



# Clause 4.6 Variation Request

## Building Height Development Standard

### Auburn Local Environmental Plan 2010

"Zone 3" Redevelopment  
Carter Street Precinct, Lidcombe

Submitted to the City of Parramatta Council  
On Behalf of YMCI Australia

# Table of Contents

1. Introduction.....	3
2. What is the environmental planning instrument (EPI) that applies to the land? .....	3
3. What is the zoning of the land? .....	3
4. What are the objectives of the zone? .....	3
5. What is the development standard being varied? .....	3
6. Under what clause is the development standard listed in the EPI? .....	4
7. What are the objectives of the development standard? .....	4
8. What is the numeric value of the development standard in the EPI? .....	4
9. What is the proposed numeric value of the development standard in the DA and the variation proposed? .....	5
10. Matters to be considered under Clause 4.6 .....	7
11. How is strict compliance with the development standard unreasonable or unnecessary in this particular case? .....	8
12. Sufficient environmental planning grounds to justify the contravention .	19
13. Is the variation in the public interest? .....	19
14. Matters of state or regional significance (cl. 4.6(5)(a)) .....	20
15. The public benefit of maintaining the standard (cl. 4.6(5)(b)) .....	21
16. Is the variation well founded? .....	21

## 1. Introduction

This report seeks an exemption to a development standard prescribed by the Auburn Local Environmental Plan 2010 (ALEP). The report relates to a Statement of Environmental Effects (SEE) and a Development Application (DA) proposing redevelopment of the northern part of "Zone 3" of the Australia YMCA owned site within the Carter Street Precinct in Lidcombe.

The exception is sought pursuant to Clause 4.6 of the ALEP. An exception is sought in relation to the application of the two (2) varying height of building development standards applicable to the subject development site (being 29.9 metres in the eastern part of the site and 42 metres in the western part of the site), pursuant to Clause 4.3 of the ALEP. The maximum variation being sought relates to proposed building 3B1 which varies from the 29.9 metre building height standard by 9.05 metres. It should be noted that whilst there are parts of the proposed buildings that do not comply with the maximum building height standards, equally, there are areas of the proposed buildings which fall well under the maximum heights permitted. This is discussed in further detail in this report.

This request has been prepared in accordance with the Department of Planning & Environment (DP&E) Guideline Varying Development Standards: A Guide, August 2011, and has incorporated as relevant principles identifies in the following judgements:

1. *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
4. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
5. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
6. *Moskovich v Waverley Council* [2016] NSWLEC 1015

In this report, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the Applicant. This report also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising either the discretion afforded by Clause 4.6 or the assumed concurrence of the Secretary.

## 2. What is the environmental planning instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Auburn Local Environmental Plan 2010 (ALEP).

## 3. What is the zoning of the land?

The site is zoned R4 High Density Residential pursuant to the ALEP.

## 4. What are the objectives of the zone?

The objectives of the R4 zone are as follows:

- *"To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in close proximity to bus service nodes and railway stations."*

## 5. What is the development standard being varied?

The development standard being varied is the "height of buildings" standard.

## 6. Under what clause is the development standard listed in the EPI?

The development standard being varied is prescribed under Clause 4.3(2) of the ALEP. An extract is below.

### "4.3 Height of buildings

*(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."*

## 7. What are the objectives of the development standard?

The objectives of the standard are set out below:

### "4.3 Height of buildings

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

*(a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and*

*(b) to ensure that the height of buildings is compatible with the character of the locality."*

## 8. What is the numeric value of the development standard in the EPI?

The map referred to in "6" above demonstrates that the site is affected by two (2) maximum building heights. An extract of the map is below:



Figure 1 Height of Buildings Map Extract, Zone 3 outlined in red (Source: ALEP)



As can be seen in the figure above the eastern extent of the site is subject to a maximum building height of 29.9 metres which applies to proposed Buildings 3B1 and 3B2. The western extent is subject to a maximum, building height of 42 metres which applies to proposed Building 3A.

## 9. What is the proposed numeric value of the development standard in the DA and the variation proposed?

As noted earlier, within the two (2) respective ALEP maximum height zones of 29.9 metres and 42 metres, there are parts of the development that fall under the maximum building heights with other areas that breach the height standard. The maximum variations for each building are set out below:

- The maximum height of Building 3A when measured to the top of the lift overrun is 48.58 metres (allowable 42 metres). The variation sought is therefore 6.58 metres;
- The maximum height of Building 3B1 to the top of the lift overrun is 38.95 metres (allowable 29.9 metres). The variation sought is therefore 9.05 metres; and
- The maximum height of Building 3B2 to the top of the lift overrun is 38.65 metres (allowable 29.9 metres). The variation sought is therefore 8.75 metres.

The elevations and sections prepared by Kann Finch submitted with the subject DA include annotations of the relevant ALEP height lines to visually demonstrate the extent of height non-compliance, which is generally limited to two (2) storeys. The following are height plane "blanket" diagrams prepared by Kann Finch which visually demonstrate the areas of non-compliance and equally, the areas of the buildings which fall below the height plane.

