



Clause 4.6 Objection to Development Standard (Height of Building)

Redevelopment of the Gladesville RSL Youth Centre

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OVERVIEW

This report forms a variation request to the applicable height of building standard contained within the *Ryde Local Environmental Plan 2014* (RLEP2014). It has been prepared with regard to the following considerations:

- Clause 4.6 of RLEP;
- The objectives of Clause 4.3, being the development standard to which a variation is sought.
- Relevant case law specifically the considerations for assessing development standards including *Wehbe v. Pittwater Council* [2007] NSWLEC 827 and *Four2Five Pty Ltd V Ashfield Council* [2015] NSW LEC.
- “*Varying Development Standards: A Guide*” published by the Department of Planning and Infrastructure (August 2011).

The variation request provides an overview of the development standard and the extent of variation proposed to the standard. The variation is then assessed in accordance with Clause 4.6 of the RLEP2014 and the relevant principles of the court rulings detailed above.

A variation to the strict application of the Height of Building development standard is considered appropriate for the proposed development as:

- The proposed height noncompliance related to a minor noncompliance of 550mm. The noncompliance is of a direct result of the unique construction requirements of the proposed youth centre facilities at the core of the proposed development. The significant public benefit associated with the facilities significantly outweighs any minor noncompliance with the height of building development standard;
- The objectives of the RLEP2014 Height of Building control are achieved notwithstanding the technical non-compliance;
- The objectives of the RLEP2014 B4 Mixed Use Zone are achieved notwithstanding the technical non-compliance;
- There are sufficient environmental planning grounds to support the proposed variation.
- The design of the proposal overcomes anticipated impacts which are associated with the additional building height proposed;
- The public benefit of maintaining the development standard is not eroded by the proposal.

THE DEVELOPMENT STANDARD

Clause 4.3(2) of RLEP2014 specifies the following:

“(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.”

Building height is defined by RLEP2014 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 relevant Height of Buildings Map nominates a height limit of 33m for the site. When measured in accordance with the LEP definition of building height, the maximum building height of the building will present a departure from the building height standard of 550mm to the top of the lift over run structure, presenting a maximum building height of 33.55m to the top of the lift over run.

RYDE LOCAL ENVIRONMENTAL PLAN 2014 CLAUSE 4.6

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

- 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 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.*
- 4 *Development 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.*
- 5 *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.*

Accordingly, justification is set out below for the departure from the height control applicable under the RLEP2014. The purpose of the information provided is to demonstrate that strict compliance with the height standard under the RLEP2014 is unreasonable or unnecessary in the circumstances of this particular case. It also provides justification for the departure from the height controls specified in the RLEP2014.

CLAUSE 4.6 ASSESSMENT

This section assesses the proposed variation to consider whether compliance with the height standard can be considered unreasonable or unnecessary in this particular case, and whether there are sufficient environmental planning grounds to justify contravening the development standard.

The assessment is structured in accordance with the three matters for consideration identified in the Wehbe Land and Environment Court judgment:

1. *"The applicant must satisfy the consent authority that "the objection is well founded," and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
2. *The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979; and*
3. *It is also important to consider:*
 - a. *Whether non-compliance with the development standard raises any matter of significance for State or regional planning; and*
 - b. *The public benefit of maintain the planning controls adopted by the environmental planning instrument."*

Consideration has also been given to the findings of the matter of Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC, initially heard by Commissioner Pearson and upheld on appeal by Justice Pain, it was

found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

- *Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;*
- *That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity); and*
- *That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone which applies to site.*

An assessment of the proposed Height of Building variation against the provisions of Clause 4.6 and the relevant case laws is provided in the following sections.

COMPLIANCE IS UNREASONABLE OR UNNECESSARY

In the *Wehbe* judgement Preston CJ set out five ways in which a variation to a development standard can be supported as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *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. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

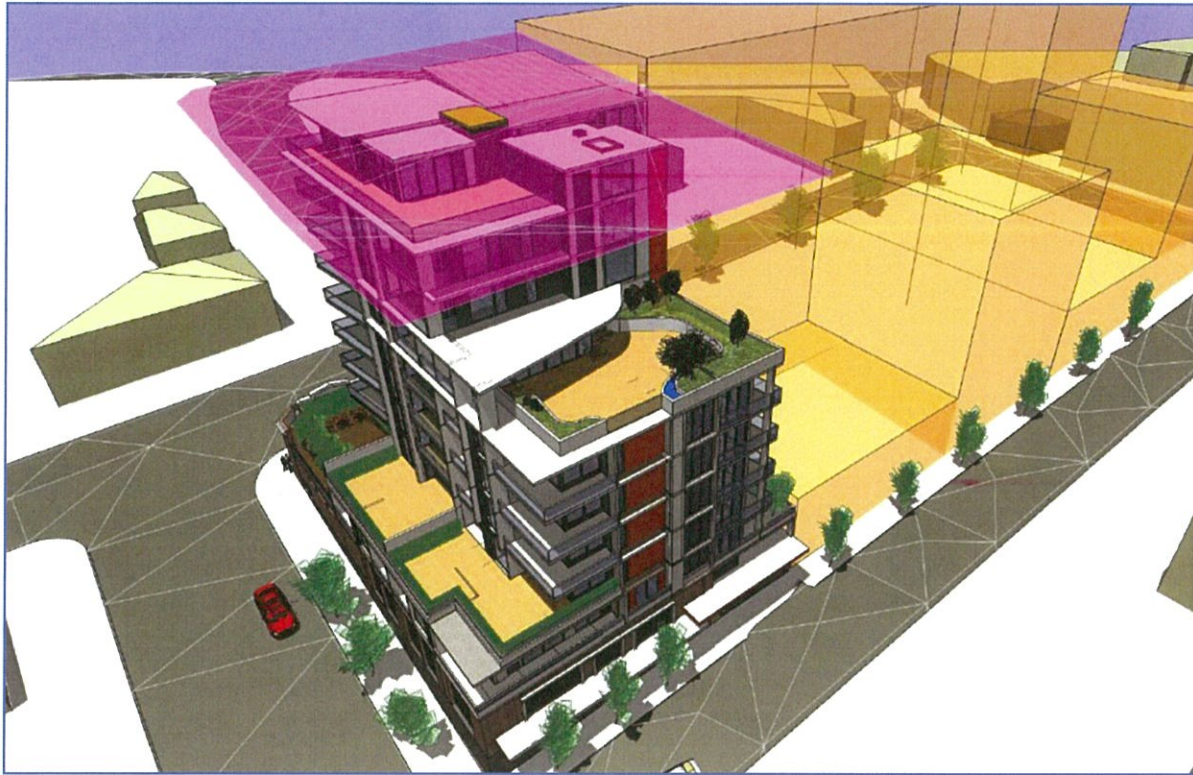
Consideration (1) which requires a demonstration that the objectives of the height standard can be achieved notwithstanding noncompliance is relevant in this case. The compliance of the proposed development with the objectives of the height standard contained in Clause 4.3 of the RLEP2014 is demonstrated below.

