

Cl. 4.6 of Appendix 12 of the
State Environmental Planning Policy
(Sydney Region Growth Centres) 2006

Request to vary the maximum
building height development standard



Proposed Residential Flat Buildings and Subdivision
50 Tallawong Road, Rouse Hill

Prepared by
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For
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November 2019

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Signed:

A handwritten signature in black ink, appearing to read 'Michael Gheorghiu', written in a cursive style.

Date:

27 November 2019

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1 Introduction

1.1 Overview

This Clause 4.6 of Appendix 12 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP) exceptions to development standards report (Clause 4.6 Report) requests a variation to the maximum height of buildings development standard for the proposed development located at 50 Tallawong Road, Rouse Hill (site).

This Clause 4.6 Report supports the Statement of Environmental Effects (SEE) report has been prepared on behalf of JS Architects Pty Ltd (JS Architects). This Clause 4.6 Report support a development application on the site for seven residential flat buildings and subdivision of the site into four allotments including three allotments to accommodate the residential flat buildings and one allotment for the proposed new roads on the site.

This Clause 4.6 Report and SEE includes an assessment of the proposed works in terms of the matters for consideration as listed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act) and Clause 50 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations).

The preparation of this Clause 4.6 Report and supporting SEE relied upon the adequacy and accuracy of supporting reports and plans prepared by expert consultants in support of the development.

1.2 Clause 4.6 of the Growth Centres SEPP

Clause 4.6 of Appendix 12 of the Growth Centres SEPP provides the mechanism to vary development standards, which states:

4.6 Exceptions to development standards

(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.

(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.*

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *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, and*
 - (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

2 The Site

This section of the report provides a review of the subject site.

2.1 Site Location

The site is located at 50 Tallawong Road, Rouse Hill. The site is in proximity to the following centres:

- Within 300 metres to Cudgegong Road and Tallawong Metro Station;
- Approximately 2 kilometres to Rouse Hill Centre and Metro Station;
- Approximately 3 kilometres from Schofield Train Station; and
- Within 9.5 kilometres of the Blacktown Town Centre.

The subject site including neighbouring lands to the area zoned for mostly medium density residential development, under the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP).

The precinct is undergoing a major transition from lower scale development to medium design residential flat buildings due to the State Governments initiative to encourage greater development in the area. The area is also subject to new major transport upgrades, specifically the new Sydney Metro Railway Line, which is also driving the changing character of the area.

Refer to Figure 1 for the site's local context and Figure 2 for the site's location in proximity to the Rouse Hill Town Station and nearest Metro Stations. Figure 3 shows the site's location to surrounding suburbs.



Figure 1. Subject site



Figure 2. Subject site in proximity to Rouse Hill Town Centre and Metro Stations



Figure 3. Subject site in its regional context

2.2

Site Description

The site is rectangular shaped comprising of one allotment. Currently, the site consists of a detached residential dwelling and a large single storey detached standalone shed.

Large vegetation ranging from medium to tall sized native trees that are in varying condition are located across the site, as well as weeds, grassed area and small brush vegetation. The site slopes down from the southeast to the northwest.

The property is located opposite the Sydney Metro stabling facility and station.

Table 1 provides additional details of the site.

Table 1. Site Description

Property	Details
Legal Description	Lot 67 in DP 30186
Existing buildings on site	Detached single storey residential dwelling and detached single storey shed.
Site Area	2.023 hectares
Site Length	246.5 metres
Site Width	82.1 metres

3 The Proposal

JS Architects Pty Ltd is the appointed architect for the proposal. This section describes the proposed development.

3.1 Proposed Development

The proposed development is for seven residential flat buildings and subdivision of the site into four allotments, including three allotments to accommodate the residential flat buildings and one allotment for the proposed roads. Generally, the following works are proposed:

- Demolition of all existing buildings and structures;
- Construction of seven residential flat buildings with basement car parking;
- Construction of new roads;
- Associated civil engineering works; and
- Associated landscaping works.

A summary of the proposed building works is identified in the table below.

