



## **Clause 4.6 Variation Request**

**Oran Park Podium Stage 2**

**Oran Park Town Centre**

April 2020

Client: Greenfields Development Company  
Document Type: Clause 4.6 Variation Request  
Document Title: Oran Park Podium Stage 2  
Version: Revised DA  
Issue Date: 8 April 2020

Prepared By: Michael Rodger

A handwritten signature in black ink, appearing to read 'M Rodger', with a long horizontal flourish extending to the right.

© Urbanco Group Pty Ltd | ABN 56 616 790 302  
Address: WeWork | 100 Harris Street PYRMONT NSW 2009  
PO Box 546 PYRMONT NSW 2009  
(02) 9051 9333

This work is copyright. Apart from any use permitted under the Copyright Act 1968, no part may be reproduced by any process, nor may any other exclusive right be exercised, without the permission of Urbanco Group Pty Ltd.

## Contents

1	Introduction.....	1
2	Site & Context.....	3
3	The Proposal .....	6
4	Variation Sought.....	7
5	Outline of the Planning Instrument and Proposed Variation .....	8
6	Five Part Test.....	10
7	Is the Variation in the Public Interest .....	16
8	Conclusion.....	17

# 1 INTRODUCTION

On behalf of Greenfields Development Company, we submit this Clause 4.6 variation request which accompanies a Development Application which seeks approval for Stage 2 of the Oran Park Podium development, comprising a variety of retail experiences, residential apartments, commercial building and integrated open space areas.

The proposal represents a key milestone for the Oran Park Town community and South West Growth Centre, delivering approximately an additional 16,000m<sup>2</sup> of retail floor space, a podium level residential apartment building and a podium level commercial building within the vibrant and modern Oran Park Town Centre.

The proposal is consistent with the overarching objectives of the current Part B Development Control Plan for the Oran Park Town Centre, in relation to the location of building height.

We note that a separate Development Application will be lodged for the planned residential apartment building 2 on the corner of Civic Way, which is subject to a current amendment to the SEPP building height.

This request has been prepared in accordance with the Department of Planning & Environment (DP&E) Guideline, Varying Development Standards: A Guide, August 2011, and relevant matters set out in the ‘five-part test’ established by the NSW Land and Environment Court.

This Clause 4.6 Variation request addresses the variation in “ground level” heights across the subject site, which in turn influence the perceived building height of the proposal.

This Clause 4.6 Variation Request should be read in conjunction with the associated Statement of Environmental Effects (SEE) and supporting documentation lodged with the Development Application.

The development site has been subject to separate bulk earthworks completed to excavate the planned basement level 1 of the centre. These excavations have artificially modified the “existing ground level” of the site.

As a result, there is a technical non-compliance of the building heights for the Commercial and Residential Apartment buildings when measured from the excavation level.

These buildings fully comply with the SEPP building heights when measured from the ground floor and street level of the existing shopping centre and Main Street roadway levels.

The technical variation sought under this application when measured from the existing excavation level is approximately 4m to the upper level of the residential and commercial buildings.

Clause 4.6 of Appendix 1 Oran Park & Turner Road Precinct Plan allows the Consent Authority to approve a development which contravenes a development standard.

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards and to achieve better outcomes for development by allowing flexibility in particular circumstances.

## 2 SITE & CONTEXT

The subject site forms part of an existing large land parcel which incorporates both the development site and the existing Oran Park Podium Stage 1 and is legally described as existing Part Lot 3 DP 270899.

The development site is bordered by the existing Stage 1 retail centre to the east, Peter Brock Drive, Central Avenue to the West. The northern boundary comprises future stages 3 and 4 of the retail centres, and the existing Town Park.

Oran Park Town forms part of the South West Growth Centre and was rezoned in December 2007. Since rezoning, the Oran Park Town project has delivered over 2,500 residential homes, Stage 1 of the Town Centre retail component, Camden Council administration building and significant open space and recreational facilities.

The development site is zoned B2 Local Centre under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – Appendix 1 Oran Park & Turner Road Precinct Plan* (the Growth Centres SEPP).

The site is highly accessible to both local and regional vehicular movements given its proximity to and the existing access arrangements to the basement car park along both Oran Park Drive and Peter Brock Drive.

