



Clause 4.6 Variation Request Amended Building Height Development Standard: Ryde Local Environmental Plan 2014

39-41 Devlin Street, Ryde

Submitted to Ryde City Council on behalf of Chiwayland Australia Pty Ltd

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This document is preliminary unless approved by a Director of City Plan Strategy & Development

CERTIFICATION

This report has been authorised by City Plan Strategy & Development, with input from a number of other expert consultants, on behalf of the Client. The accuracy of the information contained herein is to the best of our knowledge not false or misleading. The comments have been based upon information and facts that were correct at the time of writing this report.

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1. Introduction

This is a formal written request that has been prepared in accordance with clause 4.6 of the Ryde Local Environmental Plan 2014 to support an amended development application submitted to Ryde City Council for the construction of two (2) buildings up to five (5) and nine (9) storeys in height, and containing ninety-six (96) residential apartments, two (2) commercial units and three (3) levels of basement car parking at 39-41 Devlin Street, Ryde.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying development standards to achieve better outcomes for, and from, development.

As the following request demonstrates, a better planning outcome would be achieved by exercising the flexibility afforded by Clause 4.6 in the particular circumstances of this application.

The development standard that this request seeks approval to vary is the height of buildings control in Clause 4.3(2) and exceptions to height of buildings Clause 4.3A(1) of the *Ryde Local Environmental Plan 2014* (LEP)

The numeric value of the height of buildings development standard is 21.5m.

The development standard is not specifically excluded from the operation of Clause 4.6 of the LEP.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and relevant decisions in the New South Wales Land and Environment Court and New South Wales Court of Appeal¹.

In Sections 3 and 4 of this request, 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. In Sections 4, 5, 6 and 7 we address, 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.

¹ Relevant decisions include: Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46; Wehbe v Pittwater Council [2007] NSWLEC 827; Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009; Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248; and Moskovich v Waverley Council [2016] NSWLEC 1015.

2. Extent of variation

The subject site has a maximum allowable building height of 15.5 metres, as shown in the RLEP Building Height Map in Figure 1.

As the site is located in "Area E" on the Map, pursuant to Clause 4.3A(1), it benefits from an addition/bonus building height of 6 metres if the following requirements are satisfied:

- The lot on which the building is sited has an area of at least 900m²; and
- The proposed development is a mixed-use development; and
- The proposed development provides laneway access.

With regard to these three points, it is noted that:

- The lot on which the building is sited has an area of approximately 2,900m²;
- The proposed development is a mixed-use development; and
- The proposed development provides laneway access. In this regard the proposal extends the current laneway pavement and provides a vehicle turning head. Vehicle access will be obtained from Belmore Lane facilitating the removal of the existing and undesirable access from Victoria Road. A new pedestrian footpath is proposed to provide direct pedestrian access from the turning head on Belmore Lane to Victoria Road. Vehicle access to/from Victoria Road was not supported by the RMS.

The proposed development, therefore, meets the requirements of Clause 4.3A(1) and as such a maximum building height of 21.5 metres applies to the site.



Figure 1 - Extract of Height of Buildings Map pursuant to RLEP (Source: NSW Legislation).

The proposal comprises two buildings over a common basement carpark. The building on Belmore Lane nearest to the adjacent residential flat buildings complies with the maximum building height control. The building with a frontage to Devlin Street and Victoria Road proposes a variation of the height control ranging from approximately 1.5m on the Devlin Street frontage to 7.86m at the location shown in Figures 2, 3 and 4 below.

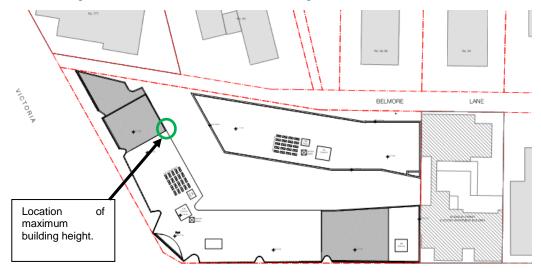


Figure 2 - Extract of the amended Roof Plan prepared by SJB, showing the location of the proposed maximum building height circled in green (Source: SJB).

The 3D height plane perspectives in Figures 4 and 5 below illustrate the extent of the proposed variation and the location of the maximum building height.

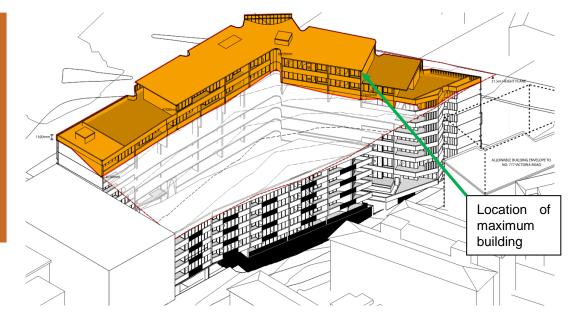


Figure 3 - Extract of the 3D height plane perspective north, showing the location of the proposed maximum building height (Source: SJB).



Figure 4 - Extract of the 3D height plane perspective south, showing the location of the proposed maximum building height (Source: SJB).

3. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this case. [cl. 4.6(3)(a)]

Achieves the objectives of the standard

Compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of this case because, as explained in Table 1 (below), the objectives of the development standard are achieved, notwithstanding non-compliance with the standard².

Table 1 - Achievement of Development Standard Objectives

Objective	Discussion
(a) to ensure that street frontages of development are in proportion with and	The site is located at the southern entrance of the Ryde Town Centre at the junction of two major roads, being Victoria Road and Devlin Street, both of which are 9 lanes wide at this location.
in keeping with the character of nearby development.	The locality is described as the Commercial Edge West Precinct in the DCP and is an area that is in transition. The planning controls in this locality permit mixed use development up to 21.5m including the immediately adjacent sites to the north and west.
	Being located on the corner of the Commercial West Precinct and the southern entry to the Ryde Town Centre, the accentuation of the building form resulting from the variation of the maximum building height control is contextually appropriate as illustrated in 4 and 5 and in proportion with the character of nearby development envisaged by the planning controls.
	In this regard the Urban Design Review Panel observed " The site is of a significant size located on a prominent intersection within the local government area, with frontage to both Waterloo Road and Devlin Street at Top Ryde The scale of the proposal is generally supported by the Panel despite some departures from the applicable building height controls The most significant departure from the building height control occurs along Victoria Road, where the impacts of additional height and overshadowing can be managed, and where the scale of the roadway can accommodate a taller building form."
	It should be noted that the proposal has been further amended since the Urban Design Review Panel made these observations such that the extent of the variation has been reduced from 10.15m to 5.85m in the location then described, and 7.86m overall.
(b) to minimise overshadowing and to ensure that	The proposed variation does not create substantial additional overshadowing to neighbouring properties than a development complying with the building height control. This is primarily due to the

² In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ identified 5 ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient for only one of these ways to be established. Although the decision concerned SEPP 1, it remains relevant to requests under clause 4.6 as confirmed by Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90,

notwithstanding that if the first and most commonly applied way is used, it must also be considered in 4.6(4)(a)(ii). The 5 ways in Wehbe are: 1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; 2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; 3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; 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 the standard is unreasonable and unnecessary; or 5. The zoning of the land is unreasonable or inappropriate.

development is generally compatible with or improves the appearance of the area. site's north-south orientation and location of the variation which largely creates overshadowing to Victoria Road, rather than neighbouring properties.

The proposed development has been accompanied by shadow diagrams prepared by SJB Architects and are provided at Appendix 3 of the SEE. The diagrams indicate the front yards of properties at 784-788 Victoria Road are generally affected by additional shadows between 9am and 12pm midwinter. Overshadowing only impacts Victoria road rather than causing negatives impacts to residential neighbours.

The proposal does not result in any unacceptable shadow impacts to surrounding residential properties or to the public domain, and will not restrict any future development of surrounding land.

Currently, development fronting Belmore Lane and Devlin Street includes a mix of older, asynchronous residential developments with no heritage significance. The development improves the appearance of the area through the use of contemporary architectural design elements such as articulation, colours and materials on the building facades.

(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure.

The site is well located with respect to access to shops and services and public transport infrastructure and is a logical place to maximise housing opportunities. The proposal achieves the planned residential densities (as reflected by the floor space ratio control) in a manner that is contextually appropriate, minimises adverse external environmental effects and optimises residential amenity.

In this respect the proposal is consistent with Objective (c).

(d) to minimise the impact of development on the amenity of surrounding properties.

The variation of the height control occurs on the main road frontages in a relatively narrow building form and as such any impact on the amenity of surrounding properties is minimised. Further, we note that the extent of the variation immediately adjacent to neighbouring properties has been reduced in the amended plans from 10.15m to 5.85m. As noted earlier the proposal does not cause any overshadowing of adjoining residential properties.

(e) to emphasise road frontages along road corridors.

As noted earlier the site is located at the intersection of two major road corridors containing 9 lanes of traffic each and being 34m and 50m wide. The proposal is of an appropriate height given the location of the site at the southern entrance to the Town Centre and on the corner of this intersection. As noted by the Urban Design Review Panel the scale of the roadway can accommodate a tall building form in this location and in this regard, we believe that the proposal appropriately emphasises the road frontages along the two road corridors given the particular locational characteristics of this site.

A better planning outcome

In *Moskovich v Waverly Council* [2016] NSWLEC 1015 the Court accepted that compliance with the development 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 circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development.

Different massing options for the site were considered before settling on the solution presented in the development application. Figure 5, for example, illustrates a massing option that strictly complies with the development standards, however, it results in a poor

streetscape outcome, poor surveillance of Belmore Lane and only baseline amenity performance against the ADG criteria. Furthermore, it does not manage the impact of road noise and it fails to appropriately respond to the gateway location of the site at the intersection of two major and large-scale road corridors.

The concept of increasing building height along the road frontages to maximise residential amenity was suggested at the first Urban Design Review Panel meeting, which took place at pre-DA stage. Increased building height, it was said, would enable a sensible building depth to be achieved.

