



## **Clause 4.6 Variation – Building Height**

### **Proposed Mixed Use Development**

589-619 Victoria Road, Ryde

Lot A and B DP403323

Lot 1 and 2 DP 856439

Lot 1 and 2 DP1000478

Lots 1-4 DP2000477

Prepared by Willowtree Planning Pty Ltd on behalf of Motive  
Properties Pty Ltd

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## 1. Introduction

This Clause 4.6 Variation request has been prepared in support of the development application for the proposed mixed use development at 589-619 Victoria Road, Ryde.

This Clause 4.6 Variation has been submitted within the Statement of Environmental Effects (SEE) and assesses the proposed non-compliance with the Height of Buildings (Clause 4.3) standard that applies to the proposed residential flat building. The Clause 4.6 Variation has been prepared in accordance with the requirements of Clause 4.6 of the *Ryde Local Environmental Plan 2014 (RLEP 2014)* which has the following aims and objectives:

- (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.*

The proposed variations to development standards for the proposed development are in relation to Clause 4.3 Height of Buildings of *RLEP 2014*. In summary the following variations are proposed:

<b>RLEP 2014 Clause</b>	<b>RLEP 2014 Development Standard</b>	<b>Proposed Development Non Compliance</b>	<b>% of Variation</b>
<b>Clause 4.3 Height of Buildings</b>	Maximum Height of Building  <b>15.5m</b>  <b>9.5m</b> rear of Block 1 and Block 2	Proposed:  19.77m	27%

In accordance with Clause 4.6 of the RLEP 2014 Council is required to consider the following:

*Development 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.*

This Clause 4.6 Variation request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.

## **2. The Standards Being Objected to**

### **2.1 Clause 4.3 of the Ryde Local Environmental Plan 2014**

The development standard being requested to be varied is **Clause 4.3 Height of Buildings** of the *Ryde Local Environmental Plan 2014* (RLEP 2014) which provides as follows.

#### *4.3 Height of buildings*

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

*(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*

*(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*

*(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*

*(d) to minimise the impact of development on the amenity of surrounding properties,*

*(e) to emphasise road frontages along road corridors.*

(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.*

Pursuant to Clause 4.6, the proposed development seeks exception to the 15.5m and 9.5m height of building standard.

The site is predominantly zoned B6 Enterprise Corridor under the provisions of the RLEP 2014, with the exception of a rear portion of the site on Block 2 which is R2 Low Density Residential (note no building height is proposed in the R2 Low Density zone portion of the site, so therefore this Clause 4.6 statement does not address the objectives of the R2 zone).

### **2.2 The objectives/underlying purpose of the clause**

A key determination of the appropriateness of a variation to a development standard is the proposal's compliance with the underlying objectives and purpose of the development standard. Therefore while there is a specified numerical control for height of buildings, the objectives and underlying purpose behind the development standard are basic issues for consideration in the development assessment process.

Section 3 of this Clause 4.6 Variation addresses the proposed variation to Clause 4.3 height of buildings development standard.

### **2.3 Proposed variation to standards**

The proposed variations to development standards for the proposed development are in relation to Clause 4.3 Heights of Buildings of the RLEP 2014. In summary the following variations to development standards are proposed:

RLEP 2014 Clause	RLEP 2014 Development Standard	Proposed Development Non Compliance	% of Variation
<b>Clause 4.3 Height of Buildings</b>	<p>Maximum Height of Building</p> <p><b>15.5m</b></p> <p><b>9.5m</b> rear of Block 1 and Block 2 (note this is the 7m setback zone where a small portion of the site in Block 1 encroaches by up to 1m to 1.5m in the northwestern corner, otherwise no built form is proposed within the setback zone)</p>	<p>Proposed:</p> <p>19.77m</p>	27%

### 3. Proposed Variation to Clause 4.3 Height of Buildings

Pursuant to Clause 4.6 of RLEP 2014, we hereby seek exception to the 15.5m height of buildings standard applicable pursuant to Clause 4.3 of RLEP 2014. Clause 4.6(4)(ii) requires that such a request must establish that the proposed contravention is consistent with the objectives of the standard and the zone.

