

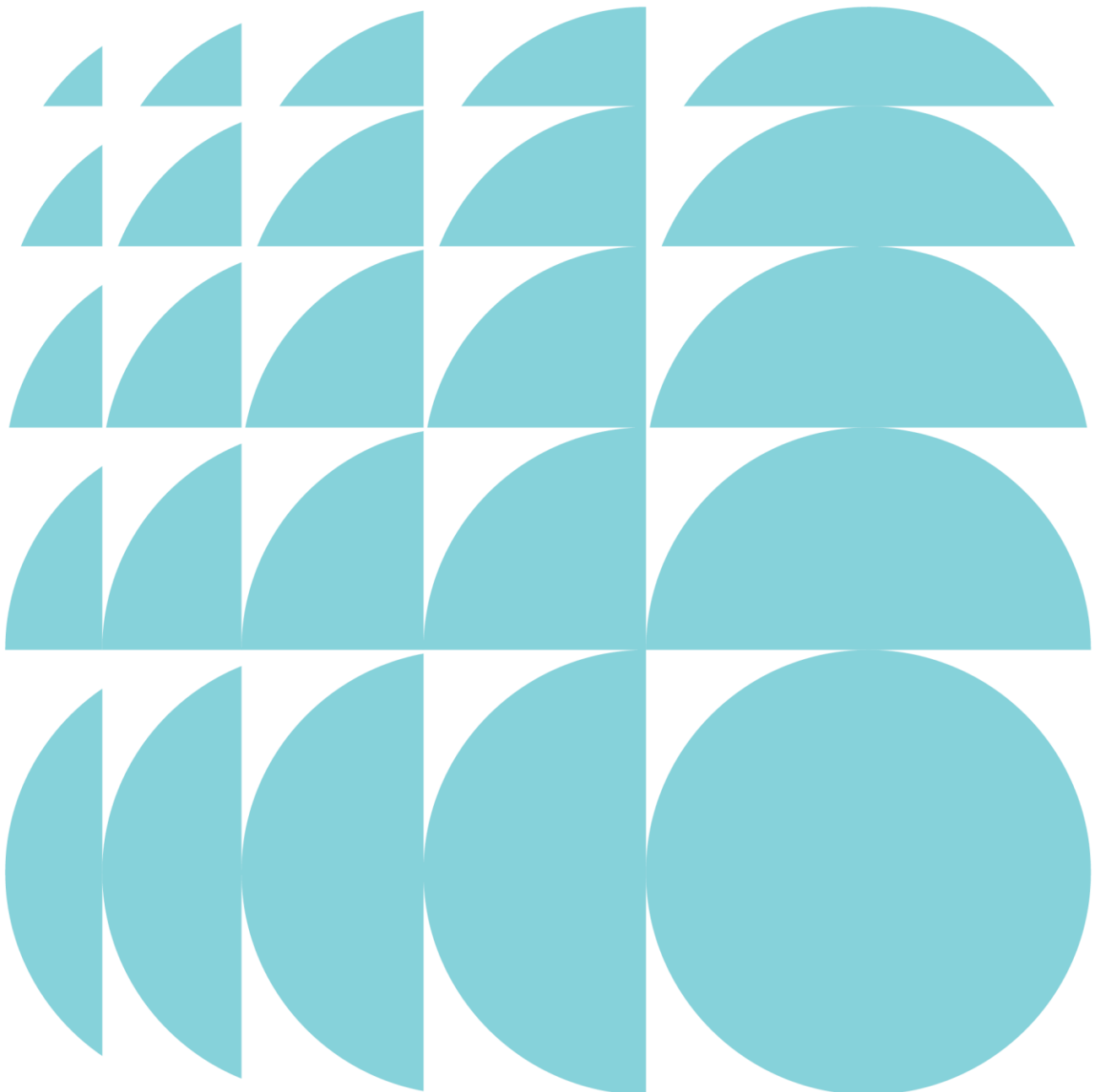
ETHOS URBAN

Amended Clause 4.6 Variation to
Development Standard
Clause 4.3 Height of Buildings Development
Standard

120 Tenth Avenue, Austral
Seniors Housing - Independent Living Units

Submitted to Liverpool City Council
On behalf of RSL Lifecare

24 May 2018 | 15696



CONTACT

Ben Craig	Director	bcraig@ethosurban.com	9956 9662
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This document has been prepared by:

This document has been reviewed by:

Arcangelo Antoniazzi	24 05 2018	Harry Quartermain	24 05 2018
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Ethos Urban
ABN 13 615 087 931 Pty Ltd.,
www.ethosurban.com
173 Sussex Street, Sydney
NSW 2000 t 61 2 9956 6952

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of RSL Lifecare. It is submitted to Liverpool City Council (Council) in support of a Development Application (DA) for a senior's housing development (Independent Living Units) at the Austral Tobruk Aged Care Facility at 120 Tenth Avenue, Austral.

Clause 4.6 within Appendix 8 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centre's SEPP) enables the consent authority to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the Height of Buildings development standard under clause 4.3 of the Growth Centres SEPP.

