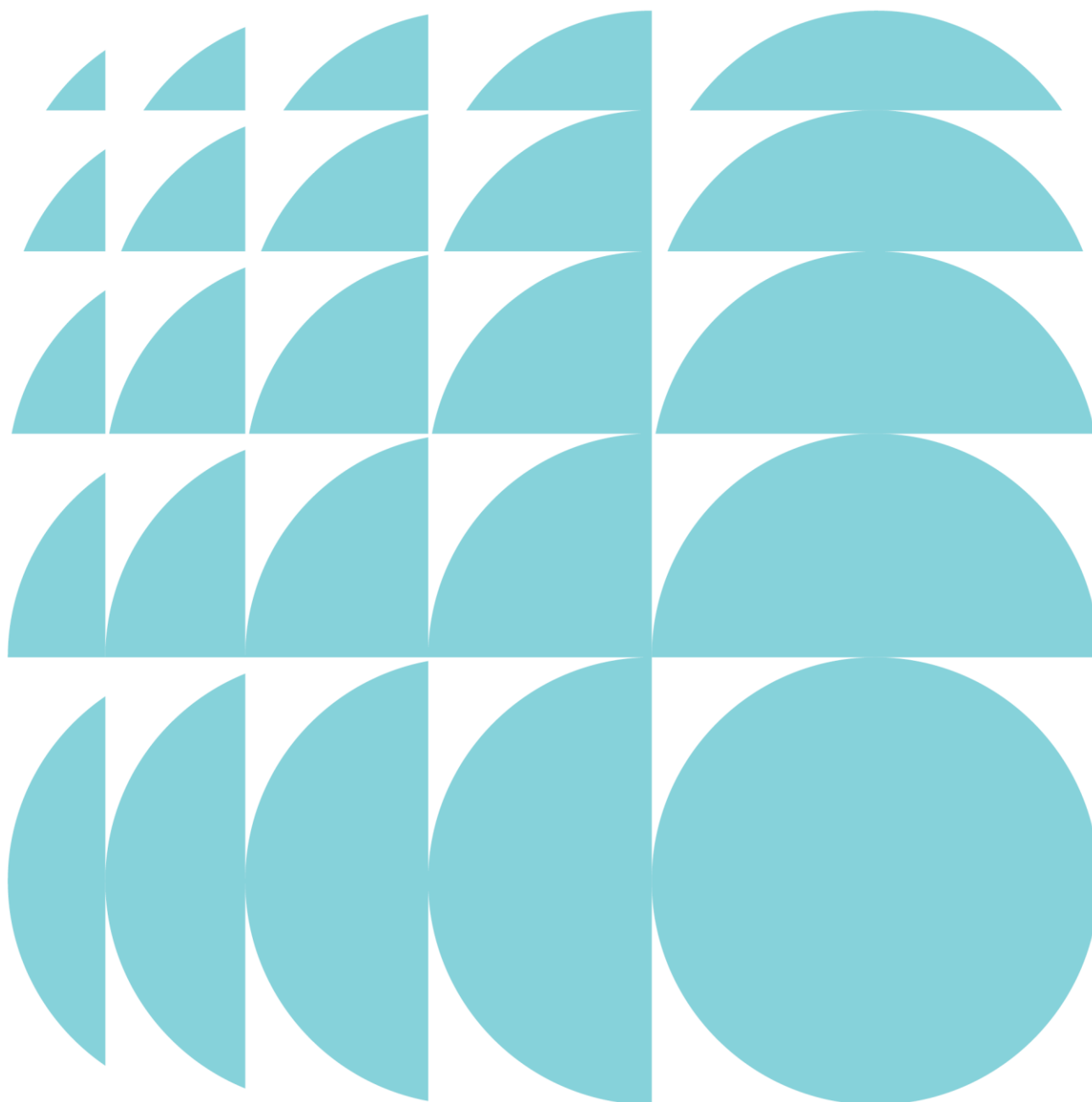


Clause 4.6 Variation - Maximum Height of Buildings

202 Byron Road, Leppington
Mixed Use Development

Submitted to Camden Council
On behalf of NLI Byron Development Pty Ltd

18 May 2020 | 15824



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VERSION NO.	DATE OF ISSUE	REVISION BY	APPROVED BY
FINAL	18/05/2020	LF	JM

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of NLI Byron Development Pty Ltd. It is submitted to Camden Council (Council) in support of a Development Application (DA/2016/866/1) for a mixed use development at 202 Byron Road, Leppington.

