

Updated Clause 4.6 Variation Request

Building Height Development Standard

Auburn Local Environmental Plan 2010

"Zone 3" South Redevelopment
Carter Street Precinct, Lidcombe

Submitted to the City of Parramatta Council
On Behalf of YMCI Australia

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1. Introduction

This report seeks a variation to a development standard prescribed by the Auburn Local Environmental Plan 2010 (ALEP). The report relates to a Development Application (DA) proposing redevelopment of the southern part of "Zone 3" (the site) of the Australia YMCI owned site within the Carter Street Precinct in Lidcombe.

The exception is sought pursuant to Clause 4.6 of the ALEP. A variation is sought in relation to the application of the two (2) height of building development standards applicable to the subject site (being 29.9 metres in the eastern part of the site and 42 metres in the western part of the site), pursuant to Clause 4.3 of the ALEP. The maximum variation being sought relates to proposed Building 3C1, which varies from the 29.9 metre building height standard by 14.65 metres to the top of the lift overrun. It should be noted that whilst there are parts of the proposed buildings that do not comply with the maximum building height standards, equally, there are areas of the proposed buildings which fall well under the maximum heights permitted. This is discussed in further detail in this report.

This request has been prepared in accordance with the Department of Planning & Environment (DP&E) Varying Development Standards: A Guide, August 2011, and has incorporated as relevant principles identifies in the following judgements:

1. *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
4. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
5. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
6. *Moskovich v Waverley Council* [2016] NSWLEC 1015
7. *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018
8. *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61
9. *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130

In this report, we have explained how flexibility is justified in this case in terms of the matters explicitly required by Clause 4.6 to be addressed in a written request from the Applicant. This report also addresses, where relevant and helpful, additional matters that the consent authority is required to be satisfied of when exercising the discretion afforded by Clause 4.6. Concurrence from the Secretary is required as the development standard is numerical and the proposed variation is greater than 10%. However, we understand that concurrence is under review.

2. What is the environmental planning instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is the Auburn Local Environmental Plan 2010 (ALEP).

3. What is the zoning of the land?

The site is zoned R4 High Density Residential and SP2 Infrastructure pursuant to the ALEP. The proposed buildings are not located within the SP2 zone. Therefore, for the purposes of this Clause 4.6 request, zoning of the land is R4 High Density Residential. Refer to Figure 1 indicating the site outlined in dotted green.

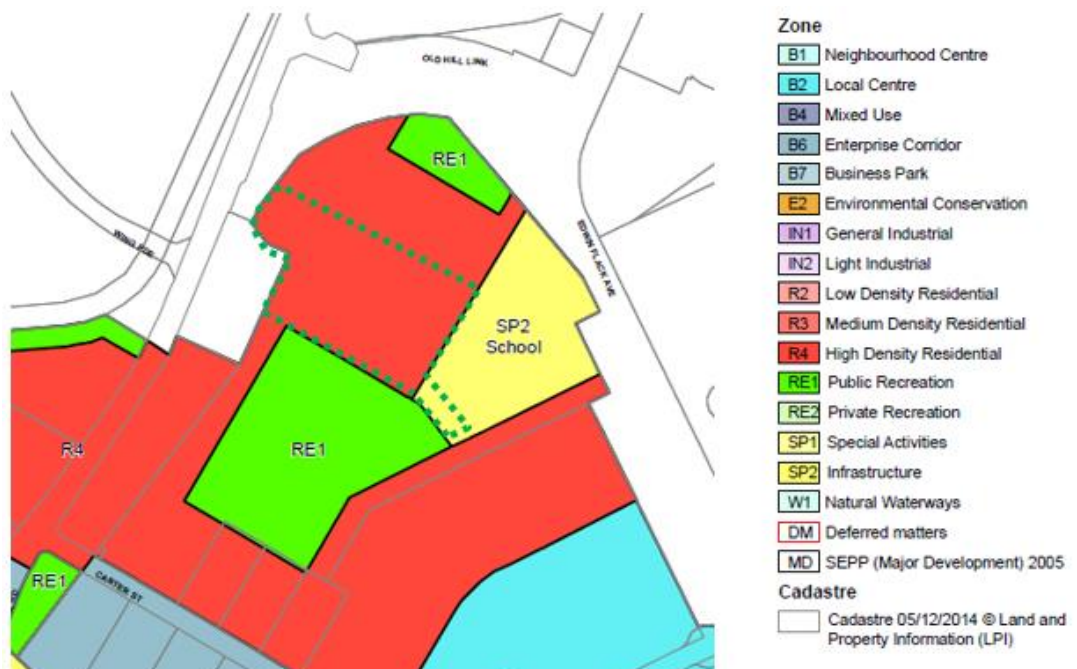


Figure 1: Extract of the ALEP zoning map. Site outlined in dotted green (Source: NSW Legislation).

4. What are the objectives of the zone?

The objectives of the R4 zone are as follows:

- *"To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in close proximity to bus service nodes and railway stations."*

5. What is the development standard being varied?

The development standard being varied is the "height of buildings" standard.

6. Under what clause is the development standard listed in the EPI?

The development standard being varied is prescribed under Clause 4.3(2) of the ALEP. An extract is below.

"4.3 Height of buildings

(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."

7. What are the objectives of the development standard?

The objectives of the standard are set out below:

"4.3 Height of buildings

(1) The objectives of this clause are as follows:

(a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and

(b) to ensure that the height of buildings is compatible with the character of the locality."

8. What is the numeric value of the development standard in the EPI?

The map referred to in "6" above demonstrates that the site is affected by two (2) maximum building heights. An extract of the map is below:



Figure 2: Height of Buildings Map Extract, Zone 3 outlined in red and the development site outlined in dashed green (Source: ALEP).

As can be seen in the figure above the eastern extent of the site is subject to a maximum building height of 29.9 metres which applies to proposed Buildings 3C1 and 3C2. The western extent is subject to a maximum, building height of 42 metres, which applies to proposed Building 3D.

