



Clause 4.6 Exceptions to development standards

Written request – Building Height

Demolition of all existing structures on the site, Torrens title subdivision of the existing allotment to create 3 development lots, and construction of 2 x four-storey residential flat buildings on proposed Lot 1, containing a total of 117 apartments, 8 commercial premises, a basement car park containing two levels, and associated stormwater works and landscaping



Proposed Lot 1, 84 Tallawong Road, Rouse Hill NSW 2155
Lot 63 DP 30186


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Clause 4.6 Written Request to Vary a Development Standard

State Environmental Planning Policy (Sydney Region Growth Centres) 2006

Applicant's name	Archidrome
Site address	Proposed Lot 1, 84 Tallawong Road, Rouse Hill NSW 2155
Proposal	Demolition of all existing structures on the site, Torrens title subdivision of the existing allotment to create 3 development lots, and construction of 2 x four-storey residential flat buildings on proposed Lot 1, containing a total of 117 apartments, 8 commercial premises, a basement car park containing two levels, and associated stormwater works and landscaping
Environmental Planning Instrument	<i>Appendix 12 Blacktown Growth Centres Precinct Plan, State Environmental Planning Policy (Sydney Region Growth Centres) 2006</i>
Development standard to be varied	<p>Clause 4.3 – Height of buildings</p> <p>The relevant subclause states:</p> <p><i>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</i></p>

Below is the written request relating to the proposed variation to clause 4.3 of Appendix 12 of the *SRGC SEPP 2006* in accordance with the provisions of clause 4.6 of Appendix 12 of the *SRGC SEPP 2006*.

1. Details of development standard sought to be varied

Clause 4.3(2) of Appendix 12 of the *SRGC SEPP 2006* prescribes that a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. As indicated in Appendix 12 of the *SRGC SEPP 2006* Height of Buildings Maps, the maximum building height shown for the subject site is 12m (**Figure 1**).

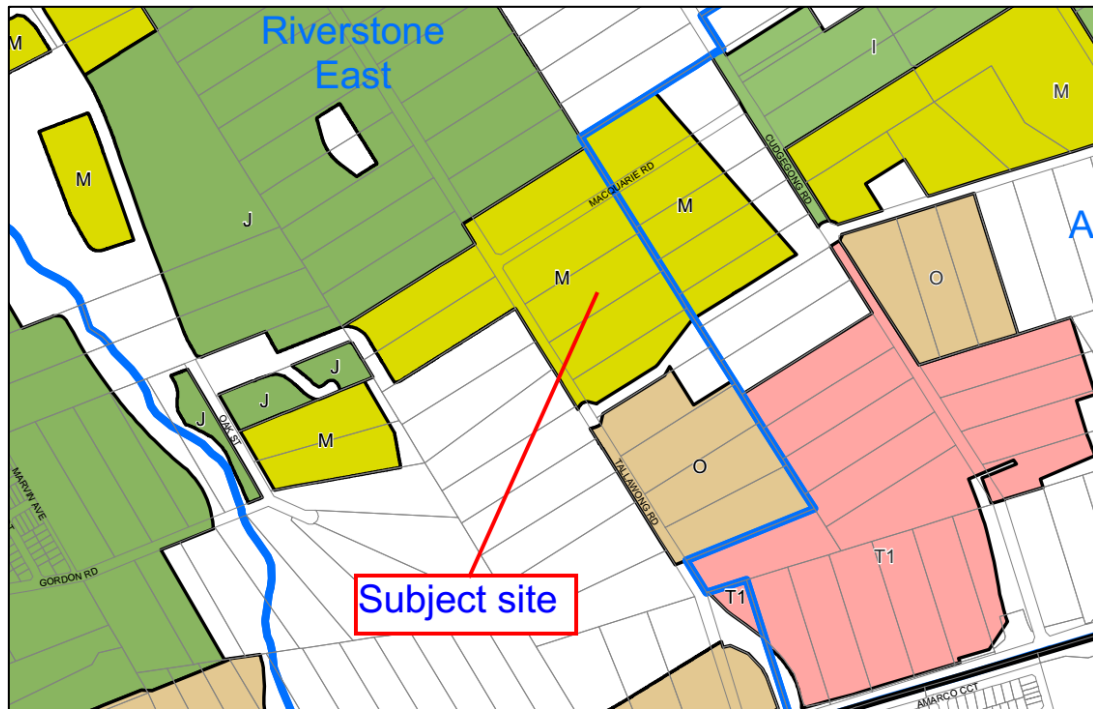


Figure 1 – Building Height Map Extract from Appendix 12 of the SRGC SEPP 2006 – 12m maximum building height
Source: <http://www.legislation.nsw.gov.au>

The proposed development has a maximum building height which exceeds the minimum requirements of 12m, largely as a consequence of the slope of the site. Part 1 of the submitted Height Analysis shown below, depicts the areas of the development which do not comply with the maximum building height.