This clause 4.6 variation request to contravene the maximum building height accompanies the amended Architectural Drawings which have been prepared to respond to the issues raised in Council's request for additional information (RFI) letter dated 24 August 2018, 21 November 2019, 4 March 2020 and subsequent discussions between the Applicant and Council. The proposed development has been significantly amended throughout the assessment and this clause 4.6 request supersedes the previous requests submitted during the assessment process.

Clause 4.6 of Appendix 9 (Camden Growth Centre Precinct Plan) of *State Environmental Planning Policy (Sydney Regional Growth Centres) 2006* (Growth Centres SEPP) allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the Growth Centres SEPP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

- that the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; 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 zone in which the development is proposed to be carried out.

The consent authority's satisfaction of those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1).

This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of clause 4.6(3)(a). Further guidance on clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this clause 4.6 variation request:

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**);
- demonstrates that the proposed variation is in the public interest (**Section 6.0**); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Section 7.0**).

This clause 4.6 variation request relates to the development standard for maximum building height under clause 4.3 of Appendix 9 of the Growth Centres SEPP and should be read in conjunction with:

- Statement of Environmental Effects (SEE) (original DA) prepared by Ethos Urban dated July 2016;
- Statement of Environmental Effects (SEE) (amended DA) prepared by Ethos Urban dated November 2017;
- Response to Council Request for Information (RFI) prepared by Ethos Urban dated October 2019; and
- Response to Council Request for Information (RFI) prepared by Ethos Urban dated February 2020 containing the latest Architectural Drawings prepared by Rothelowman.

2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of Appendix 9 of the Growth Centres SEPP. The maximum permissible building height applying to the site is 21m.

Clause 4.3 of the Growth Centres SEPP is provided below and an extract of the Height of Buildings Map, to which that clause applies, is provided in **Figure 1**.

(1) The objectives of this clause are as follows:

- (a) to establish the maximum height of buildings,
- (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.

