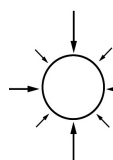


# CLAUSE 4.6 EXCEPTION REQUEST

## HEIGHT OF BUILDINGS

No.35 INGLEBURN ROAD

LEPPINGTON



**NEXUS**

Environmental Planning Pty Ltd

## CLAUSE 4.6 VARIATION REQUEST

### HEIGHT OF BUILDINGS

No.35 INGLEBURN ROAD

LEPPINGTON

15 December 2017

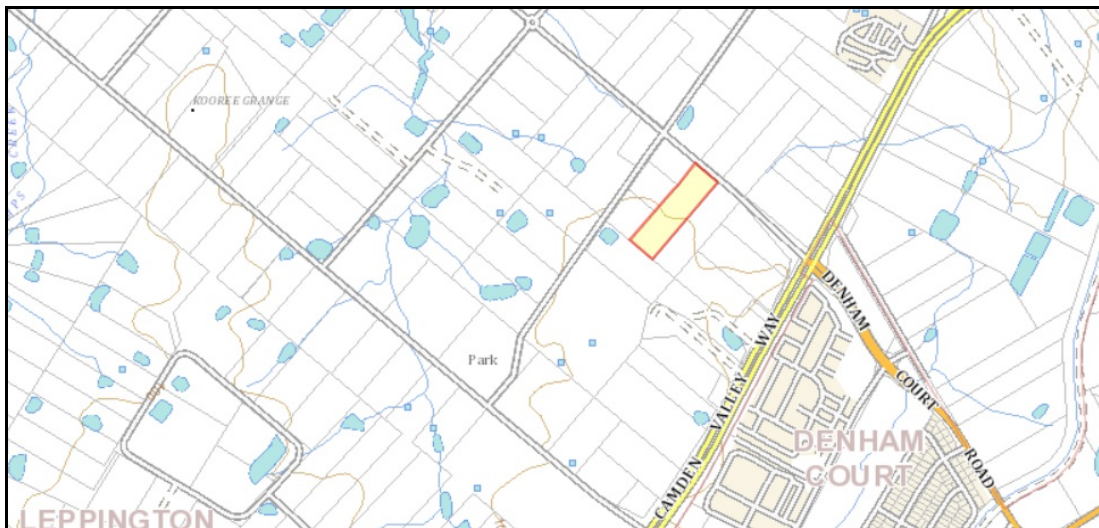
Prepared by:  
Nexus Environmental Planning Pty Ltd  
Suite 29, 103 Majors Bay Road  
PO Box 212  
CONCORD NSW 2137  
Tel: (02) 9736 1313  
Fax: (02) 9736 1306  
Email: [kennan@ozemail.com.au](mailto:kennan@ozemail.com.au)

B3247

## 1. Introduction

This objection to the Height of Buildings development standard of *State Environmental Planning Policy (Sydney Regional Growth Centres)* (**SEPP 2006**) has been prepared to accompany a development application to Camden Council (**the Council**).

The development application relates to demolition of the existing structures and the erection of a new residential flat development at No.35 Ingleburn Road, Leppington. **Figure 1** shows the location of No.35 Ingleburn Road, Leppington.



**Figure 1:** Location of 35 Ingleburn Road, Leppington highlighted in yellow. © SIX Maps

## 2. Relevant Development Standard

Building height is defined in SEPP 2006 as:

**building height** (or **height of building**) means the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

**Sub-clause 4.3** of SEPP 2006 states:

### **4.3 Height of buildings**

- (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,

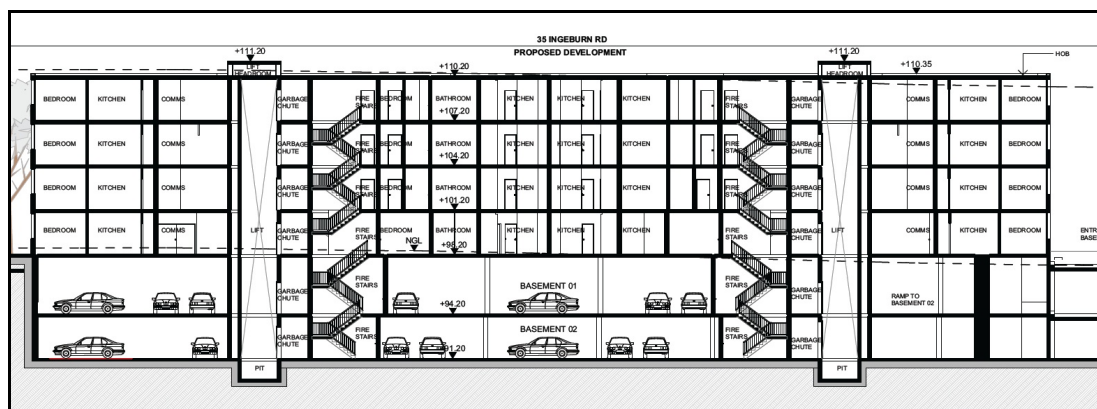
(c) to facilitate higher density development in and around commercial centres and major transport routes.

(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.

The maximum height of buildings development standard is 12 metres.

