URBAN PLANNING

CLAUSE 4.6 VARIATION REPORT

42-66 Junction Road,

SCHOFIELDS

13 October 2016

Amended 13.11.17

1.0 INTRODUCTION

1.1 This Clause 4.6 variation report accompanies amended DA drawings submitted for approval. This report supports the proposed variation to the Height development standard in the R3 zone pursuant to Appendix 4 Clause 4.3 of the SEPP relates to Height of Buildings. The accompanying map SEPP, specifies a maximum building height of 16 metres

1.2 The proposed heights for the building are provided below:

Table 1: Proposed Building Heights

Building	Lower Building Roof Height	Top of Roof Height	Lift Overrun/Plant Height
A	12.60m – 14.36m	14.8. – 17.45m	17.27m
B	12.10m – 13.80m	15.18m – 16.78m	16.45m
C	12.75m – 13.10m	15.20m – 16.23m	16.69m
D	-	14.8m – 17.8m	15.8m, 16.84m, 19.90 & 21.10m
E	14.6m – 15.1m	16.3m – 17.95m	17.95m & 18.7m
F	13.85m – 14.1m	14.8m – 16.8m	16.8m & 18.05m
G	11m – 13.7m	15.4m – 16.65m	16.4, 17.90, 19.20 & 20.20m
H	13.7 – 14.7	14.15m – 15.65m	15.5 & 17.3m

1.3 The development seeks a height variation of between 300mm and 1.95m to the top part of the units and the roof a variation of between 400mm and 4.2m to the top of the lift overrun for some buildings. Building H roof achieves full compliance and is substantially below the 16m control.

1.4 The following diagram illustrates the areas of non-compliance across the development site:

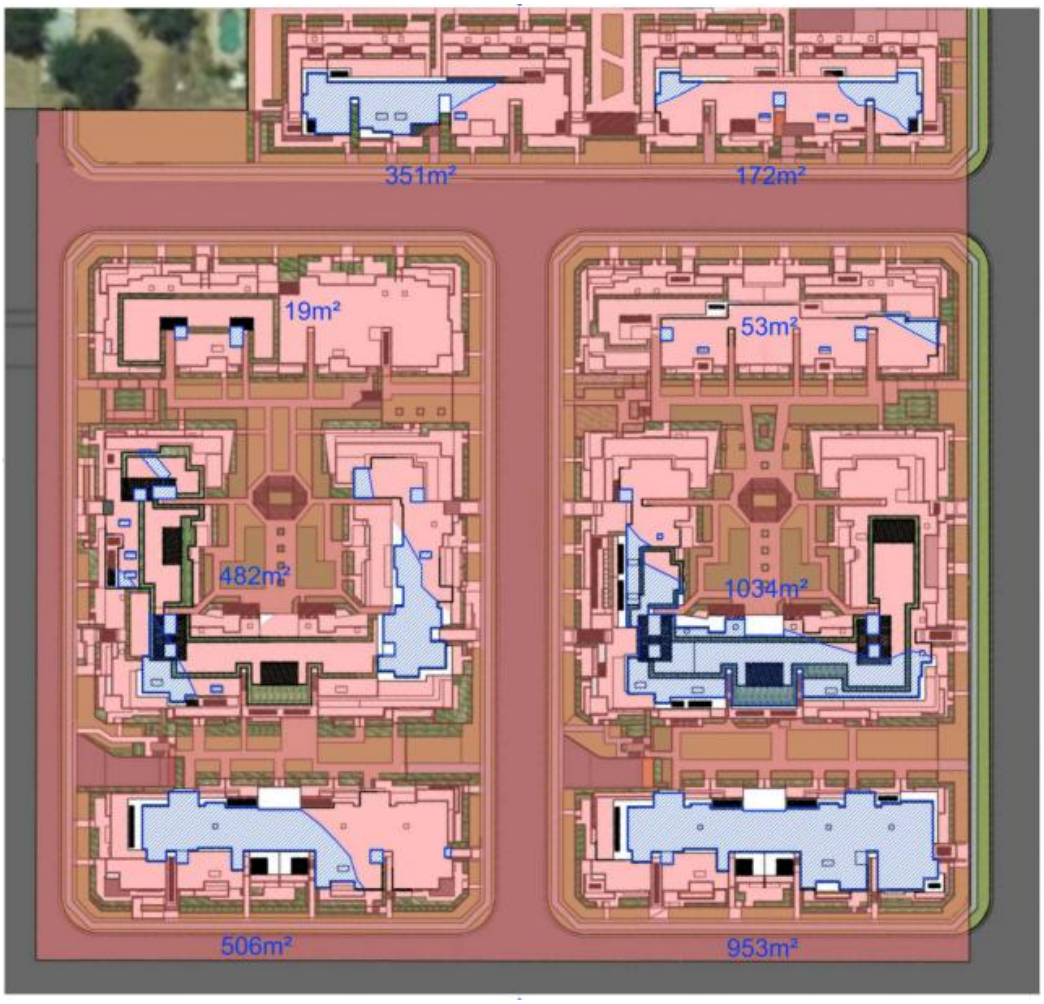

Figure 1: Shaded red areas highlight non-compliant areas

1.5 A maximum building footprint of 3570m² will exceed the 16m height control by varying degrees as shown in Table 1 above. This equates to a total of 26.7% of the proposed building footprint.

