

Applicant's Clause 4.6 request

Appendix B – Clause 4.6 Submission

Justification pursuant to Clause 4.6 of SEPP (Sydney Region Growth Centres) 2006 – Building Height Development Standard

Nature of variation request is as follows:-

Clause 4.3 of Appendix 4 to SEPP (Sydney Region Growth Centres) 2006 relates to the maximum height of buildings and requires that the proposed development does not exceed 16m above ground level as identified on the SEPP Building Height Maps.

The proposed building has been designed to comply with the height standard however, a departure from the standard is sought in relation to the lift overrun and minor plant room that exceeds the 16 metre limit.

The maximum that the development exceeds this height restriction is by approximately 2.6 metres via a portion of roof and the lift overrun.

In general terms it is contended that the non-compliance is an acceptable non-compliance in this particular instance and ensures the land is suitably developed to a scale that reflects the development controls for this locality

Building height is defined as follows:

“Means the vertical distance between the ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flag poles, chimneys, flews and the like.”

The sections which form part of the architectural plans accompanying this application indicate that the proposal does not comply with the 16 metre height limit at the lower side of the site by 2.6m at its worse position. The majority of non-compliance are less than 1000mm and would not be discernible from the street.

There are three main factors which have led to exceed in the height limit at these points, being:

- Building design concept
- Articulation of the built - form; and
- The natural topography of the site

The departure from the maximum height limit is minor both numerically and the impact associated with the Project. The departure will not materially alter the appearance of the building and would not be discernible to the casual observer at street level.

The height control is a “development standard” to which exceptions can be granted pursuant to Clause 4.6 of the LEP.

The objectives and provisions of Clause 4.6 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.*

- (2) *Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this Policy 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.*
- (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.*
- (4) *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.*
- (6) *Consent must not be granted under this clause for a subdivision of land in Zone E2 if:*

 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow consent to be granted for development that would contravene any of the following:*

 - (a) *a development standard for complying development,*

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

The development standards in Clause 4.3 are not expressly excluded from the operation of Clause 4.6. Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to Council by virtue of sub clause 4.6(2) and the limitations to that discretion contained in sub clauses (3) to (8).

This submission will address the requirements of sub clauses 4.6 (3) & (4) in order to demonstrate that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a).

In this regard, it is noted that the extent of discretion afforded by sub clause 4.6(2) is not numerically limited.

Objective 1(b) of Clause 4.6 is addressed later in the submission.

The objectives and relevant provisions of Clause 4.3 are as follows:-

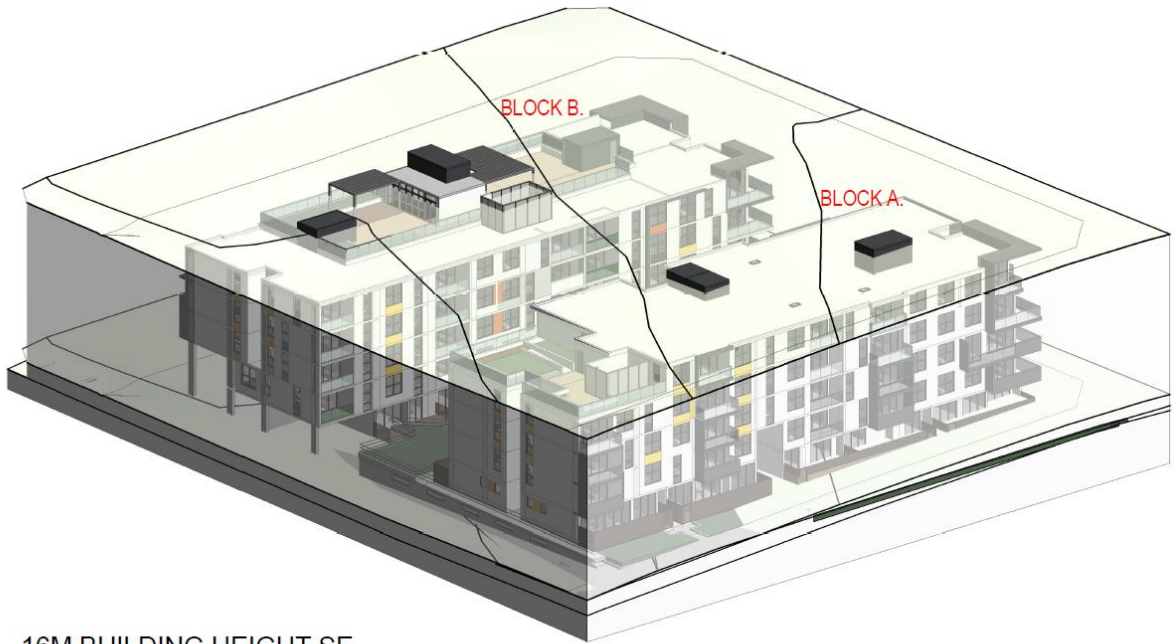
- (a) to establish the maximum height of buildings for development on land within the Alex Avenue and Riverstone Precincts,*
- (b) to protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
- (c) to facilitate higher density development in and around 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.*