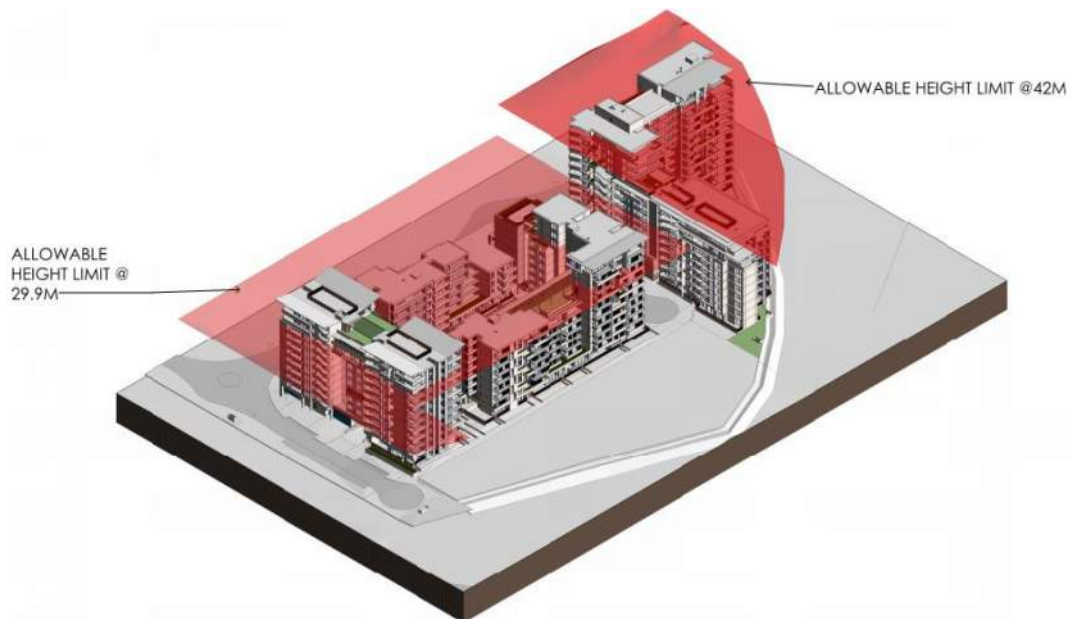


Figure 2 Height Plane Diagram 1 (Source: Kann Finch)



Figure 3 Height Plane Diagram 2 (Source: Kann Finch)

The 42 metre building height standard translates to approximately 13 storeys. Building 3A varies in height between 9 storeys and 14 storeys.

The 29.9 metre building height standard translates to approximately 9 storeys. Building 3B1 varies between 4 storeys and 11 storeys. Building 3B2 varies between 10 storeys and 11 storeys.

The following provides a further illustration of the proposed increases in building height with respect to the proposed areas of decreased height.

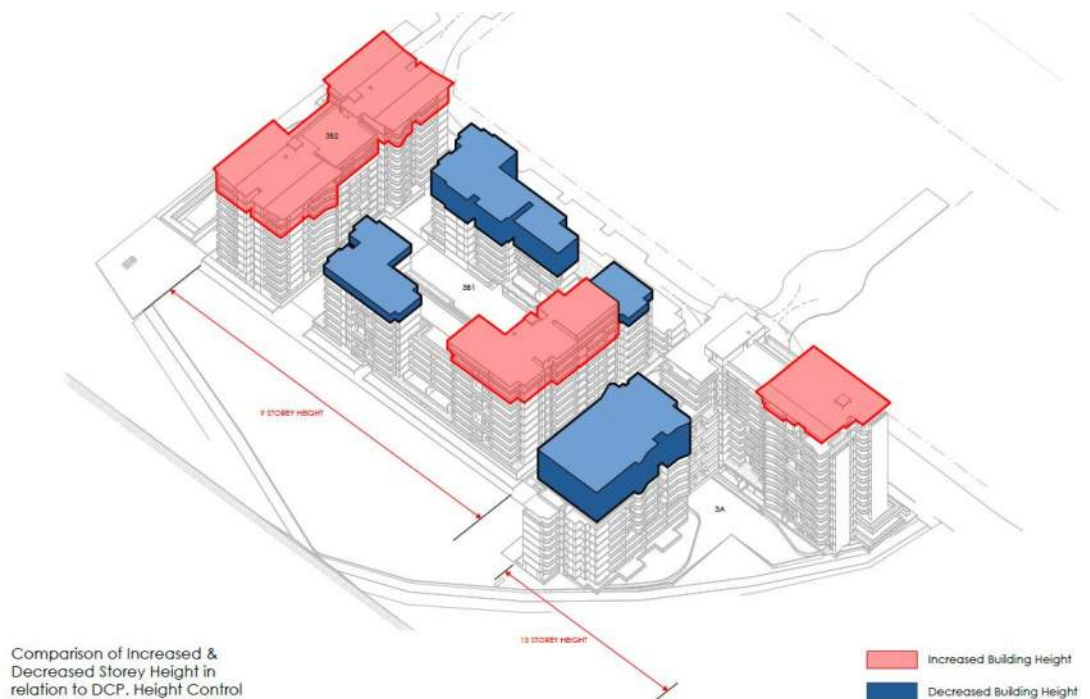


Figure 4 Redistribution of Massing Diagram (Source: Kann Finch)