The proposed variation to the height of buildings standard is a result of the overall topography of the site and its sloping nature, and the provision of lift overruns. The proposed additional building height is 3.3m up to 4.27m, the equivalent of a 21% to 27% increase to the permitted height of building. It should however be noted that the majority of the proposals building height noncompliance is actually contained within a 10% variation to the building height controls as demonstrated in **Figure 1 and Figure 2** as follows.

Therefore as the proposed noncompliance above 10% is considered minor, it is considered appropriate to consider the proposed variation to the standard as part of a Clause 4.6 variation.



**Figure 1 – Building Height Planes – Block 1**



**Figure 2 – Building Height plane – Block 2**

### **3.1 Objectives of the standard?**

The objectives of the Height of Buildings (Clause 4.3) standard as stated in the RLEP 2014 are:

- (a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- (b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- (d) to minimise the impact of development on the amenity of surrounding properties,*
- (e) to emphasise road frontages along road corridors.*

Notwithstanding the proposed variation to the standard, the proposed development is nevertheless consistent with these objectives:

- *to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- The proposed building envelope is consistent with the building envelopes of other residential flat buildings within the surrounding locality, in particular the development currently under construction at the Putney Hill site on the opposite of Victoria Road. The bulk and scale of the proposal is consistent with the format and style of building which is common within mixed use zones, and is a common scale for medium to high density mixed use developments.
- The proposal is not considered to be out of character with the existing streetscape and local character of the precinct. The new buildings will be sympathetic to the changing character of the Victoria Road that is beginning to accommodate an increased amount of mixed use development at an increase scale.
- As the development occupies a large, elongated site with the irregular shape and strong vertical rise in topography along Victoria Road (Block 1) and a second site across Arras Parade (Block 2), the architectural design of the proposal has been undertaken to reflect those specific characteristics.
- The proposed development responds to the context of the site by addressing the development towards Victoria Road, whilst also addressing a significant proportion of residential space to the rear away from Victoria Road.
- The scale of the development is consistent with the scale and bulk of other residential flat buildings within the locality, and contributes to meeting the objectives of the RLEP 2014.
- The bulk of the development is considered to be acceptable given that the development achieves compliance with the objectives contained in the Apartment Design Code.
- Due to the context of the site and the adjoining residential properties to the north, the built form of the proposed development is restricted to the southern portion of the site to ensure an appropriate buffer and setback to the north is provided.

- The proposed design of the development achieves an appropriate built form in that it enhances the public domain, and character of the streetscape. The proposal demonstrates a high quality development which achieves the design standards for the locality as well as those outlined in RDCP 2014.
- The proposal has a density appropriate to the site in that the building does not exceed the maximum floor space ratio under RLEP 2014. Being within close proximity to the commercial centre of Top Ryde the proposal is believed to be consistent with the desired future density of the local area.
- The built form comprises materials and colour schemes conducive to the character of the area and is considered an improvement to the character and appearance of the locality. Architectural treatments proposed on the façade reinforce the land use and contribute to the identity of the site as a nodal point within the precinct.
- The maximum building height of 19.77m for the site is appropriate for a B6 Enterprise Corridor zone that primarily consists of residential development.
- In light of the proposals contribution to achieving the desired future character of the area, a reduction of building height would serve no material planning purpose, other than numerical compliance with a generic Council control, and has an effect that is inconsistent with underlying strategic planning objectives of state and regional planning policy.
- The highest point of non-compliance is central to the building, and at this point has no significant impact on the proportions of the building and its relationship with the surrounding context.
- *to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
  - Shadow diagrams have been prepared to demonstrate the impact of the proposed development on sunlight access to adjoining properties (Attached at **Appendix B** of the accompanying SEE).
  - The shadow diagrams prepared demonstrate a negligible impact of shadowing to the residential dwellings to the north.
  - Shadows have been generated for the existing context and proposed building envelopes demonstrate that only immediate property to the west of site during early morning from 9 to 9-30 am in mid-winter would be partially impacted.
  - The remainder of the shadow will be cast on Victoria Road without overshadowing neighbouring properties.
  - Due to the size and orientation of the site, the living rooms and bedrooms of adjoining residential properties will not be affected by shadowing.
  - The areas of non-compliance with the height control do not have a shadowing impact in the context of the proposed development as a whole.
  - The proposed height and overall scale of the new development is compatible with surrounding development.
  - The proposed building envelope is consistent with the building envelopes of other residential flat buildings within the surrounding locality, in particular the

development currently under construction at the Putney Hill site on the opposite of Victoria Road. The bulk and scale of the proposal is consistent with the format and style of building which is common within mixed use zones, and is a common scale for medium to high density mixed use developments.