It should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated August 2017, as well as:

- The response to Council's additional information request prepared by Ethos Urban (dated May 2018); and
- Amended Architectural Drawings prepared by Allen Jack + Cottier (dated 14 May 2018).

This clause 4.6 variation request demonstrates that:

- compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case;
 - given the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- that there are sufficient environmental planning grounds to justify contravention of the standard, as:
 - consistent with the first objective of Clause 4.6 of the Growth Centre's SEPP, the degree of flexibility required by the consent authority to support the minor increase building height in this instance is considered both appropriate, and particular to the circumstances of the development;
 - the proposed development remains consistent with the site context and strategic vision for the precinct; and
 - robust building design and ongoing architectural iterations have ensured adherence to the needs of seniors housing
- the variation is in the public interest because it is consistent with the objectives of the zone and the development standard; and
- the Secretary's concurrence can be obtained as contravention of the development standard does not raise any matter of significance for State and regional planning.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 within Appendix 8 of the Growth Centre's SEPP.

2.0 Request to Vary a Development Standard

Clause 4.6 of Appendix 8 within the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* allows Council to grant consent for development even though the development contravenes a development standard imposed by the SEPP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

2.1 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the Height of Buildings development standard set out in Clause 4.3 of Appendix 8 within the Growth Centres SEPP.

Under the Growth Centre's SEPP, the site has a maximum building height of 12m with building height being defined as:

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.

2.2 Variation Sought

As detailed in the amended Architectural Drawings prepared by Allen Jack + Cottier and provided at **Appendix A**, a variation to the Height of Building development standard is requested. The proposal generates a maximum height of 15.1m where parts of the uppermost storey of buildings and some roof elements project above the 12m height plane above existing ground level. This is for the following reasons:

- The natural topography of the site, which is lower at the western portion of the site; and
- Previous excavation works, undertaken in accordance with development consent DA460/2006, which has artificially modified the natural ground level as technically defined under the Growth Centre's SEPP. The result is that isolated parts of the site fall approximately 3m below the historical natural ground level.

It is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under Clause 4.6. Recent decisions in respect of Micaul Holdings P/L V Randwick City Council (55% exceedance of height and 20% exceedance of FSR) and Moskovich V Waverley Council (65% exceedance of FSR) support this.

The extent of the variation sought as a result of the topography and previous excavation is outlined below.

2.2.1 Site Topography

The site has a natural fall to the west. This ground level is the natural ground level surveyed prior to any excavations works associated with the existing consent for the site. This topographic variation means roof elements of several buildings exceed 12m when measured from the natural ground level. These areas are limited to:

- Building 2, 5 and 6:
 - Lift overruns and small portion of the pitched roofs.
- Building 8:
 - Lift overrun and the eastern portion of the pitched roof.

The extent of the development, when measured from the natural ground level is detailed in **Figure 1** and **Figure 2** below.



Figure 1 - Proposed development plan overlaid with 12m height plane (blue) from the natural ground level

Source: Allen Jack + Cottier



Figure 2 - Proposed development oblique view overlaid with 12m height plane (blue) from the natural ground level

Source: Allen Jack + Cottier

2.2.2 Excavation Works

Excavation works by up to 3m, undertaken in accordance with development consent DA460/2006 has shifted the natural ground level for the site as technically defined under the Growth Centre SEPP. These works have therefore reduced the existing ground level, and in accordance with the definition, the level where the building height is to be measured. The site's natural ground level varies significantly across the site and as a result, a consistent 12m height plane across the site is unachievable.

A variation is therefore required as the upper storey building, and roof elements of several buildings will be above the 12m height plane when measured from the existing ground level (refer to **Figure 3** to **Figure 7**). Specifically, the proposed variation to the Height of Buildings development standards relates to:

- The lift overrun and southern portion of the pitched roof of Building 3;
- The lift overrun and central portion of the pitched roof of Building 4;
- The lift overrun and pitched roof of Building 5;
- The lift overrun and pitched roof of Building 6;
- The lift overrun and pitched roof of Building 7; and
- The lift overrun and eastern portion of the upper storey and pitched roof for Building 8.

Departures from the 12m height plane from existing ground level are shown in **Figure 3** to **Figure 4**. The variations sought are summarised in **Table 1**.

It is noted Building 7 appears to exceed the 12m height plane from existing ground level in **Figure 3** and **Figure 4**. It however has a maximum height of 11.42m. Ground levels have been measured at the face of each building. The central portion of land in which building 7 sits however, has been significantly excavated, causing the central portion of the building to exceed the height plane.

