

134 BURDEKIN ROAD QUAKERS HILL NSW

MAXIMUS DEVELOPMENTS AUSTRALIA

TOWN PLANNING / URBAN DESIGN / PROJECT MANAGEMENT

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**CLAUSE 4.6 VARIATION – EXCEPTION TO
DEVELOPMENT STANDARD TO MAXIMUM HEIGHT
OF BUILDING****APPENDIX 4 ALEX AVENUE AND RIVERSTONE
PRECINCT PLAN 2010 STATE ENVIRONMENTAL
PLANNING POLICY (SYDNEY REGION GROWTH
CENTRES) 2006**

134 BURDEKIN ROAD QUAKERS HILL NSW 2763

DEMOLITION OF EXISTING AND CONSTRUCTION OF RESIDENTIAL FLAT BUILDINGS
AND ASSOCIATED WORKS*Report copyright to Mark Anthony Raymundo T/A Maximus Developments Australia 2017***PROJECT DETAILS**

Legal Description	Lot 8 in DP 652559	Property Address	134 Burdekin Road Quakers Hill NSW
Project Reference	113-17		
Date	09/02/17	Revision	A
Client	Urbank Link P/L	Land Owner	

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Director – Maximus Developments Australia

PROPOSAL

The proposal seeks development consent for demolition of existing and construction residential flat buildings and associated works on land known as 134 Burdekin Road, Quakers Hill NSW 2763.

- A Clause 4.6 Variation has been prepared for Clause 4.3 to maximum height of buildings which prescribes 16m. The justification is in support of the proposal of 16.2m – 16.5m. The extent of the variations form lift overruns and roof for all residential flat buildings. (This report should be read in conjunction with amended architectural plans prepared by Urban Link dated 16/12/16 rev J).

Research Background

The proposal has taken in consideration with the Environmental Planning and Assessment Act 1979 (as amended), Environmental Planning and Assessment Regulation 2000 (as amended) and State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

APPENDIX 4 ALEX AVENUE AND RIVERSTONE PRECINCT PLAN 2010 STATE ENVIRONMENTAL PLANNING POLICY (SYDNEY REGION GROWTH CENTRES) 2006

The proposal seeks development consent residential flat buildings which forms a permissible use within the R3 – Medium Density Residential within the SEPP. The proposal is considered to reasonably satisfy the relevant zone objectives. The proposal complies with the all other relevant development standards. The proposal seeks a minor variation to maximum height of building, a clause 4.6 Exception to Development Standard has been provided for Council's consideration as the consent authority.

Summary of key applicable controls as per below;

Control	Requirement	Proposal	Complies
Zone R3 Medium Density Residential	Permissible use – residential flat building	Development Consent sought for residential flat building	Yes
4.3 Height of Building	O =16m	Range: 16.2-16.5m	No (1)
Clause 4.6 Exception to Development Standard	Clause 4.6 Exception to Development Standard provided for consideration for variation to SEPP	Clause 4.6 Exception to Development Standard provided for Council's consideration	Yes

(1) CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD IN RELATION TO CLAUSE 4.3 WITHIN APPENDIX 4 ALEX AVENUE AND RIVERSTONE PRECINCT PLAN 2010 (STATE ENVIRONMENTAL PLANNING POLICY (SYDNEY REGION GROWTH CENTRES) 2006

The proposal seeks a negligible departure from the prescribed 16m height of building development standard. The proposal seeks a maximum variation of 16.5m. This results in a minor prescribed variation of 16.5m (+500mm) maximum which is considered negligible. The

amended design of the proposal is consistent with the objectives and planning provisions. The minor exceedance in height does not result in any consequential or material impacts to the future amenity of occupants or adjoining properties nor undermine the planning intent of the controls. It is considered that reasonable flexibility be applied in consideration to the development. It is considered that strict numerical compliance would not necessarily result in a better design outcome.

Comment: The proposal seeks a variation to Development Standard **Clause 4.3** which states the following;

(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.*

(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.*

Comment: The proposal is considered to satisfy the objectives as the zone as the proposed built form for the most part complies with the maximum height limit of 16m with the exception of minor elements resulting in a maximum height of 16.5m (max). The extent of the variation of height does not result in any adverse material solar access impacts to buildings on site, green areas or outside the site. This is considered to be negligible and does not detract from the residential flat building proposed built form or streetscape. The extent of the variation whilst minimal does provide some modulation providing some visual interest rather than a pure flat roof. The proposal is not considered to result in an undesirable precedent. The extent of the variation on this allotment does not undermine the intent of the planning controls.

(2) DEVELOPMENT CONSENT MAY, SUBJECT TO THIS CLAUSE, BE GRANTED FOR DEVELOPMENT EVEN THOUGH THE DEVELOPMENT WOULD CONTRAVENT 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

Comment: Clause 4.3 Height of Buildings forms a Development Standard to which Clause 4.6 – Exception to Development Standard may be sought for Council's consideration.