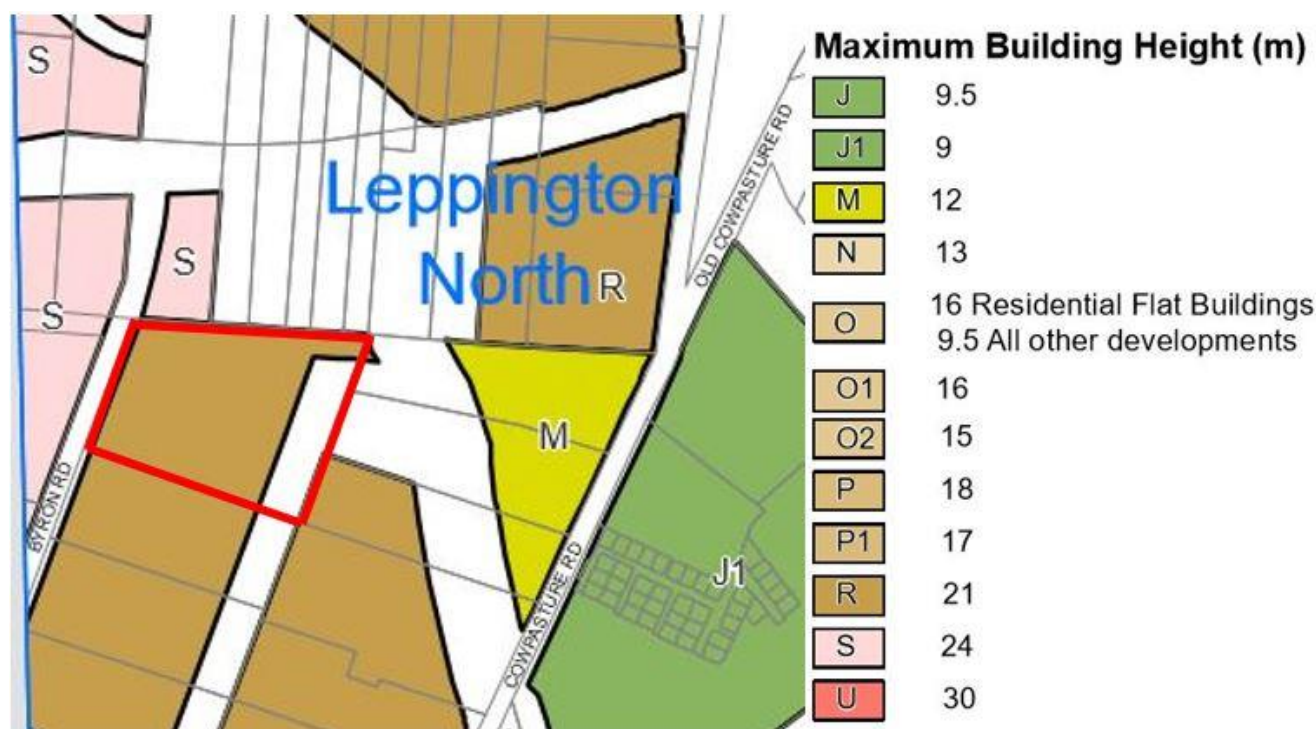


Figure 1: Growth Centres SEPP height map extract

Source: Growth Centres SEPP

3.0 Nature of the variation sought

The maximum building height development standard for the site is 21m. The proposed development seeks to vary the maximum building height standard by a maximum of 0.25m or 1.2% which equates to a total maximum building height of 21.25m. The proposed exceedance of the maximum building height relates exclusively to the Building D (0.07m) and the Building E (0.25m) lift overruns as illustrated on the height plane diagram at **Figure 2**. For absolute clarity, no habitable floor space or GFA is located above the maximum building height as all building parapets sit under the 21m height limit.

There are two reasons for the exceedance of the 21m maximum building height development standard:

1. It is required to raise the finished ground floor level at certain points to accommodate flood impacts. Following consultation with Council's engineers, it was determined that the proposed ground floor levels would need to be raised by 400mm to achieve flood compliance as detailed within the Hydraulic Impact Assessment prepared by ADG (August 2019). Specifically, the 76.8m AHD flood planning level originally adopted did not account for the ultimate flood level when the road crossing to the north east is considered in flood modelling. Considering the ultimate road crossing in place, the resultant flood planning level is 77.2m AHD (i.e. 1% AEP flood level of 76.7 + 500mm freeboard).
2. The Building Code of Australia was amended in 2019 to require all residential flat buildings to contain sprinkler protection. Previously, this requirement only applied to residential flat buildings above 25m. The impact of this change is that where previously a 3m floor to floor height was sufficient to achieve a 2.7m floor to ceiling height (in accordance with the ADG), this is no longer possible for buildings under 25m, and a 3.05m floor to floor is required. The cumulative impact of all residential floors being 0.05m higher is an extra 0.3m in the 6 storey portions of the building, which results in the lift overrun serving the top floor of the building being 0.3m higher and marginally exceeding the maximum building height in two locations.

In summary, the building has been designed to ensure that all habitable floor levels are below the maximum height limit. The change to the BCA, which wouldn't have been anticipated during the formation of the development standards that apply to the site, is having a direct impact on the maximum height of the building. The proposed variation to the maximum height limit is directly related to the increase in floor to floor heights to achieve technical compliance with the BCA.

3. In accordance with the Growth Centres SEPP the maximum height of buildings must be measured from the existing ground level. This does not consider the holistic civil works that will be delivered to level and raise the site prior to the commencement of the base building constructions. As illustrated at **Section 5.2**, if maximum building height is taken from the post-civil works level (the level at which the public will perceive the building mass following construction completion) all building elements will be under the 21m height plane.

