

Assessment of Clause 4.6 request to vary building height standard

1 Overview

The applicant has lodged a Clause 4.6 variation submission to vary the height controls in Clause 4.3 of SEPP (Sydney Region Growth Centres) 2006. A copy of the applicant's Clause 4.6 submission is at attachment 8. The maximum building height of 12 m under the SEPP is varied in this application to achieve a maximum height of 13.2 m (10%) to the building parapet and 15.4 m (28.3%) to the service plant areas and lift overruns.

The Concept Plan (JRPP-15-02701 as modified in MOD-17-00493) approved a maximum building height limit of up to 15.4 m for this site, 3.4 m above the height permitted under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 of 12 m, as shown below:

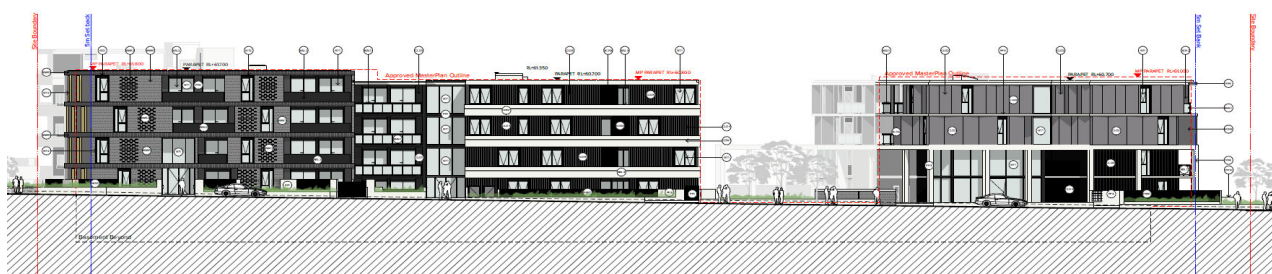


Figure 1: Extract from the South Elevation Plan showing the proposed residential flat building development, which is consistent with the maximum height and building envelopes approved in the Concept Plan (JRPP-15-02701 as amended), as indicated by the dashed red line.

2 Clause 4.6 considerations

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

2.1 Has the applicant submitted a written request 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.

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 the variation is unreasonable and unnecessary for the following reasons:

- To enforce 100% compliance in this circumstance is considered unreasonable as the proposal is compatible with the emerging scale of development in the locality and will be generally consistent with the scale of buildings approved within the Concept Plan consent (JRPP-15-2701).
- Full compliance with the development control could be achieved, subject to the deletion of a level within parts of the site. Given the greenfield context of the site, the topography of the land must be considered.
- The proposed buildings are appropriately stepped to reflect the slope of the site and to coordinate with the existing levels of the adjoining property to the north and surrounding roads. This includes ensuring that the levels of the ground floor

apartments are afforded with an appropriate level of amenity given their relationship with the new road levels.

- Due to the stepped building forms, some minor portions of the buildings are below the 12 m building height limit to compensate for some parts of the buildings and rooftop plant and equipment being above the building height limit.
- Where possible the applicant has stepped the buildings mid-width while also providing suitable core placements and meeting accessibility needs. The stepped design generates a desirable amenity outcome for future residents and a positive aesthetic streetscape presentation.
- The portion of the roof structures that exceed the height limit do not result in excessive bulk and scale and do not result in adverse shadow and amenity impacts on surrounding properties.
- The culmination of this DA and the Phase 1 and 2 DAs adhere to the maximum yield of 691 dwellings permitted by the Concept Plan approval.
- The lift overruns are contained in the central areas of the roof levels, representing only point encroachments into the height plane. They are not visible from the street and will not result in additional overshadowing to adjoining properties as shadows will be fully contained in the roof areas.
- In addition, areas that exceed the height limit do not result in excessive bulk and scale or amenity impacts, and are central to the site. Despite the height exceedance, the proposal provides a residential flat building that is compatible with the desired future character of the Area 20 Precinct.

Overall, the proposal provides a better planning outcome because the coordination of the buildings, apartments and communal open space areas is the result of a carefully considered masterplanned approach.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient planning grounds to justify varying this development standard. The variation will not have unreasonable impacts on neighbouring properties or the character of the area. The proposal is also consistent with the objectives of the development standard and the R3 Medium Density Residential zone.

There are sufficient environmental planning grounds that support a variation to the maximum building height control in this instance to secure a better outcome for and from the development. Notably, variations were approved in-principle as part of the concept plan approval, with the detailed application further resolving levels and design which has contributed to some further minor increases in building height across the site.

The proposal promotes the sustainable management of built and cultural heritage, in particular with regard to Rouse Hill House Estate which is approximately 1 km to the north of this site. This site is not contained within the views from the Rouse Hill House Estate and is not directly visible from Rouse Hill House Estate as it is blocked by the existing local tree canopy.