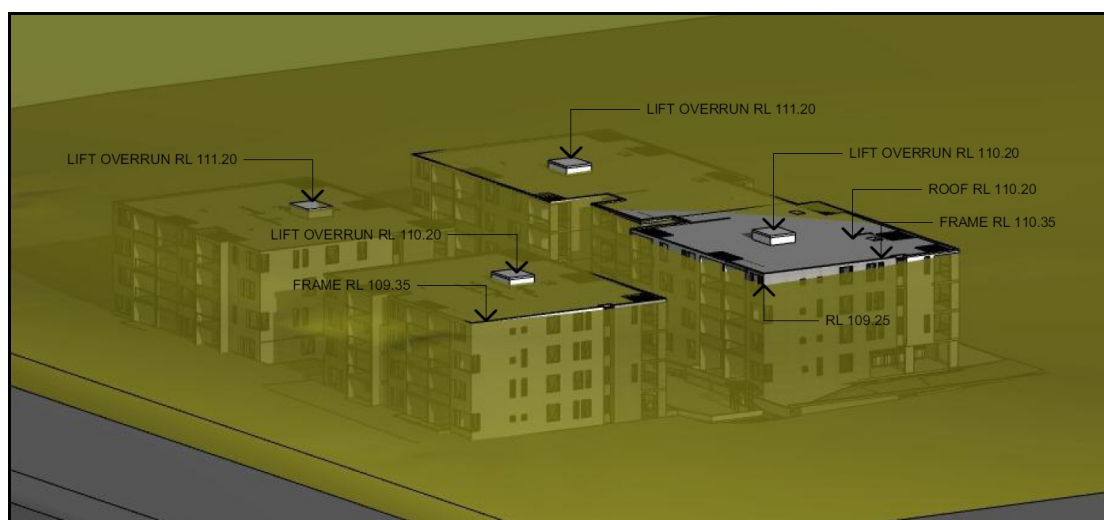
The proposed development is within the maximum building height except for a small section where the lift overrun for each of Building A, Building B and Building C is above the 12 metre maximum height. There is also a small non-compliance with the 12 metres standard at the north eastern corner of Building C.

**Figure 2** shows Section AA which indicates where the proposed development is non-compliant with the development standard.



**Figure 2:** Extract from Section AA of the development plans which shows the non-compliance of the lift overrun and a small section of Building C with the 12 metre height of buildings development standard of SEPP 2006.

**Figure 3** shows a 3D drawing which depicts that part of the proposed development which pierces the 12 metre height plane.



**Figure 3:** 3D diagram showing that part of the proposed development which pierces the 12 metre height plane.

It is the 12 metre height of buildings development standard which is the subject of this objection.

### 3. Objection to the Height of Buildings Development Standard

**Sub-clauses 4.6(1) & (2)** of SEPP 2006 state:

- (1) *The objectives of this clause are as follows:*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

**Sub-clause 4.6(3)** of SEPP 2006 provides for variation to development standards as follows:

- (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:*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

For the reasons set out below, the merits of the application should properly be considered in the context of sub-clause 4.6(3).

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 Preston CJ outlined that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments which contravene the building height standard (cl 4.6(2)), however, they cannot grant such a development consent unless they:

- Are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).
- Are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

- Have considered a written request which demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).
- Have considered a written request which demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

## Objectives of the Zone

The objectives of the R3 Medium Density Residential zone are:

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

The proposal is for a residential flat building which provides for the housing needs of the area which is undergoing significant transition from rural to residential development of varying density.

The proposal assists in the provision of a range of housing types within the medium density environment of the site and its surroundings.

The proposal would be consistent with the objectives of the R3 Medium Density Residential zone.

## Objectives of the development standard?

The underlying objectives of the height of buildings development standard contained in Clause 4.3 of SEPP 2006 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.*



### Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ comprehensively examines a number of ways of establishing that compliance with a development standard is unreasonable or unnecessary, and states:

*The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard...*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).*

The non-compliance with the height of buildings development standard is confined to the lift overrun of the proposed development and a small section at the rear of Building C. The degree of non-compliance is seen in **Figure 3**.

To strictly apply the 12 metre maximum height of buildings development standard to the proposed development would be unreasonable and unnecessary as the proposed development would provide a development which can meet the underlying objective and purpose of the development standard in that:

1. The non-compliance would not be perceived from the majority of the public domain.
2. The non-compliance with the development standard is modest.
3. The proposed height, bulk and scale of the proposed development are compatible with the desired future character of the locality.
4. The proposed development will live in harmony with other future development in the vicinity of the Site.
5. The proposed development will have negligible visual impact, will not disrupt views, and will not result in any loss of privacy to existing development and the public domain.

### Are there sufficient environmental planning grounds to justify contravention of the development standard?

The proposed development is within the R3 Medium Residential zone, the objectives of which are:

- *To provide for the housing needs of the community within a medium density residential environment.*

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

The proposal would be consistent with the objectives of the R3 Medium Density Residential zone in that it would:

- Provide for the housing needs of the community in the form of residential units.
- Facilitate development which assists in the provision of a variety of housing types in the Camden local government area.
- Provide for medium density residential housing close to public transport, services and employment opportunities.

A suitable development is proposed for the Site notwithstanding the minor non-compliance with 12 metre height of buildings development standards.

The proposed development provides a density of housing in accordance with the SEPP 2006.

It is a better planning outcome to promote and co-ordinate the orderly and economic use and development of the Site through facilitating a development with a minor breach of the height of buildings development standard than proposing a smaller development form which would not lead to the optimum sustainable capacity of development envisaged by the SEPP 2006.

In the circumstance of this development application, the objection to the development standard is well founded and should be supported as it has adequately addressed the matters required to be demonstrated by **Clause 4.6(3)** of SEPP 2006. The development would be in the public interest because it would provide a better planning outcome while at the same time being consistent with the objectives of the development standard and the objectives of the R3 Medium Density Residential zone.

----- 000 -----