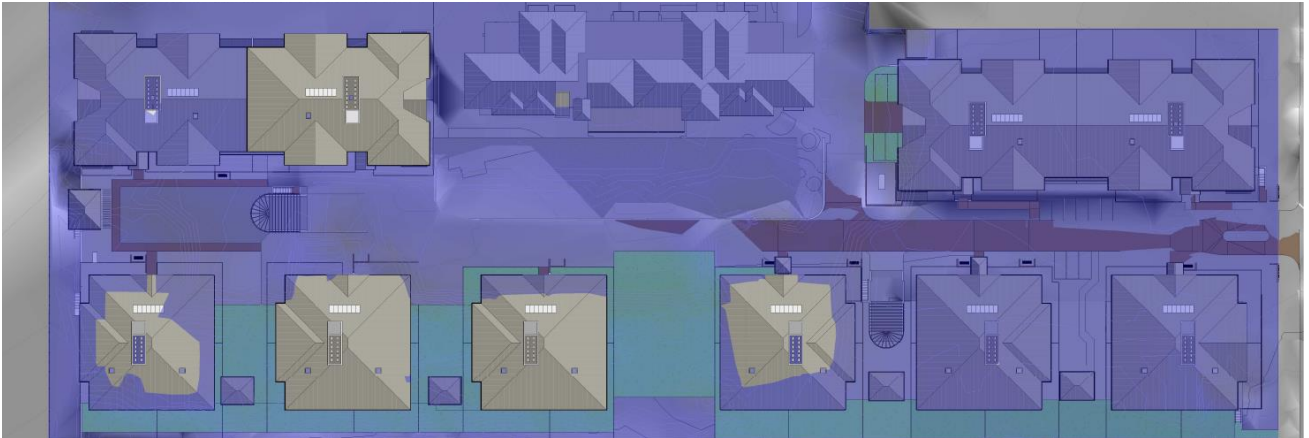


Figure 3 - Proposed development plan overlaid with 12m height plane (blue) from the existing ground level (as per the 2017 survey)

Source: Allen Jack + Cottier

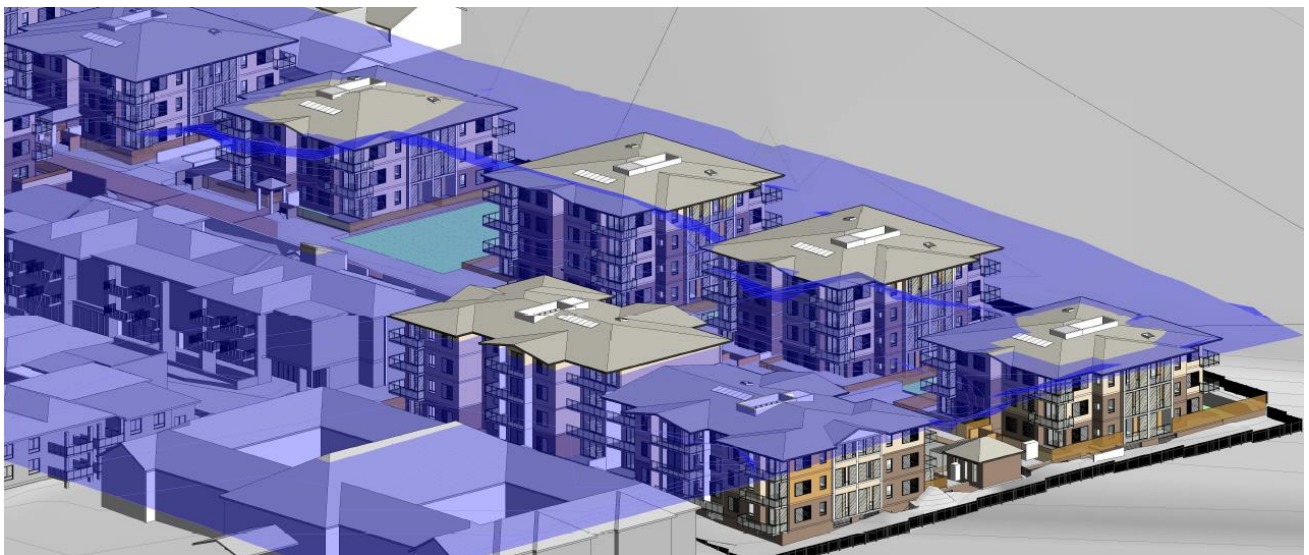


Figure 4 - Proposed development oblique view overlaid with 12m height plane (blue) from the existing ground level (as per the 2017 survey)