1.6 Overall, 73.3 % of the proposed building footprint fully complies and is below the maximum 16m LEP height control limit.

1.7 The report is structured to address the requirements of Clause 4.6 using the following headings:

- Is the development consistent with Objectives of the zone.
- Is the development consistent with the objectives of the standard?
- Is compliance with the development standard unreasonable and unnecessary in the circumstances of the site? 4.6(3)(a) and 4(a)(i)
- Are there sufficient environmental planning grounds to justify the contravention of the development standard?

Is the development consistent with the objectives of the zone ?

2.1 Yes. The zoning of the land is R3 Medium Density Residential.

2.2 The proposed development maintains compliance with the objectives of the zoned R3 Medium Density Residential zone.

2.3 The objectives of the R3 Medium Density Residential Zone under the SEPP are as follows:

- *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, and other activities where compatible with the amenity of a medium density residential environment.*

2.4 The proposed development satisfies the objectives of the R3 Medium Density Residential zone, as outlined below:

- The development provides for residential housing in a locality that seeks to increase residential density.
- The proximity to the Richmond train line and extension of the north-west railway line will further support this increased density.
- The development provides units with high residential amenity that will enhance the variety of apartments in the locale;
- The development encourages the use of public transport given the highly accessible location of public transport and position near local conveniences.
- The high quality architectural design and finish of the buildings combined with the new road layout is a desirable outcome for this precinct.

2.5 The site is located within a nominated growth centre. It is anticipated that the subject site will evolve into a new precinct that will provide high quality residential development around new roads that are generally consistent with the indicative layout plan within the Blacktown City Council Growth Centres DCP.

2.6 It is therefore considered that the development, notwithstanding the variation to the development standard, achieves the objectives of the R3 Medium Density Residential zone.

Is the development consistent with the objectives of the standard?

2.7 The proposed development will achieve compliance with the objectives of the development standard under Part 7 Appendix 4 Clause 4.3 of the SEPP. A detailed assessment against each objective, relating to height, is provided below:

(a) to establish the maximum height of buildings for development on land within the Alex Avenue and Riverstone Precincts,

2.8 As demonstrated above, 73% of the roof and lift overrun features of the eight proposed buildings will be compliant with or are well below the 16m height control. The areas of non-compliance have been off-set with either compliant or significantly lower roof heights across this large precinct.

2.9 The height variation is appropriate across this site and will not detrimentally affect adjoining sites by way of privacy, shadow and scale, as demonstrated in the Statement of Environmental Effects.

2.10 The portion of building that is over the 16 metre height limit is generally well setback from the street edge. Hence, the perceived scale of the proposed building when viewed from the public domain will not be larger than a building that complies with the building height control.

2.11 Part of the structure that is above the 16m height plane are the lift and the stair cores that serve the communal roof terraces which increase the provision of communal open space from 15% of the site area as required under the Growth Centres DCP to be in excess of 25% as proposed in the revised design.

2.12 Overall the, minor variation across the site will not be highly evident when viewed from the public way or adjoining properties. The minor variation to the height limit is appropriate and reflective of the topography across the site.

(b) to protect the amenity of adjoining development and land in terms of solar access to buildings and open space,

2.13 At least 73% of the roof and lift overrun features associated with the eight proposed buildings will comply with or be significantly lower than the 16m height control, as demonstrated above.

2.14 The accompanying shadow diagrams demonstrate that the adjoining properties and future communal open space will not be unreasonably affected by the development and adequate sunlight will be maintained.

2.15 The proposed residential units within the development will achieve a high level of amenity with 70% receiving a minimum of 2 hours of sunlight on 21 June and 61% of units achieving cross-ventilation.

2.16 The minor variation across the site will not unreasonably affect adjoining sites or communal open space as demonstrated in this accompanying Statement of Environmental Effects.

2.17 The design of the buildings is generally consistent with the controls of the LEP and DCP and is of an appropriate scale for this emerging Growth Area.

(c) to facilitate higher density development in and around the local centre, the neighbourhood centres and major transport routes while minimising impacts on adjacent residential, commercial and open space areas,

2.18 The proposed buildings will contain a total of 690 residential units and will achieve the higher density expectations established for the Riverstone precinct growth area. The proposed development is well below the maximum permitted FSR.

2.19 As demonstrated in the accompanying shadow diagrams and traffic report the development will not unreasonably affect adjoining residential and open space areas.

(d) to provide for a range of building heights in appropriate locations that provide a high quality urban form.

2.20 The varying heights across the eight new buildings ensure that the built form has variation to the urban environment. The proposed materials and finishes will provide each new building with architectural interest and individuality.

