktown Council's letter dated 22 December 2014, requesting the provision of additional information for the proposed development of the abovementioned property.

This letter outlines the Applicant's supporting written justification in relation to setback and FSR variations resulting from Council's request to provide public roads 18m wide instead of 16m wide as required by the Growth Centres DCP 2010. The applicant has agreed to the provision of 18m wide roads instead of 16m wide roads on the understanding that the council will allow the proposed building footprint to remain unchanged and require 18m wide roads throughout the R3 medium density residential zone of the Growth Centres.

The proposed development, with a gross floor area of 24,389sqm, had front setbacks of 6m and an FSR of 1.749:1 based on a site area of 13,940sqm (the area of proposed Lot 16B with 16m wide roads). However, due to the requested 1m road widening within proposed Lot 16B, the proposed front setbacks are 5m and the FSR is now 1.782:1 based on a reduced site area of 13,680sqm.

In this regard, a DCP variation is sought to allow 5m front setbacks on the following grounds:

- The bulk and scale of the development remains unchanged given the distance separation between buildings with 5m setbacks and 18m wide roads is the same as 6m setbacks and 16m wide roads
- It results in a preferred traffic circulation arrangement for the site
- It does not increase the developable area of the land
- The proposed development will establish a high quality residential environment where all dwellings have a good level of amenity and provide a satisfactory streetscape appearance
- Strict compliance with the numerical front setback requirements of the DCP is unnecessary and unreasonable in the circumstances of the case



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- Suitable landscaping will be provided within the front setback to soften the appearance of the development

In addition, a formal request in support of the proposed development to vary the FSR development standard in accordance with Clause 4.6 is also attached.

The proposal is generally consistent with the character of the locality and generally complies with the objectives and requirements of the Growth Centres DCP 2006 and the Alex Avenue and Riverstone Precinct Plan 2010 of the Growth Centres SEPP. The likely impacts of the development such as bulk and scale, built form, traffic and access, privacy, overshadowing, drainage and amenity have been satisfactorily addressed as a part of the design of the development.

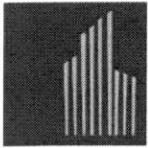
In summary, compliance with the DCP front setback and SEPP FSR development standard is unnecessary and unreasonable in the circumstances of the case given the proposal would have achieved compliance had 16m wide roads been adopted in the proposed subdivision in accordance with the DCP. Flexibility in this circumstance will achieve better outcomes for and from the proposed development.

It is considered that the proposed development satisfactorily addresses the issues raised and is worthy of support. Please proceed to finalise the assessment of the proposed development as soon as possible.

Should you have any further queries, please do not hesitate to contact me.

Yours faithfully,

Eltin Miletic
Senior Town Planner
0422 591 587



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**WRITTEN REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD
CLAUSE 4.6 FLOOR SPACE RATIO DEVELOPMENT STANDARD
PROPOSED RESIDENTIAL FLAT BUILDING DEVELOPMENT
16B PELICAN ROAD, SCHOFIELDS**

1.0 Introduction

Universal Property Group Pty Ltd has prepared a request pursuant to clause 4.6 of Schedule to the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 in respect of the proposed Residential Flat Building development at 16B Pelican Road, Schofields.

2.0 SEPP (Sydney Region Growth Centre) 2006

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) of the SEPP2006 states the objectives of the clause as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

A response to these provisions is contained within this submission. However, it is generally argued that the proposed development is consistent with these objectives.

2.2 Subclause 4.6(2) – Consent may be granted

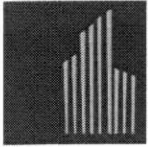
Subclause 4.6(2) provides that:

- (2) 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.*

The Floor Space Ratio (FSR) development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

2.3 Subclause 4.6(3) – Written Request

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:



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- “(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) that 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 FSR development standard pursuant to clause 4.4 of SEPP2006, however, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request.

The proposed development, with a gross floor area of 24,389sqm, had an FSR of 1.749:1 based on a site area of 13,940sqm (the area of proposed Lot 16B with 16m wide roads). However, due to the requested 1m road widening within proposed Lot 16B, the proposed front setbacks are 5m and the FSR is now 1.782:1 based on a reduced site area of 13,680sqm.