Source: Allen Jack + Cottier

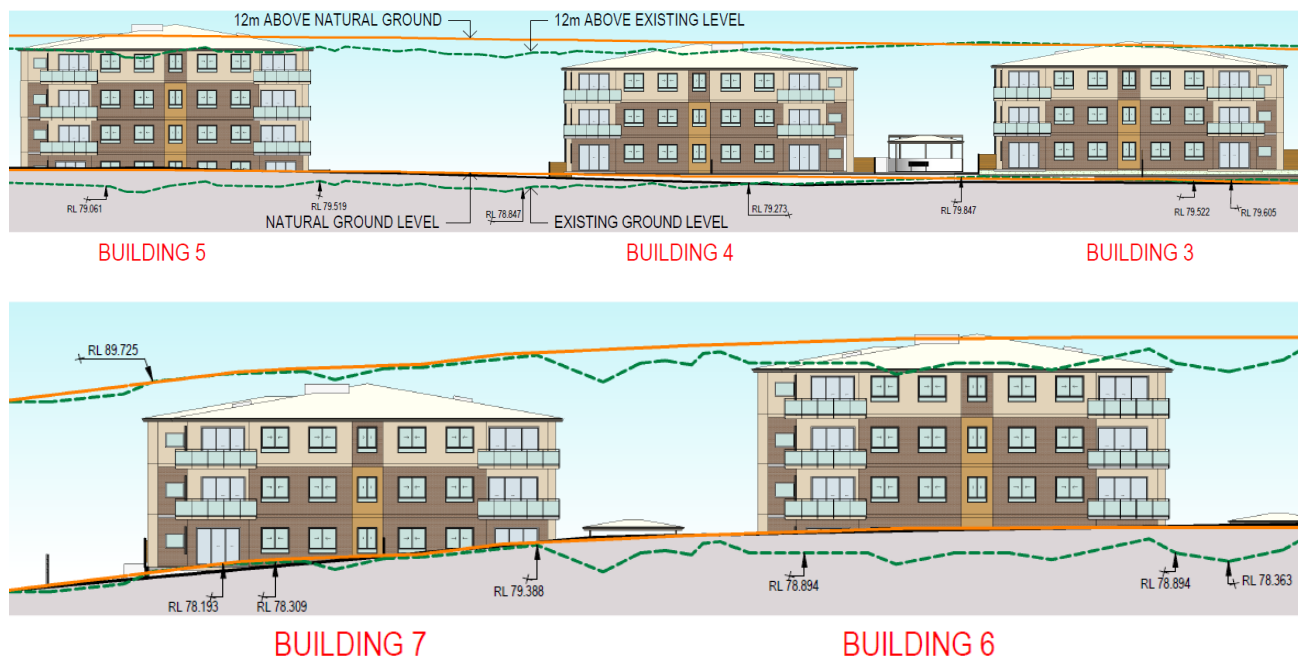


Figure 5 - South boundary elevations

Source: Allen Jack + Cottier

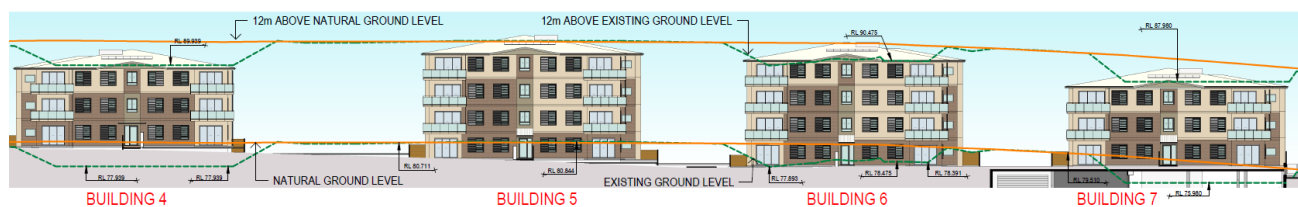
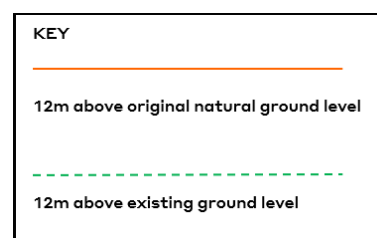


Figure 6 - Internal street elevation looking south

Source: Allen Jack + Cottier



Figure 7 - Internal street elevation looking north

Source: Allen Jack + Cottier

Table 1 - Proposed building heights

Building	Maximum Height (measured from original natural ground level)	Maximum Height (measured from existing ground level)	Variation Sought
1	11.38m	11.68m	-
2	13.05m	13.02m	1.02m
3	12.33m	12.54m	0.54m
4	11.90m	12.31m	0.31m
5	13.03m	13.02m	1.02m
6	12.27m	12.45m	0.45m
7	10.91m	11.42m	-
8	12.65m	15.16m	3.16m

The above provides the following conclusions:

- The majority of buildings only marginally exceed the 12m height plane measured from existing ground level;
- Where exceedances do occur, they are primarily isolated to the pitched roof elements of the buildings;
- Building 8 provides the greatest departures from the 12m height plane. This portion of the site however has been subject to the most extensive excavation works which has impacted on the ability for this building to comply with the height control and which also exaggerates the numerical height of the building as technically defined under the Growth Centres SEPP; and
- Excavation works have also provided Building 2 and 5 with a lower existing ground level than from the original natural ground level.

3.0 Justification for Contravention of the Development Standard

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

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 (see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 at [61] and [62]).

The five methods outlined in *Wehbe* include:

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

Of particular relevance to this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the first method.

In the recent judgement in *Micaul Holdings v Randwick City Council* the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case the Commissioner) did not have to be **directly** satisfied that compliance with the development standard was unreasonable or unnecessary but that the **applicant's written request adequately addresses the matters in clause 4.6(3)(a)**. *(Emphasis added)*

Section 3.1.2 addresses the matters in Clause 4.6(3)(a), particularly showcasing how the objectives of the height of building control are achieved notwithstanding the non-compliance to the numerical control.

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

The objectives of the Height of Buildings development standard (under clause 4.3 of Appendix 8 within the Growth Centre's 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.*

(a) To establish the maximum height of buildings

Clause 4.3 within Appendix 8 of the Growth Centre's SEPP sets a maximum permissible height for development. Clause 4.6 however, enables a degree of flexibility and variation to this standard to achieve better outcomes or cater to specific circumstances.

