



**AMENDED REQUEST UNDER CLAUSE 4.6 OF
APPENDIX 9 OF GROWTH CENTRES SEPP 2006**

297 Bringelly Road, Leppington

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1.0 The Proposal

This request is written in support of a development submitted to Camden Council, identified as **DA/2018/694/1** that proposes the Demolition of existing structures, tree removal, construction of a staged mixed use development containing commercial / retail spaces, 259 apartments, basement, road construction, subdivision and associated site works.

1.1 Clause 4.6 & Relevant Case Law

Clause 4.6 within Appendix 9 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (**Growth Centres SEPP**) allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the SEPP.

Clause 4.6 (3) of Appendix 9 of the Growth Centres SEPP provides:

(3) 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.*

Further clause 4.6(4) provides that:

(4) 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.*

The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court (the Court) and the NSW Court of Appeal in:

1. Wehbe v Pittwater Council [2007] NSW LEC 827;
2. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
3. Randwick City Council V Micaul Holdings Pty Ltd [2016] NSWLEC 7;

4. Bringham v Canterbury-Bankstown Council [2018] NSWLEC 1406;
5. Initial Action v Woollahra Municipal Council [2018] NSWLEC 118; and
6. Turland v Wingecarribee Shire Council [2018] NSWLEC 1511.

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are summarised by Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446 [42]-[51] and repeated in *Initial Action* [17]-[21]. Although *Wehbe* concerned a SEPP 1 objection, the common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe* are equally applicable to cl 4.6 (*Initial Action* [16]):

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
3. Underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
4. The development standard has been abandoned by the council; or
5. The zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers).

The five ways to demonstrate compliance is unreasonable/unnecessary are not exhaustive, and it may be sufficient to establish only one way (*Initial Action* [22]).

The environmental planning grounds relied on in the written request under cl 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]).

1.2 Relevant Development Standard

The development standard to which this objection relates is Clause 4.3 Height of Buildings within Appendix 9 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 being the following:

4.3 Height of buildings

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.

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.

Comment:

The applicable height control for the site is 24m. The development proposes a minor portion of Building A consisting of the lift overrun and roof elements which exceeds the building height by up to a maximum of 1.53m.

It is noted that Building B fully complies with the maximum building height control.

1.3 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 1.4(1) of the EP&A Act as follows:

“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(a) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,...”

Comment:

The maximum building height control under the SEPP is clearly a development standard.

2.0 The Contravention

The proposal results in the following variation to the Maximum Building Height Control as demonstrated in **Table 1** below:

Table 1: Variation to Council's Maximum Building Height Control			
	Control	Proposed	Variation
Maximum Building Height	24m	25.53m	1.53m 6.3%

Comment:

As illustrated on the amended Architectural Drawings prepared by Urbanlink on a heat map also shown in **Figure 1**, the height of the proposed development will exceed the maximum building height of 24m by a

maximum 1.53m which equates to a maximum 6.3% variation. The proposed variation accommodates a minimal percentage of the total building volume proposed.

The principle reason for the exceedance of the maximum building height limit is the sites constraints of flood affection and lift overrun.



Figure 1: Heat Map Demonstrating Height Exceedance of 1.53m (Source: Urbanlink)

3.0 Justification of the Contravention

3.1 The Site Context

Site context is a key consideration when determining the appropriateness and necessity of a development standard. The site and its surrounds currently comprise of large land holdings for residential and agricultural uses, the Leppington Train station, major road upgrades to Bringelly road and single and two storey detached dwelling houses.

The site is located within the Leppington Major Centre and is envisaged for higher density residential and commercial development due to its focus on Leppington Train Station. The Leppington Major Centre is proposed to be the focus of higher order retail, commercial, entertainment, civic and cultural activities within the South West Growth Centre with infrastructure upgrades occurring to support future growth as seen with NSW government Bringelly Road upgrades, that is currently under way.

The site is located in the heart of the Leppington Major Centre and sits to the north of the Leppington Train Station. The proposed development is consistent with the envisaged future character of the Leppington Major Centre.

Therefore, the proposal for a mixed-use development is suitable in the site context.

The following recently approved developments in respect of height under the Growth Centres SEPP.

Table 2: Previously Approved DAs that Varied Maximum Building Height Control under Growth Centres SEPP			
DA No & Address	Proposed	Comment	Approved
DA2018/1223 351 Oran Park Drive, Oran Park	New Multi-Unit Residential Flat Building	The height variation is predominantly a result of the basement excavations having already been completed under a previous consent and the proposal generally complies with the height standard when measured from street level. Height variation of 16%	4 May 2020 by Sydney Western City Planning Panel
DA2018/710 76 Central Ave, Oran Park	New Multi-Unit Residential Flat Building	The breach relates to a lift overrun providing access to a rooftop terrace; the height variation will not be highly visible from the street; there are no amenity impacts caused by the breach; similar variations have been supported in the surrounding area Height variation of 11.7%	19 March 2019 by Camden Local Planning Panel

3.2 Public Interest

Clause 4.6(4)(a)(ii) of Appendix 9 of the Growth Centres SEPP requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

The proposed development has been assessed against the objectives for the B4 Mixed Use zone below. Despite the proposed variation to the maximum building height development standard, the proposal is considered in the public interest as it satisfies the objectives of the zone and the objectives of the development standard.