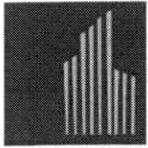
The applicant has agreed to the provision of 18m wide roads instead of 16m wide roads on the understanding that the council will allow the proposed building footprint to remain unchanged and require 18m wide roads throughout the R3 medium density residential zone of the Growth Centres.

The proposal is generally consistent with the character of the locality and generally complies with the objectives and requirements of the Growth Centres DCP 2006 and the Alex Avenue and Riverstone Precinct Plan 2010 of the Growth Centres SEPP. The likely impacts of the development such as bulk and scale, built form, traffic and access, privacy, overshadowing, drainage and amenity have been satisfactorily addressed as a part of the design of the development.

In summary, a variation to the FSR development standard is sought on the following grounds:

- The bulk and scale of the development remains unchanged given the distance separation between buildings with 5m setbacks and 18m wide roads is the same as 6m setbacks and 16m wide roads
- It results in a preferred traffic circulation arrangement for the site
- It does not increase the developable area of the land
- Suitable landscaping will be provided within the front setback to soften the appearance of the development
- The proposed development will establish a high quality residential environment where all dwellings have a good level of amenity and provide a satisfactory streetscape appearance
- The FSR of 1.782:1 (due to the requested road widening) amounts to a 1.86% increase over the permitted FSR of 1.75:1, which is considered to be extremely minor
- The proposed development is consistent with the objectives of the FSR control and the R3 medium density residential zone

Accordingly, strict compliance with the numerical FSR requirements is unnecessary and unreasonable in the circumstances of the case.



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2.4 Subclause 4.6(4) – Written Request

Subclause 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 subclause (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, subclause 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 or regional 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.”*

The Applicant contends that the proposed development is a form of development that is most appropriate for these greenfield sites as they will have minimal, if any, detrimental impacts on the surrounding amenity or the long term development potential of these lands.

As part of any consideration of this matter the Director-General can confidently accept the following considerations:

The variation of the height development standard is a relatively minor local matter, being less than 10% variation of the height standard, which is likely to result in no environmental impacts. It is noted that

The remainder of this written request for exception to the development standard addresses the matters required under subclauses 4.6(4) and 4.6(5) of the SEPP2006.

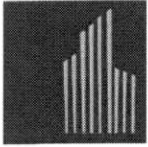
2.5 The Nature of the Variation

Clause 4.3 of Appendix 4, SEPP2006 sets out the FSR limit as follows:

- (2) The maximum floor space ratio for a building on any land is not to exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map.*

The FSR map indicates that the maximum FSR for the subject site is 1.75:1.

Clause 4.5 of Appendix 4, SEPP 2006 defines ‘FSR’ as follows:



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The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.

The proposed development has a maximum FSR of 1.782:1 metres which exceeds the limit by 0.032:1, representing a proposed variation of 1.86%.

2.6 The Objectives of the Development Standard

(1) The objective of this clause is to control the bulk and scale of buildings within the Alex Avenue and Riverstone Precincts by setting maximum floor space ratios for development in Zone R3 Medium Density Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B4 Mixed Use and Zone IN2 Light Industrial.

The bulk and scale of the development remains consistent with the scale of development that would have been provided has 16m wide roads been adopted, as envisaged in the Growth Centres DCP. This is because the distance separation between buildings with 5m setbacks and 18m wide roads is the same as 6m setbacks and 16m wide roads.

Further, the subject design seeks to provide a building form which is generally compatible with the approved and proposed building forms for development of lands in this locality. The design and building form directly relates to the topography of the land, the serviceability of the site and the need for a quality design outcome. Further, the design and positioning of the proposed buildings on the site is unlikely to result in any significant impacts on neighbouring lands with regard to overshadowing, privacy and visual impact.

