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Clause 4.6 Variation

Height of Building
45 Pendlebury Road, Cardiff



Document Control

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1 Introduction

This Clause 4.6 variation request has been prepared to support a development application for the proposed affordable housing development at 45 Pendlebury Road, Cardiff, also known as Lot 2 of Deposited Plan 240602. The development application number applying to this proposal is DA/489/2019.

This Clause 4.6 variation has been submitted to assess the proposed non-compliance with Clause 4.3 Height of Buildings for the development in accordance with the requirements of the Lake Macquarie City Council Local Environmental Plan 2014 (LEP) which provides the following aims and objectives:

- (a) to ensure the height of buildings are appropriate for their location,*
- (b) to permit building heights that encourage high quality urban form.*

The Height of Building shown on the relevant LEP Map HOB_009C is 13m. The proposed building height at the highest point is 14.25m. This is a variation of 9.1%.

The exceedance proposed allows for a better outcome on site. This exceedance allows for the ability of other development standards and controls to achieve compliance. The proposed development contains 60 affordable housing units and one commercial space. This yield was determined by Compass Housing as appropriate for the site to service the needs of affordable housing tenants within the Lake Macquarie area.

It was noted in the minutes from the SEPP 65 Design Review Meeting on 8 May 2019 that *“The Panel noted that it should be possible to increase the height of part of the buildings with a carefully-placed, recessive, additional floor towards the northern end of the blocks, as the adjacent industrial site has a height limit of 15 metres. A transition towards this height would potentially be acceptable, providing all impacts were adequately addressed”*.

The original development had a height limit below 13m, however, it was considered that varying that height limit would allow compliance with more controls and provide better amenity on site.

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant. The request must justify the contravention of the development standard by demonstrating under the LEP Clause 4.6(3) that:

- (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 request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.



2 Site Description

The site is located at 45 Pendlebury Road, Cardiff. The site is located in a B4 Mixed Use business zone and is surrounded by light industrial uses to the north and west. The site is 5,253sqm in size and has a street frontage to, and access off Pendlebury Road. The site is currently vacant of any buildings and is being used as a car park. The whole site has been covered in bitumen. The bitumen will be removed in order to construct and landscape upon the site.

There are lots on either side, the northern being a car warehouse and the southern being vacant. To the rear of the lot is Munibung Creek, a formed drain and on the opposite side of the drain is the Cardiff Motor Inn. The Cardiff Industrial area surrounds the site to the north-west which contains a range of light manufacturing businesses and compatible uses. There are residential dwellings within the business zone as well as the Cardiff Motor Inn.

The locality is well serviced in terms of the stores and businesses required on a daily or weekly basis. To the south of the site is Wests Cardiff and to the east is Cardiff RSL. The Cardiff Town Centre is approximately 300m direct distance from the site. It contains a range of services such as; grocery stores, Library, Medical Centre, car dealerships, Veterinary Hospital, beauty services, homewares, take away restaurants and other specialty services.

The site has access to bus stops with the closest being located on Munibung Road. The site is within 1km from Cardiff Train Station which is located along Main Road. The northern and western IN2 zoned land has a height limit of 15m. The applicable height of the subject site is 13m.



Figure 1 Site shown in red. (Sixmaps, 2018).



Figure 2: View from the site looking east from Pendlebury Road



Figure 3: View of the neighbouring site, 47 Pendlebury Road (Light Industry zoned), which is a car sales business. The slope of the land makes the buildings look lower when viewed from the street.



Figure 4: Standing along Munibung Road near the intersection with Pendlebury Road. White building is the northern neighbour to the subject site.



Figure 5: Standing in front of the site looking south-east. The large building is Cardiff Wests Leagues Club.

3 Proposed Development and Compliance with Lake Macquarie Local Environmental Plan 2012

The proposal seeks to gain approval for a Residential Flat Building with Commercial space on the ground floor. The building will be managed by Compass Housing and the residential component used as affordable housing.

3.1 Zone objectives

The site is located within a B4 Mixed Use zone. The objectives of a B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses.*
- *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.*
- *To enable development that complements and enhances the core retail function and trading performance of Zone B2 Local Centre and Zone B3 Commercial Core.*

B4 zoning allows for a wide range of compatible land uses that centre on residential accommodation, commercial premises, community facilities, education and recreation.