9. What is the proposed numeric value of the development standard in the DA and the variation proposed?

As noted earlier, within the two (2) respective ALEP maximum height zones of 29.9 metres and 42 metres, there are parts of the development that fall under the maximum building heights with other areas that breach the height standard. The maximum variations for each building are set out below:

- The maximum height of Block 3C1 (North) when measured to the top of the lift overrun is 38.45 metres (allowable 29.9 metres). The variation sought therefore is 8.55 metres.
- The maximum height of Block 3C1 (South) when measured to the top of the lift overrun is 44.55 metres (allowable 29.9 metres). The variation sought therefore is 14.65 metres.
- The maximum height of Building 3C2 when measured to the top of the lift overrun is 44.45 metres (allowable 29.9 metres). The variation sought therefore is 14.55 metres.
- The maximum height of Building 3D when measured to the top of the lift overrun is 54.15 metres (allowable 42 metres). The variation sought therefore is 12.15 metres.

The elevations and sections prepared by Kann Finch include annotations of the relevant ALEP height lines to demonstrate the extent of height non-compliance, which is generally limited to two (2) storeys. The following are height plane "blanket" diagrams prepared by Kann Finch which demonstrate the areas of non-compliance and equally, the areas of the buildings which fall below the height plane.



Figure 3: Height Plane Diagram 1 (Source: Kann Finch)



Figure 4: Height Plane Diagram 2 (Source: Kann Finch)

The 29.9 metre building height standard translates to approximately 9 storeys. Building 3C1 varies between 6 storeys and 11 storeys. Building 3C2 varies between 9 storeys and 11 storeys.

The 42 metre building height standard translates to approximately 13 storeys. Building 3D varies in height between 10 storeys and 14 storeys.

The following provides further illustrations of the proposed increases in building height with respect to the proposed areas of decreased height. We note the massing redistribution volumes are as follows:

- Blue (Complying): 34,924.2m³
- Red (Proposed): 24,488.5m³

Therefore, the proposed scheme is 29.8% less in volume compared to a complying scheme.

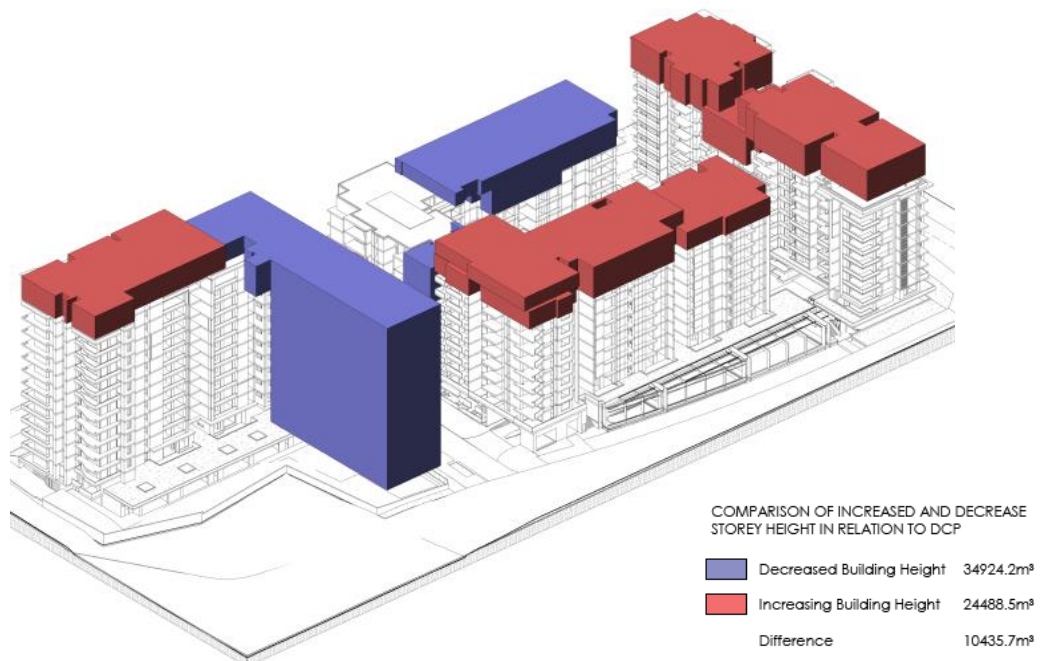


Figure 5: Redistribution of Massing Diagram for the amended proposed scheme, north east view (Source: Kann Finch)



Figure 6: Redistribution of Massing Diagram for the amended proposed scheme, south west view
(Source: Kann Finch)

10. Matters to be considered under Clause 4.6

The following table provides a summary of the key matters for consideration under Clause 4.6 of the ALEP and a response as to where each is addressed in this written request:

TABLE 1: MATTERS FOR CONSIDERATION UNDER CLAUSE 4.6

Requirement/Subclause of Clause 4.6	Response/Comment
(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.	It is key to note that the objectives of the clause are to provide flexibility in applying development standards in that in so doing, better development outcomes ensue.
(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.	The height standard is not expressly excluded from 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.	This written request justifies the variation by demonstrating (a) is achieved in Section 11, and (b) is achieved in Section 12.

<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(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</p> <p>(b) the concurrence of the Director-General has been obtained.</p>	<p>This written request addresses all requirements of subclause (3).</p> <p>As set out in Section 13 of this written request, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone.</p> <p>Concurrence from the Secretary is required as the development standard is numerical and the proposed variation is greater than 10%.</p>
<p>(5) In deciding whether to grant concurrence, the Director-General must consider:</p> <p>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) the public benefit of maintaining the development standard, and</p> <p>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</p>	<p>Potential matters of significance for State or regional environmental planning is addressed in Section 14.</p> <p>Consideration of whether there is any public benefit in maintaining the development standard is considered in 13.</p>
<p>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if.....</p>	<p>Does not apply.</p>
<p>(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).</p>	<p>This is a matter for the Consent Authority.</p>
<p>(8) This clause does not allow development consent to be granted for development that would contravene any of the following....</p>	<p>Does not apply to the site/proposed variation.</p>

The requirement for consideration and justification of a Clause 4.6 variation necessitates an assessment of a number of criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 variation, although in the circumstance of this case, the absence of any environmental impact is of considerable merit.