The proposed design includes stepped building forms, which ensure that the changes in the landform are accommodated, including allowing for basement access for waste vehicles and amalgamated basement levels that service all residents.

The proposal promotes good design and amenity, which creates a diverse and attractive neighbourhood based on strong urban design principles.

The benefit of the proposal is that it will facilitate and co-ordinate orderly and economic use of the site (which is expressed as an objective under the Environmental Planning and Assessment Act, 1979) for a development generally consistent with a Concept Approval

development. As such there is no planning purpose in strictly upholding the development standard. That is, it is a better planning outcome to permit a variation to Clause 4.3 in this instance.

It is considered that enforcing compliance will lead to an environmental planning outcome that is suboptimal when compared with the environmental planning outcome that would be secured by the adoption of the applicant's proposal.

2.2 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 proposal provides for housing stock close to public transport and the future local centre. There is no public benefit in maintaining strict compliance with the development standard as the proposed height non-compliances do not create significant amenity impacts nor compromise a high quality urban design for the area. Notwithstanding the proposed height variation, the building height objective of the SEPP is met.

2.3 Has the concurrence of the Director-General been obtained?

This Clause 4.6 written request to vary a development standard in an Environmental Planning Instrument has been considered in line with Planning Circular PS 08-003. The Secretary (formerly Director-General) of the NSW Department of Planning, Industry and Environment's concurrence is assumed by Blacktown City Council as this request is adequate, does not raise any matter of significance for State or regional environmental planning that cannot be dealt with by Council and there is no public benefit in strictly maintaining the standard in the circumstances of the proposal.

3 5-part test assessment of Clause 4.6 variation request

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard

Appendix 6 Area 20 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 on land within the Area 20 Precinct	<p>The maximum height limit on the site is 12 m. 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, only a small area of the building roof, plant and equipment and the communal open space areas.</p> <p>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.</p>
To minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space	<p>Given the proposed street setbacks, the width of the surrounding roads and the adjoining future park to the west, the proposal will result in shadows mostly contained within the subject site and the adjoining streets. The proposed morning shadow impacts onto the future park will be only until 11 am. Other adjoining properties will not be impacted by any overshadowing. Refer to the Shadow Diagram Plans at Attachment 6 for details.</p> <p>The parts of the building causing the primary height non-compliance are the lift overruns and rooftop mechanical plant. These elements are not highly visible from the public domain</p>

Appendix 6 Area 20 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
	and do not cause serious 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	<p>The site is located approximately 740 m to the north of Tallawong Metro Station, 400 m to the north of the future Cudgegong Local Centre and approximately 2.2 km to the north-west of the Rouse Hill Town Centre.</p> <p>The buildings contain 163 units in the form of 1, 2 and 3 bedroom apartments, which is representative of the density and housing demand anticipated for this site. The density of this development thus meets this objective.</p> <p>The site and surrounds are well serviced for this form of residential development. The development offers an interesting and modern design which is supported by carefully considered passive and recreational outdoor areas to create a favourable living environment for the increased residential population.</p>

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is necessary (Clause 4.6 Part 2)

The purpose of the standard is still considered relevant to the proposal. However, 100% compliance is not considered necessary in this circumstance.

The proposal maintains a predominantly 4 storey building form which is stepped with the slope of the land and offers a positive streetscape appearance.

3 The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Clause 4.6 Part 3)

The purpose of the development standard would not be defeated if compliance was required. However, 100% compliance in this circumstance is considered unreasonable as the variation is acceptable based on merit. The objectives of the standard, as outlined above, will still be achieved despite the variation.

The height variations arise as a result of the varied topography across the site and the desire to deliver a 4 storey development within a 12 metre height control.

4 The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents parting from the standard and hence compliance with the standard is unnecessary and unreasonable (Clause 4.6 Part 4)

The development standard for building height has not been virtually abandoned or destroyed through the granting of a consent departing from the height standard as the increase in height maintains the appearance of 4 storey buildings, which are stepped with the slope of the site and as envisaged by the Area 20 Precinct Plan.

5 The compliance with the development standard is unreasonable or inappropriate due to existing use of the land and current environmental character of the particular parcel of land. That is, this particular parcel of land should not have been included in the zone (Clause 4.6 Part 5)

The strict application of the building height development standard for this proposed development is unreasonable in the circumstances of the site which is intended for higher density development nearby local centres and public transport stations. The proposed 4 storey residential flat buildings are consistent with the surrounding approved development in the R3 Medium Density Residential zone.

Based on the above assessment, the requested variation under Clause 4.6 is considered reasonable, well founded and is recommended for support subject to the imposition of relevant conditions.