The artificial modification of the natural ground level from existing excavation works is specific to the site and reduces the level by where the building height is measured. Without excavation works, buildings which are four storeys in height, would exceed the height plane with only roof features and lift overruns. This departure would be deemed acceptable due to the positioning of the buildings on the site, away from the public domain and free of adjoining development.

Development to the east, adjoining Edmondson Avenue, is fully compliant with the height control, ensuring departures from the development standard are not visible from the public domain.

(b) To minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space

Land to the south of the subject site is characterised by a dam and open paddocks. It does not contain any buildings that would potentially be affected by the proposed development. All but two buildings proposed, including those which exceed the 12m height plane, adjoin the southern boundary of the site.

The amended overshadowing diagrams prepared by Allen Jack + Cottier demonstrate the proposed development will have minimal shadowing effect on these areas throughout the year. There will be some overshadowing effects on the existing residential building at 222 Edmondson Avenue, however it is noted that overshadowing of this property is isolated to the mid-winter solstice and is largely caused by Buildings 2 and 3, both of which comply with the Height of Buildings development standard.

Setbacks provided from the southern and western boundary are consistent with the DCP to ensure adequate separation from the adjacent building and to provide a suitable transition to potential future development. Landscaping is also proposed along these boundaries to soften the developments interface with the adjacent properties and mitigate potential visual impacts to both current and future adjoining development.

As an aside, it is noted that land adjoining the site to the south and west is also included in the R3 Medium Density zone and subject to the same height and FSR controls under the Growth Centres

SEPP. It is therefore expected that this land will be redeveloped for medium density housing in the future, thus providing a built form outcome that is consistent and compatible with the scale of the development proposed on the subject site.

Given the above, despite parts of the development exceeding the numerical height control, it is considered that these exceedances will:

- not result in an adverse visual impact on the surrounding area, particularly given the likely future context;
- will not unreasonably compromise the amenity of adjoining development in terms of solar access; and
- not result in an unacceptable impact on open space.

The proposed development, despite the non-compliance with the Height of Buildings development standard, is therefore considered to provide an outcome that satisfies this objective.

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

The proposal is adjacent the Austral Town Centre and is directly opposite land intended for high density commercial and retail land uses under the Austral Precinct Plan. The proposal, inclusive of the height variation, will facilitate increased density around the Austral Town Centre. The height will also provide an appropriate transition from the Centre, consistent with the medium density residential land use intended for the site under the Austral Precinct Plan.

The proposal achieves the full potential of the controls for the site under the Growth Centre's SEPP. The technical non-compliance with the Height of Buildings development standard does not alter the built form to an extent where the proposal becomes inconsistent with the strategic vision for the site or fails to meet the objectives of the R3 Medium Density zoning for the site.

The proposal is in proximity to Leppington Railway Station and in close proximity to bus services adjacent the Austral Shops on Edmondson Avenue, enabling connections to the Liverpool Interchange and greater Sydney. The built form of the proposal, notwithstanding the technical non-compliance with the Height of Buildings development standard, is appropriate to the level of transport options within the area.

Given the above, it is considered that the proposed development, inclusive of the height variation, will provide an outcome consistent with this objective as it will facilitate higher density development adjacent to the Austral Centre and in relative proximity to public transport.

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

Clause 4.6(3)(b) of the Growth Centre's SEPP requires the departure from the development standard to be justified by demonstrating:

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

There are considered to be sufficient environmental planning grounds to justify contravention of the Height of Buildings development standard in this specific instance.