Table 2. Proposed Development Summary

Property	Details
<u>Lot 1</u>	Consisting of Building A and Building B, combined total number of units equals 93 residential units.
Site Area	4,509.47 sqm
<u>Building A</u> No. of Units	50 Units
<u>Building B</u> No. of Units	43 Units
<u>Entire Site</u> Car Parking Spaces	144 spaces
Deep Soil Planting	1,063.65 sqm (23.59% of Lot 1)
Communal Open Space	3,045.86 sqm
<u>Lot 2</u>	Consisting of Buildings C, D and E, combined total number of units equals 129 residential units.
Site Area	6,154.08 sqm
<u>Building C</u> No. of Units	43 Units
<u>Building D</u> No. of Units	43 Units
<u>Building E</u> No. of Units	43 Units

Property	Details
<u>Entire Site</u> Car Parking Spaces Deep Soil Planting Communal Open Space	209 spaces 1,273.26 sqm (20.69% of Lot 2) 4,503.46 sqm
<u>Lot 3</u> Site Area <u>Building F</u> No. of Units <u>Building G</u> No. of Units <u>Entire Site</u> Car Parking Spaces Deep Soil Planting Communal Open Space	Consisting of Building F and Building G, combined total number of units equals 93 residential units. 4,658.55 sqm 43 Units 50 Units 142 spaces 866.52 sqm (18.60% of Lot 3) 3,029.04 sqm
Residential Dwelling Density	The proposal includes a total of 315 dwellings. The entire site has an area of 2.023 hectares. The land excluding the roads has an area of 1.531 hectares. The dwelling density over the entire site is 156 dwellings per hectare, while the dwelling density over the land excluding the roads is 206 dwellings per hectare.
Building Height	Block A - max height RL72.15 Block B - max height RL71.70 Block C - max height RL71.70 Block D - max height RL71.70 Block E - max height RL72.20 Block F - max height RL73.75 Block G - max height RL75.20
Setbacks	New road north – 6 metres between new lot and proposed buildings New road south - 6 metres between new lot and proposed buildings New road east - 6 metres between new lot and Block G Tallawong Road - 6 metres between new lot and Block A (building line)
Building Separations	12 metres between all buildings from ground up to and including fourth level and 18 metres for fifth level.

Refer to architectural plans enclosed with this report prepared by JS Architects for design details of the proposal.

3.2 Height of Proposed Buildings

The proposed development is subject to a maximum building height of 16 metres in accordance with Clause 4.3 of the Growth Centres SEPP. Each proposed building on the site includes similar design features that are above the maximum building height. These include the roof lobbies, which consist of the roof overruns and access points to common open space on the roof. The southern elevations of the proposed buildings generate less of an exceedance than the northern elevation. Given the orientation of the site this results in less of an impact from overshadowing to properties on the southern side.

Development Standard

The key environmental planning instrument that applies to the site is the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP). In accordance with Clause 4.3 of Appendix 12 of the LEP the maximum height of buildings (HOB) development standard that applies to the site is 16 metres.

The LEP defines building height as follows:

“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.”

5

Proposed Variation

The proposed development is non-compliant with the 16 metres maximum building height development standard under Clause 4.3 of Appendix 12 of the Growth Centres SEPP. The table below identifies the amount of exceedance generated by each building above the development standard. Additionally, refer to Figure 4 in this report that shows the extent of non-compliance of the roof elements and the actual maximum 16 metres building height plane over the site.

Table 3. Proposed Non-Compliance

Proposed Building	Proposed Non-compliance
Block A	<u>Southern lift core and roof structures</u> - Proposed maximum height RL72.15. - Maximum exceedance is 1.35 metres above maximum building height <u>Northern lift core and roof structures</u> - Proposed maximum height RL72.15 - Maximum exceedance is 2.55 metres above maximum building height <u>Northern roof portion</u> - Proposed maximum height RL68.55 - Maximum exceedance is 0.15 metres above maximum building height
Block B	<u>Southern lift core and roof structures</u> - Proposed maximum height RL71.70 - Maximum exceedance is 1.29 metres above maximum building height <u>Northern lift core and roof structures</u> - Proposed maximum height RL71.65 - Maximum exceedance is 2.80 metres above maximum building height
Block C	<u>Southern lift core and roof structures</u> - Proposed maximum height RL71.70 - Maximum exceedance is 1.40 metres above maximum building height <u>Northern lift core and roof structures</u> - Proposed maximum height RL71.70 - Maximum exceedance is 3.25 metres above maximum building height