As previously noted, the height of buildings map, nominates a maximum building height of 16m at the site measured from existing ground level. It is hereby requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit the building height proposed as follows for each Building.

This departure is justified on the basis that the proposed development considers the street character and low density development character along Grima Street and responds by providing a transitional zone along Grima Street by breaking the proposed building mass with a reduced building height along Grima Street.

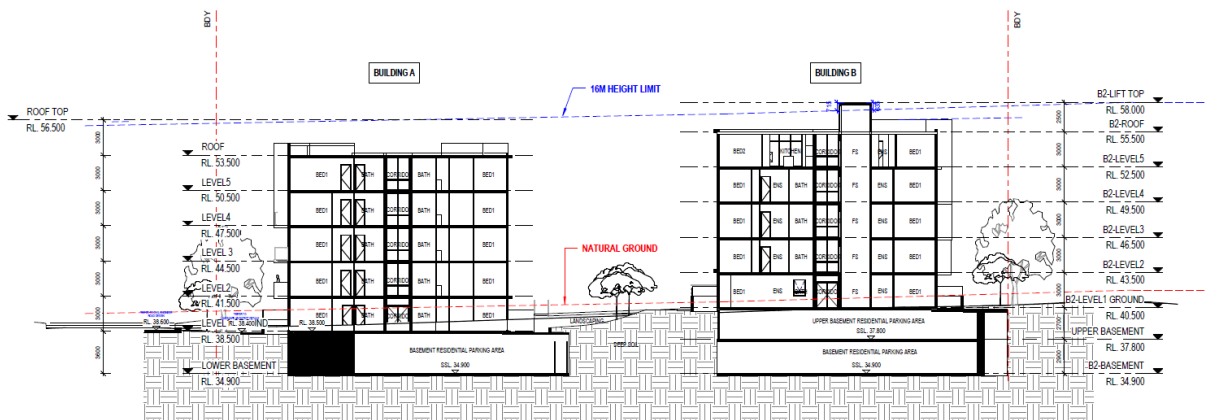
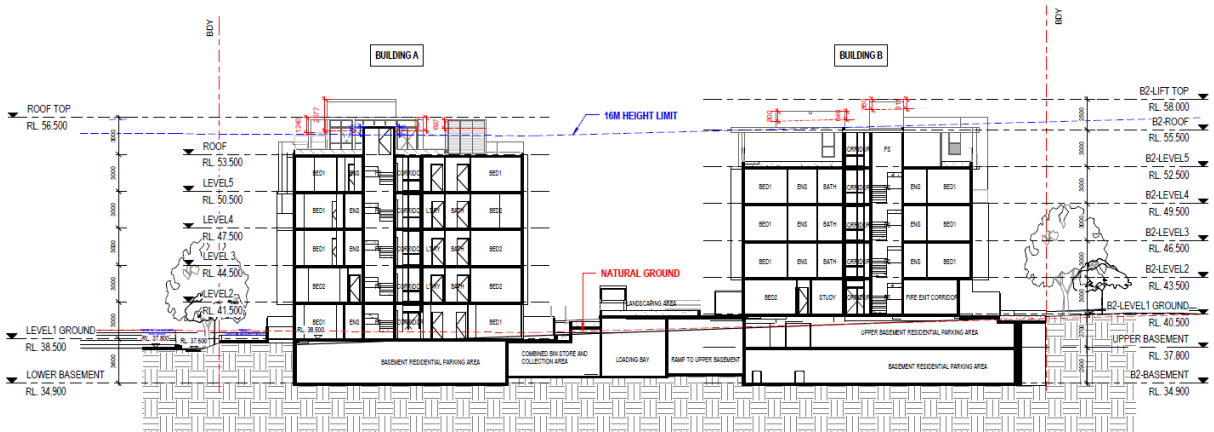
The increased height along Road No. 7 does not adversely affect well-being necessities like privacy or solar access available to future occupants and adjoining properties while avoiding unacceptable bulk addition to the buildings.

