

Detailed information about proposal and Clause 4.6 variation request

- In summary, the 140 residential units are proposed in the 2 new buildings as follows:

Block	A	B	C	D	Total
1 bed	4	4	-	-	8
2 bed	32	21	44	32	129
3 bed	-	3	-	-	3
Total	36	28	44	32	140

- The maximum building height of the development is 14.8 m. The development seeks a variation of 2.8 m over only limited portions of the buildings above the maximum height limit of 12 m under the Growth Centres SEPP. The maximum variation sought is equivalent to a 23.3% variation to the development control for roof parapets, plant, equipment and roof top pergolas/planter boxes. The applicant has lodged a Clause 4.6 variation to the development standard for the consideration of the consent authority.
- The proposal has an FSR of 1.43:1, which is compliant with the maximum FSR of 1.75:1 permissible on the site under the Growth Centres SEPP.
- The proposal provides for 6 m setbacks to public roads and articulation is provided in some areas encroaching into the 6 m setback, which is considered acceptable. There is a setback of 6 m to the adjoining R3 zoned land along the southern boundary. In the south-east corner the feature balconies encroach 1 m into the 6 m setback, which is considered acceptable.
- Waste collection will occur within the basement within the site, at the end of the common driveway between Block B and Block C.
- The DA provides for one level of basement car parking for a total of 168 car parking spaces. The basement provides:
 - 140 resident car parking spaces, of which 12 are accessible spaces
 - 28 visitor car parking spaces
 - 50 bicycle spaces.

Each basement car space has been designed so that vehicles can enter and exit in a forward direction. Lifts will provide direct access from the basement carpark area to the residential levels. All parking is secure within the basement and a roller shutter and card-key system will be conditioned to be installed at the entry/exit points of the basement carpark. Visitor parking will be conditioned to be centrally located close to the lifts.

- The DA proposes 1 new vehicle access point to proposed new Road No. 2 on the southern side of the development. This road will have to be constructed and dedicated to Council prior to the issue of any Occupation Certificate.
- The development provides for a central communal open space area at ground level for Building A and for Building B. The communal open space is also located on the roof of Buildings B and C and at ground level along the eastern boundary facing Windsor Road. These open space areas will benefit all units. The communal open space has a

total area of 1,814 sqm. The common landscaped areas will be embellished with seating, BBQ areas, children's playgrounds, pathways, pergolas and appropriate plantings.

9. The proposed development is well articulated with a flat roof form, and is well balanced with articulated windows, vertical grouping of balconies and building elements at corners providing architectural features to the development. Balconies incorporate feature elements used on the façade treatment, with a mix of concrete and aluminium framed glass balustrades. The development proposes a variety of external colours and finishes, including face brick, highlighted with painted rendered finishes, wood-like aluminium cladding and aluminium framed windows. Concrete feature elements in brown, dark grey and off white are randomly dispersed through different elements of the façade to break up the repetition of the balconies. Powdercoated aluminium louvered screens in timber look/brown are provided to balconies to address amenity concerns in relation to privacy.
10. A Design Verification Statement prepared by Andre Mulder of Zhinar Architects has been prepared for the development, in accordance with the requirements of SEPP 65. The Design Verification Statement identifies that the buildings have been arranged on the site in response to the site controls and surrounding context. The building design is of a high standard, creating a unique contemporary design. The individual buildings are well articulated with a variety of architectural elements to create an appropriate massing and legibility of scale. The building orientation and façade elements are implemented with a climate control strategy, including solar access, light penetration and provision of natural cross ventilation for individual apartments.
11. The applicant has submitted a Traffic and Parking Assessment Report prepared by Varga Traffic Planning Pty Ltd. The report reviews the road network in the vicinity of the site and assesses the traffic implications of the development proposal in terms of road network capacity.
12. The report identifies that, in accordance with the Roads and Maritime Services publication *Guide to Traffic Generating Developments, Section 3 – Land use Traffic Generation* dated October 2002, the development proposal yields a traffic generation potential of approximately 41 vehicle trips per hour during commuter peak periods. The report identifies that the projected increase in traffic activity as a consequence of the development proposal is consistent with the objectives of the rezoning of the local area and will not have any unacceptable traffic implications in terms of road network capacity.
13. The report has also undertaken an assessment of the required car parking for the proposal in light of the development controls established by the Growth Centre Precincts DCP. The development proposal necessitates an off-street car parking requirement of 169 parking spaces and the proposed development complies, providing exactly 169 car spaces. The report also concludes that the geometric design layout of the proposed car parking facilities have been designed to comply with the relevant requirements as specified in Australian Standard 2890.1, in respect of parking bay dimensions, ramp gradients and aisle widths.
14. The report has reviewed the access locations and the proposed loading and servicing provision and concludes that the proposed development will not have any unacceptable parking or loading implications.