The proposed height variations are less than the height variations approved by the Sydney Western City Planning Panel (the Panel) for the residential development at 76 Rickard Road, Leppington (DA/2016/422). The 76 Rickard Road approval permits a 0.45m (3.75%) variation to the 12m maximum building height development standard in relation to lift overruns and other rooftop features. In approving the DA at 76 Rickard Road, the Panel determined that the variations would not generate unacceptable environmental impacts on nearby property and the variations did not alter the development's consistency with the standard.



Figure 2: 202 Byron Road height plane diagram representing the proposed variations (0.07m-0.25m) in white

Source: Rothelowman

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis may be of assistance in applying clause 4.6 given that subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

The five methods outlined in *Wehbe* were:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
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 (**Fourth Method**).
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 (**Fifth Method**).

In this instance, the First Method is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of the height development standard contained under Appendix 9, clause 4.3 of the clause 4.3 of the Growth Centres SEPP are:

- (a) to establish the maximum height of buildings,*
- (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 proposal is assessed against the objectives for the height of buildings development standard below.

Objective A: to establish the maximum height of building

The Growth Centres SEPP establishes a 21m maximum building height and the proposal has been informed by this control. The proposal results in all buildings being under the 21m height limit, apart from two lift overruns which are a maximum of 0.25m or 1.2% above the 21m height limit, as such the proposal establishes a dominant 21m building height. All building parapets are compliant with the 21m maximum height. The lift overruns are located within the centre of Building D and Building E and therefore, when viewed from the public domain, the buildings will read as a compliant 21m form. The proposal is consistent with this objective.

Objective B: to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space

The site is located at the eastern 'gateway' to the Leppington Major Centre. Careful consideration has been given to harness the opportunities for a landmark site through the delivery of significant views to and from the site.

In designing a built form outcome, the design has recognised the long-distance views to the site from the surrounding park land and from the train line and consider an appropriate height strategy that modulates the skyline, adding visual interest and variety. This is reflected in the modulated building heights and building breaks providing visual relief and view corridors through the site (refer to **Figure 2**).

As the building elements above the 21m height plane are 2 x lift overruns located in the centre of Building D and Building E, they will not result in any perceptible visual impact from the public domain or neighbouring properties, and their shadow will fall on the proposed buildings and have no additional overshadowing impact on the public domain or communal open space areas. The shadow diagrams prepared by Rothelowman (submitted separately) illustrate that the proposed development will maintain minimum of 2 hours sunlight to the future development and open space on neighbouring sites on the 21 June.

Objective C: to facilitate higher density development in and around commercial centres and major transport routes

The proposal has given detailed consideration to the site location within the Leppington Major Centre and the Leppington Train Station. The site is within 700 metres of the Train Station and will form part of the eastern gateway to the Leppington Major Centre Precinct. The proposed height variations will allow the development to respond to the site-specific flood constraint, as well as maintain the upper levels of Buildings D and Building E, therefore allowing the development to continue to provide higher density housing in proximity to a rail station, which is commensurate with the transit oriented development principles envisaged for the area. Strict compliance with the development standard would require the removal of a storey of housing in order to comply with the development standard, which is contrary to the objective of promoting higher densities in a location well serviced by existing transport infrastructure.

5.0 Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of Appendix 9 within the Growth Centres SEPP requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relied on in the written request under clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

5.1 Flooding

As discussed at **Section 3.0** above, the proposed ground floor levels have been raised by 0.4m to achieve flood compliance as detailed within the Hydraulic Impact Assessment prepared by ADG dated August 2019. Specifically, the 76.8m AHD flood planning level originally adopted did not account for the ultimate flood level when the road crossing to the north east is considered. Considering the ultimate road crossing in place, the resultant flood planning level is 77.2m AHD (i.e. 1% AEP flood level of 76.7 + 500mm freeboard). Consequently, amending the design to meet flood level compliance resulted in two lift overruns protruding through the 21m height plane to a maximum of 0.25m or 1.2% above the height limit. The requirement for the lift overruns to marginally breach the maximum building height is therefore in response to the site-specific environmental constraints.