Vehicular access to the site will be achieved via a number of access points including the existing basement car park entrances approved under Stage 1 and new access driveways from Central Avenue.

Figure 1: Locality Plan

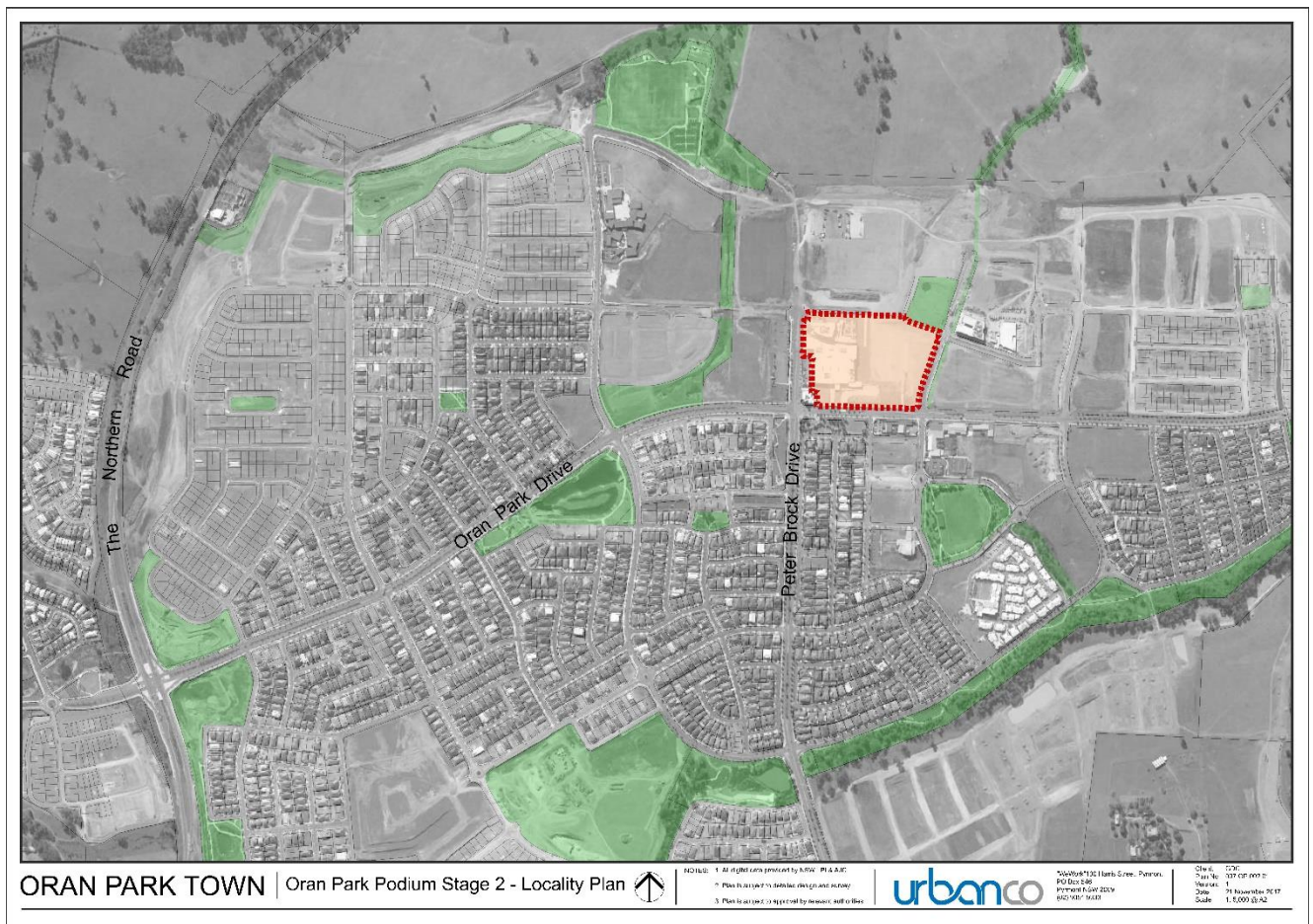
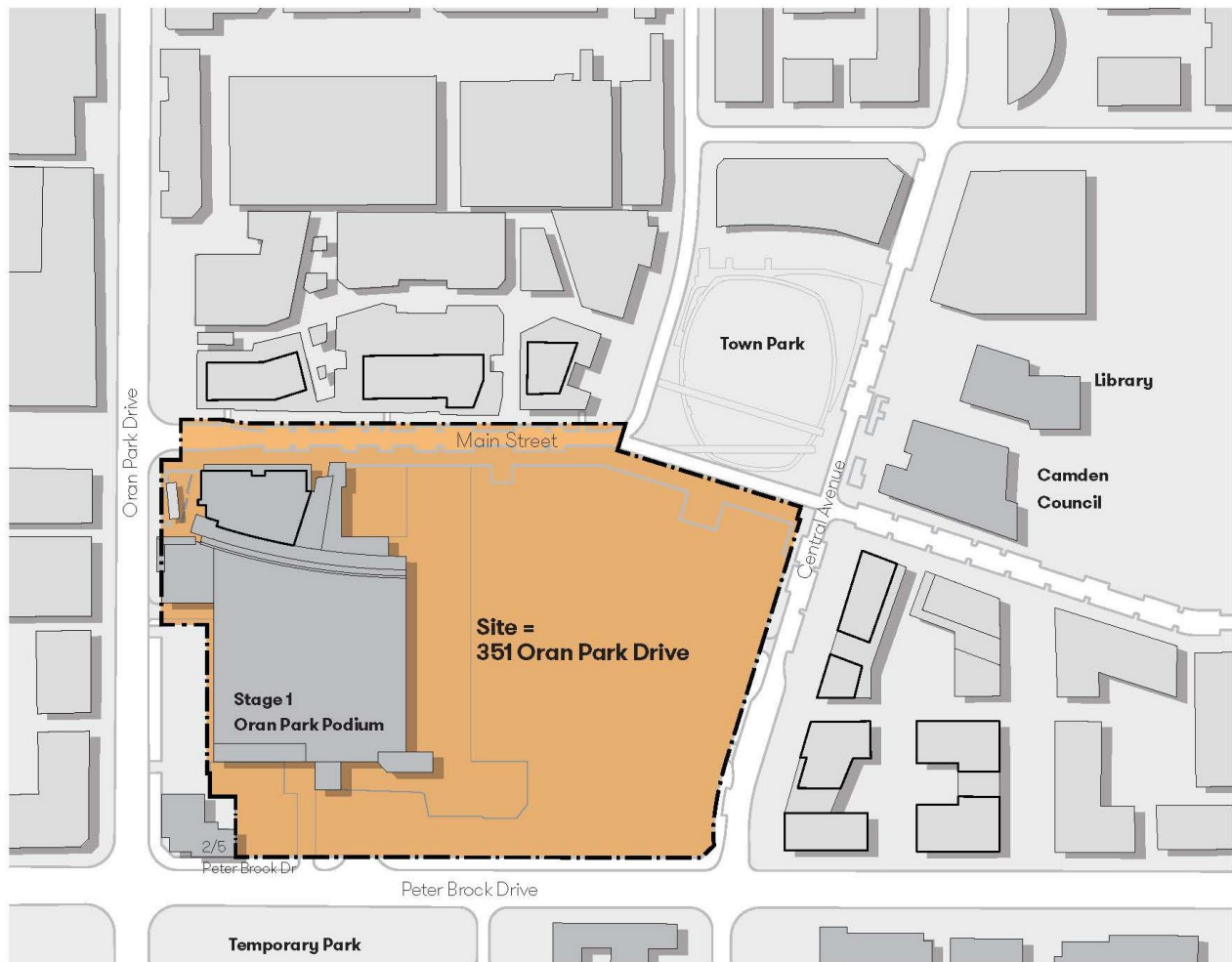