5-part test assessment of Clause 4.6 variation request

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard

Height

The objectives of Clause 4.3 Height of buildings are as follows:

- (a) *To establish the maximum height of buildings for development 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.*

- **Maximum height**

The maximum height limit on the site is 12 m. Although the development exceeds the permissible height by up to 2.8 m, the development does not achieve an additional residential level. The increase in height therefore does not impact on the density / floor area of the development. The increased height also has no impact on the scale of the development. The additional height simply accommodates the roof structures and rooftop services including pergolas/planter boxes.

- **Solar access to buildings and open space of adjoining development and land**

The additional shadow impacts are negligible. The overshadowing caused by the non-compliance is due to the parapets of some buildings, lift overruns and stairs which provide access to the roof top terrace. The shadow diagrams prepared demonstrate the development can achieve a minimum of 2 hours of direct solar access between 9 am and 3 pm in midwinter for approximately 70% (98 units) of apartments within the development.

- **Facilitates higher density development in and around the local centre while minimising impacts on adjacent residential, commercial and open space areas**

The site is located approximately 1 km from the Rouse Hill Bus Terminal on Windsor Road. The proposed Cudgegong Road Sydney Metro Northwest train station is also under construction, located approximately 650 m to the south. The buildings represent as 4 storeys, and are 14.8 m in height when measured from the ground floor to the top of the plant and equipment. The density of this development meets this objective.

- **Range of building heights in appropriate locations**

The site is considered suitable for the development given its proximity to the Rouse Hill Bus Terminal and Local Centre. The additional height does not result in any additional yield and does not result in an additional storey. The proposed number of storeys is suitable given its proximity to transport and the retail and commercial centre.

The objectives of the development standard are achieved as the development is representative of the building height anticipated for land near the Area 20 Precinct Local Centre and does not result in a bulky appearance. The interesting and varied design elements used throughout the development assist with ensuring that it is consistent with the desired future character of the immediate locality. Therefore, this minor variation to building height is considered acceptable in this circumstance.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The purpose of the standard is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered unreasonable due to topographical changes.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The purpose of the development standard could still be met even if compliance with the numerical aspect of the standard was not required. 100% compliance with the height limit of 12 m is considered unreasonable as the variation involving point encroachments of 2.8 m for plant and equipment, occupying only 7.64 sqm of the roof, is acceptable based on merit. The objectives of the standard, as outlined above, will still be achieved despite the variations as there are no residential units above the 12 metre height limit.

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

Variations to the development standards of building height have similarly been considered in the Area 20 Precinct of the Growth Centre.

- JRPP-16-03310 approved January 2017 for the construction of 6 x 4 storey residential flat buildings included a variation of up to 7.5 % of the 12 m height limit, which included lift overruns and building parapets.

5. The compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

The development is a greenfield site. Full compliance with the development control would be able to be achieved, but the variations do not increase residential density. Further, given the greenfield context of the site, the topography of the land must be considered. The existing levels on the site result in a 3.5 m fall from the east to west portion of the site. As site benching and earthworks are required to meet civil grades and construction of the surrounding road network, full compliance would be unreasonable in the circumstances.

Based on the above assessment, the requested variation under Clause 4.6 is considered reasonable, well founded and is recommended for support.

