

Amended Clause 4.6 Request

99-101 Schofields Road Rouse Hill Statement of Environmental Effects

Prepared for FAL Construction Group Pty Ltd
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4.6 CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD

4.6.1 Introduction and Background

This request has been prepared in support of a development application for 6 residential apartment buildings comprising 520 residential apartments to be developed on land at 99 and 101 Schofields Road, Rouse Hill.

Clause 4.3 (Schedule 4 - Area 20 Precinct Plan) of the Growth Centres SEPP provides that the height of a building (HOB) on any land is not to exceed the maximum height shown for the land on the height of buildings map.

The subject land has a maximum height of 12m as shown on the map. The proposed development contains building heights that exceed the HOB standard to minor degrees to accommodate the sloping site and basement requirements as well as lift overruns.

Accordingly this objection seeks to vary the development standard contained in Clause 4.3 in accordance with Clause 4.6 Exceptions to Development Standards of the SEPP. Clause 4.6(2) provides that *"development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument"*.

4.6.2 Aims and Objectives Of Clause 4.6

Clause 4.6 Exceptions to Development Standards of the Growth Centres SEPP aims:

- (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.*

4.6.3 Requirements for Applications

Clause 4.6 provides that

- (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.*

Case law provides a number of questions when considering an exception to a development standards as follows:-

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?

- Is compliance with the development standard consistent with the aims of Clause 4.6?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?
- Are there sufficient environmental planning grounds to justify contravening the development standard and therefore, is the objection well founded?"

This request addresses these matters.

4.6.4 Relevant Standard

The standard relating to maximum height which this Development Standard Objection addresses is imposed by Clause 4.3 of the Growth Centres SEPP, as follows:

4.3 Height of buildings

- (1) *The objectives of this clause are as follows:*
 - (a) *to establish the maximum height of buildings on land within the Area 20 Precinct,*
 - (b) *to minimise visual impact and 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 commercial centres and major transport routes.*
- (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.*

In this regard it is noted that SEPP contains a definition of "building height " as follows:

building height (or height of building) means the vertical distance between ground level (existing) at any point to 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.

In accordance with this definition, the maximum height of the proposed buildings ranges from approximately 11.4m up to 12.9m as measured at building corners as shown on the elevations and sections within architecture plan set and set out in the table below.

The maximum 12m HOB control is exceeded on some building corners ranging from 50mm to 900mm (0 to 8% variance) at an average of less than 300mm or 3%. Some building corners are below the HOB control by up to 600mm and if all the building corner heights are averaged, the exceedance is limited to an average of 150 mm or 1.2% variance.

The following table provides the height of building differential between the proposal and HOB control for each corner of the six buildings A to F.

Building		Height parapet above existing ground level	Aprox difference to 12m HOB control	% Variance
Building A	NE cnr	69.15	- 300 mm	-3%
	SE cnr	69.65	200 mm	2%
	NW cnr	68.15	400 mm	3%
	SW cnr	68.15	600 mm	5%
Building B	NE cnr	69.65	200 mm	2%
	SE cnr	69.65	400 mm	3%
	NW cnr	68.15	900 mm	8%
	SW cnr	68.15	- 300 mm	-3%
Building C	NE cnr	69.65	300 mm	3%
	SE cnr	70.15	- 300 mm	-3%
	NW cnr	66.15	- 200 mm	-2%
	SW cnr	70.15	50 mm	0%
Building D	NE cnr	66.95	- 400 mm	-3%
	SE cnr	66.95	600 mm	5%
	NW cnr	66.15	600 mm	5%
	SW cnr	66.15	300 mm	3%
Building E	NE cnr	66.15	- 300 mm	-3%
	SE cnr		- 50 mm	0%
	NW cnr	66.15	200 mm	2%
	SW cnr	66.15	0	0%
Building F	NE cnr	67.85	900 mm	8%
	SE cnr	69.65	- 600 mm	-5%
	NW cnr	67.15	600 mm	5%
	SW cnr	68.50	- 300 mm	-3%

Given the extent of slope on the site, building height exceedance has been limited by stepping buildings mid-width as allowed by core placement and accessibility needs.

In these circumstances, the height of building averages above and below the HOB control generally within the above parameters but which are generally not viewable from the public domain or most communal open spaces. Additional stepping in the buildings would result in the introduction of internal corridor stairs with an unnecessary adverse impact on apartment accessibility. (Refer to elevations and sections for details.)