In determining that flood prone land is sufficient environmental planning grounds to justify contravening the development standard, we refer to the following development consents, where flood prone land was cited as appropriate environments planning grounds within the applicable Clause 4.6 Requests:

- DA/485/2016: 2-2A Hepburn Avenue & 199-203 Carlingford Road, Carlingford
 - approved by the Sydney West Central Planning Panel in 2016.
 - height variation of 1.76m (10.05%) to elevate the development 0.5 metres above the 100-year ARI flood level and accommodate larger floor to floor heights.
- DA-2017/181: 989-1015 Pacific Highway, Roseville
 - approved by the Sydney North Planning Panel in 2017
 - height variation of 6.65m (33.2%) due to the building being required to set back from the railway line and the heritage item on the site as well as the flood liability of the site.
- D/2018/355: 54-56 Riley Street, Darlinghurst
 - Approved by the City of Sydney Council in 2018.
 - Height variation of 0.3m (1.4%) to achieve the flood planning level of RL13.28m.

For absolute clarity, Buildings D and E have both been raised 0.4m to achieve flood compliance as detailed within the Hydraulic Impact Assessment prepared by ADG dated August 2019. Notwithstanding this, through skilful design, the variations to the building height have been isolated to two lift overruns with minimal variations of 0.07m and 0.25m which equates to an imperceptible 1.2% maximum variation. Maintaining this development standard in this instance would require the Building D and Building E lift shafts to be reduced which would remove the top floor of these buildings which is a missed opportunity to deliver housing within the South West Growth Centre, which remains significantly underdeveloped since the Leppington precinct rezoning over a decade ago.

5.2 No adverse environmental impacts arising from the variation to the development standard

Solar Access and Overshadowing

The shadow diagrams prepared by Rothelowman (submitted to Council on 5 February 2020) illustrate that the shadows generated by the proposed variations will fall on the proposed buildings and have no additional overshadowing impact on the public domain or communal open space areas. For absolute clarity, the proposed variations will maintain minimum of 2 hours sunlight to the future development and open space on neighbouring sites on the 21 June. In this regard, there is no adverse solar access or overshadowing resulting from the proposed variations.

Visual Impact

As illustrated at **Figure 2**, the proposed variations exclusively relate to two lift overruns located central (setback from the building parapets) to the Building D and Building E envelopes. The site itself has four main road frontages bound by public domain elements including footpaths and the future public open space adjacent to Bonds Creek. When viewed from these key areas of the public domain, the 0.07m Building D variation and 0.25m Building E variation will be imperceptible. As the predominant building height and volume sits below the 21m height plane, the buildings will be read as a complaint. In this regard there is no adverse visual impact resulting from the proposed variations.

Fire Engineering

The Building Code of Australia was amended in 2019 to require all residential flat buildings to contain sprinkler protection. Previously, this requirement only applied to residential flat buildings above 25m. The impact of this change is that where previously a 3m floor to floor height was sufficient to achieve a 2.7m floor to ceiling height (in accordance with the ADG), this is no longer possible for buildings under 25m, and a 3.05m floor to floor is required.

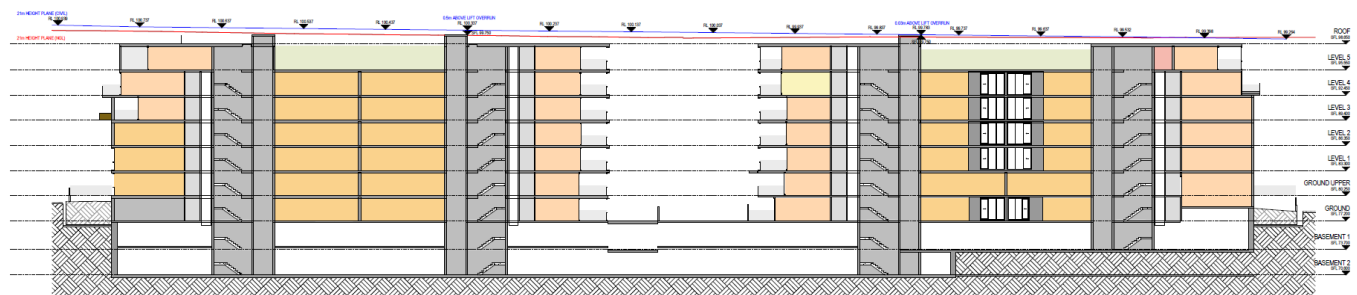
The cumulative impact of all residential floors being 50mm higher is an extra 300mm in the 6 storey portions of the building, which results in the lift overrun serving the top floor of the building being 300mm higher and marginally exceeding the maximum building height in two locations.

