

consistent with current day architectural practices and design guidelines for medium/high density residential developments;

- The modified development, despite the non-compliance with the building height still remains consistent with the R3 zone objectives by providing a variety of housing types within a medium density residential environment integrated with suitable retail uses and (future) public transport facilities;
- The maximum breach represents a modest 7.6% variation which contextually, is considered to be a minor non-compliance and consistent with recent approvals for similar scale developments;
- The variations do not seek an increase in residential density and fully complies with the statutory 1.75:1 FSR;
- A development, the scale of what is proposed is considered appropriate for a site that is 2.035 hectares in area and is opposite commercial uses, including the Mean Fiddler Hotel and Rouse Hill Local Centre, and approximately 550 metres from the Rouse Hill Regional Centre and the future Rouse Hill train station.
- Similar variations to the development standard have been previously considered in the Growth Centre e.g. JRPP-14-91 approved in December 2014 for the construction of 4 x 4 storey residential flat buildings and JRPP-14-1593 approved in July 2015 for the construction of 5 x 4 storey residential flat buildings *[Note: this particular approval was for the immediately adjoining property at 828 Windsor Road, Rouse Hill]*
- The architectural style and scale of what is now being proposed, combined with appropriate landscape treatment is consistent with the character of residential development anticipated in the locality will no significant adverse impacts upon the natural or built environments.
- Overall, the proposal has environmental planning merit as demonstrated both in the original application and with the JRPP's approval.
- The contravention of the height standard does not impact on visual privacy of adjacent properties.
- The contravention of the height standard does not raise any matter of State or Regional planning significance; and
- The development is located on a greenfield site;

In summary, the NSW Land and Environment Court has determined that the most commonly invoked way to establish that compliance with a development standard is unreasonable or unnecessary is to determine if the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Based on the above mentioned arguments, it is my opinion that full compliance with the 12m height control is unreasonable and the objectives of the building height standard have been achieved by a development that will continue to facilitate higher density development in close proximity to planned commercial centres and public transport, without adversely creating any visual impact or loss of amenity to adjoining developments.

As previously stated, the adjoining property at 828 Windsor Road received development approval for similar height variations in July 2015. There are no recognisable differences between what is now being proposed for the subject site and that which was approved next door.

#### **Clause 4.6 (4)**

The consent authority must not grant development consent that contravenes the standard unless it is satisfied that the applicant's written request has adequately addressed matters in subclause (3) and the proposed development is in the public interest.

**Response:**

It is submitted that sufficient written justification has been provided under subclause (3) justifying that the request for variation is minor and there is no public benefit to be gained by strictly enforcing the height control for the reasons discussed above. The modified development has been assessed against the objectives of the Height of Buildings development standard and the objectives of the R3 – *Medium Density Residential* and SP2 – *Infrastructure – Classified Road* zones.

**Clause 4.6 (5)**

The Director-General must consider:

- a) *whether contravention of the standard raises any matters of significance for State or regional planning, and*
- b) *public benefit of maintaining the development standard, and*
- c) *other matters required to be taken into consideration.*

**Response:**

The proposed breach does not give rise to any matters of State or Regional planning that would be considered contradicting or negative.

**Clause 4.6 (6)**

This subclause does not apply to the proposed development.

**Clause 4.6 (7)**

Upon determining a development application, the consent authority must keep a record of matters in the written request referred to in subclause (3)

**Response:**

This provision is noted.

**Clause 4.6 (8)**

This clause does not allow development consent to be granted that contravenes:

- a) *a development standard for complying development,*
- b) *BASIX commitment*
- c) *Clause 5.4*

**Response**

This subclause does not apply to the proposed development.

## **4.2 Likely Impacts of the Modifications**

The following section addresses the likely impacts associated with the proposed modifications. For the purpose of completeness, these comments should be read in conjunction with the original consultants reports approved with the DA.

### **4.2.1 SEPP 65**

Submitted under separate cover is a SEPP 65 check list prepared by Group GSA addressing all relevant heads of consideration and demonstrates the modified design for Stages 1 and 6 are fully compliance.

### **4.2.2 Access**

*Accessibility Solutions (NSW) Pty Ltd* has prepared a supplementary accessibility report pertaining to the modifications of Stages 1 and 6 and concludes that: