

Assessment of Applicant's Clause 4.6 request for variation to Growth Centres SEPP

1 Overview

The applicant has lodged with this application a Clause 4.6 variation submission to the height controls of State Environmental Planning Policy (Sydney Region Growth Centres) 2006. A copy of the applicant's Clause 4.6 submission is provided at attachment 8.

The applicant acknowledges that the proposed development exceeds the relevant height provision under Clause 4.3 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

The Growth Centres SEPP states that the maximum height for the site is 16 metres, and the proposed development exceeds this prescribed height limit. The proposed variation to the control is made under Clause 4.6 of Appendix 12 of the Growth Centres SEPP.

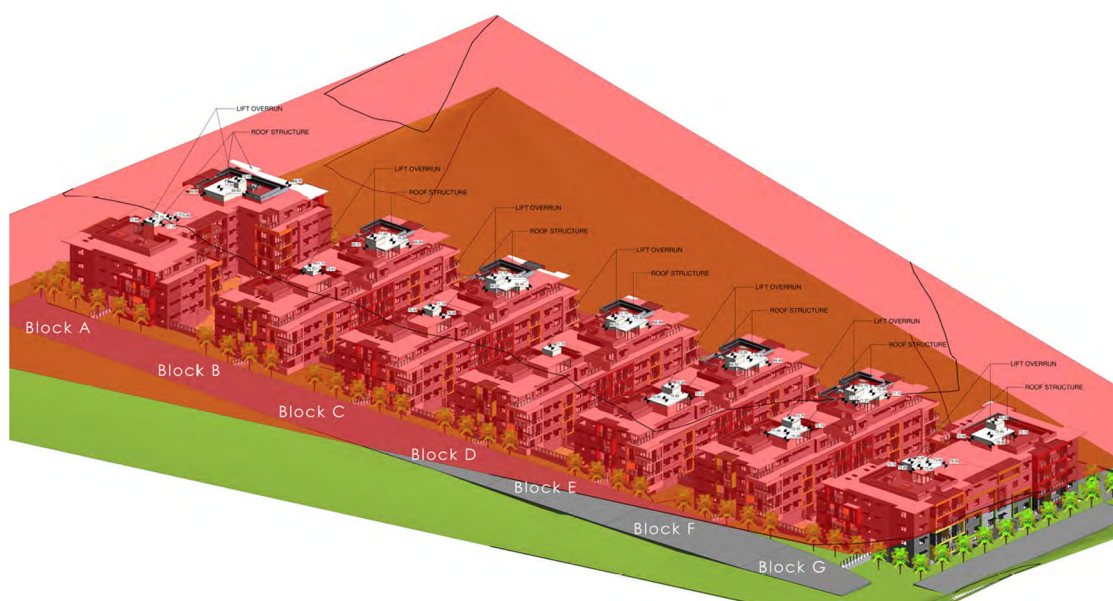
The proposal seeks the following variation to the 16 metre height limit under the Growth Centres SEPP:

- (a) parts of the rooftop lift overruns, stairs and rooftop communal open space area structures on all buildings, that exceed the height limit by up to 3.25 m, being an exceedance of 20.3%
- (b) a small portion of the roof of the apartments at the northern end of Buildings A, C, D and G, which exceeds the height limit by up to 0.15 m, being an exceedance of 0.9%.

Consequently the proposed building height is 19.25 m at the highest point, due to the provision of rooftop open space and access thereto.

2 Visual representation of offset

The figure below identifies portions of the development that exceed the height limit and portions of the development below the height limit. Areas that exceed the height limit are shown in white.



The north elevation plans below further illustrate the height non-compliance for each proposed building



3 Clause 4.6 variation considerations

Clause 4.6 requires consideration of the following matters and a town planning comment is provided to each item.