In summary, the building has been designed to ensure that all habitable floor levels are below the maximum height limit. The change to the BCA, which wouldn't have been anticipated during the formation of the development standards that apply to the site, is having a direct impact on the maximum height of the building. The proposed variation to the maximum height limit is directly related to the increase in floor to floor heights to achieve technical compliance with the BCA.

Topography and Finished Ground Level

As demonstrated on the site survey, the existing ground levels vary across the site. The site slopes from south-west corner to north-east corner, resulting in a 4m cross fall. In addition, Council has instructed the applicant to raise the site to where necessary to achieve appropriate road grades to accommodate stormwater requirements. Therefore, the finished site levels have been adjusted to allow the ground floor of the buildings to relate to the proposed roads levels in order to provide an appropriate relationship between the future built form and the public domain. In this regard, while the building will result in two minor height variations, based on the existing site survey levels, if taken from the post civil works finished ground level, all building elements will be under the 21m height plane as illustrated at **Figure 3**. Importantly, this finished level is the level pedestrians will perceive the building mass following construction completion, as such it will be read as a maximum 21m form from the finished public domain.

Building D and Building E Section



Section Extract

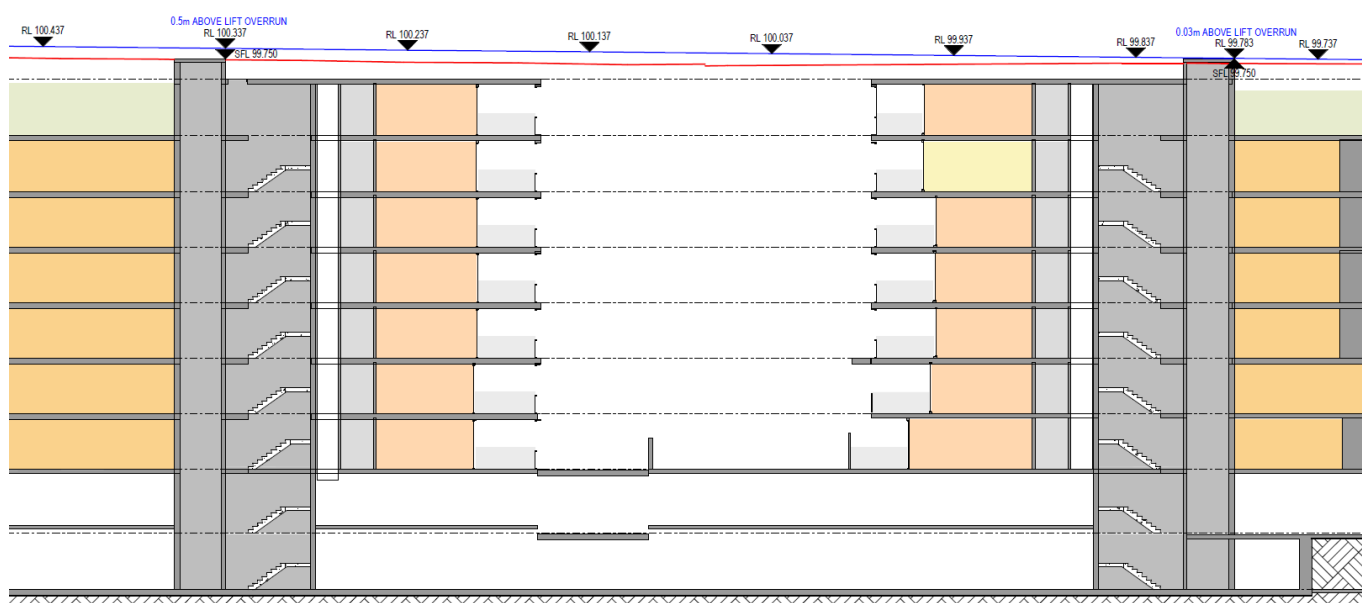


Figure 3: 21m Height Plane Comparison measured from existing ground level (red) & finished ground level (blue)