## 10. Matters to be considered under Clause 4.6

The following table provides a summary of the key matters for consideration under Clause 4.6 of the ALEP and a response as to where each is addressed in this written request:

**TABLE 1: MATTERS FOR CONSIDERATION UNDER CLAUSE 4.6**

Requirement/Subclause of Clause 4.6	Response/Comment
<p>(1) The objectives of this clause are as follows:</p> <p>(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,</p> <p>(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</p>	<p>It is key to note that the objectives of the clause are to provide flexibility in applying development standards in that in so doing better development outcomes ensue.</p>
<p>(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.</p>	<p>The height standard is not expressly excluded from operation of this clause.</p>
<p>(3) Development 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:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>This written request justifies the variation by demonstrating (a) is achieved in Section 11, and (b) is achieved in Section 12.</p>
<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(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</p> <p>(b) the concurrence of the Director-General has been obtained.</p>	<p>This written request addresses all requirements of subclause (3).</p> <p>As set out in Section 13 of this written request, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone.</p> <p>Concurrence is assumed but is a matter to be determined by the Consent Authority.</p>
<p>(5) In deciding whether to grant concurrence, the Director-General must consider:</p> <p>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) the public benefit of maintaining the development standard, and</p> <p>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</p>	<p>Potential matters of significance for State or regional environmental planning is addressed in Section 14.</p> <p>Consideration of whether there is any public benefit in maintaining the development standard is considered in 13.</p>

(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.....	Does not apply.
(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).	This is a matter for the Consent Authority.
(8) This clause does not allow development consent to be granted for development that would contravene any of the following....	Does not apply to the site/proposed variation.

The requirement for consideration and justification of a Clause 4.6 variation necessitates an assessment of a number of criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 variation, although in the circumstance of this case, the absence of any environmental impact is of considerable merit.

The proposed variation from the development standard is assessed below against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and the principles outlined in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46. Whilst the principle applied to SEPP 1, we believe that it is useful to apply in the consideration of a request under Clause 4.6 of the ALEP, as confirmed in *Four2Five*.

## 11. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the variation. Under *Four2Five*, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6(3)(a) (see below).

The five ways described in *Wehbe* are therefore appropriately considered in this context, as follows:

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

The objectives of the standard are set out in Section 7 of this report. A response to each of the objectives is provided below:

#### **(a) to establish a maximum height of buildings to enable appropriate development density to be achieved,**

No more density is proposed for site than envisioned under ALEP, noting that compliance with the maximum FSR of 2:1 is achieved (proposed FSR is 1:1). The proposed development purely seeks to redistribute "mass" across the site to achieve a better planning and architectural, amenity and urban design outcome and particularly, a better outcome for solar access, as will be discussed further in this report.

Therefore, based on the above, we contend that objective (a) is achieved in a different way than envisioned under ALEP, with some minor variations to building height across the



development site which are offset by reductions in height to other parts of the building and a resultant better outcome.

For the reasons set out above, we consider that the proposed development, notwithstanding the variation, results in a better planning outcome in terms of meeting this particular objective of the standard.

- **(b) to ensure that the height of buildings is compatible with the character of the locality.**

Consideration of the compatibility of the proposal and its surroundings can be undertaken with regard to the Land Environment Court Planning Principle on “compatibility with context” in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. In order to test whether a proposal is compatible with its context, the following questions can be asked, with answers provided accordingly:

- *Are the proposal's physical impacts on surrounding development acceptable?*

The SEE submitted with the DA undertakes a detailed assessment of the proposal with regard to the surrounding sites concluding no adverse impact. The proposal's physical impacts on surrounding development/land are therefore acceptable.

- *Has the proposed development of the site has been undertaken with due consideration of the existing and future redevelopment of neighbouring properties?*

The existing character of the Carter Street Precinct is light industrial. However, given the locality is undergoing significant transformation following rezoning in early 2016, it is appropriate to consider the compatibility of the development with the desired future character, as prescribed under the ALEP and the Carter Street Precinct DCP. The Carter Street Precinct DCP supplements the ALEP provisions and provides more detailed guidelines as to the desired future character for the Precinct. We comment as follows:

## **2.2 Development Principles:**

- The development principles in the DCP identify that development in the precinct is to provide a diverse and innovative built form that provides a high quality living environment. The proposed variations to the built form, including some buildings taller than the maximum ALEP heights and some buildings lower than the maximum ALEP heights, directly responds to this principle. The built form outcome for the proposed site will result in a varying built form outcome which promotes better outcomes for residential amenity and therefore, a high quality living environment. Further discussion is provided later in this report under the heading "**Better Residential Amenity**".

## **2.3 Indicative Structure Plan (ISP)**

- The ISP notes a requirement to provide a high density urban environment with over 5,500 dwellings. This, along with the maximum FSRs prescribed in the ALEP, identify the planned density for the Precinct. As noted elsewhere in this report and later under the heading "**No Additional Density**", the proposal complies with the maximum permitted FSR and therefore responds to the planned density for the site.
- The ISP also notes a range in building heights across the precinct noting that taller buildings in landmark locations (and the town centre) are to be 16-22 storeys in height. Despite the variations in height within the proposed site, they will not exceed the 16-22 storeys prescribed for the town centre and other landmark locations, thereby not adversely challenging the planned hierarchy of development within the Precinct.
- Finally, the ISP requires varied building heights to be provided in the Precinct "for visual interest and dynamic urban form". The proposal achieves this with some taller buildings, but equally, some lower buildings, to not only promote better amenity but to also promote a better and varied built form outcome for this part of the Precinct. Further discussion is provided later in this report under the heading "**Better Architectural and Urban Design Outcome**".