- *to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
  - Whilst the site is not located directly adjacent or above a major public transport interchange or infrastructure, the site is located within close proximity of Top Ryde Centre (5 minute walk) where numerous local buses that service the local area and metropolitan Sydney frequently service.
  - In addition the site is located adjacent Victoria Road where multiple bus services connect the site to the Sydney CBD, and surrounding suburbs to the west of the site.
  - In light of the proximity of the site to good local and regional bus connections, the proposed increase in building height to achieve an additional apartment gross floor area is considered well founded and contributes to consolidating dwellings within an integrated land use and transport arrangement.
  - The proposal also gives generous provision of bicycle parking on the site, helping to promote sustainable travel modes and reduce car dependency.
- *to minimise the impact of development on the amenity of surrounding properties,*
  - The proposed height non-compliance will not result in additional overlooking impacts when compared to a potentially compliant building height. The proposed storeys of the building that are subject of building height non compliance will not result in increased overlooking to the adjoining site to the north or north west.

The following image demonstrates that the impact of the proposed building height on adjoining properties to the north, and demonstrates that any additional height above 15.5m will not result in any significant difference in overlooking between a complying proposal.

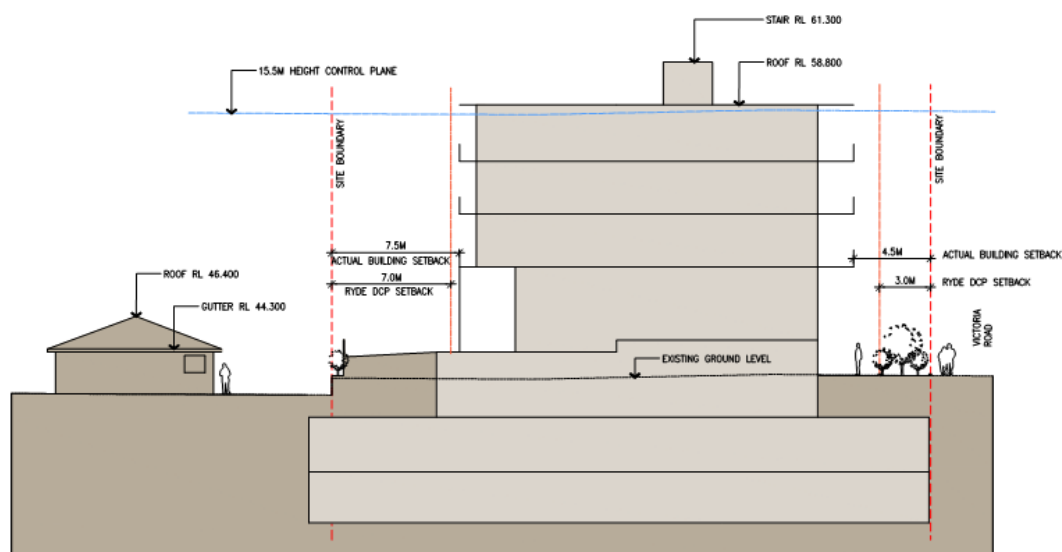
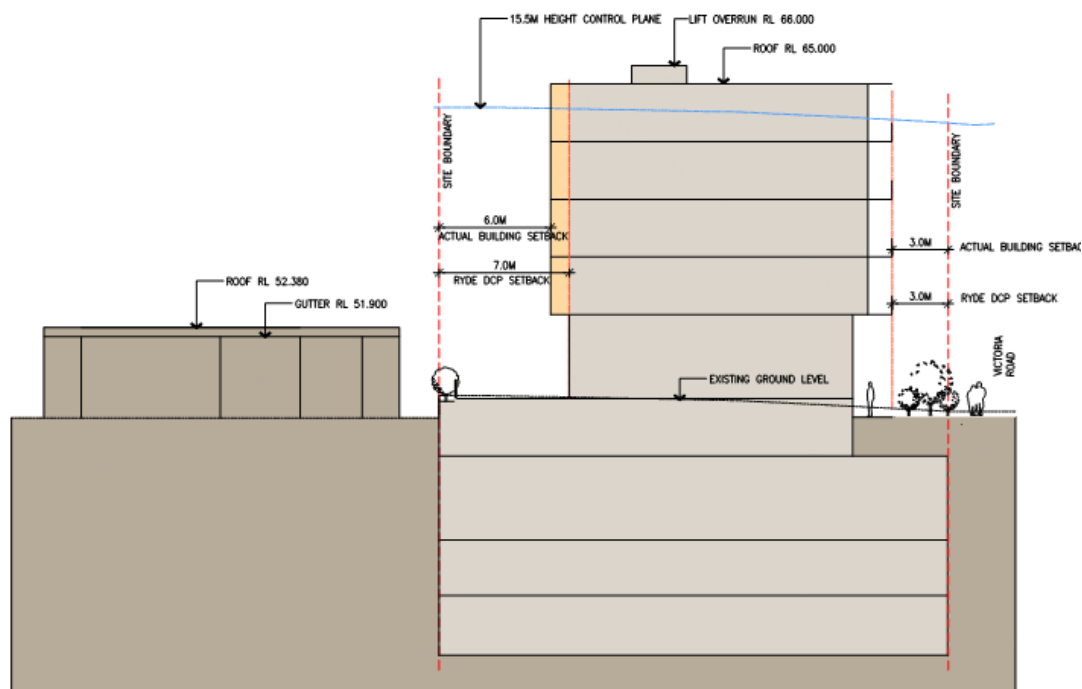


