



Clause 4.6 - Exceptions to Development Standards

The proposed development will result in a built form which has a height in excess of the 12.0m height of building control as required by Clause 4.3 of Appendix 6 - Area 20 Precinct Plan of State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

The proposal will result in a building which exceeds the 12.0m height control to the extent reflected on Drawing No. DA-33/B of the submitted Architectural Plans prepared by SWA Group and dated 31/5/18.

It is submitted that the non-compliance is attributable to the existing site topography which slopes naturally from the centre of the site to both the front south eastern corner adjoining Cudgegong Road and the rear north western corner together with the provision of roof top open space and the associated lift access to that space.

Given that the proposal does not comply with the maximum height control and in order for consent to be granted to the proposal a variation pursuant to Clause 4.6 of the Appendix 6 of the SEPP is required.

This Clause 4.6 variation has been prepared having regard to the recent decisions of the Land & Environment Court.

It is submitted that the variation is well founded and is worthy of the support of the Council.

The following is an assessment of the proposed variation against the requirements of Clause 4.6 of Appendix 6 of the SEPP.

1. What are the objectives of Clause 4.6 and is the proposal consistent with them.

The objectives of Clause 4.6 of the LEP are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

It is my opinion, as is demonstrated by the responses to the questions below, that the proposed variation is consistent with the objectives of this clause.

2. Is the standard to be varied a Development Standard to which Clause 4.6 applies.

Clause 4.3 is contained within Part 4 of Appendix 6 of the SEPP and which is titled Principal Development Standards. It is also considered that the wording of the Clause is consistent with previous decisions of the Land & Environment Court of NSW in relation to matters which constitute development standards.

It is also noted that Clause 4.3 does not contain a provision which specifically excludes the application of Clause 4.6.

On this basis it is considered that Clause 4.3 is a development standard for which Clause 4.6 applies.

3. Is compliance with the development standard unreasonable or unnecessary in the circumstances of this case.

It is my opinion that compliance with the requirements of Clause 4.3 is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- The proposed non-compliance comprises only part of the proposed built form and is considered to be attributable to the topography of the site combined with the provision of roof top open space over part of the built form and the provision of lift access to those spaces.
- The proposal provides for a 4 storey residential flat building which is consistent with the aims and objectives of the height control.
- The proposed non-compliances will not in my opinion result in any amenity impacts upon adjoining properties including unreasonable overshadowing.
- The proposal in my opinion will not result in any unreasonable visual impacts upon either adjoining properties or the streetscape as a result of the non-compliance.
- The proposal is consistent with variations approved for other buildings approved within the locality including the development located opposite the subject site at 96 Cudgegong Road, 88 & 104 Rouse Road, Rouse Hill.

On this basis it is my opinion that strict compliance with the standard is unreasonable and unnecessary in the circumstances of this case.

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

It is considered that a contravention of the development standard is justified given the topography of the site combined with the fact that it does not result in any unreasonable impacts and is associated with the provision of a high quality architecturally designed development which will make a significant positive contribution to the built form character of the locality.

It is also considered that there is significant benefit provided to residents through the provision of roof top open space and noting that the proposed lift and lift overrun are necessary to provide equitable access to this space.

The proposal is considered to be otherwise consistent with the aims and objectives of the SEPP for this form of development.

5. Is the proposed development 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.

The proposed development is in my opinion in the public interest because it will provide for a high quality, architect designed development which will make a significant positive contribution to the built form character of the locality and provide equitable access to all areas of communal open space in a manner which is otherwise compliant with the requirements of the SEPP, the applicable zone objectives and the objectives of the particular standard.

In this regard it is submitted that in relation to the objectives for the R3 - Medium Density Residential zone that:

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

Comment

The proposal is considered to be consistent with this objective in that it seeks to provide for a total of 208 dwellings within two x 4 storey residential flat buildings.

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

Comment

The proposal is considered to be consistent with this objective in that it provides for a combination of 1, 2 & 3 bedroom dwellings comprising of 24 x 1 bed dwellings, 160 x 2 bed dwellings and 24 x 3 bed dwellings.

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

Comment

Not Applicable.

- *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.*

Comment

Not Applicable.

The proposal is also considered to be consistent with the objectives of Clause 4.3 - Height of Buildings in that:

- The proposal does provide for a 4 storey residential flat building upon the site and which is consistent with that envisaged by the SEPP.
- The proposal will not in my opinion result in any visual impact and will protect the amenity of adjoining development and land in terms of solar access to buildings and open space, and
- The proposal does provide for the provision of higher density housing in a location which is close proximity to the Cudgegong Metro Rail Station.

6. Whether contravention of the development standard raises any matter of significance for state or regional environmental planning.

It is my opinion that contravention of the standard does not raise any matters of significance for State or Regional environmental planning.

7. What is the public benefit of maintaining the development standard.

It is my opinion that there is no public benefit in maintaining the development standard in this instance given the high quality of the architecture proposed and the absence of any unreasonable detrimental impacts together with the provision of 208 units resulting from the proposal.

Conclusion

It is therefore my opinion based upon the content of this submission that a variation of the height requirement of Clause 4.3 of Appendix 6 of SEPP (Sydney Region Growth Centres) 2006 is appropriate in this instance.



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