Source: Rothelowman

Summary

The proposed variation is not considered to have any adverse environmental impacts as it:

- is minor in nature and only represents a maximum 1.2% variation;
- is located central to the buildings and is therefore not discernible from the immediate public domain;
- is located central to the buildings and therefore any additional overshadowing will not fall on communal open space, adjacent dwellings or significant areas of public open space;
- has been informed by a requirement to upgrade the buildings fire engineering (BCA 2019) following submission of the original DA;
- if measured from the post civil works finished ground level where pedestrians will eventually read the site, all building elements will be under the 21m height plane; and
- allows equitable access to upper level apartments that are provided with enhanced views and are of a high amenity.

5.3 Consistency with the zone and height objectives

As demonstrated at **Section 4.1** and **Section 6.1** the minimal variation to the development standard will not prevent the proposed development being consistent with the objectives of the development standard and the objectives of R3 Medium Density Residential zone.

5.4 Consistency with the Objects of the *Environmental Planning and Assessment Act 1979*

In *Initial Action*, the Court observed that the phrase “*environmental planning grounds*” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 1** we demonstrate how the proposed development is consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 1 Assessment of proposed development against the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The proposed development will promote the economic and social welfare of the community through the appropriate redevelopment of a currently vacant lot within the wider redevelopment of the Leppington precinct within the South West Growth Centre. The proposed variation will not result in a contradiction of this object as it is limited to a 1.2% lift overrun variation.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The incorporation of Environmentally Sustainable Development (ESD) principles into the proposal has been ongoing during the preliminary design of the building and will continue through the detailed design. BASIX Certificates have been submitted with the DA, demonstrating that the proposed development will satisfy the relevant requirements for water, thermal and energy. The proposed development will provide much needed housing within the Leppington precinct of the South West Growth Centre and will foster a new community contributing to the activation and vibrancy of the precinct. The proposed variations relate to lift overruns that allow an upper level to Building D and Building E and as such, will contribute much needed housing.
(c) to promote the orderly and economic use and development of land,	The site is currently vacant and is currently used for rural purposes, consistent with the historic zoning. The proposed development will facilitate the redevelopment of this underutilised site to provide medium density residential development consistent with the site's Leppington Precinct rezoning. The site is strategically located in proximity to the Leppington Rail Station and has excellent amenity. The proposed redevelopment is considered to be a balanced and orderly design outcome that responds to the unique characteristics of the site and does not represent the over intensification of land. The proposed variations relate to lift overruns that allow an upper level to Building D and Building E and as such will provide upper level dwellings with high amenity that will contribute to the orderly and economic use of the land.
(d) to promote the delivery and maintenance of affordable housing,	Whilst the proposal does not include affordable housing as defined under the Affordable Rental Housing SEPP, it does include 436 residential apartments within the Sydney South West Growth Centre. Given the site's location within the outer western suburbs, the proposed units are considered to offer a more affordable alternative to inner and middle ring housing. The proposed variations relate to lift overruns that allow an upper level to Building D and Building E and as such, will contribute much needed housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed building footprints have been carefully located as to not impact any ecological community or threatened species. The proposed lift overrun variations are minor and are located within the centre of the buildings, which do not impact upon any ecological community or threatened species. As was demonstrated in the SEE, and the submitted updated technical studies, the proposed development will not result in adverse environmental impacts.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	An Aboriginal Heritage Assessment has been prepared by Artefact Heritage which accompanied the DA. The report concludes that despite indicators of archaeological potential, the site has experienced significant land disturbance. No Aboriginal sites or areas of archaeological potential were identified, and the site is considered suitable for the proposed development, including the height variations, from an Indigenous heritage perspective.