The Devlin Street and Victoria Road building has a building depth of only 9.5m (glass to glass) and comprises single loaded gallery corridors and floor plans that mitigate the impact of road noise and maximise internal amenity (88% solar access and 88% cross flow overall). The proposal complies with the maximum floor space ratio control applying to the land. The variation of the maximum building height results in a superior planning outcome in terms of a better streetscape and internal and external amenity compared with a complying development - thereby indicating that strict compliance with the development standard is both unreasonable and unnecessary in the circumstances of this case.

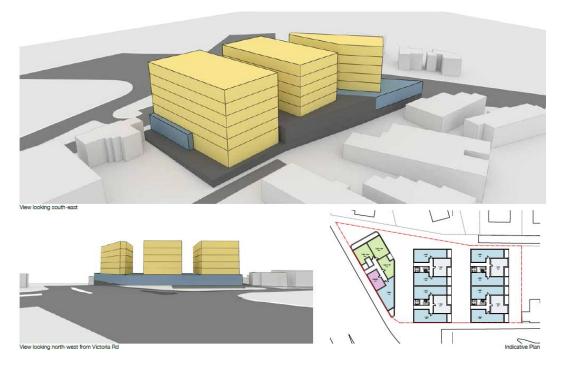


Figure 5 - Numerically compliant building form (source: SJB)

4. There are sufficient environmental planning grounds to justify contravening the standard. [cl. 4.6(3)(b)]

The site enjoys a unique location with particular environmental challenges including road noise and topography and opportunities including orientation and its town centre gateway location.

The site lends itself to increased height on the southern and eastern edges (main road frontages) as noted by the Urban Design Review Panel.

The increased height on these frontages facilitates a better planning outcome as discussed earlier and does not result in any exceedance of the floor space ratio standard.

The increased height facilitates exceptional solar access within the development (88% overall).

The building frontage on Belmore Lane does not exceed the height limit and is located at the intersection with Victoria Road where the Urban Design Review Panel noted "the scale of the roadway can accommodate a taller building form". The entire length of the Belmore Lane boundary is approximately 75.5m.

The increased building height does not have any adverse amenity impacts on adjacent properties because of the orientation of the site and location of adjacent arterial road corridors.

The corner location of the site at the entrance to the Ryde Town Centre is a unique characteristic of the site such that the proposal would not create an undesirable precedent.

5. The proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone. [cl. 4.6(4)(a)(ii)]

In section 2 (above), it was demonstrated that the proposal is consistent³ with the objectives of the development standard. The proposal is also consistent with the objectives of the zone as explained in Table 2 (below).

Table 2 - Consistency with Zone Objectives

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Objective	Discussion			
To provide a mixture of compatible land uses.	The proposed mixed-use development is permissible within the zone. Further, the site is located 400 metres from the Top Ryde town centre and within close proximity to public transport, retail and recreational uses. The proposal facilitates a higher density residential development on an appropriate site/zone and compatible to other land uses in the town centre. The proposed exceedance of the height standard does not affect consistency with this objective.			
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The site is located within close proximity to public transport, services and employment opportunities. This will encourage walking and cycling for the residents. The proposed exceedance of the height standard enables the planned density to be achieved on the site in an appropriate manner thereby maximising public transport patronage and walking and cycling.			
To ensure employment and educational activities within Macquarie University campus are integrated with other businesses and activities.	This objective is not applicable to the site although it is noted that an express bus service provides excellent access between Macquarie University and the site.			
To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.	This objective is not applicable to the site.			

As can be seen from Table 2, the proposal is consistent with the objectives of the standard and the objectives of the zone, and is therefore in the public interest.

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³ In *Dem Gillespies v Warringah Council* [2002] LGERA 147 and *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC the term 'consistent' was interpreted to mean 'compatible' or 'capable of existing together in harmony'.

6. Contravention of the development standard does not raise any matter of significance for State or regional environmental planning. [cl. 4.6(5)(a)]

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

7. There is no public benefit of maintaining the standard [cl. 4.6(5)(b)]

There is no public benefit⁴ in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum building height control and hence there are no public disadvantages. Alternatively, increasing the building height on the Victoria Road and Devlin Street frontages helps to define the entrance to the Ryde Town Centre and facilitates the improvement of Belmore Lane and in so doing provides a public advantage.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will have an overall public benefit.

⁴ Ex Gratia P/L v Dungog Council (NSWLEC 148) established that the question that needs to be answered to establish whether there is a public benefit is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development"

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8. Conclusion

The proposal to exercise the flexibility afforded by Clause 4.6 of the *Ryde Local Environmental Plan 2016* results in a better outcome both in terms of the amenity of future residents of the development and the contribution the development makes to the urban form and legibility of the Ryde Town Centre and amenity of adjacent properties.

This variation request demonstrates, as required by Clause 4.6 of the Ryde Local Environmental Plan 2014, 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;
- The development achieves the objectives of the development standard and is consistent with the objectives of the B4 Mixed Use Zone;
- The proposed development, notwithstanding the variation, is in the public interest and there is no public benefit in maintaining the standard; and
- The variation does not raise any matter of State or Regional Significance.

On this basis, therefore, it is considered appropriate to exercise the flexibility provided by Clause 4.6 in the circumstances of this application.