Copy of Applicant's Written Clause 4.6 Request

Clause 4.6 Exception to Development Standards Area 20

SEPP (Sydney Region Growth Centres) 2006

Clause 4.3 Height of Building Control

Construction of four (4) Residential Flat Building's 848 Windsor Road Rouse Hill

1.0 Introduction

This written request has been prepared by Allan Caladine, Consultant Town Planner on behalf of Southern Han Rouse Hill.

The written request seeks to provide justification to contravene a development standard that applies to a development application (DA) lodged with Blacktown City Council. This written request is made pursuant to Clause 4.6 "*Exceptions to Development Standards*" contained within Area 20 - State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

This exception to the development standard accompanies a DA that proposes to demolish the existing structures on the site, and construct 2 x 4 storey RFB's containing 140 residential apartments over a single level of underground car parking.

This written request seeks to demonstrate that compliance with the 12m maximum building height standard referred to in this submission is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The development as proposed in the accompanying development application contravenes the 12m Building Height development standard prescribed by Clause 4.3 "*Height of Buildings*" in the Area 20 – SEPP Sydney Region Growth Centres 2006.

In this particular case, the exception seeks to vary Clause 4.3 to allow a minor increase in each RFB's building height. Each building and the proposed heights above the 12m standard are set out below and shown on the accompanying architectural drawings:

- Residential Building 1 - 0.580m to 1.2m above the standard;
- Residential Building 2 - 0.450m to 2.8m above the standard;

The building encroachments are a direct result of the topography of the land falling substantially from east to west, allowing plant, lift overruns and other small roof top features such as stairwells, parapets, nose of the contemporary curved roof for RFB 2, pergolas, planter boxes, all of which extend above or partially above the 12m building height standard.

As set out in detail in this written submission, the variation in this instance is warranted because the extra height does not generate any adverse environmental impacts, such as overshadowing, overlooking, view loss or increased bulk and scale to that generated by a fully compliant 12m high building.

The proposal is consistent with the objectives of the building height standard, the zone objectives and seeks to introduce new RFB's into a transitional neighborhood that represents good examples of contemporary architecture and therefore the proposal is in the public interest.

2.0 Definition of Development Standards

The definition of a development standard is set out as follows:

"Development Standards" has the following definition under Section 4(1) of the Environmental Planning & Assessment Act 1979:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- the proportion or percentage of the area of a site which a building or work may occupy,*
- the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- the cubic content or floor space of a building,*
- the intensity or density of the use of any land, building or work,*
- the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- the volume, nature and type of traffic generated by the development,*
 - (i) road patterns,*
 - (j) drainage,*
 - (k) the carrying out of earthworks,*
 - (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
 - (m) the provision of services, facilities and amenities demanded by development,*
 - (n) the emission of pollution and means for its prevention or control or mitigation, and*
 - (o) such other matters as may be prescribed.*

Comment

Clause 4.3 'Height of Buildings' is the relevant planning control contained within Area 20 – SEPP Sydney Region Growth Centres 2006, which is a statutory planning instrument and as such it is a development standards that can be varied by the use of Clause 4.6.

3.0 Varying Development Standards: A Guide August 2011

In accordance with the notification given under Clause 12 of Circular B1 states that:

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be

numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard...

In deciding whether to consent to a development application the Council should test whether the proposed development is consistent with the State regional or local planning objectives for the locality; and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unreasonable and unnecessary"

Director General's Concurrence

The Director-General has notified metropolitan Councils that arrangements for the Director-General's concurrence can be assumed in respect of any environmental planning instrument that adopts clause 4.6 of the Standard Instrument or a similar clause providing for exceptions to development standards. It is considered that Blacktown City Council, inclusive of the JRPP enjoys a similar delegation.

Planning Circular PS08 – 003 issued 9 May 2008 contains notification of assumed concurrence of the Director General pursuant to clause 64 of the Environmental Planning and Assessment Regulation 2000. A copy of this planning circular accompanies this written request.

On demonstrating that the development standard is unreasonable or unnecessary in the circumstances of the case, the consent authority may assume the Director-General's concurrence to the objection pursuant to the provisions contained within Clause 4.6 of Area 20 – SEPP Sydney Region Growth Centres 2006 in the circumstances of this case.