Proposed Building	Proposed Non-compliance
Block D	<u>Southern lift core and roof structures</u> - Proposed maximum height RL71.70 - Maximum exceedance is 1.28 metres above maximum building height <u>Northern lift core and roof structures</u> - Proposed maximum height RL71.70 - Maximum exceedance is 2.71 metres above maximum building height
Block E	<u>Southern lift core and roof structures</u> - Proposed maximum height RL72.20 - Maximum exceedance is 1.89 metres above maximum building height <u>Northern lift core and roof structures</u> - Proposed maximum height RL72.20 - Maximum exceedance is 2.72 metres above maximum building height
Block F	<u>Southern lift core and roof structures</u> - Proposed maximum height RL73.75 - Maximum exceedance is 1.76 metres above maximum building height <u>Northern lift core and roof structures</u> - Proposed maximum height RL73.75 - Maximum exceedance is 2.65 metres above maximum building height
Block G	<u>Southern lift core and roof structures</u> - Proposed maximum height RL75.20 - Maximum exceedance is 1.65 metres above maximum building height <u>Northern lift core and roof structures</u> - Proposed maximum height RL75.20 - Maximum exceedance is 2.52 metres above maximum building height



Figure 4. Extent of non-compliances with maximum building height

6 Justification for Request

This Clause 4.6 Report seeks to amend the maximum building height development standard in Clause 4.3 of Appendix 12 of the Growth Centres SEPP in support of the proposal. This section provides the justification for the variation.

6.1 Assessment of the Objective of the Relevant Standard

The objectives of Clause 4.3 are provided below with an assessment of the objectives.

Maximum Height of Buildings

Clause 4.3 of Appendix 12 of the Growth Centres SEPP 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.”*

Assessment

The proposal meets the above by:

- The SEPP establishes a maximum building height of 16 metres on the subject site. The proposed development is non-compliant with the development standard as identified in Section 5 of this report. This Clause 4.6 Report provides the necessary justification demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstance. The non-compliance does not generate any adverse environmental impacts and generates a better design/planning outcome that significantly increases the residential amenity to the proposed buildings with the proposed roof top 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 mid-winter.
- The proposal includes a total of 315 dwellings located within 300 metres of the new Tallawong Metro Station. The proposed development aligns with Objective (c) above, which also aligns with the Greater Sydney Regional Plan and Central City District Plan strategic planning directions and priorities.

Therefore, the proposed non-compliance is considered to be reasonable for the site and strict compliance with the development standard unnecessary.

6.2

Assessment of the Objectives of the Land Use Zone

The site is zoned R3 Medium Density Residential. The objectives of the land use zone in the SEPP are as follows:

“Zone R3 Medium Density Residential

1 Objectives of zone

- 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.”*

Assessment

The proposal meets the above by:

- The proposal provides a mix of housing that provides greater housing choice to the market in an area that is undergoing significant urban transformation. The proximity of the new Metro Station and distance to Rouse Hill Town Centre makes the site ideal for the proposed type of development.
- The proposal provides a wide combination of studio, one bedroom, two bedroom and three bedroom residential units that are located in proximity to a future Centre and the new Tallawong Metro Station. The proposal also aligns with the Central City District Plan, which identifies that the site is located within an area designated as Transit Orientated Development. Hence, the proposal is well suited to the site and surrounding area and fits within the future environment and character of the area.
- The proposal includes residential development with a mix of dwelling types and sizes and also includes large common open space areas, and communal rooms to support the needs of the future residents. The site is well serviced by public transport and Schofields Road that provides access to major shopping in the Rouse Hill Town Centre.

Therefore, the proposed non-compliance is considered to be reasonable for the site as the proposal ensures that a high level of residential amenity is achieved.

6.3

Clause 4.6 Assessment

In order for development consent to be granted to a non-complying development, Council must be satisfied that the provisions of Clause 4.6(3)-(5) of the LEP have been satisfied. The proposed development has been assessed under these provisions, having regard to the application of these provisions established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council [2007] NSW LEC 82*
- *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

Accordingly, the following assessment is made:

Clause 4.6(1)(a) and (b)

The first test of Clause 4.6, is whether the proposal meets the objectives of Clause 4.6, which area:

- (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.*

It is believed that the proposal does meet the above objectives as the proposal offers a development that does not generate any significant environmental impacts, achieving a design with a good outcome for the site.