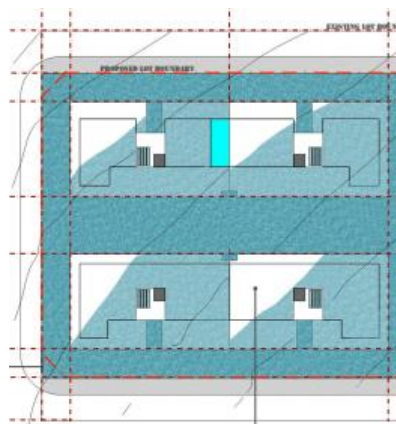


Figure 2- Extract from Height Analysis Part 1. The roof areas in light colour exceed the maximum building height.
Source: Archidrome, 2017

The following notes to Part 1 of the submitted Height Analysis Plan are worthy of reference: The overall development site falls 12m to the west.

- The illustrated height plan is projected up 12m from the existing site levels.
- The finished levels of the site remain relatively consistent with the existing site levels (discussed further below)
- Greater than 2/3 of the building footprint is compliant with the maximum building height.

The section plans below show the height non-compliances at each proposed lot.

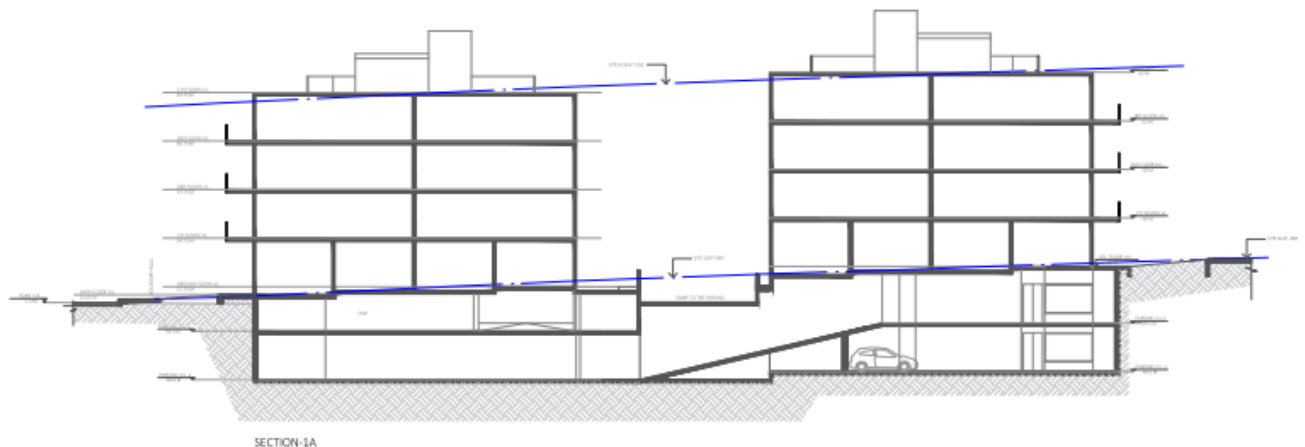
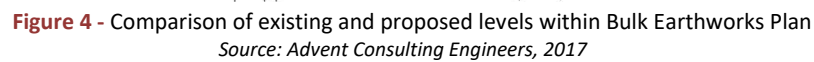


Figure 3- Section-1A

Source: Archidrome, 2017

Prior to lodgement of the subject application, Judith Portelli, of Council's Development Assessment Department had indicated that the finished levels as a consequence of roadworks and drainage, must first be established in considering any height non-compliance. The proposal has been designed such that the roadworks and drainage will have negligible impact on surface levels across the site, as indicated in the Bulk Earthworks Plan shown below.



The maximum extent of the overall height non-compliance can therefore be described as follows:

- The extent of the non-compliance to the lift overrun is dictated by the provision of communal rooftop open spaces, and the minimum required dimensions for lift overruns. The area of the non-compliant lift overruns equates to between 1-2% of the total site area, with each lift overrun being centralised within the respective building.