3.1 Consideration as to whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

The applicant's written request has adequately justified that compliance with the height development standard is unreasonable and unnecessary in this instance. It is considered that compliance with the standard is unreasonable and unnecessary for the following reasons:

- The underlying purpose of the standard is still considered relevant to the proposal. However, 100% compliance in this circumstance is considered both unreasonable and unnecessary for the following reasons.
- In the context of this Precinct, the topography of the land must be considered. The site is sloping, with a fall of 7.5 metres across the whole site, from the south-east to the north-west of the site. This results in minor portions of the apartment roofs of 4 buildings exceeding the height limit by up to 0.15 metres at the lowest, northern boundary of the site.
- The major portion of the rooftop features that exceed the height limit are the lift overruns and stair structures that provide access to the communal rooftop areas. As the above diagrams illustrate, these structures are contained in the central areas of the roof levels. They will not result in additional overshadowing to adjoining properties, as shadows will be fully contained in the roof areas that are compliant with the 16 metre height limit.

- This application is compatible with the emerging scale of development in the locality and is consistent with the scale of residential flat buildings anticipated and approved in the vicinity.
- The proposed minor encroachments to the overall building height do not result in additional yield in terms of the number of apartments or storeys.

The proposal provides a better planning outcome because it provides access to rooftop communal space on all buildings, with appropriate levels of solar access, suitable recreation areas and amenity for its occupants.

3.2 Consideration of sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b))

The proposal demonstrates sufficient environmental planning grounds to justify contravening the height of buildings development standard for the following reasons:

- The proposal promotes the orderly and economic use and development of the site because it provides a built form which does not generate any adverse environmental impacts nor result in any increase in residential apartments or density and is therefore considered acceptable in the circumstances. The 5 storey residential flat buildings proposed are an expected outcome of a 16 metre height limit development standard.
- The proposal promotes the social welfare of the community by increasing the residential amenity to the buildings with the proposed rooftop common open spaces on each building.
- The proposed development is located in an area that is undergoing major urban change. The proposal does not generate any view impacts in consideration of the future desired character of the area and achieves the minimum ADG solar access design criteria to units, while also achieving solar access between the buildings and to common open space for a minimum of 2 hours in midwinter.

It is considered that the applicant's written request at Attachment 8 justifying the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

3.3 The objectives of the standard are achieved notwithstanding non-compliance with the standard (Clause 4.6(4)(a)(ii))

Appendix 12 Blacktown Growth Centre Precinct Plan, State Environmental Planning Policy (Sydney Region Growth Centres) 2006	
Objectives of Clause 4.3 'Height of buildings'	How the proposal achieves the objective
To establish the maximum height of buildings	The maximum height limit on the site is 16 metres. The majority of each building's massing will comply with this height limit, including the majority of the respective roof level areas. The increase in height does not impact on the density of the development as no residential units are proposed above the height limit. A small portion of roof, plant and equipment and the communal open space areas exceed the height development standard. The objective of building height limits is to provide higher density development close to major transport routes without significant amenity impacts on adjoining development, and it is considered that this development will meet that objective.
To minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space	The parts of the building that exceed the height limit will result in no additional overshadowing of adjacent properties than a proposal where the heights are fully compliant with the standard. Most of the height exceedence is on the northern ends of the proposed buildings. Given the proposed street setbacks and the width of the existing and proposed

Appendix 12 Blacktown Growth Centre Precinct Plan, State Environmental Planning Policy (Sydney Region Growth Centres) 2006	
Objectives of Clause 4.3 'Height of buildings'	How the proposal achieves the objective
	surrounding roads, the anticipated overshadowing of the property to the south of the proposal is considered acceptable and as expected for a site with the existing development standards and 16 metre height limit. The parts of the building causing the primary height non-compliance are the lift overruns accommodating the rooftop communal open areas. These elements are not highly visible from the public domain and do not cause shadow impacts or any overlooking issues to neighbours. Therefore, the proposed building heights are satisfactory and visual impacts are minimal.
To facilitate higher density development in and around commercial centres and major transport routes	The site is located approximately 300 metres north-west of the future Tallawong Local Centre and 400 metres from the existing Tallawong Metro Station. The buildings contain 315 units in the form of studios, 1, 2 and 3 bedroom apartments that are representative of the density and housing demand anticipated for this site. The density of this development thus meets this objective. The site and surrounds will be well serviced for public and private transport, public open spaces and commercial services.

Therefore, the proposal is in the public interest because the development is consistent with the objectives of this particular development standard.