#### 4.1 Building Height and Form

- The height variations will result in buildings up to a maximum of 14 storeys, to ensure buildings within the Precinct town centre and Sydney Olympic Park remain the dominant built form elements in the area.
- The proposed variations in height (some taller buildings some lower) respond to the objective in this section of the DCP to provide "a range of building heights and forms...within each street block to create variety and encourage different architectural styles".

To conclude, the proposal is a suitable development option for the site which is in keeping with the desired future character for the Precinct. Whilst different heights are proposed for buildings than strictly envisaged under the ALEP and DCP, they will accommodate the same density as that planned for the site and will achieve the general objectives and principles of the DCP which determine the desired future character for the Precinct.

- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The proposal results in a built form outcome which is compatible with the desired future built form for the site and the immediate area. As such, the proposal is capable of being in harmony with future buildings within the Precinct and the desired future character of the street network following transformation of the Precinct.

For the reasons set out above, the objectives of the standard are satisfied and in many cases, are better satisfied than a strictly compliant development.

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

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved.

***3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;***

Not applicable.

***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;***

Not applicable.

***5. The compliance with 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 zoning of the land is appropriate for the site.

We note that Council, in the pre-lodgement meeting minutes, advised that this written request should address a "Wehbe test" additional to "compliance with the objectives of the standard" to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances (refer to Four2Five).

Consistent with subsequent case law (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), in addition to demonstration that Wehbe way "1" is satisfied, it is not necessary to find other Wehbe "ways" to demonstrate "unreasonable and unnecessary" but rather, to find other additional reasons rather than simply relying on Wehbe way "1".

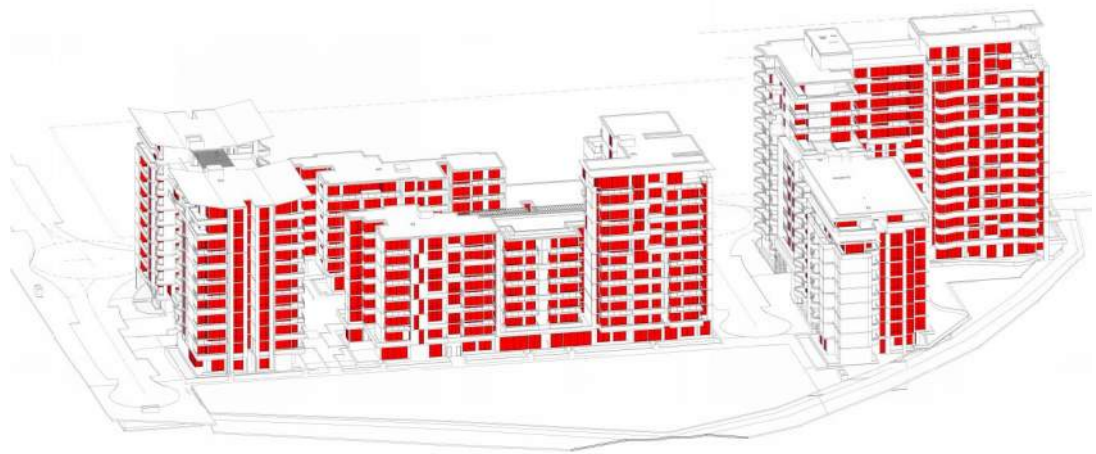
Strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons:

### **No Additional Density**

- The additional storeys above the height standard to select buildings within site will not result in any additional GFA/density. Therefore, the height variations are not attributed to any additional density on the site but rather a direct response to the specific site attributes (i.e. DCP street orientation and block form) and to redistribution of massing to achieve a better planning outcome.