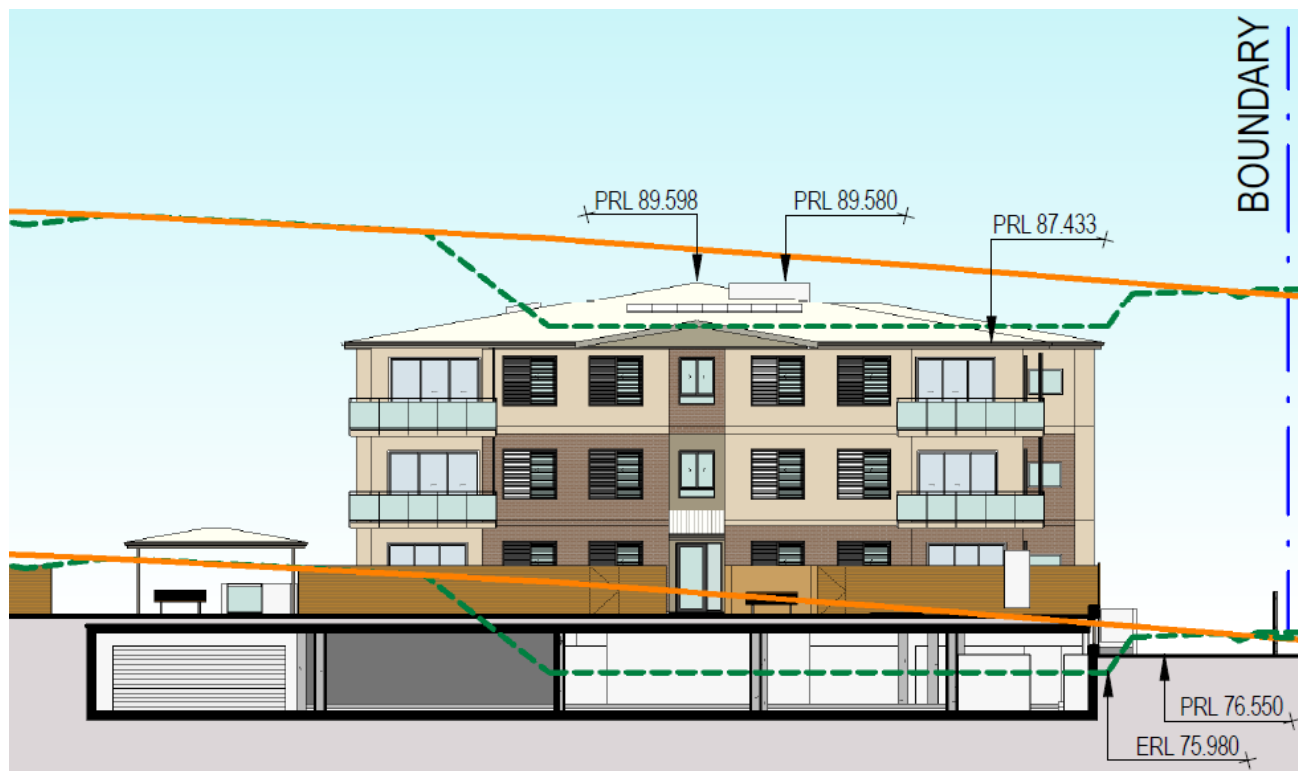
In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. There are particular elements that contribute to the development's variation to the Height of Buildings development standard and these are detailed below.

Ground 1: Excavation Works

Due to the excavation work undertaken to date, the existing ground level at some areas of the site is up to 3m below natural ground level. This results in an irregular and artificial 12m height plane across the site. Buildings are positioned across land and have been designed to respond to the original natural ground level, which inadvertently results in a technical non-compliance with the Height of Buildings development standard from the existing ground level. This is due to existing excavation works and the artificial fall across the site. Building elements therefore become compliant and non-compliant as the height plane rises and falls.

This is the case for portions of Building 7 and Building 8 in particular (refer to **Figure 8** and **Figure 9**). Although Building 7 has a compliant height of 11.42m, the central portion of land in which the building sits, has been heavily excavated reducing the height plane in the central portion of the building. Without excavation, this would not occur. For Building 8, only minor roofscape elements and lift overruns would exceed 12m from natural ground level.

As demonstrated below, the existing excavation works impact the numerical height of the buildings when measured against the technical building height definition under the Growth Centres SEPP. Despite the technical non-compliance, the exceedance of the height control is considered to generate a negligible impact to surrounding development.



BUILDING 7

Figure 8 - Internal street elevations looking south

Source: Allen Jack + Cottier

KEY

— 12m above original natural ground level

- - - 12m above existing ground level

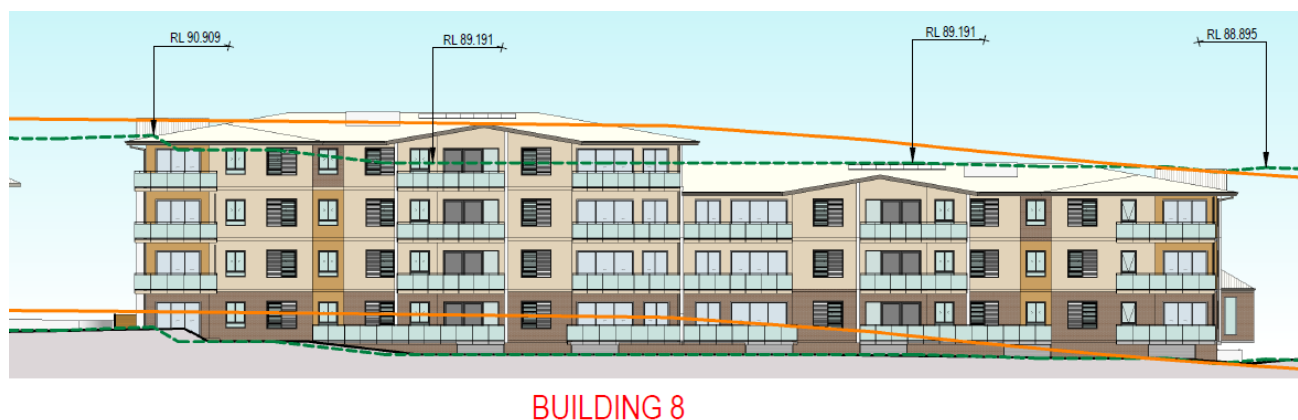


Figure 9 - North boundary elevation

Source: Allen Jack + Cottier

Ground 2: Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. Importantly, the height of the tallest elements of the proposal are consistent with the existing roofscape of existing development on the site.