The objectives of Clause 4.3 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.*

The proposed height exceedance is caused by a lift over run structure located towards the centre of the building footprint. These structures will not cast any additional shadow than that cast by the building itself. Further, these non-habitable structures will cause no privacy or visual impact issues to neighbouring properties given their location on the roof of the building well above the sight lines from these neighbouring properties. The height non compliance is shown in **Figure 1** on the following page.

FIGURE 1 – PROPOSED HEIGHT NON COMPLIANCE (SOURCE ARCHITECTS CONTEMPO 2016)



No reduction in solar access to the public domain will result from the lift over run structures. All shadows cast by these elements will fall within the shadow lines cast by the proposed building. This has been established in the shadow assessment to not materially impact nearby open space areas south of the site. The overshadowing of the site is shown in **Figure 1** below.

FIGURE 2 – OVERSHADOWING DIAGRAM (SOURCE ARCHITECTS CONTEMPO 2016)



PICTURE 1 –JUNE 21 9AM



PICTURE 2 –JUNE 21 12AM



PICTURE 3 –JUNE 21 3PM

The proposed structures will not be perceptible from the public domain and as such will have no impact on the building's visual relationship with site topography.

Despite the technical departure from the relevant height standard the proposed development remains consistent with the objectives of Clause 4.3 of RLEP2014 and therefore it is demonstrated that strict compliance with the height standard in this instance is unreasonable and unnecessary.

ADEQUATE GROUNDS FOR CONTRAVENING THE DEVELOPMENT STANDARD

Clause 4.6 requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard. In this instance, there are strong planning grounds in support of the height variation.

The overall vision for the Gladesville Town Centre is to include major retail, commercial and residential developments on key sites. The subject site is considered to be a key site in the context of the Town Centre precinct. The rigid enforcement of the height of building development standard will preclude the development from providing an appropriate level of residential accommodation which is envisaged for the site likely inhibiting the potential for the site to adequately contribute to a vibrant and growing town centre.

The height noncompliance is a direct consequence of the unique construction requirements associated with providing a safe facility for the Gladesville RSL Youth Centre. These facilities themselves must have a height clearance of greater than 6m to ensure that all gymnastic competition can be undertaken safely. The floor plate of the centre must also be free of weight bearing columns and the like and as such a thicker than usual transfer slab between levels must be provided. These design requirements are particular to the circumstances of the proposed development and will not be a matter for consideration for other developments within the locality.

The lift over run will cause no impact to neighbouring properties and indeed will be imperceptible from the public domain due to their height above ground level and location towards the centre of the building footprint.

For these reasons it is considered that there are adequate grounds to support the proposed variation to the height standard to accommodate the lift overrun.

SIGNIFICANCE FOR STATE OR REGIONAL PLANNING

The non-compliance will not raise any matter of State or Regional Significance

THE PUBLIC INTEREST

Clause 4.6 requires that the consent authority consider the public interest in determining whether to support the variation.

The Gladesville RSL Youth Centre is a largely unique land use in the context of the Ryde LGA which provides low cost dance, gymnastics and karate classes to children and young adults

It is considered that the proposed height increase will not be contrary to the public interest for reasons stated above. There will be no impact resulting to neighbouring buildings resulting from the proposed lift over run. They will be imperceptible from the public domain and will not reduce privacy, increase overshadowing or present visual impact to surrounding properties.

SUMMARY

In view of the development context strict compliance with Clause 4.3 of the RLEP2014 is considered to be unreasonable in this case and the proposed development is justified on the following environmental planning grounds as follows:

- The proposal is considered appropriate and consistent with the objectives and intent of Clause 4.3 which is to
 - 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.*

The proposed development achieves these outcomes. Strict application of the standard is therefore considered unreasonable and unnecessary.

- The expansion to the youth centre proposed by the application which has caused the proposed noncompliance provides a significant public benefit which is unique to the subject site;
- The proposed variation will not result in the loss of views, nor will it result in adverse amenity impacts.
- The proposed development, contributes to achieving the objects of the EP&A Act which includes the promotion and co-ordination of the orderly and economic use and development of land.
- The proposed non-compliance will not undermine the public benefit and legitimacy of the standard and no matters of State or regional planning would be affected by the proposed variation.

For these reasons, the proposed 550mm variation to the height standard should be supported as part of the assessment of this DA.

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