2.21 The proposed building form and design will achieve a high level architectural finish with the eight proposed buildings framing the new road layout and creating a highly amenable urban environment consistent with the characteristics of this emerging growth centre.

2.22 The proposed stepping of the buildings is in response to the site topography while ensuring the communal open spaces that is situated between the buildings and across the site can remain relatively level with the proposed building and maximise its functionality for the benefit of future residents.

2.23 Each building will be highly modulated and articulated to provide visual interest that will minimise the bulk and scale of the development across the site.

2.24 Overall, the development will result in a high quality architectural form that will urbanise the precinct and achieve the desired future characteristics of this locality. The buildings are kept generally to 5 storeys with 73% of the proposed building footprint compliant and below the maximum height of 16 metres presenting as a predominantly 5 storey form.

2.25 The variation to height will not make a tangible impact on adjoining properties in terms of overshadowing.

2.26 For the reasons discussed above, the variation to the height control will still achieve the building height objectives.

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

2.27 The proposed variation to the height control is assessed with consideration to the principles established by the Land and Environment Court in *Whebe V Pittwater Council [2007] NSW LEC 82.* His Honour Preston CJ set out 5 ways of establishing that compliance with the standard is unreasonable or unnecessary. The 5 parameters were further tested in Four2Five Pty Ltd v Ashfield Council NSWLEC 90 where Justice Pain found that meeting the objectives of the standard was not sufficient to demonstrate that compliance was unreasonable or unnecessary.

2.28 Each of the 5 ways will be addressed in detail below:

(a) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the

objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?

2.29 Yes the proposal meets the objectives of the standard as demonstrated above.

(b) The underlying objective or purpose is not relevant to the development;

2.30 The underlying objectives for height are still relevant.

(c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;

2.31 The underlying objective or purpose of the height control would be thwarted if compliance was required. This assessment is made on the basis of the minimal affects produced by the proposed development:

- The subject site is located within the Riverstone emerging growth centre and this precinct is transitioning to higher densities. The proposed heights will still achieve an appropriate height transition and land use intensity. It is preferable to provide higher density living in closer proximity to public transport and in this instance the site is extremely close to the Schofields train station which connects to the future north-west railway line, which will see increased services to the City.

- The proposed development is well below the density anticipated by this site established by the Floor Space Ratio Control. The LEP permits a maximum FSR of 1.75:1. The development application provides a maximum FSR of 1.46:1. The redistribution of the permitted floor space results in variation to the height control. Without a variation to the height control, the precinct will not be able to deliver a 'higher density development in and around the local centre, neighbourhood centre and major transport routes' consistent with the height objective.

2.32 The underlying objectives of providing increased density in this precinct and providing a sensitive response notwithstanding the permitted height control would be thwarted if compliance was required.

(d) The development standard has been virtually abandoned or destroyed by Council's own actions.

2.33 Council has not abandoned the height controls. However it is noted that there is a disparity between the FSR control and the height control. The permitted FSR or in this instances a lesser FSR cannot be configured within compliant buildings.

(e) The zoning of the 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 and unnecessary.

2.34 The zoning of the land R3 is appropriate.

Are there sufficient environmental planning grounds to justify contravening the development standard?

2.35 There are sufficient environmental planning grounds to justify the variation as follows: The flexible application of the control will achieve a better outcome on this site for the following reasons:

- The site will be developed to provide new roads, footpaths and landscaped setbacks. The proposed building layouts and relationship with the new public domain will achieve the desired future character for this emerging precinct;
- To enable an appropriate development of the site the development will provide 3 new allotments with amalgamated car parking basements to minimise disruption to new footpaths and reduce conflict with pedestrians;
- The additional height to the proposed new buildings will vary across the site and will not unreasonably affect adjoining properties or new residential units, all will still maintain or achieve a high level of solar access including the communal open space areas;
- The varied height will provide architectural interest to this new precinct and will not be significantly higher than the 16m height control given the size of the development and shared variation across the site;
- The topography combined with the amalgamated basement levels will see some buildings higher than others; however, the benefits of amalgamated basement levels far outweigh the impacts of the minor height non-compliance across the precinct. The resulting benefit will be that the communal open space will remain level and accordingly have improved functionality and provide disabled access for the benefit of future residents;
- The residential properties to the north will not be detrimentally affected by shadow due to site orientation to the south and adequate measures are in place to minimise overlooking from Building A and B;
- The location of the roads around all buildings combined with site layout will ensure that adjoining properties to the east, west and south will not be unreasonably affected by shadow; and
- The increased heights have been off-set across the site and this flexible outcome results in a highly appropriate development that will achieve the desired characteristics of the emerging precinct without any detrimental effects.
- The proposed development is well below the density anticipated by this site established by the Floor Space Ratio Control. The LEP permits a maximum FSR of 1.75:1. The development application provides a maximum FSR of 1.46:1. By the flexible application of the height control, this enables the site to achieve a reasonable development density although significantly lower than the maximum FSR permitted.

2.36 Based on the above, there are sufficient planning grounds to justify the variation.