The Court has held that there at least five different ways, and possibly more, in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary and that it is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (Wehbe v Pittwater Council [2007] NSWLEC).

10.1 The objectives of the development standard are achieved notwithstanding non-compliance with the standard

The objectives of the standard are set out in Section 7 of this report. A response to each of the objectives is provided below:

(a) to establish a maximum height of buildings to enable appropriate development density to be achieved,

This site is within the Carter Street Priority Precinct, which was rezoned to facilitate the development of a high density community with high accessibility to Sydney Olympic Park, Millennium Parklands and transport. In this context it is important, in a strategic planning sense, to seek to optimise development density as envisaged in the ALEP.

No more density is proposed for site than envisioned under ALEP, noting that compliance with the maximum FSR of 2:1 is achieved (proposed FSR is 2:1). The proposed development purely seeks to redistribute "mass" across the site to achieve better planning, architectural, amenity and urban design outcomes.

Therefore, based on the above, we contend that objective (a) is achieved in a different way than envisioned under ALEP, with some minor variations to building height across the development site which are offset by reductions in height to other parts of the building and a resultant better outcome.

For the reasons set out above, we consider that the proposed development, notwithstanding the variation, results in a better planning outcome in terms of meeting this particular objective of the standard.

(b) to ensure that the height of buildings is compatible with the character of the locality.

Consideration of the compatibility of the proposal with its surroundings can be undertaken with regard to the Land Environment Court Planning Principle on "compatibility with context" in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. In order to test whether a proposal is compatible with its context, the following questions can be asked, with answers provided accordingly:

- *Are the proposal's physical impacts on surrounding development acceptable?*

The SEE submitted with the DA undertakes a detailed assessment of the proposal with regard to the surrounding sites, concluding no adverse impact. The proposal's physical impacts on surrounding development/land are therefore acceptable.

- *Has the proposed development of the site been undertaken with due consideration of the existing and future redevelopment of neighbouring properties?*

The existing character of the Carter Street Precinct is light industrial. However, given the locality is undergoing significant transformation following rezoning in early 2016, it is appropriate to consider the compatibility of the development with the desired future character, as prescribed under the ALEP and the Carter Street Precinct DCP. The Carter Street Precinct DCP supplements the ALEP provisions and provides more detailed guidelines as to the desired future character for the Precinct. We note that a mixed use development consisting of ground level neighbourhood shops, residential apartments and basement parking was recently approved to the north of the site under DA1005/2016. The development was approved with height variations of up to 2 storeys (approximately) in some parts. We comment further as follows:

CSPDCP 2.2 Development Principles

- The development principles in the DCP identify that development in the precinct is to provide a diverse and innovative built form that provides a high quality living environment. The proposed variations to the built form, including some buildings taller than the maximum ALEP heights and some buildings lower than the maximum ALEP heights, directly responds to this principle. The built form outcome for the proposed site will result in a varying built form outcome which promotes better outcomes for residential amenity and therefore, a high quality living environment. Further discussion is provided later in this report under the heading "**Better Residential Amenity**".

CSPDCP 2.3 Indicative Structure Plan (ISP)

- The ISP notes a requirement to provide a high density urban environment with over 5,500 dwellings. This, along with the maximum FSRs prescribed in the ALEP, identify the planned density for the Precinct. As noted elsewhere in this report and later under the heading "**No Additional Density**", the proposal complies with the maximum permitted FSR and therefore responds to the planned density for the site.
- The ISP also notes a range of building heights across the precinct, noting that taller buildings in landmark locations (and the town centre) are to be 16-22 storeys in height. Despite the variations in height within the proposed site, they will not exceed the 16-22 storeys prescribed for the town centre and other landmark locations, thereby not challenging the planned hierarchy of development within the Precinct.
- Finally, the ISP requires varied building heights to be provided in the Precinct "for visual interest and dynamic urban form". The proposal achieves this with some taller buildings, but equally, some lower buildings, to not only promote better amenity, but to also promote a better and varied built form outcome for this part of the Precinct. No development is proposed within the southern 'leg' of the Building 3D site. Further discussion is provided later in this report under the heading "**Better Architectural and Urban Design Outcome**".

CSPDCP 4.1 Building Height and Form

- The height variations will result in buildings up to a maximum of 14 storeys, to ensure buildings within the Precinct town centre and Sydney Olympic Park remain the dominant built form elements in the area.
- The proposed variations in height (some taller buildings some lower) respond to the objective in this section of the DCP to provide "a range of building heights and forms...within each street block to create variety and encourage different architectural styles". Building 3D has the potential to be developed so that it extends to the south along Road 5 and towards Road 2, and up to the allowable maximum building height limit of 42m under the ALEP. We note that instead of developing the Building 3D envelope along Road 5 towards Road 2, the building has been designed to substantially reduce the overall bulk and scale, providing landscaped open space within the site. Refer to Figures 5 and 6 indicating that 29.8% of the potential 'complying' building mass is not proposed.

We note that development adjoining the site on land at 1-5 Hill Road, Lidcombe has been zoned for maximum building heights of 21m and 30m under the State Environmental Planning Policy (State Significant Precincts) 2005. Further, the Carter Street Priority Precinct is currently under review by the Department of Planning and Environment which will ultimately change the site's development controls.

To conclude, the proposal is a suitable development option for the site which is in keeping with the desired future character for the Precinct. Whilst different heights are proposed for buildings than strictly envisaged under the ALEP and DCP, they will accommodate the same density as that planned for the site and will achieve the general objectives and principles of the DCP which determine the desired future character for the Precinct.

- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The proposal results in a built form outcome which is compatible with the desired future built form for the site and the immediate area. As such, the proposal is capable of being in harmony with future buildings within the Precinct and the desired future character of the street network following transformation of the Precinct.

For the reasons set out above, the objectives of the standard are satisfied notwithstanding the variation.

11. Sufficient environmental planning grounds to justify the contravention

In this section we demonstrate that there are sufficient environmental planning grounds to justify contravening the height development standard as required by clause 4.6(3)(b) of the LEP.

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard. The proposal is consistent with the objectives of the Act.

The particular circumstances of this case distinguish it from others for the following key reasons:

Better Residential Amenity

- The main objective of providing additional heights in selected locations throughout Zone 3 South is to achieve a better residential amenity outcome than a fully height compliant scheme. This is discussed below.
- In relation to the previously submitted scheme Kann Finch had prepared a series of comparative diagrams which demonstrated that the variations in height compared with a fully height compliant scheme resulted in a better outcome for internal solar access. Specifically, at 9am and 12 noon in mid-winter, the proposed scheme achieved 13.48% and 1.8% (respectively) greater solar access to residential apartments than a fully height compliant scheme. At 3pm in mid-winter, the proposed scheme achieved a 15.94% greater solar access to residential apartments than a fully height compliant scheme. Overall, the proposed scheme achieves an average solar access area gain of 10.40% from 9am, 12pm and 3pm compared to a height compliant scheme.

In preparing the comparative analysis, Kann Finch advised that the two (2) schemes represented the same (common) ground floor and typical lower level layouts and the same GFA and apartment yield.

PROPOSED SCHEME ACHIEVES 13.48% GREATER SOLAR ACCESS AREA IN COMPARISON TO A COMPLYING HEIGHT SCHEME AT 9AM

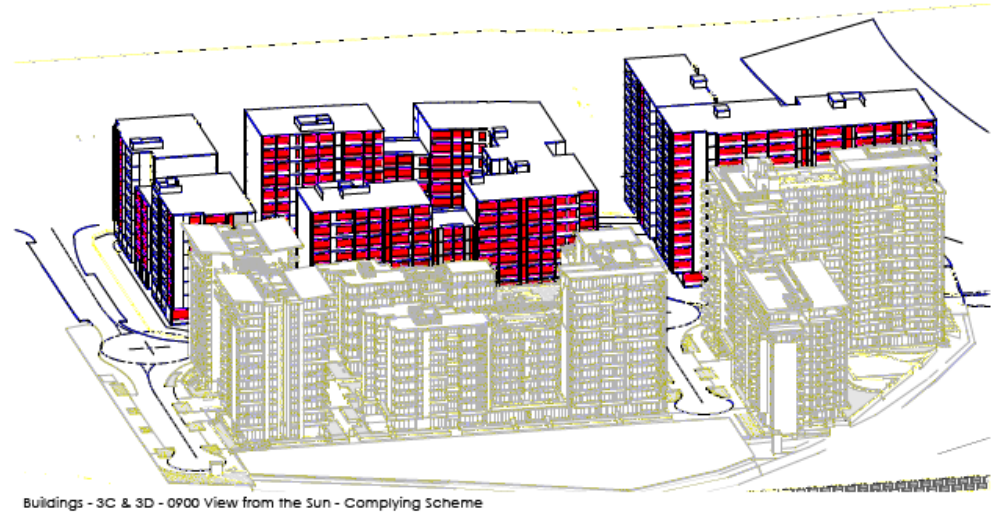
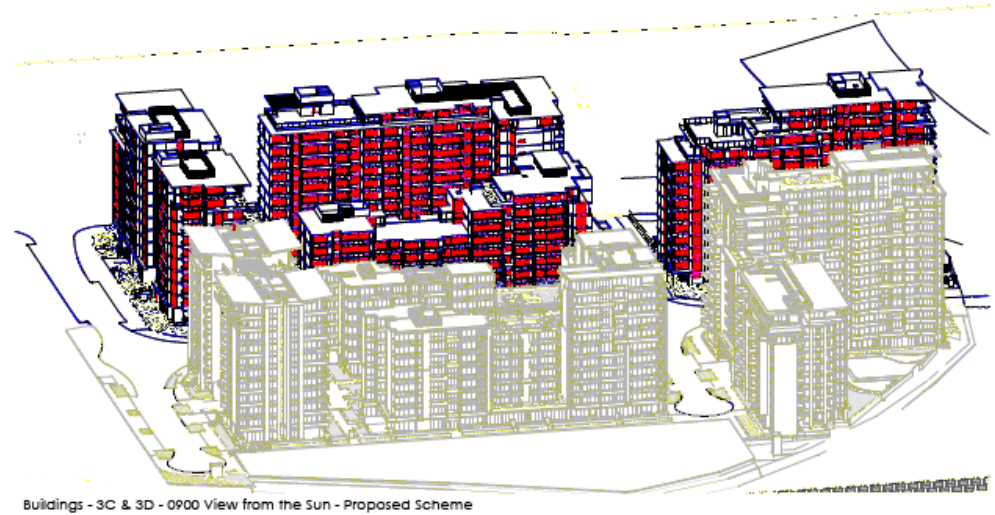


Figure 7: Comparative Analysis of 9am Mid-Winter Solar Access Outcome of Amended Proposed Scheme (top) vs. Height Compliant Scheme (bottom). (Source: Kann Finch)