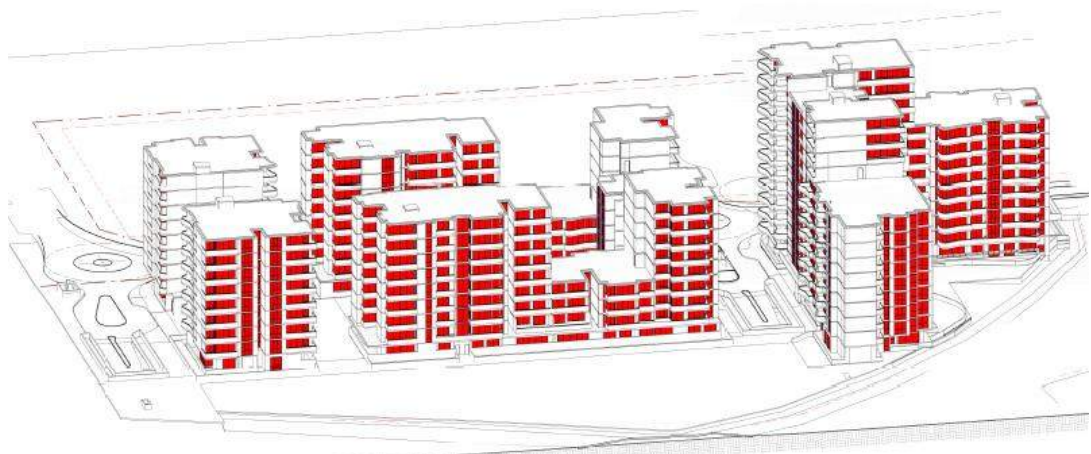
### **Better Residential Amenity**

- The main objective of providing additional heights in select locations throughout Zone 3 is to achieve a better residential amenity outcome than a fully height compliant scheme. This is discussed further below.
- Kann Finch has prepared a series of comparative diagrams which demonstrate that the variations in height compared with a fully height compliant scheme results in a better outcome for internal solar access. Specifically, as can be seen in the analysis below, at 9 am and 12 noon in mid-winter, the proposed scheme achieves a 10% greater provision in solar access to residential apartments than a fully height compliant scheme. At 3pm in mid-winter, the proposed scheme achieves a 26% greater provision in solar access to residential apartments than a fully height compliant scheme. In preparing the comparative analysis, Kann Finch has advised that the two (2) schemes represent the same (common) ground floor and typical lower level layouts and the same GFA and apartment yield. Refer to the comparative analysis diagrams prepared by Kann Finch on the page over.



Buildings - 3A & 3B - 0900 View from the Sun - Proposed Scheme  
ACHIEVES 10% GREATER SOLAR ACCESS AREA IN COMPARISON TO COMPLYING HEIGHT SCHEME

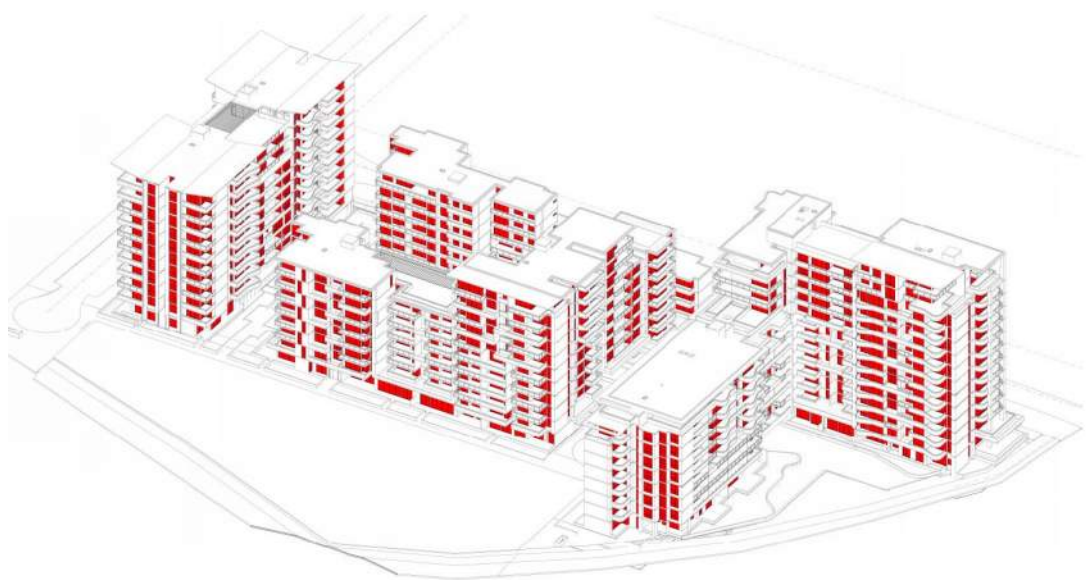
AVERAGE SOLAR ACCESS AREA GAIN OF 15% FROM 9AM, 12PM & 3PM COMPARISON TIMES  
BETWEEN PROPOSED AND COMPLYING HEIGHT SCHEME



Buildings - 3A & 3B - 0900 View from the Sun - Complying Scheme

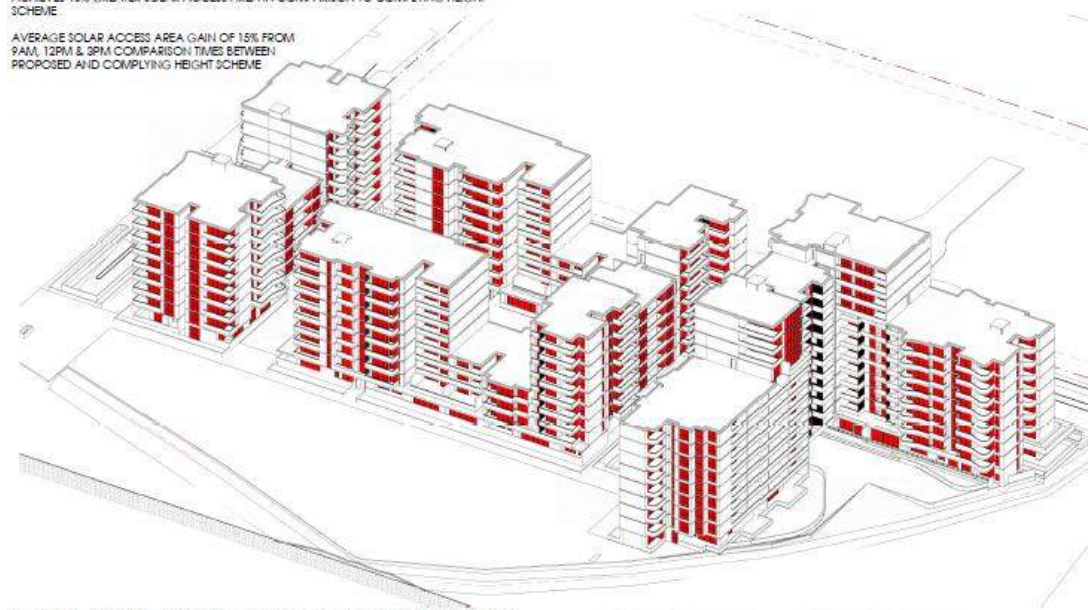
Figure 5 Comparative Analysis of 9 am Mid-Winter Solar Access Outcome of Proposed Scheme vs. Height Compliant Scheme (Source: Kann Finch)