2. Clause 4.6 Exceptions to Development Standards - SEPP Sydney Region Growth Centres 2006

Clause 4.6 of Appendix 12 of the *SEPP Sydney Region Growth Centres 2006* is the mechanism by which a consent authority is able to grant consent to a development despite non-compliance with a prescribed development standard. Clause 4.6 is reproduced below:

(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 Director-General has been obtained.*

(5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

(6) Development consent must not be granted under this clause for a subdivision of land in Zone E2 Environmental Conservation, Zone RU6 Transition or Zone E3 Environmental Management if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4.

In *Wehbe V Pittwater Council* (2007) NSW LEC 827, Preston CJ set out the following 5 different ways in which an objection (variation) may be well founded:

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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

It is necessary for the applicant to demonstrate that the standard is unreasonable and unnecessary in the circumstances of the case, and that there are environmental planning grounds to justify contravening the development standard. These matters are addressed below.

3. Development consent must not be granted for development that contravenes a development standard unless compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Compliance with the maximum building height development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, for the following reasons:

- The proposed development will not impact on views that are available from nearby properties, or from important landmarks within the locality. An unobstructed visual corridor from a nearby State heritage item, Rouse Hill House and Farm, is able to be maintained looking toward the south with minimal presence of built elements within that view corridor. Figure 5 below demonstrates the distance from the subject site to the Rouse Hill House and Farm.

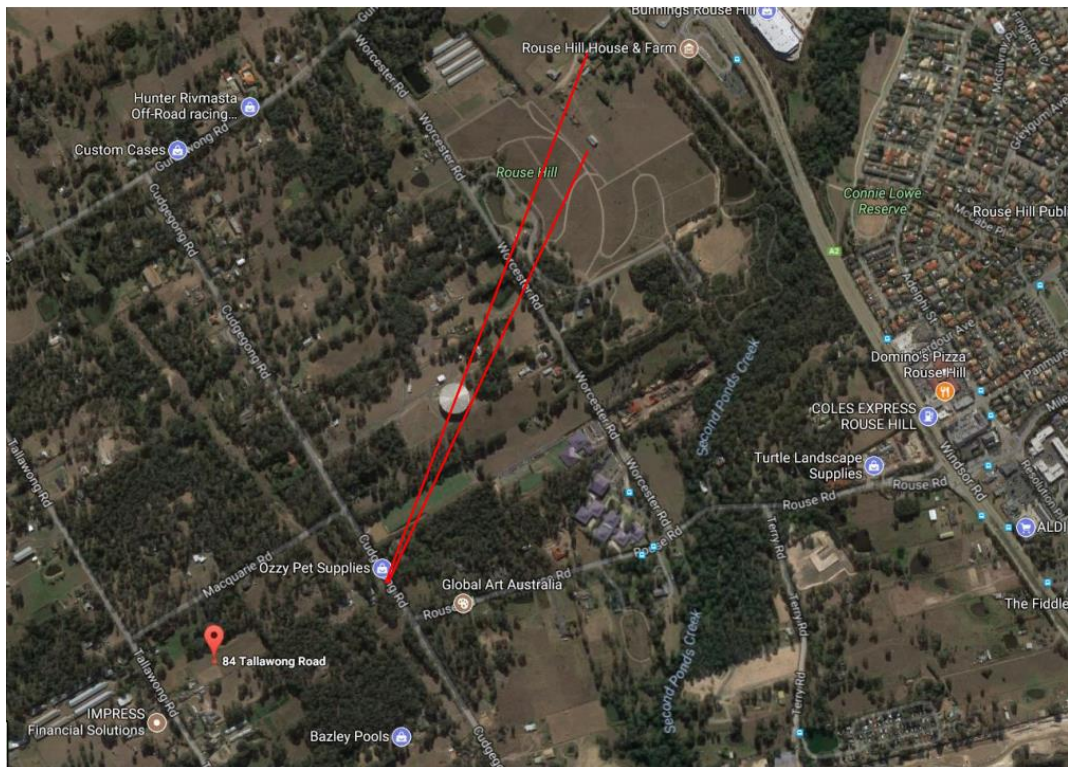


Figure 5 – Image depicting distance from the eastern edge of the subject site to Rouse Hill House and Farm. The line on the left hand side represents 1.2km to Rouse Hill House and the line on the right hand side represents 1.05km to the associated farm house.