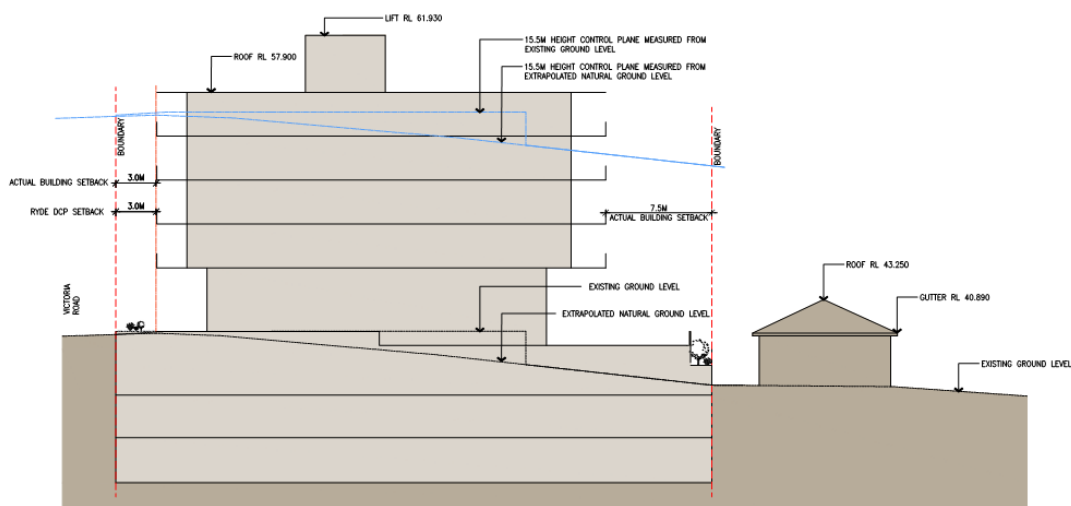
Figure 3 – Block 1 Section – Building 3



**Figure 4 – Block 1 Section – Building 1**

- Figures 3, 4 and 5 demonstrate that the site is currently already set well above the adjoining properties to the north, owing to the topography of the site and sloping nature of the area that falls away to the north. These sections clearly demonstrate that any overlooking or enclosure is likely to occur, with either a complying building height or a noncomplying building height.

It is therefore considered any additional impacts of overlooking from the proposed building height variation are negligible in relation to the proposed development.