Figure 2: Site Plan (Scott Carver)





### 3 THE PROPOSAL

The Development Application seeks approval for the construction of an extension of the Oran Park Town Centre Podium complex. The proposal incorporates extension of the retail component, extension of the existing basement car park, continuation of Main Street (Podium Way), and the erection of a residential apartment building and commercial building above the retail centre.

The proposal is described below.

#### **Stage 1**

- Extension of the retail component to accommodate small, medium and large-scale retail uses, food hall and restaurant dining with a Gross Leasable Floor Area of 15,790m<sup>2</sup>;
- Extension and minor reconfiguration of the existing basement car park to provide retail car parking areas.
- Construction of a second level basement carpark to provide parking for the residential buildings.
- Construction of new basement car park entries along Central Avenue.
- Delivery of the eastern portion of Main Street (Podium Way) and associated landscaping along the edge of Town Park.
- Construction of a residential apartment buildings above the retail complex with a total of 50 units.
- Construction of a central commercial building with a total commercial floor space area of 4,300m<sup>2</sup>.
- Delivery of large scale roof-top common open space and communal facilities area for the residential apartment buildings above the retail centre; and
- Extension of the existing loading dock / service area situated along Peter Brock Drive.

This application is accompanied by detailed architectural, engineering and landscape plans which incorporate all proposed structures and site works. A detailed description of key components of the proposal is provided below.

## 4 VARIATION SOUGHT

This Clause 4.6 variation seeks support for a technical variation to the maximum building height specified under the SEPP Height of Buildings Maps.

The subject land is a dedicated retail /mixed-use development site, which forms part of a large scale master planned greenfield community.

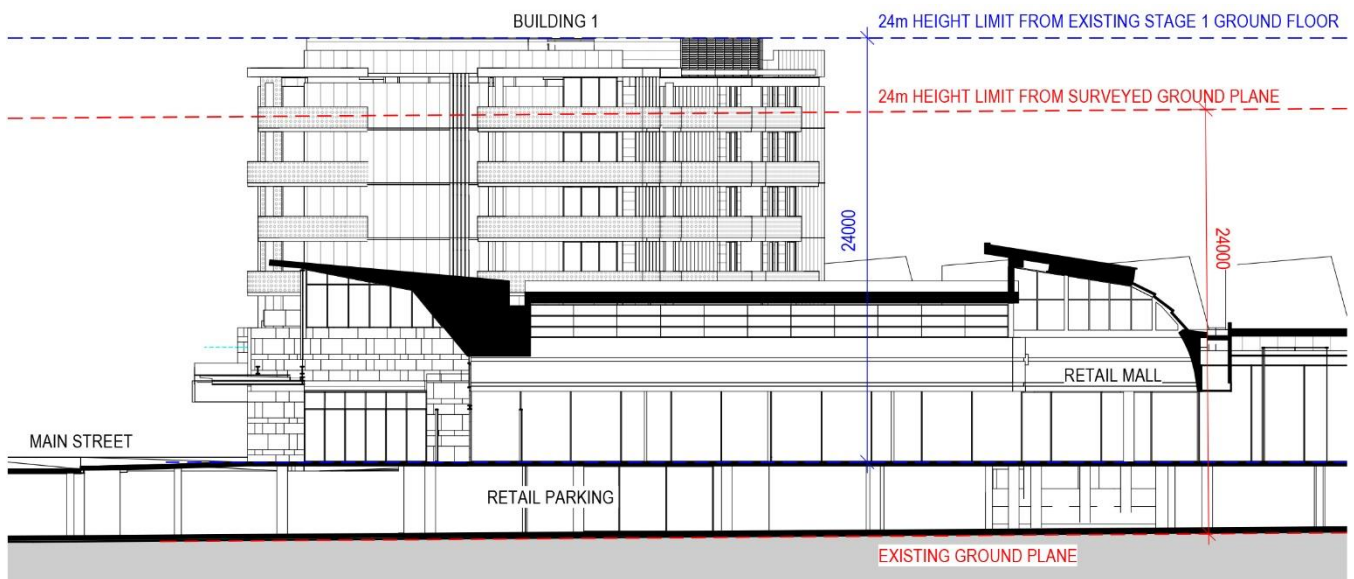
As part of the bulk earthworks associated with the construction of the existing Stage 1 component, the future basement level was excavated to minimise future construction impacts.

As a result of the bulk earthworks and excavation, the central portion of the site now has a finished ground level of approximately 4m below the surrounding street level.