Source: Google Maps, 2017

Views towards Rouse Hill House and the associated farmhouse are currently available over the Rouse Hill Regional Park and beyond. In consideration of the location of the subject site and the additional building height over the prescribed limit, the proposal will not create any unreasonable impacts on views or outlook from Rouse Hill House and farm.

- The design will not create any adverse privacy impacts on existing or future residents within the locality, as balconies are well setback from proposed roads, and areas of rooftop activity are located away from the edge of each building;
- The lifts and stairs are located centrally on each roof and are integrated in to the overall design of each building, and will not be readily visible at street level.
- Despite the proposed non-compliance, the development as proposed will not be inconsistent with the desired future character and building forms that would be anticipated within this locality. The planning controls envision a 4-storey built form with 6m setbacks from each street and between buildings. The proposal provides for two well-spaced residential flat buildings arranged logically across the site in accordance with these requirements. The development allows for visual and pedestrian permeability between each building and through opposite ends of each site, with basement access provided discreetly within the development. As a consequence of this arrangement, there are limited opportunities to provide midwinter solar access to the ground floor communal

open space areas, and the proposed development seeks to provide rooftop communal open space areas, which will enjoy unfettered solar access at all times of the year, but which necessitates breach of the height limit.

- This design also allows for exemplary solar access to be provided within the development, as 95 units (81.2%) are proposed to receive solar access which complies with the minimum numerical requirements.
- The breach will not result in any adverse impacts on neighbouring properties as the open timber pergolas have insignificant bulk and the minimal amount of shadowing caused by the structures will fall on the roof of the development only.
- Despite the minor non-compliance, the objectives of the building height clause have been achieved as the development maximises the provision of solar access within the development, without generating an additional overshadowing to neighbouring properties, and the perceived bulk of the development is minimised through the use of lightweight rooftop structures which are not highly visible from surrounding areas.

4. Environmental planning grounds justifying contravening the development standard.

Compliance with the maximum building height development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, for the following reasons:

- The building height is primarily provided for two reasons: as a consequence of responding to the slope of the land, and in order to provide a rooftop communal open space area.
- The ground levels at the site have been selected considering a range of important factors including street presentation, vehicular access, and stormwater management. The ground levels that are proposed enable direct level pedestrian access to all ground floor units that face a public street, which assists in improving the ground level streetscape appearance. The selected levels also allow for vehicular access to be provided from the lower portions of the site, whilst minimising level changes within communal open space areas, and still allowing for ceiling heights within the basement that facilitate on-site basement garbage collection. The levels that have been selected across the site are optimal for this development, and there is no environmental planning benefit in providing alternative roof levels in order to better achieve numerical compliance with the development standard.
- The fact that over two thirds of the roof level sits below the height limit demonstrates that the building height has been limited as much as is practicable, and that there is limited opportunity to reduce the overall height of the development any further, without create adverse impacts elsewhere on the functionality of the development.
- The non-compliant rooftop elements include lift overrun, stair shaft, pergolas, rooftop amenities, and planting. The taller elements are located at the centre of each building as demonstrated in Part 2 of the submitted Height Analysis shown below.