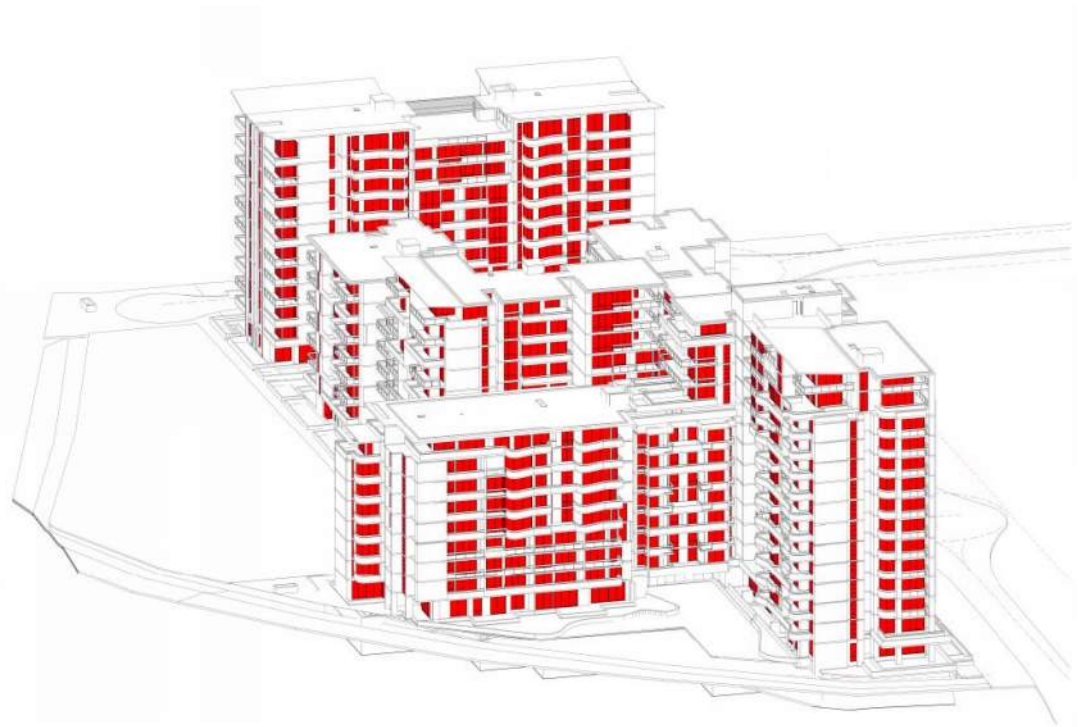
Buildings - 3A & 3B - 1200 View from the Sun - Proposed Scheme  
ACHIEVES 10% GREATER SOLAR ACCESS AREA IN COMPARISON TO COMPLYING HEIGHT SCHEME

AVERAGE SOLAR ACCESS AREA GAIN OF 15% FROM  
9AM, 12PM & 3PM COMPARISON TIMES BETWEEN  
PROPOSED AND COMPLYING HEIGHT SCHEME



Buildings - 3A & 3B - 1200 View from the Sun - Complying Scheme

Figure 6 Comparative Analysis of 12 noon Mid-Winter Solar Access Outcome or Proposed Scheme vs. Height Compliant Scheme (Source: Kann Finch)



Buildings - 3A & 3B - 1500 View from the Sun - Proposed Scheme  
 ACHIEVES 26% GREATER SOLAR ACCESS AREA IN COMPARISON TO COMPLYING HEIGHT SCHEME  
 AVERAGE SOLAR ACCESS AREA GAIN OF 15% FROM 9AM, 12PM & 3PM COMPARISON TIMES  
 BETWEEN PROPOSED AND COMPLYING HEIGHT SCHEME



Buildings - 3A & 3B - 1500 View from the Sun - Complying Scheme

Figure 7 Comparative Analysis of 3 pm Mid-Winter Solar Access Outcome or Proposed Scheme vs. Height Compliant Scheme (Source: Kann Finch)

- Kann Finch has prepared a series of comparative diagrams which demonstrate that the variations in height compared with a fully height compliant scheme allows for the proposed scheme to achieve a 17% increase in area of the northern façade that promotes views. Views to the Olympic Stadium in the proposed scheme are increased by 5%. Refer to the analysis below.