3.3 Consistency with B4 Mixed Use Zone

The consistency of the proposal against the objectives of the B4 Mixed Use zone is outlined below.

- ***To provide a mixture of compatible land uses***

The proposed development provides a compatible land use that is consistent with the ILP within the Leppington Major Centre DCP and the envisaged future character of the Leppington Major Centre. The development proposes a mix of residential units and commercial spaces designed to contribute to a compatible future surrounding built form.

- ***To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling***

The development provides high density mixed use development in an accessible location that maximises opportunities for public transport patronage and encourages non-vehicular transport.

- ***To facilitate active retail, commercial, entertainment and community uses at ground level of mixed use developments.***

The proposal consists of a mixed-use development comprising of ground floor commercial and retail uses with residential units located at ground level and above.

- ***To provide for residential development that contributes to the vitality of the local centre.***

As above, the development comprises of a mixed-use development with at least 360 residential units proposed that will be located within close proximity to Leppington Train Station and will aid in supporting the Leppington Major Centre.

- ***To ensure that residential development adjacent to the centre does not detract from the primary function of the centre being to provide for retail, business, entertainment and community uses.***

The proposed development comprising of a mixed-use development will include commercial tenancies that will provide opportunity and floor space for businesses to establish within the Leppington Major Centre. Both residential and commercial uses will contribute to the economic growth of the Leppington area and is considered the development will not detract from envisaged vision of the Leppington Major Centre.

Comment:

The proposed development is consistent with the objectives of the development standard and the B4 Mixed Zone.

3.4 Consistency with Objectives of the Building Height Development Standard

The consistency of the proposal against the objectives of the maximum building height standard is outlined below.

- ***To establish the maximum height of buildings***

The proposal consists of a high density mixed use development that meets the desired future character of the Leppington Major Centre.

The area of exceedance does not contain any habitable residential space and the area of exceedance will not be visually prominent.

- ***To minimise the visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space***

The area of exceedance does not contain any habitable residential space and the area of exceedance will not be visually prominent.

Detailed shadow diagrams have been prepared that demonstrate that the development fully complies from a solar access perspective including communal open space areas

- ***To facilitate higher density development in and around commercial centres and major transport routes***

The development proposes a high density mixed use development on a site that is located within walking distance to the Leppington Train Station and within the height of the Leppington Major Centre.

The reduction in height will comprise the developments ability to facilitate higher density development within the Leppington Major centre and in a location that is within close proximity to major transport nodes and routes.

Comment

The proposed development is considered to appropriately serve the objectives of the zone and promotes and orderly and economic use of the land. Camden's population is rapidly growing and access to accommodation and services in close proximity to public transport should be the forefront of decision making and planning outcomes for development sites zoned for this purpose, such as the B4 Mixed Use Zone.

Therefore, the proposed development, including the proposed building elements that exceed the height limits, will continue to achieve the objectives of the standard. It is therefore considered that the objectives of the development standard are met notwithstanding the breach of the height of buildings standard.

4.0 Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case (Clause 4.6(3)(a))?

Clause 4.6(3)(a) of Appendix 9 of the Growth Centres SEPP requires the departure from the development standard to be justified by demonstrating:

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

As detailed in the section above, the proposal maintains the future higher density built form that is at a scale comparative to the site's location within the Leppington Major Centre.

This increase is considered reasonable in the context of the site and its ability to result in no adverse impacts on adjoining properties.

The proposed development, including the proposed building elements that exceed the height limits, will continue to achieve the objectives of the standard. It is therefore considered that the objectives of the development standard are met, notwithstanding the breach of the height of buildings standard.

5.0 Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard (Clause 4.6(3)(b))?

Clause 4.6(3)(b) of Appendix 9 of the Growth Centres SEPP requires the departure from the development standard to be justified by demonstrating:

There are sufficient environmental planning grounds to justify contravening the development standard

It is our opinion that there are sufficient environmental planning grounds to justify contravening the building height standard in this instance. These are as follows:

The proposed development is consistent with the objectives of the zone and the objectives of the building height control.

The proposal does not result in any adverse impact from adjoining properties.

The height variation equates to a maximum 1.53m for a small portion of Building A including lift overrun and is not visually prominent when viewed from the public domain.

The area of exceedance does not contain any habitable space.

6.0 Conclusion

The proposed contravention of the 24m maximum building height is based on the reasons outlined in this request that are summarised as follows:

- It is considered that this proposal represents an individual circumstance in which Clause 4.6 was intended and to be available to set aside compliance with unreasonable or unnecessary development standards;
- Achieves the objectives of the development standard for maximum height of buildings development standard of Appendix 9 of the Growth Centres SEPP;
- Is consistent with the objectives of the B4 Mixed use zoning;
- The development will not create an undesirable precedent and Is considered acceptable considering its location along Bringelly Road and proximity to Leppington Train Station; and
- Is in the public interest.
- The proposed development will not create an undesirable precedent;

The proposed development is consistent with the B4 Business Zone objectives and the objective of clause 4.3 and Clause 4.6 of Appendix 9 of the Growth Centres SEPP. The proposed development is therefore in the public interest pursuant to clause 4.6(4).

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of Appendix 9 of the Growth Centres SEPP.

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