**Figure 5 – Block 2 Section – Building 5**

- Privacy screens and mechanisms will be used along the rear elevation to avoid instances of direct overlooking.

- No direct overlooking between windows of the proposed development and the residential windows of properties to the north is likely to occur owing the complying setbacks along the rear boundary, the elevated topography of the site.
- The relationship between the proposed building and the adjoining residential buildings to the north gives provision of a predominantly 7m to 7.5m setback to the site boundary to reduce potential impacts of privacy and enclosure.
- The proposed development and building height will not obstruct or block any existing views enjoyed by surrounding occupiers within Arras Parade or Irvine Crescent. Presently views from these buildings are not considered significant. The proposal does not detract from exiting views of surrounding occupiers and ensures that views to surrounding ridgelines and public and private open spaces are not impacted upon.
- The building envelopes create sufficient articulation and separation between the existing residential building envelopes surrounding the site to avoid bulk and visual dominance along the street frontage. The separation distances between the surrounding residential buildings and the proposed buildings are appropriate and will not create any impacts such as enclosure or overlooking.
- Impacts of the proposed building height in relation to solar access and shadowing have been previously addressed.
- The proposed additional building height has also been provided in part as a result of the topography of the site, which contributes to any exaggeration of exceeding building heights.
- The proposal has a density appropriate to the site in that the building does not exceed the maximum floor space ratio under RLEP 2014. Being within close proximity to the commercial centre of Top Ryde the proposal is believed to be consistent with the desired future density of the local area.
- *to emphasise road frontages along road corridors.*
  - The proposed development and its associated building heights will continue to emphasise the road frontage with Victoria Road. The proposal provides appropriate landscaped setbacks to each frontage, and even exceeds the minimum requirements fronting Victoria Road by an additional 3m.
  - The built form of the building has been designed to emphasise the corner aspect of the development towards Victoria Road. The vehicle showrooms are primarily focused along the prime southern frontage and will encourage residents and visitors from surrounding neighbourhoods to interact with the development.
  - All boundaries to the site have been landscaped to soften the appearance of the public domain and ensure an appropriate interface between the public domain of the site and the street frontage.

### **3.2 Objectives of the zone**

The site is predominantly zoned B6 Enterprise Corridor Zone under the provisions of the RLEP 2014, with the exception of a rear portion of the site on Block 2 which is R2 Low Density Residential (note no building height is proposed in the R2 Low Density zone portion of the site, so therefore this Clause 4.6 statement does not address the objectives of the R2 zone).

The proposed development is for a mixed use development including *vehicle sales and hire premises* and *shop top housing* is therefore permissible within the zone and on the site. The proposal is consistent with the B6 zone objectives in that:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
  - The proposals is for *vehicle sales and hire premises* and *shop top housing* and is therefore permissible within the zone and on the site.
  - The proposal will continue to promote business along the Victoria Road corridor by retaining the existing vehicle sales premises on the ground floor of the site fronting Victoria Road.
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
  - The proposal gives provision of approximately 5419.2m<sup>2</sup> (GFA) of retail floor space that will contribute to employment on the site, which is forecasted to have the potential to accommodate up to 77 jobs on the site.
  - The proposal will only result in the net loss of 3 jobs on site, and is therefore not considered as significant loss of jobs. The loss of the 3 jobs on site will however be accommodated elsewhere within Ryde as the applicant plans to relocate the existing vehicle service centre within the Ryde LGA, which will be subject of a future development application.
  - The retention of employment uses on site will allow for the potential creation of both construction jobs, and jobs associated with the operation of the businesses, cleaning and maintenance of the precinct.
- *To maintain the economic strength of centres by limiting retailing activity.*
  - The type of retail premises proposed for vehicle sales will not result in any impact on the nearby Top Ryde Shopping precinct.
  - The existing use for vehicle sales premises on the site has historically resulted in no impact on nearby retailing centres or other similar vehicle sales premises located along Victoria Road.
- *To provide for residential uses, but only as part of a mixed use development.*
  - The proposal will deliver a mix of well-designed housing that meets the needs of Sydney's growing population by providing a greater number of smaller dwellings to meet the changing population as well as increasing overall supply to ease pressures in the rental market.
  - The proposal will contribute to revitalising the Ryde LGA, and will provide additional supply of residential development through mixed use development in an area of high accessibility, contributing to desirable residential and employment outcomes.
  - It is considered that development of the site for the purpose of Shop Top Housing satisfies the zone objectives as the proposal will provide for residential uses, but only as part of a mixed use development whilst contributing to a range of employment uses.