(3) 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:

Comment: Justification provided as per below addressing a variation. It is considered that on planning merit that the intent of the underlying objectives have been satisfied. It is also

considered that Council has allowed flexibility regarding strict numerical compliance in relation to the application of this clause. No material impacts arise from this variation to the negligible maximum building height. Sufficient environmental planning grounds have been provided for Council's consideration contained further detailed within this report.

(A) THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE, AND

It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The proposed variation is sought on its merits on the basis that strict compliance with the development standard is unreasonable or unnecessary in this circumstance by virtue of the negligible exceedance in height of 200mm -500mm range. More importantly, the proposal is considered to adequately satisfy the underlying intent of the controls which states;

R3 Medium Density Residential

The objectives of the zone are 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.*

The site is considered to adequately accommodate the development which is considered to be consistent in satisfying the underlying objectives and planning provisions and results in negligible amenity impacts for the following reasons;

- The extent of the variation sought is considered to be commensurate to that of similar developments previously supported by Council. This is considered to be reasonable given that the underlying intent of the objectives have been satisfied and no unreasonable impacts arise given the design and context of the proposal. The proposal will result in a significant number of dwellings, dwelling types, various configurations in line with the intent of the SEPP.
- The immediate visual catchment comprises of a semi-rural character however the area is undergoing urban transitional change, which comprises of detached dwellings, semi detached dwellings and residential flat buildings. It is considered that the proposed use for the site as residential flat buildings forms part of the desired future character of the area.
- The overall built form of the proposal is considered to be reasonable and appropriate for the subject site due to the character of the immediate visual catchment and would be sympathetic and harmonious in relation to the desired streetscape character within the locality. The underlying intent of the 16m building height to ensure appropriate bulk and scale. Given the negligible variation, this is considered to be the case.
- Limited impact - visual bulk and scale – The proposal adopts an overall appropriate built form which conforms with the intent of SEPP 65.
- Limited impact - solar access – The proposal complies with Council's solar access and overshadowing requirements resulting in good levels of solar access being achieved to buildings within the subject site. Given the extent of the variations which are located

- centrally within the roof of each residential flat building minimises solar access impacts, overshadowing to other units, green spaces and adjoining properties.
- Limited impact – The extent of the non-compliance will not detract from; neighbouring access to air, ventilation and light, being direct or ambient or impact any development potential on adjoining properties.
 - The objects of the Act are considered to be satisfied regarding the merits of the proposal.

(B) THAT THERE ARE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD.

Comment: The proposal has satisfied the following objectives;

(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.

In this regard, respectfully, it is considered that Council has previously applied reasonable flexibility and not strict numerical compliance with this control. On this basis, the rationale for sufficient environmental planning grounds are based primarily on the adequate satisfaction to development standard objectives, zone objectives, amenity and material impact are considered to apply in this instance.

In relation to the proposal,

- Strict numerical compliance is considered to be unnecessary and unreasonable given that it is considered that Council has abandoned strict compliance allowing for a degree of flexibility by supporting variations to this clause. Council has eroded strict numerical compliance and has applied a logical consideration to the merits of the extent of each clause 4.6 Variation. More importantly as previously discussed, the extent of the variation does not undermine the intent of the objectives for height by virtue of the design,
- As previously discussed, this extent of the variation is minor, inconsequential and does not result in any unreasonable impacts. More importantly, the proposal satisfies the objectives of the zone, underlying intent of Clause 4.6, and therefore the merits of the proposal are considered to be worthy of approval. Furthermore, it has been demonstrated within Council and the Courts to apply a reasonable approach in supporting variations to development standards. This in turn has eroded the literal view of 'sufficient environmental planning grounds' established *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* (11 June 2015) by which was generally the planning consensus 1.5 years ago however the Courts in recent Land and Environment Court Approvals and Joint Regional Planning Panels has placed more weight on the satisfaction of the objectives of the controls, reasonableness of the extent of the variation, impacts and amenity. Often within Class 1 Appeals within the Land and Environment Court of considerations to this previous court case were not cited. For example, the above court case has been cited within *GGD Danks Street P/L and CR Danks Street P/L v Council of the City of Sydney [2015] NSWLEC 1521* (decision date 15 December 2015) which sought variations to height and floor space ratio. The Commissioner placed emphasis on the satisfaction of the zone objectives and minimal impacts generated by the proposal. This resulted in the acceptance by the court in

relation to variations to floor space ratio and height. On this basis, the rationale for sufficient environmental planning grounds are based primarily on satisfaction to development standard objectives, zone objectives, amenity and material impact are considered to apply in this instance.