Figure 3 below demonstrates that this excavation results in a technical non-compliance when the building height is measured from the excavated area rather than the streetscape level.

As shown in Figure 3, the building heights are fully compliant with the building heights when measured from the existing main street level of the Stage 1 retail complex.

**Figure 3: Building Height Diagram**



## 5 OUTLINE OF THE PLANNING INSTRUMENT AND PROPOSED VARIATION

### a) What is the name of the environmental planning instrument that applies to the land?

The Environmental Planning Instrument pertaining to the site is State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – Appendix 1 Oran Park & Turner Road Precinct Plan.

### b) What is the zoning of the land?

The land is zoned B2 Local Centre zone under Appendix 1 of the Growth Centres SEPP.

### c) What are the objectives of the zone?

The objectives of the B2 Local Centre zone under Appendix 1 of the Growth Centres SEPP read as follows:

- *To provide a range of retail, business, entertainment and community uses which serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To ensure that residential development does not detract from the primary function of the centre being to provide for retail, business, entertainment and community uses.*
- *To ensure that residential development does not preclude the provision of active uses at street level.*
- *To provide for land uses of a higher order and density within the Local Centre Zone than are permitted within the Neighbourhood Centre Zone or the Mixed-Use Zone.*
- *To provide for residential development that contributes to the vitality of the local centre.*

### d) What is the development standard being varied?

This variation request relates to Clause 4.3 Height of Buildings of Appendix 1 of Growth Centres SEPP, which prescribes maximum building heights for buildings within the Oran Park Precinct.

The variations are minor in the context of the scale of the proposal and are a result of approved excavations relating to the basemen areas.

Both the commercial building and residential buildings result in a height exceedance of approximately 4m when measured from the excavated ground level.

**e) Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.3 (2) requires that 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.

Building Heights are shown on South West Growth Centre Height Of Buildings Map Sheet HOB\_004. This map identifies that the site is subject to a maximum building height of 24m.

**f) What are the objectives of the development standard?**

The Objectives of Clause 4.3 Height of Buildings are as follows:

*(a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,*

*(b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,*

*(c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,*

*(d) to provide appropriate height controls for commercial and industrial development.*

**g) What is proposed numeric value of the development standard**

Building Heights are shown on South West Growth Centre Height Of Buildings Map Sheet HOB\_004. This map identifies that the site is subject to a maximum building height of 24m.

The proposal seeks a technical variation of approximately 4m. However, the buildings are compliant with the building height when measured from the street level.

**h) What is proposed in the development application?**

The subject application seeks approval for the second stage of the Oran Park Podium mixed-use centre, comprising a variety of retail experiences, residential apartment complexes and integrated open space areas.

A detailed explanation of the proposal is included in Section 3 above.

## 6 FIVE PART TEST

Clause 4.6 provides appropriate flexibility in the application of development standards to achieve enhanced planning and urban design outcomes where appropriate.

As required under Clause 4.6 (3) the proposed variation to lot sizes is considered appropriate as follows:

### **(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

The NSW Land and Environment Court had established the principle of a five-part test in determining whether compliance with a development standard is unnecessary (*Refer Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 & Wehbe v Pittwater Council [2007] NSW LEC 827*). The most common and appropriate manner of demonstrating that compliance is unnecessary, was whether the proposal met the objectives of the standard regardless of the variation.

The following discussion provides a response to each of the five (5) "tests" established by the court and demonstrates above that the objectives of the standard are achieved notwithstanding the noncompliance.

#### **Test 1. The objectives of the standard are achieved notwithstanding noncompliance with the standard**

The objectives of Clause 4.3 Building Heights are as follows:

##### ***(a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,***

**Comment:** The proposal has been designed in a coordinated manner as part of a large scale mixed-use complex which forms part of an overall master-planned Town Centre project.

The proposed variations are minor in the context of the scale of the development.

The key elements of this objective are addressed below:

##### *Solar Access*

Detailed solar access diagrams have been prepared and submitted with the Development Application which demonstrate that the built form.

The proposal does not result in overshadowing of any adjacent buildings.

##### *Bulk & Scale*

The bulk and scale respond to the both the existing Town Centre built form and the desired vision, scale and character of the Oran Park Town Centre.