The proposal is consistent with the medium density residential development envisioned for the site under the Austral Precinct Indicative Layout Plan, and fully utilises the development standards under the Growth Centre's SEPP.

Land adjoining the site, although currently vacant, is also included in the R3 Medium Density Residential zone and is therefore expected to be redeveloped in the future with buildings of a similar scale to that proposed for the subject site. The technical non-compliance with the Height of Buildings development standard will therefore not leave the proposed development inconsistent with the future surrounding character of the area as it is envisioned that the future surrounding development will be of a bulk and scale similar to the proposal.

Ground 3: Building Design

The proposed development has been subject to a robust design development process to ensure an architectural solution which adheres to the needs of seniors housing with high amenity while responding to the context of the site. Specifically:

- Buildings 1 and 2 in particular have been designed to be considerate to the Edmondson Avenue streetscape and have been designed to align to the 12m height plane. Buildings which exceed the height plane do not adjoin the public domain. Both their distance from Edmondson Avenue and the natural topography of the site which falls to the west, will reduce their perceived height, bulk and scale from the public domain;
- The eastern portion of Building 8, which provides the most significant variation to the Height of Buildings development standard, has been positioned internally from the site boundary, reducing the perceived scale of that portion of the building, and ensuring that any impacts generated as a result of the exceedance are effectively mitigated and managed within the site;
- The proposed development has been the subject of a review by the Liverpool Design Excellence Panel. As such, this application has undergone further design iterations to ensure consistency with the recommendations of the Panel. While it is not expected that the Apartment Design

Guide (ADG) applies to Independent Living Units as they require significantly different spatial requirements to standard apartments, the proposed development has provided compliance with the ADG in accordance with the Panel's recommendations;

- Building separation distances have been provided in accordance with the ADG to ensure a high level of amenity is provided for future residents, supplemented further by generous landscaping and communal open space to further enhance amenity. No existing dwellings, public spaces and or reserves are proposed to be overshadowed by the proposal. Edmondson Avenue will experience minor overshadowing only after 3:00pm. Edmondson Avenue is however a transitional space, not a space of congregation where the public expects to enjoy sunlight access; and
- Portions of pitched roofs and lift overruns are the predominant structures which exceed the 12m height plane from the existing ground level. These elements will not generate adverse view impacts for residents. All lift overruns are positioned centrally on the buildings, reducing their visibility from the streetscape. The pitched roofs further reduce the perceived height of the lift overruns and their level of protrusion.

Additional planning grounds which support the contravention of the Height of Buildings development standard in this instance includes:

- The site is located within an area undergoing transformation and transition. The proposal is consistent with the desired future character for the site and wider precinct in accordance with the Growth Centre's SEPP;
- Full compliance with the height plane under the existing ground level would generate a highly irregular built form. All proposed buildings have a consistent roof form and pitched roof, which although exceeds the height plane, provide a consistent roofscape; and
- The proposal remains consistent with the objectives of the Height of Buildings development standard as detailed in **Section 3.1.2** above.

3.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

Clause 4.6 (4)(a)(ii) within Appendix 8 of the Growth Centre's SEPP requires that consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied 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"*. These matters are addressed in the following sections.

3.3.1 Consistency with the objectives of the development standard

The proposal is consistent with the objectives of the Height of Building development standard, for the reasons discussed earlier in this report.

The proposal utilises Clause 4.6 within Appendix 8 of the Growth Centre's SEPP to seek flexibility in the application to the Height of Buildings development standard following existing excavation works, which has artificially reduced the natural ground level on the site. The proposal will not result in unacceptable impacts on surrounding existing development in terms of visual privacy and or solar access, nor will it compromise future development opportunities surrounding the site. The proposal provides a density and intensity of land use appropriate to its proximity to the Austral Town Centre

and transport linkages, as well as the envisioned future character of the site under the Austral Precinct Indicative Layout Plan. The proposal therefore complies with the objectives of the development standards in this regard.

3.3.2 Consistency with objectives of the zone

The consistency of the proposal, including the height variation, against the objectives of the R3 Medium Density Residential zone as set out in the Growth Centre's SEPP is outlined below.

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

The proposal is commensurate of a medium density development suitable for the site and surrounding environment. The site has seen its principle development standards increased under the Growth Centres SEPP. The proposal utilises the uplift available to the site to provide seniors housing appropriate to the desired future character of the area.

The elderly demographic that will populate the proposed development are provided with housing close to public transport and services, and a high level of residential amenity. The proposal increases the provision of seniors housing within the LGA whilst responding to the site controls and envisioned development within the area. It is therefore considered to be consistent with this zone objective.

To provide a variety of housing types within a medium density residential environment

An existing active consent for 127 ILUs exists on the site. If approved, the proposed development would replace that consent and introduce significantly more units for the area, consistent with the intended future character of the Austral Precinct.

Austral Tobruk currently provides two and three-bedroom independent units. This proposal will assist in the provision and diversity of seniors housing for the site, and will compliment other forms of housing, both private and public, single dwellings, town houses and apartments to provide a broad spectrum of housing typologies within the area.