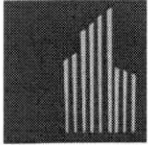
2.7 The Objectives of the Zone

The land use table of SEPP2006 states the objectives of the R3 Medium Density Residential Zone as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *to support the well being of the community, by enabling educational, recreational, community, and other activities where compatible with the amenity of a medium density residential environment.*

The subject proposal is consistent with the objectives for the zone as it provides for a mix in housing type at a medium to high density yield and is in a location which is walking distance to public transport and future essential services.

2.8 The Grounds of the Objection



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The proposed variation to the 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 basis for the FSR non-compliance is:
 - I. the proposed development, with a gross floor area of 24,389sqm, had an FSR of 1.749:1 based on a site area of 13,940sqm (the area of proposed Lot 16B with 16m wide roads).
 - II. the requested 1m road widening within proposed Lot 16B has reduced the site area from 13,944sqm to 13,680sqm, meaning the FSR is now 1.782:1 instead of 1.749:1.
 - III. the bulk and scale of the development remains unchanged given the distance separation between buildings with 5m front setbacks and 18m wide roads is the same as 6m front setbacks and 16m wide roads.
2. There is unlikely to be any adverse visual or acoustic privacy impacts;
3. There will be no adverse overshadowing impacts on surrounding premises as the site adjoins vacant lands. Essentially the development is isolated from other residential development;
4. The proposal will not result in the loss of any views from adjoining properties due to the sites relative isolation;
5. The proposal is considered to demonstrate good urban design, is not excessive in terms of bulk and scale and provides a positive contribution to the streetscape;
6. It results in a preferred traffic circulation arrangement for the site; and
7. The non-compliance is extremely minor, being an increased FSR of 1.86%, and does not involve additional developable area. The desired future character for the area is for 5 storey residential flat buildings and the proposal is compatible with this character. The breach in the FSR limit will not be discernible as there is no current or future adjoining residential development to judge it against. The development will be read as a 5 storey residential flat building which steps down a slope to future 5 storey buildings to be constructed in the future stages of this Bathla development.

2.9 Director-General's Considerations

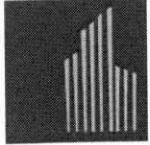
As indicated above, subclause 4.6(5) of the SEPP2006 also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

"(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,"

The breach of FSR limit is not a matter of state or regional significance.

"(b) the public benefit of maintaining the development standard,"

There is a public benefit in allowing the development to proceed. The development footprint remains unchanged from that originally proposed based on a subdivision with 16m wide roads that did comply with the FSR. Accordingly, the bulk and scale of the proposed development remains unchanged. Given the preference for an improved traffic circulation arrangement for the site with 18m wide roads, there is limited public benefit in maintaining the development standard in this instance as the current proposal will



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provide a superior development outcome with a bulk and scale that is consistent with the desired future character for the R3 zone.

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

Amending the proposal to achieve compliance with an FSR of 1.75:1 would not assist in providing housing choice or housing affordability or provide the preferred traffic circulation arrangement for the site.

Compliance with the FSR control would result in a less preferred traffic arrangement for the site, which would result in less desirable external and internal amenity.

3.0 Conclusion and Recommendations

The proposed residential flat building complex has been assessed against the relevant statutory provisions of clause 4.6 Appendix 4 of SEPP2006 and this submission provides justification that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

The non-compliance is due to a preference for 18m wide public roads, instead of the 16m wide public roads specified in the DCP. A 5-storey residential flat building is the nature of development that would be anticipated in this location. To require compliance with the 1.75:1 FSR limit would require re-design of a proposal that was designed in accordance with the 1.75:1 FSR limit based on a site area with 16m wide roads. Further, the proposal has satisfactorily addressed the likely impacts of the development such as bulk and scale, built form, traffic and access, privacy, overshadowing, drainage and amenity. Given the sites relative isolation and the potential of future residential development by the Bathla Group on adjoining lands, the additional 1.86% of FSR will **not** cause any adverse amenity impacts and is not considered to be an over-development of the site.

Accordingly, the justification within this written request is considered to be well founded.

Mr Eltin Miletic
Senior Planner
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(subsidiary of the Bathla Group of companies)