The building design specifically responds to the site-specific design considerations and consistent with the principles of building height in the adopted DCP.

The building form provides for activated street frontages with retail edge along the site boundary.

The building includes awnings at street level as required under the DCP.

In this regard, the upper levels of the buildings which exceed the height will not be visible.

***(b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,***

**Comment:** Clause 7.3 *Building Envelopes / Bulk & Scale* of the Oran Park Town Centre Part B4 DCP addresses building height modulation and building envelopes within the Town Centre precinct.

The objectives of Clause 7.3 are:

- (1) To ensure that the bulk and scale of future development responds to the desired vision, scale and character of the Oran Park Town Centre and surrounding development.*
- (2) To encourage a variety of building heights within the Town Centre which respond to the site specific design considerations.*
- (3) To embody buildings with flexibility in their use over time.*

The bulk and scale of the buildings are generally consistent with the desired DCP character.

The proposed building height variation is related to specific design considerations associated with the existing excavated ground level.

The proposal is considered appropriate in its context and the objectives of the DCP.

***(c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,***

**Comment:** The proposal specifically seeks approval for higher density residential as a component of the development within the Town Centre Core.

The proposal will deliver higher density apartment living within the Town Centre core, and significantly enhance housing diversity within Oran Park Town and the broader region.

The proposal is situated within the Town Centre core, delivering a highly accessible and walkable neighbourhood outcome for future residents.

As such, the proposal is consistent with the objective to deliver higher density residential development within the Town Centre.

***(d) to provide appropriate height controls for commercial and industrial development.***

**Comment:** The proposal seeks approval for a mixed-use development incorporating both retail, commercial and residential components.

The buildings comply with the height limits when measured from the street level.

The variation to the existing excavation which has been undertaken under an existing consent, to minimise the extent of earthworks and construction activity associated with the development in an active town centre.

The proposal is consistent with the objective.

**Test 1(a). The objectives of the zone**

The objectives of the zone are as follows:

- *To provide a range of retail, business, entertainment and community uses which serve the needs of people who live in, work in and visit the local area.*

**Comment:** The proposal seeks approval for a mixed-use development which encompasses a range of retail business and residential uses, consistent with the zone objective.

The technical breach in the building height relates to both the commercial building and the residential building. Both buildings contribute to achieving a mixed-use development consistent with the zone objectives.

- *To encourage employment opportunities in accessible locations.*

**Comment:** The development includes the delivery of a podium level commercial building which will provide significant employment opportunities for local residents.

The retail component will also generate significant employment opportunities across a variety of retail and service industries.

The proposed variation in building height will allow approval of the commercial building, consistent with the zone objective.

- *To maximise public transport patronage and encourage walking and cycling.*

**Comment:** This objective relates to the maximising public transport patronage.

The proposal in general is consistent with the objective as it delivers higher density housing, commercial offices and a large scale retail complex in a location which has high levels of access to public transport, and pedestrian / cycle pathways.

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

**Comment:** The proposed residential building is to be constructed as a podium level structure which is complimentary to the retail centre.

The retail centre remains the main built form and streetscape component.

The residential building will not detract from the primary function of the centre, but rather provides higher density housing within the centre which will increase patronage to retail business.

- *To ensure that residential development does not preclude the provision of active uses at street level.*

**Comment:** The proposal delivers significant areas of streetscape activation associated with retail and restaurant uses.

The variation to building height does not preclude or impact on the provision of active uses at street level.

- *To provide for land uses of a higher order and density within the Local Centre Zone than are permitted within the Neighbourhood Centre Zone or the Mixed-Use Zone.*

**Comment:** The proposal forms part of a planned major regional retail town centre development.

The proposed scale of the development and land uses are appropriate to be accommodated within a higher order centre.

The proposal as sought is wholly consistent with this objective.

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

**Comment:** The proposal has been designed to incorporate the delivery of a podium level residential flat building as an integrated mixed-use project.

The “technical” breach of the building height will facilitate delivery of the residential apartment building.



**Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.**

The application does not rely on this test for approval.

**Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.**

The application does not rely on this test for approval.