4.0 Development Standards Within SEPP (Sydney Region Growth Centres) 2006 To Be Varied Comment

The development standard to which this objection relates is Clause 4.3 Height of Buildings. The objectives of the Height of Buildings standard are set out in full below and a part copy of the associated Building Height map is provided at **Figure 1**.

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.*


 NSW Planning & Environment
 State Environmental Planning
 Policy (Sydney Region Growth
 Centres) 2006

North West Growth Centre
 Height of Buildings Map
 Sheet HOB_009

LEGEND

Maximum Building Height (m)

A	0
C	5
I	8.5
J	9
K	10
M	12
N	14
O	16
P	18

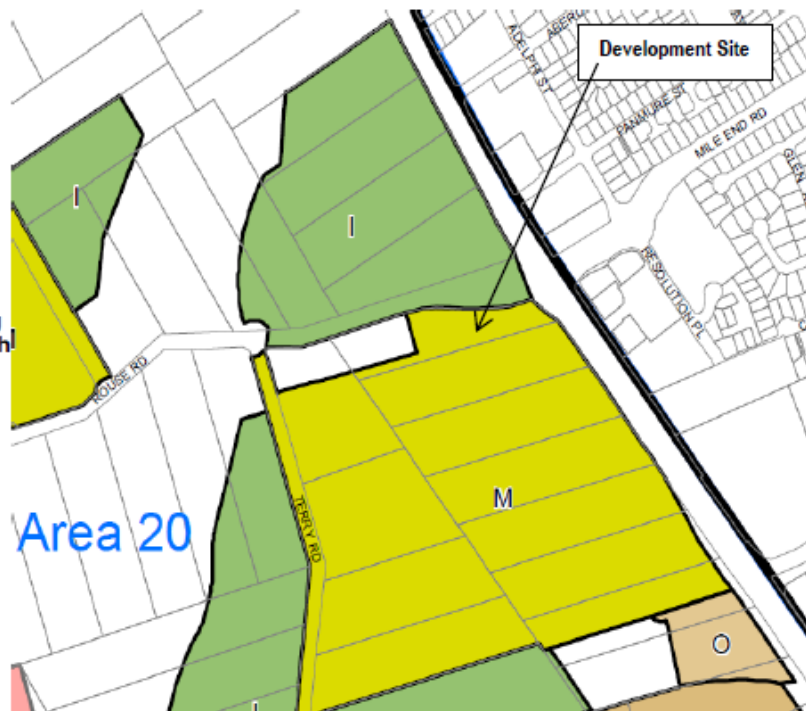


Figure 1

Source: SEPP -Sydney Region Growth Centres 2006

Comment

Clause 4.3 refers to Height of Building Standards and in this particular case the site is afforded a permissible building height of 12m as shown in **Figure 1**.

In this particular case, the exception seeks to vary Clause 4.3 to allow a minor increase in each RFB's building height. Each block and the departures above the 12m standard are set out below:

- Residential Building 1 - 0.580m to 1.2m above the standard;
- Residential Building 2 - 0.450m to 2.8m above the standard;

The building encroachments are a direct result of the topography of the land falling substantially from east to west, allowing plant, lift overruns and other small roof top features such as stairwells, parapets, the contemporary nose of the curved roof for RFB 2, pergolas, planter boxes, all of which extend above or partially above the 12m building height standard.

As set out in detail in this written submission, the variation in this instance is warranted because the minor increase in height does not generate any adverse environmental impacts, such as overshadowing other properties or other units, overlooking, view loss or bulk and scale to that achieved by a fully compliant 12m high building.

Area 20 of SEPP Sydney Region Growth Centres 2006 has been identified by the Department of Planning and Environment as having substantial development opportunities in terms of the sites close proximity to employment, retail, public transport, services and other forms of amenities as well as the desired future building bulk, scale, form, density and new character to meet Council's environmental capacity for new development in this neighbourhood precinct.

There are no heritage items in this precinct that would be impacted upon by the minor increase in building height as that proposed.