PROPOSED SCHEME ACHIEVES 1.8% GREATER SOLAR ACCESS AREA IN COMPARISON TO A COMPLYING HEIGHT SCHEME AT 12PM

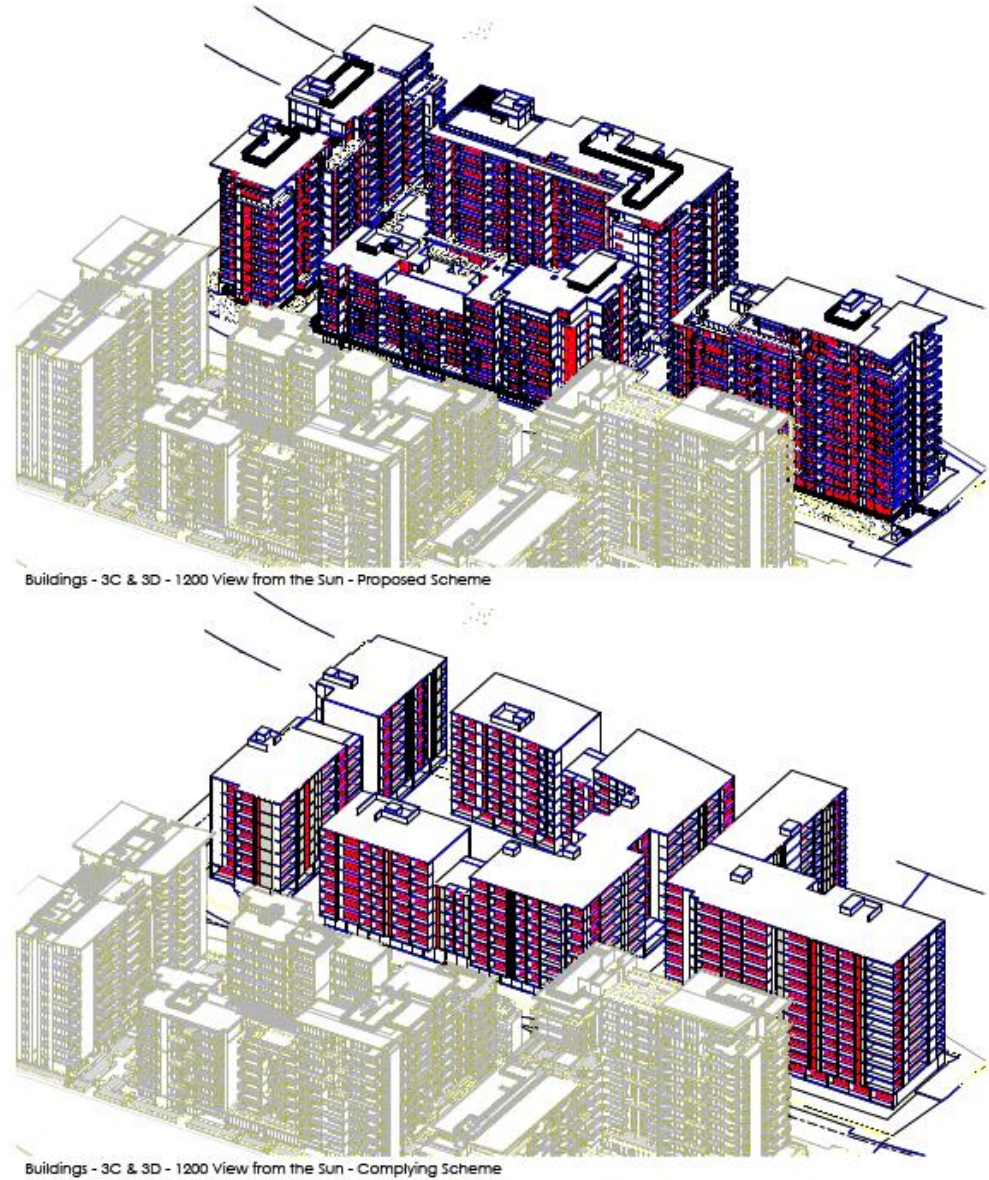
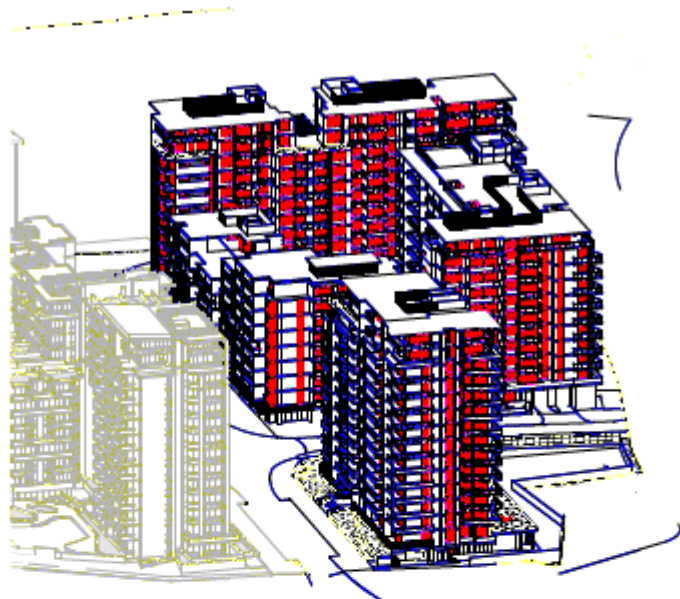
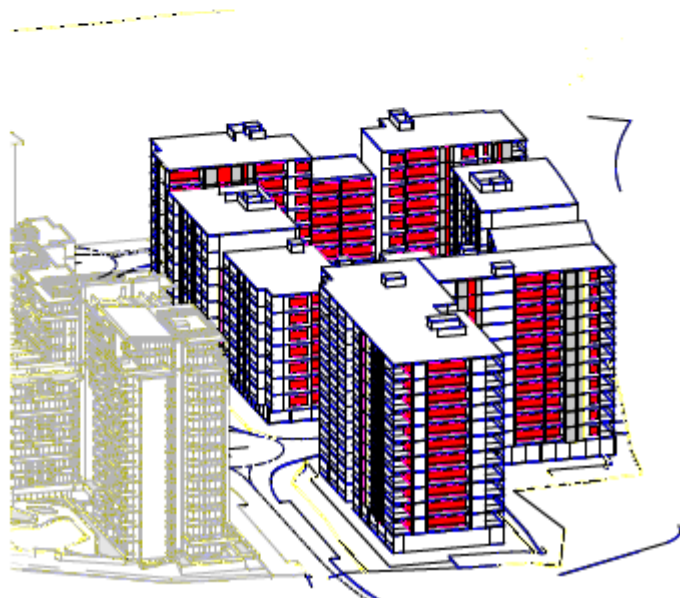