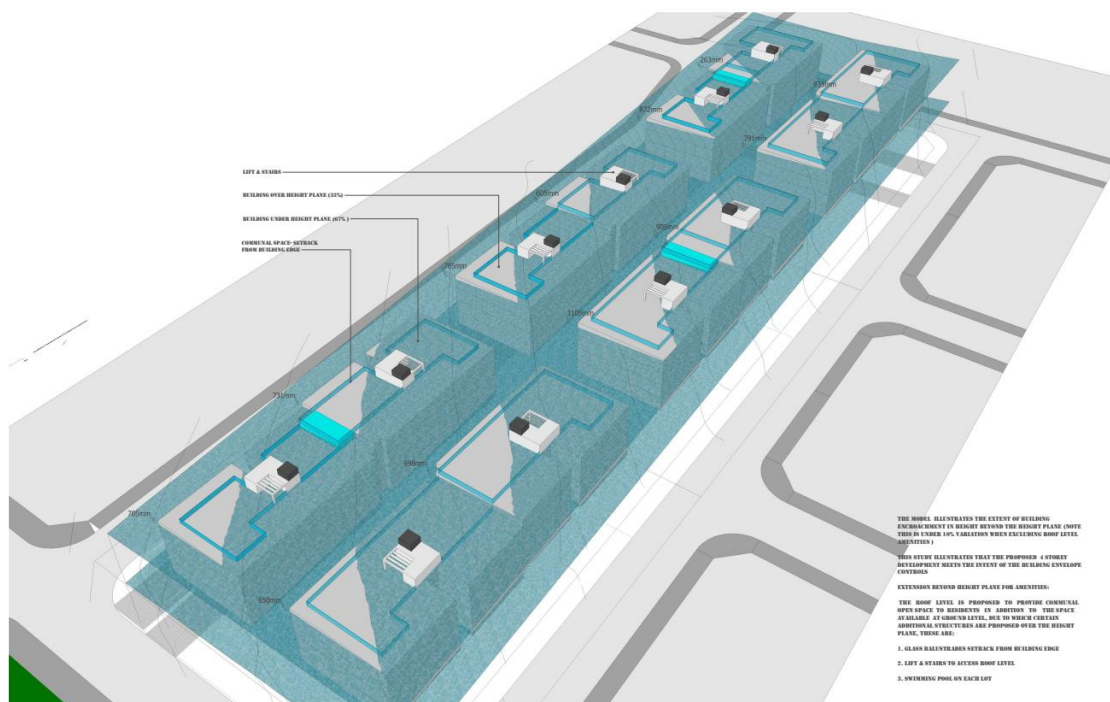


Figure 6 – Part 2 of the submitted Height Analysis, with the unshaded areas representing elements that are non-compliant with the maximum building height. Lot 1 is the site fronting Tallawong Road, and is shown in the foreground.

Source: Archidrome

The location and the minimal bulk of these elements will ensure they will not be visible from the public domain, and the impacts to surrounding properties will be negligible.

- The lift overrun and pergolas are provided above the height limit solely to enable access to the rooftop communal open space areas, and for no other purpose. The communal open space area will positively contribute to the amenity of the development, and will provide an additional space for residents, to enjoy a variety of passive and recreational opportunities, within a mixture of sunlit and shaded areas. This is considered to outweigh the insignificant and generally non-existent adverse impacts of the given structures exceeding the height limit.
- No part of any apartment is situated above the height limit. The height non-compliances relate exclusively to the provision of rooftop communal open space, and to parapet walls that sit at the edge of each building. The height of these parapet walls is dictated by the average of the ground levels in the centre of the site. Given the overall size of each floor plate, and the gradual slope of the land, it is inevitable that some portion of the parapet walls at the edges of each building would sit above the height limit.
- Further to the above, to insist on compliance, would require the deletion of the rooftop communal open spaces, and the lowering of each building. The deletion of the communal open spaces would be to the detriment of the amenity of each building. Moreover, if the buildings were lowered simply to achieve compliance, the development would become less responsive to the existing ground levels, and would result in a poor relationship between the

ground floor dwellings and the adjacent outdoor areas. These changes would not reduce the overall scale of the buildings, or provide any improvements to the amenity of other properties.

- Having regard to the judgement in *Wehbe*, the reasons for the variation can be summarised as follows:
 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;
 - The underlying object or purpose of the height of buildings standard, being to provide higher density development close to major transport routes without significant amenity impacts on adjoining development, would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
 - Insistence on compliance would result in poorer amenity being provided at the site, without any associated reduction of the scale of the buildings, or any improvement to the amenity of other properties.
 - Although the standard has not been abandoned or destroyed, similar height non-compliances have been supported by Council (and the Sydney West Planning Panel) and consent for departure to the standard has been granted at:
 - JRPP-15/02480 (2015SYW211 DA) – 15A and 15B within 54 Pelican Road, Schofields
 - JRPP-16-03313 (2016SYW132 DA) – Lot 1 within subdivision of 848 Windsor Road, Rouse Hill
 - JRPP-16-03310 (2016SYW091) – 99-101 Schofields Road, Rouse Hill
 - DA-14/10924 – Lot 16A within 54 Pelican Road, Schofields
 - DA-14/1907 – Lot 16B within 54 Pelican Road, Schofields

Therefore, compliance with the standard would be unnecessary and unreasonable.

Given the above it is considered that the requirements of Clause 4.6 have been satisfied and that the variation to the building height development standard can be approved.