3.4 The objectives of the zoning are achieved notwithstanding non-compliance with the standard (Clause 4.6 (4)(a)(ii))

Appendix 12 Blacktown Growth Centre Precinct Plan, State Environmental Planning Policy (Sydney Region Growth Centres) 2006	
Objectives of the R3 Medium Density Residential zone	How the proposal achieves the objective
To provide for the housing needs of the community within a medium density residential environment	The proposal provides for the housing needs of the community by providing 315 apartments and associated communal open space areas.
To provide a variety of housing types within a medium density residential environment	The proposed residential flat buildings provide a good mix of studios, 1, 2 and 3 bedroom apartments, which contribute to the variety of housing types in this Precinct.
To enable other land uses that provide facilities or services to meet the day to day needs of residents	Not applicable to this application.
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	Not applicable to this application.

The proposal is in the public interest because the development will be consistent with:

- (a) the objectives of the development standard for the height of buildings and
- (b) the objectives for development within the R3 Medium Density Residential zone in which this proposal is to be carried out.

The variation will not have unreasonable impacts on neighbouring properties or the character of the area.

3.5 The concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]

3.5.1 This Clause 4.6 written request to vary a development standard in an Environmental Planning Instrument has been considered in accordance with Planning Circular PS 08-003. The Secretary (formerly Director-General) of the NSW Department of Planning and Environment's concurrence is assumed as this request is adequate, does not raise any matter of significance for State or regional environmental planning and there is no public benefit of maintaining the standard, as discussed below.

- Contravention of the development standard does not raise any matter of significance for State or regional environmental planning.
- In accordance with Clause 6.4 of the Environmental Planning and Assessment Regulation 2000, a consent authority, in this case the Sydney Planning Panel, has 'assumed concurrence' from the Secretary of the NSW Department of Planning, Industry and Environment.
- The purpose of the standard is still considered relevant to the proposal, however 100% compliance is not considered necessary in the circumstances. The site is sloping, with a fall of 7.5 metres across the whole site, from the south-east to the north-west of the site. This results in minor portions of the apartment roofs of 4 buildings exceeding the height limit by up to 0.15 metres at the lowest, northern boundary of the site. The major portions of the rooftop features that exceed the height limit are the lift overruns and stair structures that provide access to the communal rooftop areas, which exceed the height requirement by up to 3.25 metres. These structures are contained in the central areas of the roof levels, and will not result in additional overshadowing to adjoining properties as shadows will be fully contained in the roof areas that are compliant with the 16 metre height limit. The proposed minor encroachments to the overall building height do not result in additional yield in terms of the number of apartments or storeys. The proposal provides a better planning outcome because it provides access to rooftop communal space on all buildings with appropriate levels of solar access, suitable recreation areas and amenity for its occupants.
- This particular site is of a substantial size, which provides for subdivision into 3 residential lots, construction of public roads, and offers suitable building separation between the proposed 7 buildings, whose overall height complies with the 16 metre prescribed height under the Growth Centres SEPP with the exception of minor encroachments on the rooftops, and exceedance of the lift overruns which are only for plant, equipment purposes, and access to common open space areas on the rooftops.

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

3.6.1 There is no identified outcome which would raise any matter of significance to planning matters of State or regional significance as a result of varying the development standard as proposed under this application.

3.7 There is no public benefit in maintaining the standard [Clause 4.6(5)(b)]

- 3.7.1 There is no public benefit in maintaining the standard, as when compared to providing a development that strictly complies with the height of buildings development standard, the impact of the proposal on the surrounding area is no different. The proposal offers a social benefit because it provides a better communal open space outcome for the future residents. The proposal also ensures that, despite the scale of the proposal and slope of the site, ground level apartments are at or above ground level and hence have improved amenity and interaction with the street. There is no public benefit in maintaining strict compliance with the development standard in the circumstances of this case.
- 3.7.2 Based on the above, permitting the proposed development on this site to vary the height of buildings development standard to a relatively minor degree achieves a better design outcome.

Based on the above assessment, the Clause 4.6 variation request is considered reasonable, well-founded and is recommended for support to allow flexibility in the application of the development standard, subject to the imposition of relevant conditions.