Figure 8: Comparative Analysis of 12 noon Mid-Winter Solar Access Outcome of Amended Proposed Scheme (top) vs. Height Compliant Scheme (bottom) (Source: Kann Finch)

PROPOSED SCHEME ACHIEVES 15.94% GREATER SOLAR ACCESS AREA IN COMPARISON TO A COMPLYING HEIGHT SCHEME AT 3PM



Buildings - 3C & 3D - 1500 View from the Sun - Proposed Scheme



Buildings - 3C & 3D - 1500 View from the Sun - Complying Scheme

Figure 9: Comparative Analysis of 3pm Mid-Winter Solar Access Outcome of Amended Proposed Scheme (top) vs. Height Compliant Scheme (bottom) (Source: Kann Finch)

- Kann Finch has prepared a series of comparative diagrams which demonstrate that the variations in height compared with a fully height compliant scheme allows for the proposed scheme to achieve a 3.64% increase in area of the northern façade that promotes views. Views to the Olympic Stadium in the proposed scheme are increased by 23.45%. Refer to the analysis below.

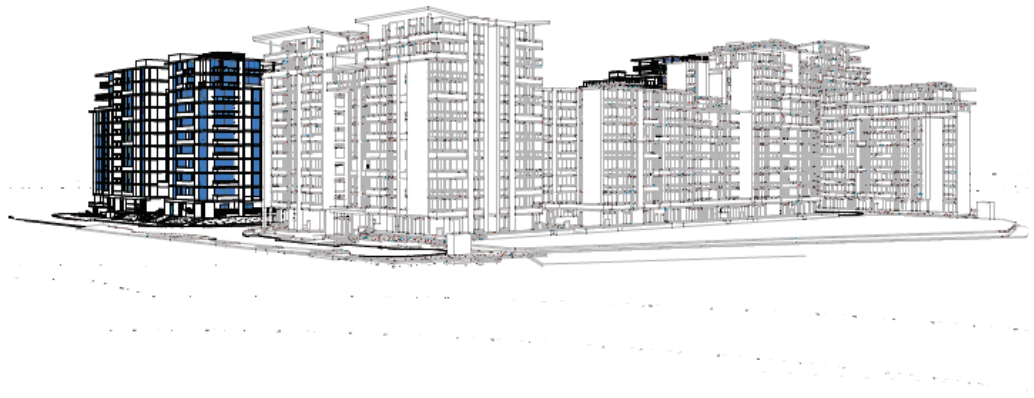


View to North - Proposed Scheme

ACHIEVES 3.64% GREATER AREA OF VIEWS IN COMPARISON TO COMPLYING HEIGHT SCHEME.



Figure 10: Northern Façade Comparative View Analysis between amended proposed scheme (top) and compliant scheme (bottom) (Source: Kann Finch)



View to Olympic Stadium - Proposed Scheme
ACHIEVES 23.45% GREATER AREA OF VIEWS IN COMPARISON TO COMPLYING HEIGHT SCHEME

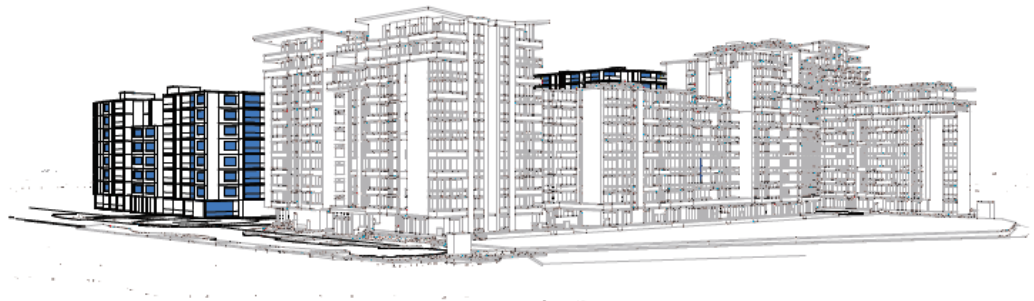


Figure 11: Comparative View Analysis to Olympic Stadium between amended proposed scheme (top) and compliant scheme (bottom) (Source: Kann Finch)

Based on the above and the amended architectural plans, we contend that the proposed variations in height and redistribution of massing around the site (as shown in Figures 5 and 6), when compared with a full height compliant scheme, result in a better outcome for residential amenity in terms of solar access and views/outlook.

Better Architectural and Urban Design Outcome

- Another key objective of providing additional heights via a redistribution of massing is to achieve a better urban design outcome with variety in the scale of buildings across the “Zone 3” part of the Carter Street Precinct. **Figure 4** demonstrates how the redistribution of the same complying scheme GFA with the balancing of increased and decreased heights, results in a better outcome in terms of visual interest and amenity.

Further to the above, lower building heights on the southern side of the Road 1 edge create a more pedestrian scaled outcome and visual interest in built form. Refer to the comparable images prepared by Kann Finch in **Figure 12**.