View to North - Proposed Scheme  
ACHIEVES 17% GREATER AREA OF VIEWS IN COMPARISON TO COMPLYING HEIGHT SCHEME



View to North - Complying Scheme

Figure 8 Northern Façade Comparative View Analysis (Source: Kann Finch)





View to Olympic Stadium - Proposed Scheme

ACHIEVES 5% GREATER AREA OF VIEWS IN COMPARISON TO COMPLYING HEIGHT SCHEME



View to Olympic Stadium - Complying Scheme

Figure 9 Comparative View Analysis to Olympic Stadium (Source: Kann Finch)

Based on the above, we contend that the proposed variations in height and redistribution of massing around the site, when compared with a full height compliant scheme, result in a better outcome for residential amenity in terms of solar access and views/outlook.

#### **Better Architectural and Urban Design Outcome**

- Another key objective of providing additional heights via a redistribution of massing is to achieve a better urban design outcome with variety in the scale of buildings across the “Zone 3” part of the Carter Street Precinct. Earlier **Figure 4** demonstrates how the redistribution of the same complying scheme GFA with the balancing of increased and decreased heights, results in a better outcome in terms of visual interest and amenity and a greater variety of landscaped roof spaces. This is also demonstrated in the following comparative aerial views of the proposal and a height complying scheme.





Figure 10 Comparative View 1 - Aerial Massing of Proposed Scheme vs Height Complying Scheme  
(Source: Kann Finch)



Figure 11 Comparative View 2 - Aerial Massing of Proposed Scheme vs Height Complying Scheme  
(Source: Kann Finch)



Figure 12 Comparative View 3 - Aerial Massing of Proposed Scheme vs Height Complying Scheme  
(Source: Kann Finch)

Further to the above, lower building heights on the northern side of the main street edge create a more pedestrian scaled outcome and visual interest in built form. Refer to the comparable images prepared by Kann Finch below:



Figure 13 Proposed Main Street View vs Complying Scheme Street View (Source: Kann Finch)

### Better Opportunity for Solar Access to future "Retail" Street

- Whilst the subject DA does not include any development on the southern side of Road 2, the intent is for the ground floor to incorporate neighbourhood shops, similar to the proposed ground floor neighbourhood shops to the street edge on the northern side of the street in the subject DA. The analysis provided below from Kann Finch demonstrates that the redistribution of massing and particularly, a significant reduction in height of parts of Building 3B down to 4 storeys provides a better pedestrian scaled street and good opportunities for winter solar access. The latter is important for enhancing activation of the future "retail street" and amenity for patrons and staff of the neighbourhood shops. Refer below.

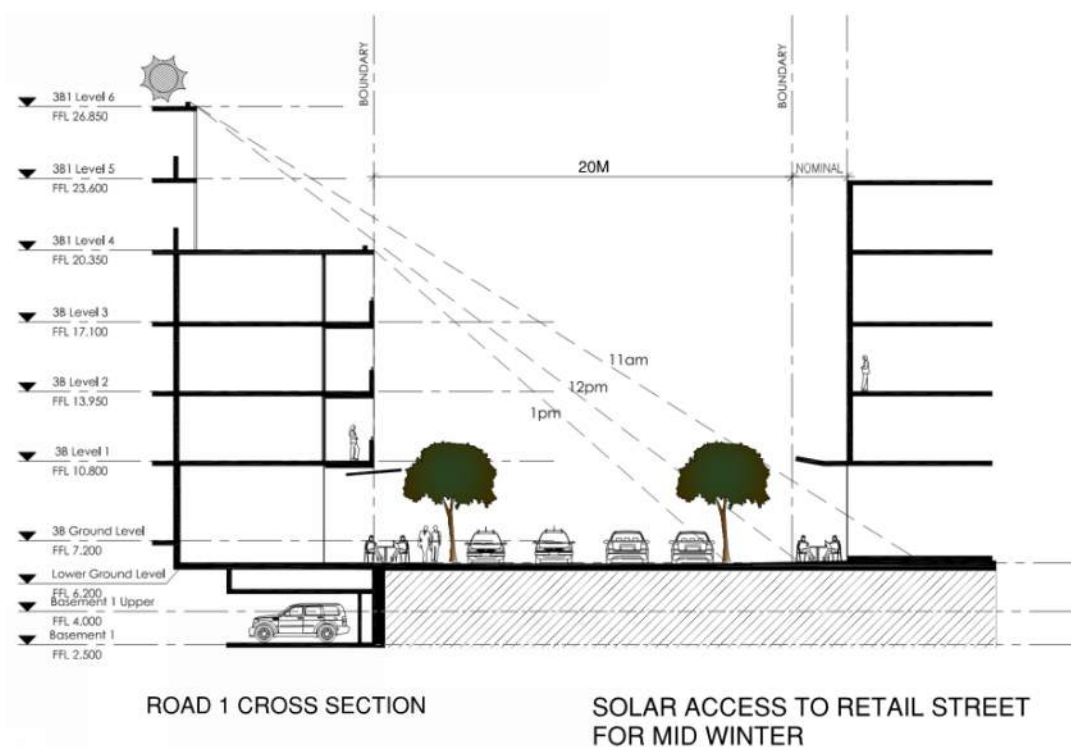


Figure 14 Mid-winter solar access for proposed "retail" street (Source: Kann Finch)

The reference to a "retail street" relates to the provision of modest shops and future food and drink premises providing a community hub/meeting place for Zone 3, with the objective of providing this section of the street with high amenity, adding to its attractiveness, which will be enhanced through maximisation of solar access.