In addition, lift overruns as shown on the Site and Roof Plan DA04 will generally exceed the height control by variable minor amounts. The overruns are 950 mm high above the roof level and equates to 600 to 800 mm above adjacent parapet levels depending on the design style of the building in question.

The lift overruns are generally contained within central areas of the roof levels. As a consequence, they will not be visible from the immediate surrounds of the buildings when viewed from public and private domains including most apartments. Further, they will likely to be generally indistinguishable from medium and long range views if visible at all given the future height of mature street trees.

Accordingly, the lift overruns are unlikely to have any adverse visual or amenity impacts and will not increase overshadowing of apartments or adjoining public and private domains.

4.6.5 Grounds for Request

Pursuant to the provisions of clause 4.6, the applicant request a contravention to the development standard which limits the maximum building height on the subject land to 12m under Clause 4.3 of the Growth Centres SEPP.

Is the planning control a development standard?

The planning control in Clause 4.3 relating to maximum building height is a development standard under the definition within the Environmental Planning and Assessment Act 1979 defines development standards, specifically as including height, as follow (*EP&A Act, Part 1 Section 4, Definitions*)

What is the purpose/object of the standard?

The objectives of the development standard are as follows:

- (a) *to establish the maximum height of buildings on land within the Area 20 Precinct,*
- (b) *to minimise visual impact and 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 commercial centres and major transport routes.*

The proposed variances to the height control are consistent with the objectives of the development standard as the proposed development will be consistent with the visual character of the surrounding area and will not will result in any adverse impact on the amenity of adjoining development (in terms of solar access to buildings and open space).

Further, the variances requested are minor in nature while the proposed development will facilitate higher density development in location immediately adjacent to a public transport corridor and within walking distance of the Rouse Hill and other centres.

Is compliance with the development standard consistent with the requirements of Clause 4.6?

The aims of Clause 4.6 are:

- (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.*

When the development is tested against the underlying objectives of the standard, compliance would be inconsistent with the aims of the policy because the proposed

height is appropriate, acceptable and consistent with the characteristics of the site and the expectation of a development outcome limited to 4 storeys on sloping land.

The proposed exceedances will not result in any adverse impacts and will provide for a high quality development with a density below that anticipated in the planning controls and appropriate in a highly accessible location.

The proposed development is therefore a case where flexibility in the application of the development standard is justified in order to address practical site considerations while meeting the planning objectives of the controls.

Is Compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?

Strict compliance with Clause 4(3) of the Growth Centres SEPP is considered unreasonable and unnecessary in the circumstances of the case especially as the buildings have been set as close to existing and finished ground levels as possible given its sloping nature and limitation to four storeys.

Strict adherence to the height control would result in lower buildings where some apartments would become subterranean in nature while excessive level changes within buildings would result in the need for stairs within corridors and a resultant reduction in apartment accessibility.

The proposed development is consistent with the objectives of the development standard as set out above.

The proposal is also consistent with the future character of the area through suitably scaled buildings to adjacent public and private domains. It will also provide a high quality development that achieves a reasonable density in a highly accessible location but well below that permitted.

Having regard to the consequences of strict compliance and the proposed development's consistency with the objectives of the building height standard as well as the particular circumstances of the case, it is considered that strict compliance with the this development standard as proposed would be unnecessary and unreasonable in the circumstances.

Is the objection well founded?

The objection to Clause 4(3) is well founded for the following reasons:-

- The development is appropriate in this location and provides for an appropriate 4 storey development in an area which is highly accessible and earmarked for a medium density development.
- Strict compliance with the height control in all circumstances on a sloping site would result in apartment elements below finished ground surfaces, reduced apartment accessibility or under scaled buildings to adjacent public and private domains;

- The proposed development is consistent with the underlying objectives of the maximum height of building standard.
- The non-compliance does not result in any significant adverse visual or amenity impacts on the surrounding area in general, internally within the development site or on any adjacent residential properties.
- The scale of the proposal, notwithstanding the non-compliance, is compatible with the future character of surrounding development and the intent for the area.

4.6.6 Conclusion

Having regard to the above, it is concluded that the proposed non-compliances with the height of building standard does not undermine or frustrate its underlying objectives. The non-compliance does not give rise to any significant adverse environmental impacts but provides for an enhanced development outcome. Compliance with the standard would result in adverse consequences for apartment amenity and accessibility.

It is therefore considered that strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the case and that the requested exception to the standard should be supported by the consent authority.