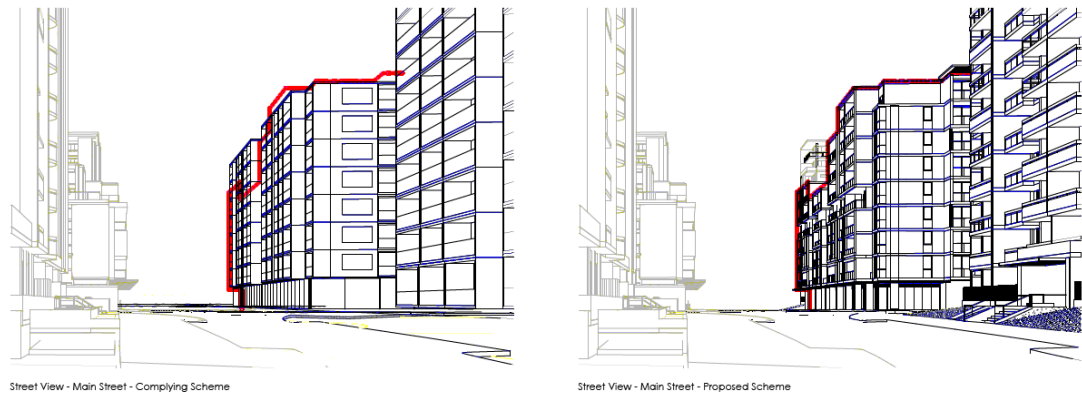


Figure 12: Proposed amended scheme Road 1 View vs Complying Scheme Street View (Source: Kann Finch)

- Building 3D has the potential to be developed so that it extends to the south along Road 5 and towards Road 2, and up to the allowable maximum building height of 42m limit under the ALEP. However, it has been designed so that the footprint does not extend to the south along Road 5 and towards Road 2 to ensure that the built form is dramatically reduced and appropriate within the context of the site. The reduced scale of Building 3D's eastern façade allows for increased solar access to Road 5 South and to Building 3C1. It also improves the internal amenity of the neighbouring apartments by reducing any privacy impacts. Comparisons between the complying and previously submitted scheme is shown in **Figure 13** and **Figure 14**.

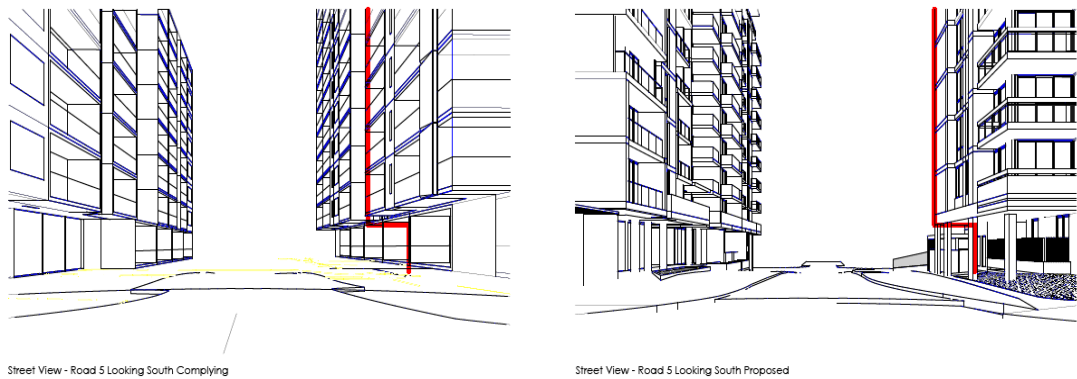


Figure 13: Previously submitted Road 5 South Street View vs Complying Scheme Street View (Source: Kann Finch)

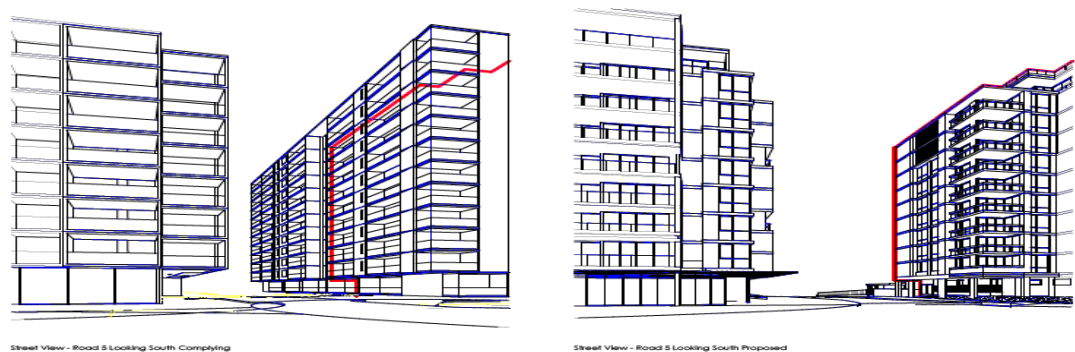


Figure 14: Previously submitted Road 5 South Street View vs Complying Scheme Street View (Source: Kann Finch)

Adequate Solar Access to the future public park

- The shadow diagrams shown in Figures 23-27 of the SEE demonstrate that the proposed scheme provides adequate solar access to the future park. The complying scheme indicates marginally less overshadowing (than the proposed scheme) on the future park between 9am and 11am at mid winter. However, Figures 26 to 27 indicate minor overshadowing occurs on the future park at 12pm and no overshadowing occurs on the future park at 3pm at mid-winter.
- In the case of *Moskovich v Waverley Council*, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. In a similar scenario, the proposed development which seeks to vary the height standard, is demonstrated to achieve better residential amenity outcome by complying with the FSR standard and merely redistributing the building mass around the site to provide lower buildings in places and taller buildings in other places to achieve better urban design, architectural and residential amenity outcomes. A compliant development could be delivered but this would be at the expense of optimising density and of residential amenity including compliance with solar access, public domain amenity, and urban design/architectural outcomes for this part of the Precinct.
- Whilst noting that the maximum FSR is not a “given”, it reflects the planned density for the site. If the planned density for the site can be achieved in a way which provides a better planning outcome for the site, notwithstanding the variation which is within the ambit of Clause 4.6, this is considered to be a positive outcome.