Clause 4.6(3)

Clause 4.6(3)(b) requires the proposal to be justified in regard to:

- (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.*

Unreasonable or Unnecessary Assessment

Preston CJ in *Wehbe v Pittwater Council* [2007] NSW LEC 827 outlined five criteria, which may demonstrate that compliance with a development standard is "unreasonable or unnecessary".¹ The criteria are articulated as follows:

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.*²

An assessment of the above criteria in relation to the subject development is outlined below:

(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard

Consistency with the objectives of the standard, and the absence of any adverse environmental impacts and significant material impacts, would demonstrate that strict compliance with the development standard is both unreasonable and unnecessary in this instance.

¹ *Wehbe v Pittwater* [2007] NSW LEC 827, [42-49]

² *Ibid*

The proposal is consistent with the objectives at Clause 4.3 of Appendix 12 of the Growth Centres SEPP satisfying Wehbe test (i). As such, it is unreasonable and unnecessary in this circumstance to comply with the development standard.

(ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.

(iii) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.

(iv) 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

Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required.

(v) 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.

Not applicable. Zone R3 Medium Density is an appropriate zone given the site's location to Rouse Hill Town Centre. The proposed uses are also consistent with the land use zone. As such this exception to development standards request does not rely on this reason.

Further Discussion on Unreasonable or Unnecessary Assessment and Environmental Planning Grounds

The proposed development is subject to a maximum building height of 16 metres in the Growth Centres SEPP. Each proposed building on the site includes similar design features that are above the maximum building height. These include the roof lobbies, which consist of the roof overruns and access points to common open space on the roof. The southern side of the proposed buildings generate less of an exceedance than the northern side. Given the orientation of the site this results in less of an impact from overshadowing to properties on the southern side.

Also, as shown in Figure 4 of this report, in consideration of the total footprint of the proposal, it is evident that the areas/footprints of the design elements generating the non-compliance are much smaller than the overall development footprint.

Clause 4.6(3)(b) requires sufficient environmental planning grounds to be demonstrated to justify a contravention of the development standard.

The proposed development is mostly compliant with the maximum building height of 16 metres prescribed in the Growth Centres SEPP. However, the non-compliance generates two issues of concern, which include overshadowing and view loss.

In relation to overshadowing, the shadow analysis diagrams enclosed with the architectural design plans show that the proposal would not have an adverse impact on the adjoining lands due the separation between the buildings, which allow daylight to penetrate between

the buildings, and sunlight between 12pm and 3pm. Moreover, the shadows are mainly cast on Tallawong Road, proposed new roads and in-between the blocks, while also achieving the minimum required solar access design criteria under the Apartment Design Guide.

The lobby areas and lift overruns, also include fire stairs within the roof structure. It is necessary to provide fire stair access to the roof level in case of an emergency. While these elements exceed the maximum building height they also produce a significant benefit to the overall function and residential amenity of the proposal.

These design features allow access to the common open space on the roof level. As such, the proposal is considered to generate a skilful design outcome in balance of the proposal versus the minor material environment impacts.

With respect to view loss and view impacts the design elements are well setback from the building line and would not dominate the skyline when the buildings are seen from the immediate street level. Moreover, the design elements generating the non-compliances would not be visually evident from the immediate streetscape and various frontages of the proposal as experienced any pedestrians. The overall prominence of the proposal in relation to its bulk, mass and scale is further reduced and mitigates any view impacts by having the top floor to each building setback beyond the building line of the lower levels of each building.

In consideration of, 1) the orientation and siting of the proposed development, 2) its proposed built form, 3) modulation and articulation, 4) tree lined streets, views and pedestrian experience at street level, and 5) location of design elements causing the non-compliance, it is considered that the variation to the development standard is completely acceptable. Hence, strict compliance with the development standard in the circumstance is unnecessary and unreasonable.

Further, pursuant to the decision in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* it needs not be demonstrated that the non-complying development has a "neutral or beneficial effect relative to a complaint development."³ Should the design be amended to comply, it would cause an inferior design and planning outcome with no better environmental outcome. Accordingly, the proposal is optimal as it stands.

Furthermore, in *Initial Action*, at [23], Preston CJ held:

"... The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purposes of the EPA Act, including the objects in Section 1.3 of the EPA Act."

An assessment of the Objects Section 1.3 of the Act is provided in the table below. The assessment found that the proposal does offend any of the Objects of the Act.