**Test 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.**

Camden Council and the Local Planning Panel have supported minor variation to building heights for commercial and residential flat buildings within the Oran Park Town Centre to allow flexibility in the delivery of these large scale buildings.

The building height variation proposed under this application is less than the approved building height variations and is only required to existing excavated ground levels associated with the development.

**Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.**

The application does not rely on this test for approval.

Given the discussion above, strict compliance with the development standard is unnecessary.

**(b) There are sufficient environmental planning grounds to justify contravening the development standard**

A detailed Statement of Environmental Effects (SEE) has been prepared and submitted with this application and provides a comprehensive environmental planning assessment of the proposed development.

The SEE has demonstrated that the proposal is predominantly compliant with the all adopted planning controls and guidelines for the site. The SEE has also demonstrated that there are no adverse environmental impacts as a result of the proposal.

Key long-term benefits associated with the proposal include:

- Increased retail and business services for residents.
- Enhanced Employment Opportunities.
- Completion of Town Park edge / interface.
- Enhanced Housing Diversity and Affordability; and
- Higher levels of Activation of the Town Centre

Requiring strict compliance with the building standard would impact on the ability to deliver a lift as part of the proposal.

It is our professional opinion that there are sufficient environmental planning grounds to justify variation to the maximum building height as:

- The proposal is consistent with the objectives of the zone and the objectives of the height control.
- The proposal does not result in any overshadowing impacts of either planned residential sites or streetscape areas.
- The proposed lift cores are not visible from street level due to the built form retail edge and street edge awnings.

## 7 IS THE VARIATION IN THE PUBLIC INTEREST

Support for this proposal will enable the delivery of a major extension to the existing Oran Park Town Centre Podium retail complex, which will espouse a broad range of social, economic and place making benefits to both residents of Oran Park Town and the broader region.

The two residential apartment buildings are situated directly above the retail centre, and will frame the southern edge of Town Park, provide iconic built form elements as key visual markers in the urban fabric of the Town Centre, and provide enhanced housing variety and affordability for future residents.

Overall, the proposed is in the public interest as:

- The proposed development will significantly expand the retail, business and ancillary services within the Town Centre servicing residents, workers and the broader community.
- Support for the proposal will significantly enhance the variety of residential housing located within the Oran Park Precinct, expanding housing choice and diversity.
- The delivery of apartments within the Town Centre will enhance housing affordability within the region.
- The delivery of residential apartments within the Town Centre core is vital to ensuring a diverse, activated and vibrant Town Centre.
- The delivery of the residential apartments will enhance the viability of local shops, restaurants and business within the Town Centre as well as enhance visitors and use of Civic facilities.
- The delivery of commercial office space will enhance the local employment opportunities for residents and the broader community.

## 8 CONCLUSION

This Clause 4.6 variation request seeks support for a minor technical variation to the current prescribed maximum building height. The variation relates to the existing excavated ground level associated with the proposed development.

We note that the proposal is fully compliant with the prescribed building heights when measured from the existing Main Street level.

The proposal is consistent with the overarching objectives of the current Part B Development Control Plan for the Oran Park Town Centre.

Key long-term benefits associated with the proposal include:

- Increased retail and business services for residents.
- Enhanced Employment Opportunities.
- Completion of Town Park edge / interface.
- Enhanced Housing Diversity and Affordability; and
- Higher levels of Activation of the Town Centre

This report and supporting plans and documentation have demonstrated that the site is highly suitable to accommodate the proposal and is generally compliant with all relevant state and local government planning provisions.

Variations to building heights are consistent with the revised adopted building height plans for the Town Centre and area appropriate in the context of the Town Centre framework.

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards and to achieve better outcomes for development by allowing flexibility circumstances.

This variation request has demonstrated that

- Compliance with the development standard is considered unreasonable and unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify the contravention.
- The proposal maintains consistency with the objectives of the B2 Local Centre zone.
- The proposal is consistent with the objectives of Clause 4.3 Building Height, despite the non-compliance.
- The proposed development is an appropriate response to the context of the site, and the breach of the standard is compatible with the existing and future character of the area; and
- Support for the proposed variation is in the public interest, allowing the delivery of both employments generating office space and higher density housing for residents.

# urbanco

planning | design | strategy