There are no historic views or vistas in this neighbourhood precinct that are to be preserved nor are there any other adverse environmental impacts that would rise as a result of the increase in building height.

5.0 Clause 4.6 Exceptions to Development Standards of Area 20 of SEPP Sydney Region Growth Centres 2006

Clause 4.6 is set out below:

4.6 Exceptions to development standards

- (1) *The objectives of this clause 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) *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. 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) *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 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) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living 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.*

Note. When this Precinct Plan was made it did not include any of these zones other than Zone E2 Environmental Conservation.

- (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 development 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,*
 - (c) *clause 5.4.*

Comment

Clause 4.6 contained within SEPP Sydney Region Growth Centres 2006 – Area 20 replaces

State Environmental Planning Policy 1 (SEPP 1) in the Blacktown local government area. SEPP 1 previously gave the decision maker jurisdiction to grant development consent to a DA notwithstanding contravention of the development standard contained in an environmental planning instrument.

SEPP No 1 no longer applies to the land and Clause 4.6 of SEPP Sydney Region Growth Centres 2006 – Area 20 now confers a similar planning discretion upon the consent authority.

The provisions of SEPP 1 differ from the provisions of clause 4.6. The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 now confirms that the decision of Preston CJ in *Wehbe v. Pittwater Council* [2007] NSWLEC 827 is only of indirect assistance in determining ways of establishing that compliance with a development standard in an environmental planning instrument might be seen as unreasonable or unnecessary. In *Wehbe* [42] [46] Preston CJ did say however that a way of proving a well-founded objection under SEPP 1 is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting development consents departing from the standard and hence compliance with the standard is unreasonable or unnecessary in the circumstances of the case. The principle applies to Cl. 4.6 of the Area 20 of SEPP Sydney Region Growth Centres 2006 as well.

The Chief Judge referred to the decision in *North Shore Gas Company v North Sydney Municipal Council* (Land and Environment Court, New South Wales, 15 September 1986, unreported) in which Stein J similarly held that compliance with a development standard was not required where the standard had been virtually abandoned or destroyed by council's own action.

In addressing the relevant objectives in Clause 4.6(3) and 4.6(4), to achieve a variation to the Building Height standard, the following specific clauses must be met:

- *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *there are sufficient environmental planning grounds to justify contravening the development standard;*

- *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.*

The objectives contained in Area 20 of SEPP Sydney Region Growth Centres 2006 relating to the building height standards are:

- (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.*

The requirement for consideration and justification of Clause 4.6 - Exception to Development Standard necessitates an assessment of a number of criteria. It is recognized that it is not merely sufficient to demonstrate a minimization of environmental harm to justify a variation under Clause 4.6, although in the circumstance of this case, the absence of material impacts on adjacent properties is of considerable merit.

The site and other land zoned R3 Medium Density Residential within this Area 20 precinct is about to undergo substantial change, with previously used and zoned rural land is changing to promote high rise residential development, where in this instance the proposal is for 140 residential apartments over basement car parking, promoting the revitalization of land for urban purposes as strategically envisioned by Blacktown City Council and the Department of Planning and Environment in the making of Area 20 - SEPP Sydney Region Growth Centres 2006.

Also it needs to be recognized that those parts of the building that extend above the 12m building height standard are lift overruns and other small parts of the building, including the nose of curved roof (RFB 2), parapets pergolas, planter boxes on some buildings. These are not major structures such as rooms or corridors.

In regards to ensuring the proposed development is compatible with the desired future bulk, scale and character of development in the streetscape and changing context, the following is noted:

- The desired future building bulk, scale form and height of the proposed development and future development within the visual catchment of the site has been considered and from a planning perspective, the proposal will have no adverse impact upon other buildings or the desired future character mooted by the Area 20 controls.
- The design of the proposed development provides visual interest in the transitional streetscape;
- The proposed buildings achieve the objectives and Design Guidance controls outlined in the Apartment Design Guide (ADG) so as to afford future residents in the proposed RFB's and future RFB's adjoining the site with a level of amenity suitable for the scale of the development proposed;
- The designs also ensure there will be no adverse impact on any view loss from nearby properties;

The proposed development has been designed to enable sunlight access to new streets and private and public domains, open space and nearby properties can be adequately maintained by the provisions and objectives in the ADG where solar access should achieve the following:

"Living rooms and private open spaces for at least 70 percent of apartments in a development should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at midwinter in the Sydney Metropolitan Area".