Table 4. Section 1.3 of the Act Assessment

Objects under Section 1.3 of the Act	Assessment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	Not applicable. The proposal does impact any of the State's natural and other resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning	The proposal meets the objectives of the R3 Medium Density Residential zone and NSW State Government and Council's inherent desired future

³ *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 [86]*

Objects under Section 1.3 of the Act	Assessment
and assessment,	character for the area. The proposal is considered suitable for the site and that it meets this object because, • it does not generate any significant adverse environmental impact; • provides housing close to the a new Metro Station and Rouse Hill Town Centre, locating housing in close proximity to employment and uses/services/functions to the Rouse Hill Town Centre and Tallawong Station Centre, while contributing the to economic role of the both Centre; and • provides greater housing choice in the area, while also providing housing in close proximity to public transport and a transport hub, which achieves the objectives of the land use zone.
(c) to promote the orderly and economic use and development of land,	The proposal achieves an orderly and economic use of the land. Refer to above assessment under Object (b).
(d) to promote the delivery and maintenance of affordable housing,	The proposal does not include affordable housing and there is no requirement or mechanism under Council's LEP or the SEPP to provide affordable housing. However, the proposal meets the objectives of the R3 Medium Density Residential zone and Council's inherent desired future character for the area.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Not applicable. The site does not include any threatened and other species of native animals and plants, ecological communities and their habitats.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Not applicable. The site does not include any built and cultural heritage, including Aboriginal cultural heritage.
(g) to promote good design and amenity of the built environment,	The proposal is considered to be a good design outcome for the site, as it achieves a high quality residential amenity for future residents. Landscaped common open spaces are provided throughout the development generating a soft interface between the buildings themselves and between the buildings and public domain.

Objects under Section 1.3 of the Act	Assessment
	The inclusion of compliant setbacks to the street further achieves a greater sense of space between the development and the pedestrian experience to the street, hence promoting good pedestrian amenity within the built environment.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal seeks to achieve the proper construction and maintenance of the building. Any development consent would be subject to strict Conditions of Consent that the developer and building contractor would need to adhere to and demonstrate compliance with relevant Council requirements, National Construction Code requirements and Australian Standards.
i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	Rouse Hill and the site are identified in the Central City District Plan. Rouse Hill as a 'strategic centre' and TOD precinct, while Tallawong Station as a TOD precinct. The proposal achieves the NSW State Government's core aim under the Greater Sydney Region Plan to deliver a '30-minute city' by locating housing close to strategic centres and employment. The above is reinforced by the proposal meeting the objectives of the R3 Medium Density Residential zone and Council's inherent desired future character for the area.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposal is subject to standard planning process for development consent.

As such, given the assessment of the Objects of the Act and assessment of potential environmental impacts, there is sufficient justification for the proposal on environmental planning grounds, which are particular to the subject site, to allow for the contravention of the development standard.⁴

Accordingly, the proposed development will be in the public interest because it is consistent with the objectives of the development standard and land use zone.

⁴ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, [60]; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90,[29].

Assessment of Clause 4.6(5)

Further to the above, the NSW Department of Planning and Environment (DP&E) issued a Planning Circular (PS17-006) dated 15 December 2017 that provides guidance with respect to assumed concurrence when determining a development application that is supported by a Clause 4.6. The Planning Circular outlines the procedural and reporting requirements.

Therefore, the Clause 4.6 also includes an assessment under Clause 4.6(5) of Appendix 12 of the SEPP as required by the Planning Circular. Clause 4.6(5) states:

“4.6 Exceptions to development standards

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and***
- (b) the public benefit of maintaining the development standard, and***
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.”***

An assessment of Clause 4.6(5) of Appendix 12 of the SEPP is provided below.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The proposed non-compliance with the maximum building height development standard does not raise any matters of significance for State or regional environmental planning. The contravention only relates to local environmental planning matters and controls.

(b) the public benefit of maintaining the development standard, and Maintaining the development standard in the circumstance would result in a poorer public benefit with respect to the streetscape.

Should the proposal comply with the maximum development standard it would result in an inferior architectural and urban design outcome, as well as result in a less economic viable outcome for and area identified as a TOD precinct under the District Plan.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other matters to be taken into consideration by the Secretary before granting concurrence. The proposal results in an orderly and economic development for the site.

Conclusion

The proposed development is within the public interest because it is consistent with the objectives of the particular standard, providing a particularly high level of amenity for future users whilst maintaining the current level of amenity to surrounding development.

This Clause 4.6 Report provides a well-founded justification for the proposed non-compliance to the maximum height of building development standard under Clause 4.3 of Appendix 12 of the Growth Centres SEPP.

Therefore, it is considered that strict compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard for Council to support the proposed development.

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