- In the case of *Moskovich v Waverley Council*, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. In a similar scenario, the proposed development which seeks to vary the height standard, is demonstrated (above and in the accompanying architectural package prepared by Kann Finch) to achieve a better residential amenity outcome by complying with the FSR standard and merely redistributing the building mass around the site to provide lower buildings in places and taller buildings in other places to achieve a better urban design, architectural and residential amenity outcome. A compliant development could be delivered but this would be at the expense of residential amenity, public domain amenity, and urban design/architectural outcomes for this part of the Precinct.
- Whilst noting that the maximum FSR is not a “given”, it reflects the planned density for the site. If the planned density for the site can be achieved in a way which provides a better planning outcome for the site, notwithstanding the variation which is within the ambit of Clause 4.6, this is considered to be a positive outcome.

For the reasons as set out above, compliance with the standard can be demonstrated to be unreasonable and unnecessary in the circumstances of this case.

## 12. Sufficient environmental planning grounds to justify the contravention

The particular circumstances of this case distinguishes it from others for the following key reasons:

- The taller buildings which do not comply with the height standard will be offset by lower buildings. In translating the maximum heights to comparable maximum storeys, proposed Building 3A will be 4 storeys lower than the height standard in some places and 1 storey taller in others. Proposed Building 3B1 will be up to 5 storeys lower than the height standard in places and 2 storeys greater in others. Proposed Building 3B2 does not have a lower offset but is only 1 to 2 storeys greater than the height standard permits. In our view, the reductions in height across the site adequately offset the minor variations of up to two (2) storeys. As addressed earlier in this report and in the documentation prepared by Kann Finch for the DA, the redistribution of massing achieves a better streetscape and amenity outcome for the public domain, as well as a better residential amenity outcome.
- The SEE that has been prepared for DA provides a holistic environmental planning assessment of the proposed development and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the SEE demonstrates that the contravention of the height standard enables the planned density for the site under the ALEP to be achieved in buildings and apartments therein with higher levels of amenity achieved than a strictly height compliant development. The ability to achieve this is largely attributed to the substantial size and dimensions of the site, and the street layout and block orientation as stipulated in the DCP, which is a circumstance unique to this particular site in the surrounding catchment. It's effectively a master planning exercise for the site determining that greater heights in appropriate locations within the northern part of Zone 3 allow for a better planning outcome, but that are still relatively modest and within the ambit of 4.6, which has no quantitative limit.

The above points are environmental planning grounds that warrant the exceedance, which are not “generic”, but rather, specific to the site and circumstances of the development.

## 13. Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless 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 objectives of the standard have been addressed in Section 11 and are demonstrated to be satisfied.

The objectives of the zone are addressed below.

**TABLE 2: RESPONSE TO OBJECTIVES OF ZONE**

Objectives of R4 Zone	Response/Comment
To provide for the housing needs of the community within a high density residential environment	The proposed variation to height standard will not conflict with this objective. The redistribution of the height does not result in any impact to the planned density for the site. The envisaged high density can be achieved with a better amenity outcome than a height complying scheme.
To provide a variety of housing types within a high density residential environment.	The proposed variation to height standard will not conflict with this objective. A greater variety can be provided by more varied building heights. Better views are promoted as a result of the increased height in certain locations. This is addressed earlier in this report. A variety of apartment types will be provided ranging from single aspect, through, corner, garden terrace and double heights will be accommodated in a mix of varied 1 bedroom, 2 bedroom and 3 bedroom types.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed variation to height standard will not conflict with this objective. Some smaller retail uses, "neighbourhood shops", will be provided within the development to achieve consistency with this objective.
To encourage high density residential development in close proximity to bus service nodes and railway stations.	The proposed variation to the height standard will not conflict with this objective. No more density is proposed for the site than envisioned under ALEP. Rather the proposal purely seeks to redistribute massing to achieve a better planning and architectural outcome. ARUP has advised the proposed Road 2 is not intended to be a future bus route.

The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been adequately satisfied, where relevant. Therefore, the variation to the height of buildings standard is in the public interest.

## 14. Matters of state or regional significance (cl. 4.6(5)(a))

There is no prejudice to planning matters of State or Regional significance resulting from varying the development standard as proposed by this application.



## 15. The public benefit of maintaining the standard (cl. 4.6(5)(b))

Pursuant to case law of *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is “whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development”.

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum height of buildings standards, whilst better planning outcomes are achieved.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest.

## 16. Is the variation well founded?

This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the Precinct Plan, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
- The development meets the objectives of the development standard and where relevant, the objectives of the R4 zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard; and
- The contravention does not raise any matter of State or Regional significance.

The variation is therefore considered appropriate in the circumstances of the case.