Additional environmental planning grounds

- The proposal promotes the good design and amenity of the built environment particularly through the redistribution of massing and achieves a better streetscape when compared to a compliant scheme. The taller buildings which do not comply with the height standard will be generally offset by lower buildings. In translating the maximum heights to comparable maximum storeys, proposed Building 3D will be 2 storeys lower than the height standard in some places and 2 storeys taller in others. Further, Building 3D has the potential to be developed so that it extends to the south along Road 5 and towards Road 2, and up to the allowable maximum building height limit of 42m under the ALEP. However, it has been designed so that it does not extend to the south along Road 5 and towards Road 2 to ensure that the built form is dramatically reduced and appropriate within the context of the site. The northern part of Building 3C1 is generally 2 storeys below the height standard with the exception of the north western part of the building, being 2 storeys greater. Proposed Building 3C2 does not have a lower offset but is only 1 to 2 storeys greater than the height standard permits. In our view, the reductions in height across the site adequately offset the minor variations of up to two (2) storeys. As addressed earlier in this report and in the documentation prepared by Kann Finch for the DA, the redistribution of massing achieves a better streetscape and amenity outcome for the public domain, as well as a better residential amenity outcome.
- In addition, the contravention of the height standard enables the planned density for the site under the ALEP to be achieved in buildings and apartments with higher levels of amenity achieved than a strictly height compliant development. The ability to achieve this is largely attributed to the substantial size and dimensions of the site, and the street layout and block orientation as stipulated in the DCP, which is a circumstance unique to this particular site in the surrounding catchment. It is effectively a master planning exercise for the site determining that greater heights in appropriate locations within the southern part of Zone 3 allow for a better planning outcome, but that are still relatively modest and within the ambit of 4.6, which has no quantitative limit.

- The proposal enables the orderly and economic use and development of land and promotes the delivery of affordable housing. This is achieved through the development of currently underutilised land which is currently predominately zoned for residential purposes.

The above environmental planning grounds that warrant the exceedance, are not "generic", but rather, specific to the site and circumstances of the development. Therefore, there are sufficient environmental planning grounds to justify the contravention in the height standard.

12. Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless 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 objectives of the standard have been addressed in Section 11 and are demonstrated to be satisfied.

The objectives of the zone are addressed below.

TABLE 2: RESPONSE TO OBJECTIVES OF ZONE

Objectives of R4 Zone	Response/Comment
To provide for the housing needs of the community within a high density residential environment	The proposed variation to height standard will not conflict with this objective. The redistribution of the height does not result in any impact to the planned density for the site. The envisaged high density can be achieved with a better amenity outcome than a height complying scheme.
To provide a variety of housing types within a high density residential environment.	The proposed variation to height standard will not conflict with this objective. A greater variety can be provided by more varied building heights. Better views are promoted as a result of the increased height in certain locations. This is addressed earlier in this report. A variety of apartment types will be provided ranging from single aspect, through, corner, garden terrace and double heights, accommodated in a mix of 1 bedroom, 2 bedroom and 3 bedroom types.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed variation to height standard will not conflict with this objective. Some smaller retail uses, "neighbourhood shops" and a child care centre will be provided within the development to achieve consistency with this objective.
To encourage high density residential development in close proximity to bus service nodes and railway stations.	The proposed variation to the height standard will not conflict with this objective. The site was recently rezoned to facilitate the development of a high density community. It is therefore it is important, in a strategic planning sense, to seek to optimise development density as envisaged in the ALEP. No more density is proposed for the site than envisioned under ALEP. Rather the proposal purely seeks to redistribute massing to achieve a better planning and architectural outcome. ARUP has advised the proposed Road 2 is not intended to be a future bus route.

The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been adequately satisfied, where relevant. Therefore, the variation to the height of buildings standard is in the public interest.

13. Matters of state or regional significance (cl. 4.6(5)(a))

There is no prejudice to planning matters of State or Regional significance resulting from varying the development standard as proposed by this application.

14. The public benefit of maintaining the standard (cl. 4.6(5)(b))

Pursuant to *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is “whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development”.

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum height of buildings standards, whilst better planning outcomes are achieved.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public interest.

15. Is the variation well founded?

Proposed heights have evolved from a detailed contextual urban design analysis undertaken by Kann Finch. The principles behind the varied height of buildings are:

- Maintain a high density of development as envisioned by the State Government when identifying Carter Street as a Priority Precinct.
- Distributing height consistent with the DCP principles of varied roof form to achieve visual interest.
- Compatibility of height and building form with adjoining and surrounding approved development (i.e. northern Buildings 3A & 3B approved under DA1005/2016 with building height variations of up to 2 storeys (approximately); 1-5 Carter Street mixed use development within two tower elements of 22 storeys with building height variations, approved under DA/620/2016; 1-5 Carter Street, 7 Carter Street and 23 Uhrig Road residential flat buildings comprising 385 units with building height variations, approved under DA/1056/2016; and, 5 Uhrig Road consisting of residential flat buildings up to 16 storeys with building height variations of 8.6m approved under DA/1269/2016).
- Optimise private residential amenity without adversely affecting public amenity. Key amenity improvements include:
 - An average of 10.4% (from 9am, 12pm and 3pm) greater solar access at mid winter in comparison to a complying scheme. A summary of the solar access comparative analysis is shown below:

Time at Mid Winter	Proposed Greater Solar Access than a Complying Scheme
9am	13.48%
12noon	1.8%
3pm	15.94%

- Greater views in comparison to a complying scheme, being 3.46% to the north and 16.48% to Olympic Stadium;
- Better urban design outcome and visual interest in built form by the reduction of Building 3D's eastern façade, allowing for increased solar access to Road 5 South and reducing privacy impacts.

The principles have been achieved with only a relatively modest (equivalent 2 storey maximum) variation to the standard (offset by reductions elsewhere), which represents a

"appropriate degree of flexibility" to "achieve better outcomes for and from (this) development", within the terms of Clause 4.6.

In summary, this Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the Precinct Plan, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
- The development meets the objectives of the development standard and where relevant, the objectives of the R4 zone, notwithstanding the variation;
- The proposed development is in the public interest and there is no public benefit in maintaining the standard; and
- The contravention does not raise any matter of State or Regional significance.

The variation is therefore considered appropriate in the circumstances of the case.