The shadow diagrams prepared demonstrate the development can achieve a minimum of 2 hours of direct solar access between 9am and 3pm in midwinter for approximately 98 units or 70% of apartments within the development. The additional shadow cast by the encroachments either falls onto each building's roof or generally within the shadow cast by compliant 12m high building.

Accordingly, the design of the proposed development inclusive of the breaches in height is consistent with this objective in that the development has been designed to ensure sunlight access to surrounding properties is to be adequately maintained.

R3 Medium Density Residential Zone

1 Objectives of R3 Medium Density Residential Zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.*

The proposal provides for a mix of unit types and sizes, including 14 adaptable apartments with associated car parking spaces, 8 x 1 bedroom units, 129 x 2 bedroom units and 3 x 3 bedroom units, which vary in size and design, thus their price to the housing market will reflect affordability, allowing some younger buyers to enter the market while others may have to find smaller apartments that meet their social and economic demands.

Views to and from the site will not be interrupted because the site is large in size and buildings are well separated from others.

The filling in of this site with the proposed RFB's will promote a new, transitional character mooted by the governing statutory environmental planning instruments and policy documents as well as the strategic plans that led to the making of the Area 20 - SEPP Sydney Region Growth Centres 2006.

The proposed development is within a short walk of excellent future public transport along Windsor Road and the new Railway Stations in the Rouse Hill town centre and Cudgegong Road.

The site is within a short walk of neighbourhood business centres as well as the Rouse Hill Town Centre, which will provide fundamental amenities for local residents, such as restaurants, supermarkets, banking, fresh vegetables and take way food services etc.

All of the above, creates a suitable, vibrant neighbourhood that offers a safe and secure environment through passive surveillance over the public and private domains.

The variation to the height control is therefore consistent with the R3 Medium Density Residential zone objectives.

6.0 Land and Environment Courts Assessment

Winten Property Group Ltd v North Sydney Council (2001) NSWLEC 24

Justice Lloyd's Questions - Winten Property Group v North Sydney Council 2001

Justice Lloyd raised in this case, five questions that must be considered in the assessment of a SEPP 1 Objection, in the subject application, it relates to Clause 4.6 of Area 20 - SEPP Sydney Region Growth Centres 2006 because SEPP 1 does not apply to this new planning instrument.

Question 1

Is the Planning Control in Question a Development Standard?

Environmental Planning Instrument

Clause 4.3 Height of Buildings is contained within an Environmental Planning Instrument (Area 20 - SEPP Sydney Region Growth Centres 2006 that was prepared in accordance with the provisions contained within the Environmental Planning & Assessment Act 1979 and therefore is a development standard that controls building height.

Question 2

What is the Underlying Object or Purpose of The Standard?

As mentioned in clause 3.0 above, the Department of Planning Circular B1, numerical requirements may be departed from, if the purpose behind the control is achieved and the locality objectives of the relevant planning instruments are satisfied.

Comment on the relevant objectives behind Clause 4.3 are set out as follows:

The standard is contained within an Environmental Planning Instrument that was prepared in accordance with the provisions contained within the Environmental Planning & Assessment Act 1979 and therefore the control is a development standard that controls building height and flow on amenity impacts such as over shadowing, overlooking, view loss and general loss of amenity.

The proposal is able to satisfy the objectives of this control.

Question 3

Is compliance with the development standard consistent with the aims of the policy, and in particular does compliance with the development standard tend to hinder the attainment

of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979.