The following diagrams extracted from the Architectural drawings depict the extent of non-compliance relating to the height of 16metres for each Building.



16M BUILDING HEIGHT SE

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The Lift Overrun, Stairs and Plant rooms of block A are 2300-4500mm above the roof level. The Lift Overruns and Plant rooms of block B are 1500mm above the roof level and Stairs exceed the roof level by 2500mm. The respective buildings are largely below the height limit or marginally above as depicted above. No habitable floor or room is located above the height limit.

Objective (b) relates in part to the impacts of overshadowing and loss of sunlight to sensitive private and public spaces.

As detailed in this Statement and specifically the shadow diagrams contained in the Architectural submission for each of the two Buildings proposed, the impacts of overshadowing from the proposals are entirely appropriate and could be reasonably expected as a result of the prevailing planning controls.

The additional height of the lift overrun and plant room does not add to the shadow cast. The extent of additional shadowing resulting from the departure from the standard is minor and largely affects the roads that adjoin each site to the east.

To require compliance with the height limit in this instance would have no material benefit in terms of overshadowing and solar access as any "offending" additional overshadowing arising from the "plant height" is largely contained in the shadow cast by the proposed roof of each building and affects predominately "public infrastructure" lands.

Objective (b) also relates to minimising privacy impacts. The proposal achieves appropriate levels of privacy to adjoining properties and the additional height sought does not add to any future privacy impacts as the area is largely "non-habitable" and is restricted to "Lift and plant only".

Objective (b) is inherently satisfied by the compliance of the subject development, with the 16m height development standard.

The deviation from the height standard has been granted by Council on numerous and multiple Development Approvals in relation to parapet, lift overruns and plant rooms, as is the case in this application.

Objective (c) of the height controls is 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. The minor deviation in the height standard to recognise plant and lift overruns does not obscure the achievement of this objective.

Objective (d) intends to provide for a range of building heights in appropriate locations that provide a high quality urban form. The minor variation in building height and the articulation proposed in the roof profiles across all two buildings assist greatly in delivering a superior "urban form".

The proposal is therefore consistent with these primary objectives.

Having regard to Clause 4.6 (3) (b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard relating to height, as discussed earlier there is an absence of significant impacts of the proposed non-compliance on the adjoining properties or the character of the development within the locality.

On planning grounds and in order to be satisfied that the proposal fulfills objective 1(b) of Clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “a better outcome for and from development”, it is considered that the current proposal provides an appropriate scale and form of development particularly in the absence of any additional adverse impacts.

The departure of the height limit with respect to Building A has significant planning merit in that the point encroachment above the height limit are specifically the result of providing roof top amenities and communal areas that will deliver resident interaction and amenity.

Having regard to all the above and with specific reference to Wehbe V Pittwater Council (2007) NSW LEC 827, it is our opinion that compliance with the maximum building height development standard is unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives.

In summary

- The lift overruns and Roof feature will not be discernible at street level proximate to the site.
- Only part of these building elements exceed the maximum building height and as such, the exceedances do not facilitate additional floor space.
- The large majority of the development sits lower than the maximum building height with only minor elements exceeding the maximum building height.
- The lift overruns, stair overruns and roof element/garden features are integrated within the design of the development.
- The lift overruns and roof element/garden features provide access and a function for residents using the roof top common open space area.
- With the roof top common open space areas to be provided, the minimum quantities under the Growth Centres DCP will be exceeded. The additional facilities for residents therefore have a public benefit as they could reduce demand on off-site public open space.
- The removal of the lift overruns and roof element/garden features exceedance is not considered to outweigh the benefits of them being retained.
- The overall building height is not considered to be inconsistent with the desired future character and building forms anticipated within the surrounding area.

As such there are sufficient environmental planning grounds to justify an exception to the development standard, on this basis the requirements of Clause 4.6(3) are satisfied.