

- The proposal is consistent with Council's growth objectives for the town centre and presents an opportunity to achieve contemporary apartment housing that is compatible with the context and location. It also presents an opportunity for the development of a new road that will contribute to improving the accessibility and function of the Gordon town centre.

Each of the above are environmental planning grounds that justify contravening the development standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Clause 4.3 of KLEP which are stated as follows:

- (a) to ensure that the height of development is appropriate for the scale of the different centres within the hierarchy of Ku-ring-gai centres,*
- (b) to establish a transition in scale between the centres and the adjoining lower density residential and open space zones to protect local amenity,*
- (c) to enable development with a built form that is compatible with the size of the land to be developed.*

In response

- The proposed building is ameliorated by generous and significant setbacks from key site boundaries again reinforcing the view that the design is appropriate, relative in scale to the area of the allotment. In this way the proposal will protect local amenity and provide a transition in scale between the centres and the nearby lower density residential zone.
- The proposal responds to the opportunities and constraints of the land and is compatible with the current and anticipated future town centre character of development within the local context.
- There are significant landscaped areas around the building that are sufficient to provide appropriate deep planting that will, overtime, support significant trees that will assist in enhancing the landscaped setting of the building.
- There are no significant or unreasonable amenity impacts (for example on overshadowing, privacy, noise, view loss etc.) that are attributable to the proposed height exceedance. In this way the proposed design is appropriate, relative in scale to the area of the allotment, and does not result in what could be concluded to be an over-development of the site.
- The proposal complies with other development controls that represent key determinants of the site's potential development intensity being, Floor Space Ratio, Setbacks, Landscaped open space, deep soil area, and car parking.
- Consistent with the provisions of the development standard the proposal results in a development that:
 - Is compatible to the nature scale and built form character, both established and proposed, of residential developments within the context of the site.
 - provides a sufficient amount and quality of landscaping to meet the needs of future residents and also provide an appropriate amenity to the streetscape and surrounding land
 - provides a sufficient amount of separation between buildings for privacy
 - provides a sufficient amount of separation between buildings for solar access with generous setbacks to all adjoining properties

These characteristics are further responded to in Section 7 in relation to the proposal's performance against the DCP controls.

- The site is suitable in accommodating the proposed redevelopment given that:

6 Exception to a Development Standard

6.1 4.6 Exception to Clause 4.3 – Height of buildings

Clause 4.6 of Ku-ring-gai LEP (**Local Centres**) 2012 provides a mechanism to allow an exception to a development standard.

As previously identified, the proposal contravenes *Clause 4.3 Height of Buildings* development standard and an exception is sought.

As required by clause 4.6 (3) the following is a *written request* for the consent authority's consideration.

The matters in support of the proposed exception are demonstrated by the following characteristics of the proposal and circumstances of the case.

In accordance with 4.6 (3)(a) it can be demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case given that:

- The extent of the exception to the height of buildings standard is relatively small and isolated to the central portion of the proposed development footprint reducing its visibility from the street and properties to the north and east. Being central within the development footprint, the exception won't be prominent from Dumaresq Street. The proposed Dumaresq Street building façade presents as a 5 storeys and is well within the maximum building height limit.
- The overall form of the building has been designed to reduce the bulk and scale of the structure as viewed from Dumaresq Street, the proposed new road and neighbouring residential properties. In particular, from the proposed new road, the length of the building has been articulated with deep recesses at the foyers to 'crease' the appearance of three smaller built forms.
- The proposed structure has a maximum height of 6 storeys but steps in response to the sloping character of the land displaying a graduation of heights from 5 to 6 storeys. The building steps down the slope of the site towards the rear and the upper levels are set back to reduce their visual prominence, apparent height and shading impact.
- The building design is of high architectural quality and uses modulation, articulation and varied materials to effectively minimise its scale and apparent height in order to meet the objectives of the zone and the Height of Buildings development standard.
- The roof planes of the proposed development have been kept low in order to minimise the development's height and roof envelope whilst also achieving a contemporary building design compatible with the transforming character of this location.

In accordance with 4.6 (3)(b) there are sufficient environmental planning grounds to justify contravening the development standard given that:

- The site topography slopes in two directions:
 - from the Dumaresq Street level down to the southern rear boundary of the site; and
 - across the site from the east down to the western edge where the proposed new road will be developed

These topographical characteristics present an environmental constraint that results in strict compliance with the height of buildings development standard being unable to be achieved when seeking to develop the site in accordance with the zone objectives, and meeting the community infrastructure improvements (new road) sought for the town centre.

- It is within a town centre that is identified by council to support the area's growth in housing, jobs and community infrastructure.
- It is part of an area that is transforming from lower to higher density. In this way the proposal is compatible with the current and likely future character of development within the local context.
- Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its height offensive, jarring or unsympathetic in a streetscape context nor the built form characteristics of development within the sites visual catchment.
- Accordingly it can be reasonably concluded that the proposal is compatible with its surroundings when viewed from the public domain and surrounding residential properties.
- Having regard to the matter of Veloshin v Randwick City Council [2007] NSWLEC 428 this is not a case where the difference between compliance and non-compliance is the difference between good and bad design.
- For these reasons the proposed development is assessed as satisfying the objectives of the development standard.

The proposed development will be in the public interest because it is consistent with the objectives for development within the R4 High Density Residential zone in which the development is proposed to be carried out. These are stated as follows:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide for high density residential housing close to public transport, services and employment opportunities.*

In response, the proposal is consistent with the zone objectives in that:

- The proposed housing form is responsive to the mixed residential housing character that prevails within the context of the site. As such the proposed development is compatible with the scale and character of the surrounding residential development
- Will provide an appropriate mix of apartment housing.
- Will provide additional smaller housing within a council area that has a high proportion of detached housing.
- Will provide high density residential housing close to public transport, services and employment opportunities that exist within the Gordon town centre.

Further with regards to the Secretary's considerations the proposed variation of the development standard:

- Does not raise any matter of significance for State or regional environmental planning consistent with 4.6 (5)(a).
- The public benefit is not served by maintaining the development standard consistent with 4.6 (5)(b).

In conclusion, Council can be satisfied that:

- This written request has adequately addressed the matters required to be demonstrated by 4.6 (3)
- The exception is appropriate in this instance.