- *To promote sustainable development, including public transport use, living and working environments.*
- Whilst the site is not located directly adjacent or above a major public transport interchange or infrastructure, the site is located within close proximity of Top Ryde Centre (5 minute walk) where numerous local buses that service the local area and metropolitan Sydney frequently service.
- In addition the site is located adjacent Victoria Road where multiple bus services connect the site to the Sydney CBD, and surrounding suburbs to the west of the site.
- The design makes efficient use of natural resources, energy and water throughout its full cycle, including construction. It will meet the benchmarks for energy and water reduction set out in the Building and Sustainability Index (BASIX) report.
- A site-based water retention system has been incorporated into the development. It comprises an OSD storage tank, filtration and pump unit in the basement car park that is used to recycle roof and ground rainwater for the irrigation of courtyard planting.
- All dwellings will be fitted with energy efficient, reverse cycle, split AC systems consisting of a single condenser unit and multiple fan coil units. Waste and recycling facilities are provided in the basement with recycling bins on each residential floor.

### **3.3 Establishing if the Development Standard is Unreasonable or Necessary**

In **Wehbe v Pittwater Council [2007] NSWLEC 827** Preston CJ set-out the five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation:

1. *Establish that compliance with the development standard is unreasonable or unnecessary because **the objectives of the development standard are achieved notwithstanding non-compliance** with the standard.*
2. *Establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *Establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *Establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *Establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary".*

In applying the tests of **Wehbe v Pittwater Council [2007] NSWLEC 827** ruling, only one of the above rationales is required to be established. Notwithstanding the proposed variation, the development is consistent with the underlying objectives of the standard for Height of Buildings and the B6 Enterprise Corridor zone of RLEP 2014.

### **3.4 Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard**

The variation to the development standard for height of buildings is considered well founded because, notwithstanding the proposed non-compliance with the standard:

- The proposed development is entirely consistent with the underlying objective or purpose of the standard as demonstrated in **Section 3.1**.
- The proposed mixed use development will give provision for 145 apartments and provision of up to 77 jobs for the benefit of residents of the local government area and the wider Sydney metropolitan region.
- The scale of the proposal is considered to be appropriate for the site and the surrounding area and meets the needs of the local residents and wider Sydney metropolitan area.
- The bulk and scale of the proposal is limited and is consistent with the style and scale of other residential buildings within the locality.
- The proposed development will not significantly impact on the amenity of adjoining occupiers.
- The proposed development will not result in any unreasonable privacy intrusion or loss of daylight access to adjacent properties.
- The proposed development still maintains compliance with GFA/FSR provisions for the site.

### **3.5 Overview**

For the reasons outlined above, it is considered that the objection to Clause 4.3 of RLEP 2014 is well-founded in this instance and the granting of a variation to the development standard is appropriate in the circumstances. Furthermore the objection is considered to be well founded for the following reasons:

- The proposed development is clearly consistent with the objectives of the height of buildings standard;
- The proposal is entirely consistent with the underlying objectives or purposes of the B6 Enterprise Corridor Zone.
- The built form and scale of the building will not obscure any existing significant views, or result in any significant impacts to the amenity of surrounding residents.
- Strict compliance with the standards would hinder the achievement of the objects of the EP&A Act;
- No unreasonable impacts are associated with the proposed variation.

Overall, it is considered that the proposed variation to the height of building ( up to 27%) is entirely appropriate and can be clearly justified having regard to the matters listed within RLEP 2014 Clause 4.6.

## **4. Conclusion**

It is requested that council supports the proposed variation to Clause 4.3 of the RLEP 2014 for the following reasons:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
- There are sufficient environmental planning grounds to justify contravening the development standard.
- No unreasonable environmental impacts are introduced as a result of the proposal.
- There is no public benefit in maintaining strict compliance with the standards.

Given the above justification provided above this Clause 4.6 Variation is well founded and should be favorably considered by Council.