- The extent of the variation is unlikely to be visually apparent out of character when viewed by a casual observer from the public domain given that the allotments within the visual catchment comprise of at least 16m or at least very close to 16m. An exceedance of 500mm (3.1%) given the scale of the proposal is difficult to distinguish.
- The proposal complies with most other aspects of the proposal without resulting in any unacceptable material planning impacts. By supporting this variation in its current form, it is considered that an appropriate flexibility be applied on planning merit which results in a reasonable built form which is commensurate of other residential flat buildings within the locality.
- The natural ground level of the existing development is considered to be generally unchanged whereby the site comprises of a semi -rural character and therefore has unlikely been altered overtime. In this instance, due to the subdivision of the area of Alex Avenue and Riverstone, existing levels outside the subject site and beyond have been / are to be altered to achieved adequate drainage to the street and to provide appropriate access levels for development, In this regard the intent of the variation is considered to be reasonable and will not result in any adverse impacts.
- The minor variation is considered to be in the public interest as the proposal overall conforms to the majority of the relevant planning controls. The minor variation in to height of buildings does not detract from the streetscape and does not result in a poor design or built form. The extent of the variation is not considered to materially offend the underlying intent of the development standard or zone objectives.
- The proposal would result in an improvement to the existing condition and results in the improvement and addition of existing housing stock within the locality which adopts a desirable residential built form. It is considered that the immediate visual catchment is undergoing urban infill transitional change from semi-rural to low – medium density development.
- The extent of the variation sought is 3.1% which is considered to be insignificant, it is noted that the New South Wales Land and Environment Court has reasonably accepted reasonable variations with a numerical departure of up to 10%.
- As previously discussed, the proposal adequately satisfies the underlying objectives of the controls and zoning objectives of which do not result in any unacceptable impacts to the built, natural, social or economic impacts for consideration under the Act.

(8) THIS CLAUSE DOES NOT ALLOW DEVELOPMENT CONSENT TO BE GRANTED FOR DEVELOPMENT THAT WOULD CONTRAVENE ANY OF THE FOLLOWING:

(c) CLAUSE 5.4

Comment: Clause 4.3 height of building is not a development standard expressed as excluded within Clause 5.4 within the SEPP. In this regard, a Clause 4.6 – Exception to Development Standard can be considered.

- Limited impact - visual bulk and scale – The proposal adopts a built form which is considered to be commensurate of that of other residential flat buildings within the locality. The extent of the variations are centrally located on the roof and therefore the extent of the variation is not considered to be visually apparent when viewed from the public domain. The extent of the variation is not apparent given the overall design. The extent of the variation is considered to be compatible with the surrounding area and desired character of the locality.
- The extent of the variation generally comprises of lift overruns which are often supported in exceedance to maximum height of buildings within the Sydney Metropolitan Area and are generally accepted by the Land and Environment Court.
- Limited impact - solar access – The proposal complies with solar access and overshadowing requirements resulting in good levels of solar access being achieved to the subject site and adjoining properties and to the subject site given the solar orientation and design. Compliant levels of solar access are afforded to adjoining properties. The minor exceedance in building height does not result in any material adverse solar access impacts to other buildings within the site or beyond.
- Limited impact – The extent of the non-compliance due to increased height will not detract from other buildings on site, neighbouring access to air, ventilation and light, being direct or ambient or impact any development; potential on adjoining properties.
- Limited impact - amenity – The proposal satisfies most other aspects of the proposal in relation to setbacks, floor space, car parking, landscaping, amenity and the like. The minor exceedance in building height does not result in a poor design or layout as the proposal adopts a layout similar to that of common residential flat buildings within the locality and Metropolitan Sydney. The extent of the variation does not result in any material adverse amenity impacts for future occupants.
- Limited impact - privacy – The proposal does not result any material increased privacy impacts as the proposal is appropriately setback from adjoining properties and does not result in a material impact due to floor levels.
- The immediate visual catchment comprises of a semi-rural residential character which is currently undergoing transitional change. The built form of the proposal despite the minor exceedance in height is considered to be reasonable and appropriate for the subject site and would be sympathetic and harmonious in relation to the existing and desired streetscape character within the locality.
- The proposal complies with all other prescribed requirements; the proposal satisfies the zone objectives and intent of the SEPP.
- The Objects of the Act are considered to be satisfied regarding the merits of the proposal.

PUBLIC INTEREST

The proposal and extent of the variation is considered to be in the public interest by virtue of providing additional housing in line with the SEPP. As previously discussed, the extent of the

variation is considered to be minor in nature. It is considered that Director- Generals concurrence is assumed given that the proposal type is not identified as an exclusionary item.

CONCLUSION – SUPPORT FOR MINOR VARIATION TO HEIGHT OF BUILDINGS

For the reasons identified above, it is considered that supporting the Clause 4.6 – Exception to Development Standard in relation to the minor exceedance in building height is reasonable and appropriately justified. Strict numerical compliance is considered to be unnecessary and unreasonable given the extent of the variation, negligible impact and changing character of the area. More importantly the proposal is considered to fit within the immediate visual catchment.

It is considered that sufficient logical planning justification has been provided. The proposal is not considered to result in an undesirable precedent to the character of the area or immediate visual catchment. More importantly, the proposal satisfies the objectives of the zone, underlying intent of Clause 4.6, and therefore the merits of the proposal are considered to be worthy of approval. As previously stated, the proposed variation is considered to be reasonable, not excessive and is consistent with the objectives and aims of the plan.

Kind regards,

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