Comment

Section 5(a)(i) and (ii) is set out as follows:

5 Objects

The objects of this Act are:

(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land,

This issue in itself would hinder the attainment of the Environmental Planning & Assessment Act 1979 objective, which seeks to promote the orderly and economic use and development of land. The reasons why the proposed RFB's achieve the objects of the Act are:

- The proposal for the reasons already mentioned, is in keeping with the objectives of the R3 Medium Density Residential zone;
- The minor increase in bulk and scale from the lift overruns, parapets, pergolas and roofing elements does not unreasonably increase shadow to that cast by fully compliant RFB's with any additional shadow being cast onto the roof or over a compliant building envelope shadow;
- No significant views will be lost as a result of the encroachments;
- The design of the proposed building is responsive to the desired future character expressed in the governing planning controls;
- The proposal seeks to promote RFB's that will be in keeping with the transitional built form and character expected for this neighbourhood by Council's strategic planning controls and those strategic studies undertaken by the Department Planning and Environment for this region;
- The design responds to its transitional context in that the proposed design is responsive to its location and will not impact upon the amenity of existing or future residents in this precinct, in terms of overlooking and overshadowing of private and communal open space areas;
- The proposal will have no adverse impacts upon the new character when viewed from the proposed built and natural environments;
- The proposal is considered to be in the public interest as the new building forms will enhance the context of this neighbourhood.

Question 4: Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Comment

Compliance with the development standard is deemed to be unreasonable and unnecessary under the circumstances because the departure sought does not create any impacts upon the built and natural environments;

The proposed RFB's and their private and communal open space areas provide a high quality, environmentally and ecologically sustainable form of development that will make a positive contribution to the visual amenity and envisaged character that will slowly emerge in this precinct;

The application before Council clearly demonstrates that the proposed buildings can readily fit within a neighbourhood that is undergoing substantial change in character and density.

Question 5: Is the objection well founded?

In the decision (*Wehbe v Pittwater Council* [2007] NSW LEC 827) Chief Justice Preston expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy. These are:

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- *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; or*
- *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.*

We are of the view that the objection is well founded because:

Clause 4.6 of the SEPP Sydney Region Growth Centres 2006 (Area 20) replaces *State Environmental Planning Policy 1* (SEPP 1) in the Blacktown LGA. The State Policy previously gave the decision maker jurisdiction to grant development consent to a development application notwithstanding contravention of the development standard contained in an environmental planning instrument.

It is for the reasons set out in this written submission, the proposed minor increase in Building Height that forms part of this DA is not unreasonable or unnecessary because:

- Clause 4.6 allows flexibility in the application of the building height standard in the circumstances of this case as set out previously in this written request;
- The proposal is consistent with the objectives of both the Building Height standard and the R3 Medium Density Residential zone;
- There are sufficient environmental planning ground to warrant the variation to the building height standard;
- The proposal is in the public interest as it allows for an architecturally sound building form;

- Will not set an undesirable precinct as the proposed design is in keeping with the desired future character of this neighbourhood and;
- The objection as submitted is in our view well founded.

6.0 Conclusion

It is considered that it has been demonstrated that the objection to the strict application of the building height development standard in this instance is both unreasonable and unnecessary in the circumstances of the case, for the following reasons;

- The departures proposed are minor in the context of the development, with the merits for departing from the standard being met, with the R3 zone objectives met, no unreasonable environmental impacts arise and the proposed development is in the public interest as it allows for an appropriate development to be introduced into a neighbourhood that is about to undergo substantial change;
- The departures sought will not set an undesirable precedent in this precinct as the proposed development is consistent with the objectives of the governing planning instrument;
- The flexible application of clause 4.6 will enable a better planning outcome to be achieved without any tangible impacts.
- The increase in Building Height satisfies the Land and Environment Court's test judgments for a well-founded objection to vary a development standard;
- The change to the Building Height control in the manner sought does not undermine the objects contained in Section 5 (a) (i) & (ii) of the Environmental Planning & Assessment Act 1979:

The development standard is a local planning matter because it is contained within Area 20 – SEPP (Sydney Region Growth Centres) 2006 and the variation of such building height standard in this instance will not have any adverse environmental impacts upon any regional or State matters.

Accordingly, the GSC as the consent authority can be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 (3) of the SEPP and that 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 R3 Medium Density Residential zone in which the development is proposed to be carried out.