Object	Comment
(g) to promote good design and amenity of the built environment,	The proposal has been designed in accordance with SEPP 65 and the ADG to ensure the development promotes good design and amenity. The proposed variations relate to lift overruns that allow an upper level to Building D and Building E. These upper level apartments benefit from enhanced views, and therefore are desired from an amenity perspective.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants. No apartments are located above the maximum building height.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to the proposed development.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development has been publicly notified in accordance with the requirements of Council's DCP.

5.5 Summary

Notwithstanding the minimal variation to the 21m height limit, which is a direct consequence of flood impacts and recent changes to the BCA (refer **Section 3.0**), the proposed development is suitable for the site and will not result in any adverse impacts to the surrounding area. This request demonstrates that the proposed development is consistent with the objects of the EP&A Act and the objectives of the building height development standard and the objectives of the R3 Medium Density Residential zone. There are sufficient environmental planning grounds to justify contravening the standard.

6.0 Clause 4.6(4)(A)(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

6.1 Consistency with the objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in **Section 4.1** of this report.

6.2 Consistency with the R3 – Medium Density Residential Use objectives

The objectives of the R3 Medium Density Residential zone under Appendix 9 of the Growth Centres SEPP are:

- a) To provide for the housing needs of the community within a medium density residential environment.
- b) To provide a variety of housing types within a medium density residential environment.
- c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- d) 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 including a height variation, satisfies the R3 zone objectives as it:

- Provides a mix of affordable housing in 1, 2, 3 and 4 bedroom apartments. Specifically, the variations allow additional upper level apartments that are provided with high amenity and contain a variety of apartment typologies;
- Proposes a mix of dwelling typologies consisting of 1, 2, 3 and 4 bedroom apartments within a medium density residential environment to provide for the housing needs of the community;
- Contributes to housing diversity and will increase the housing choice within Leppington by providing housing in a transitioning urban area with good access to an emerging commercial centre, employment lands and existing public transport;
- The height variation allows additional space within the development to incorporate non-residential uses that will contribute to the needs of residents including small scale neighbourhood shop; and
- The height variation provides for upper level apartments, ensuring the ground plane is freed to accommodate a significant open space on site, including a through-site link for residents of the development through to the public open space to the east.

Despite non-compliance with the numerical maximum building height control, it is considered that the proposed building height is consistent with the objectives of the R3 Medium Density Residential zones of the Growth Centre SEPP.

7.0 Secretary's Concurrence

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

These matters are addressed in detail below.

7.1.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the maximum building height development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the Greater Sydney Region Plan 'A Metropolis of Three Cities':

- provides residential accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- allows for the use of the site to provide local employment opportunities;
- is well located to public transport connections; and
- does not affect any heritage assets.

7.1.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the additional height exclusively relates to minor lift overrun variations with all building parapets under the 21m height development standard. In this regard, the proposal remains consistent with a compliant building when viewed from the public domain. As detailed above, the proposed variation would not give rise to any adverse environmental impacts and will allow equitable access to upper level apartments.

7.1.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

None.

8.0 Conclusion

The assessment above demonstrates that compliance with the maximum building height development standard contained in clause 4.3 of Appendix 9 of the Growth Centres SEPP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the minor 0.07m and 0.25m variations to the maximum building development standard, that:

- the objectives of the maximum height development standard and R3 Medium Density zone objectives are achieved notwithstanding non-compliance with the numerical control;
- the proposal is responsive to the site-specific flood constraint which requires the ground level finished floor levels to be raised as such there are sufficient environmental planning grounds to justify contravening the development standard;
- the proposed flexible application of controls achieves better planning outcomes than would be achievable by strict adherence to the controls across the development site;
- the proposal is compatible with the envisaged scale and character of the area and will not have adverse amenity impacts on surrounding land;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance; and
- there is no public benefit in maintaining the building height development standard adopted by the environmental planning instrument for this site.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of Appendix 9 of the Growth Centres SEPP.