To enable other land uses that provide facilities or services to meet the day to day needs of residents

The proposal seeks to expand a land use currently operating on the site. This will increase the provision of seniors housing in the Austral Centre, increasing the population of the local area and subsequent demand for services and facilities. This local population increase is consistent with the planning and provision of services expected for Austral under South West Priority Growth Area.

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 proposed development provides a campus style arrangement of buildings with a built form that is consistent with a medium density residential environment. The proposal is integrated with a range of recreational and leisure facilities including communal gardens, lawn bowls, mini golf and bocce greens. It is noted that the primary purpose of the development is to cater for the elderly. This demographic is considered some of the most vulnerable and the high level of amenity afforded to residents will therefore provide for comfortable living in an inclusive environment.

3.4 Other Matters for Consideration

Under Clause 4.6(5) of Appendix 8 within the Growth Centre's SEPP, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of Appendix 8 within the Growth Centre's SEPP which must be considered by the Secretary.

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

The variation does not raise any matters of significance for State or regional environmental planning. The variation to the Height of Buildings development standard will not contravene any overarching State or regional objectives or standards or have any effect or adverse impact on the locality.

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

No direct public benefit is achieved by maintaining the Height of Buildings development standard in this situation. The proposal seeks to expand the provision of seniors housing within an existing seniors living community. The site has been subject to excavation works which has artificially reduced the existing ground level below the natural ground level, generating an irregular height plane which reduces the height to several portions of the site.

Strict compliance with the standard would see Building 4, 5, 6 and 8 subject to flat roofing, compromising the architectural integrity of the development with an irregular building form and roofscape that is inconsistent with the established roofscape for the site.

The development as a whole will deliver a number of public benefits to the area, including:

- providing a development which contributes to the realisation of the Austral Indicative Layout Plan, in which the increased population will support the emerging local centre;
- providing Senior's Independent Living Units in close proximity to public transport and services;
- a new development offering high quality design and residential amenity, and improvements to the streetscape;
- the provision of construction jobs and ongoing employment opportunities; and
- promoting ecological sustainability and sustainable practices through the achievement of BASIX targets.

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

In addition to the matters already mentioned, it is noted that the variation to the Height of Buildings development standard will not set an undesirable precedent in the area.

The unique circumstances of the site, specifically the existing excavation has contributed to the proposed variation. Buildings proposed comprise three to four storeys, generally consistent with a 12m height plane from the natural ground and appropriate to the medium density residential zoning of the site.

3.5 Summary

Compliance with the Height of Buildings development standard contained in clause 4.3 of Appendix 8 within the Growth Centre's SEPP is unreasonable and unnecessary in the circumstances of the case, and the justification is well founded. It is considered that the variation allows for a better planning outcome for the site by providing additional housing to accommodate Sydney's growing and ageing population.

This clause 4.6 variation demonstrates, notwithstanding the non-compliance with the Height of Buildings development standard, that:

- the objectives of the Height of Buildings development standard are achieved notwithstanding the variation to the numerical control;
- the proposed flexible application of controls achieves better planning outcomes than would not be achievable by strict compliance with the development standard;
- it is in the public interest as the proposal remains consistent with the objectives of the R3 zone and Height of Buildings development standard;
- the proposal is compatible with the envisioned 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 Height of Buildings development standard adopted by the environmental planning instrument for this site.

4.0 Conclusion

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of RSL Lifecare. It is submitted to Council in support of a senior's housing development (Independent Living Units) at the Austral Tobruk Aged Care Facility at 120 Tenth Avenue, Austral.

The SEE and supporting documentation provided with the DA demonstrates that the proposed development will not give rise to any significant adverse environmental effects which cannot be managed or mitigated. The proposed development will make a positive contribution to the local area, through the increased provision and diversity of seniors housing in the form of 149 independent living units.

Compliance with the Height of Buildings development standard in clause 4.3 within Appendix 8 of the Growth Region's SEPP is unreasonable and unnecessary in the circumstances of the case, and the justification is well founded. It is considered that the variation allows for a positive planning outcome for the site that is aligned to its strategic location and envisioned built form, yet sympathetic to its site-specific circumstances in the form of significant excavation works.

The consent authority can be satisfied that this clause 4.6 variation request demonstrates, notwithstanding the proposed variation to the development standard, that:

- compliance with the Height of Buildings development standard is unreasonable and unnecessary in the circumstances of the case;
 - given the objectives of the standard are achieved notwithstanding non-compliance with the standard;
- that there are sufficient environmental planning grounds to justify contravention of the standard, as:
 - consistent with the first objective of Clause 4.6 of the Growth Centre's SEPP, the degree of flexibility required by the consent authority to support the minor increase in building height in this instance is considered both appropriate, and particular to the circumstances of the development;
 - the proposed development remains consistent with the site context and strategic vision for the precinct; and
 - robust building design and ongoing architectural iterations has ensured adherence to the needs of seniors housing.
- the variation is in the public interest because it is consistent with the objectives of the zone and the development standard; and
- the Secretary's concurrence can be obtained as contravention of the development standard does not raise any matter of significance for State and regional planning.

It is therefore requested that development consent be granted for the proposed development despite its contravention of the Height of Buildings development standard within Appendix 8 of the Growth Centre's SEPP.