It does not support forms of agriculture, heavy industry or a variety of industry based works (electricity generation, extractive industries or transport depots) which would not be compatible with residential uses.

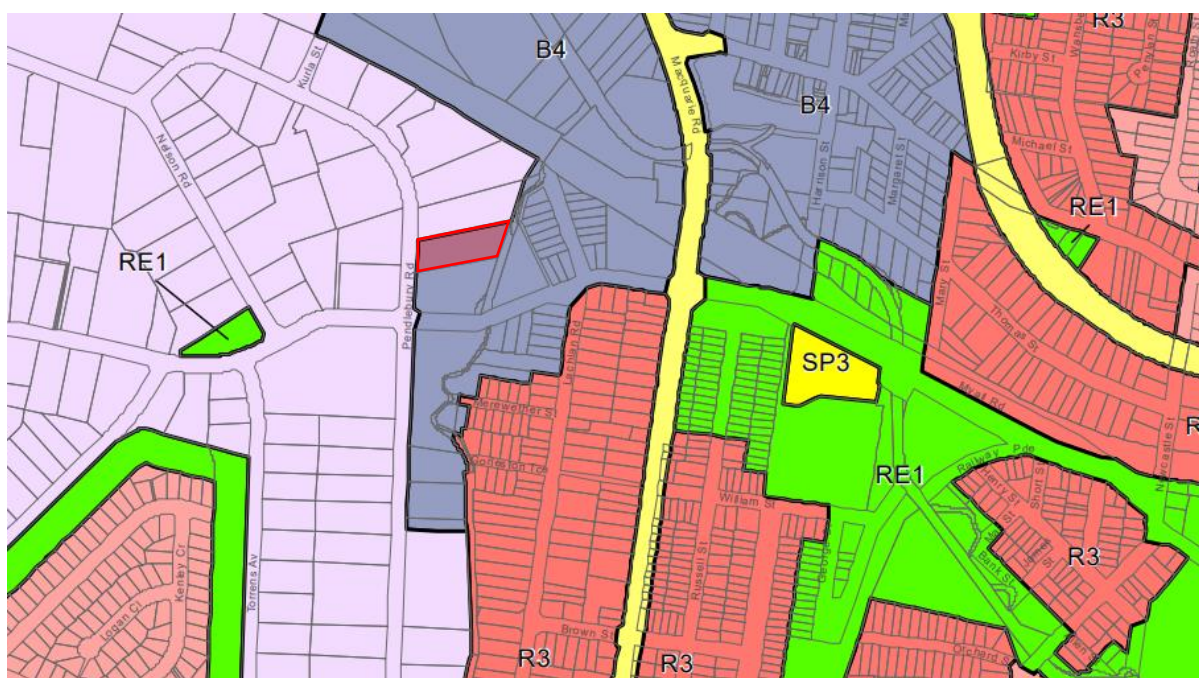


Figure 6: Land zoning map (Lake Macquarie LEP, 2014).

3.2 Maximum Height of Building imposed by Clause 4.3

Clause 4.3 applies to development on the site as mapped in the LEP maps. Clause 4.3 states that:

- (1) *The objectives of this clause are as follows:*
 - (a) *to ensure the height of buildings are appropriate for their location,*
 - (b) *to permit building heights that encourage high quality urban form.*
- (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.*

On the LEP Map HOB_009C the building height applicable for this site is 13m. The proposed building height is 14.25m. Figure 7 shows the amount of the development which exceeds the building height. Approximately 50% of the combined roof areas exceeds the 13m, with the remaining 50% at or under 13m in height. The highest point above ground is the roof of Block C in the south-eastern corner of the building where it exceeds by 1.25m.

The neighbouring properties to the west along Pendlebury Road are for industrial uses, currently Ausgrid is directly opposite, and they are not expected to be impacted by this height increase. Those properties currently have no valuable view corridors through this site and being located on the opposite side of Pendlebury Road there will be no issues of overshadowing or overlooking.

The northern property is a car wholesale yard and due to the northerly positioning, will not experience an increase in overshadowing from this height exceedance. It is also unlikely that the amount the building exceeds by would have a noticeable impact compared to if it was 13m.

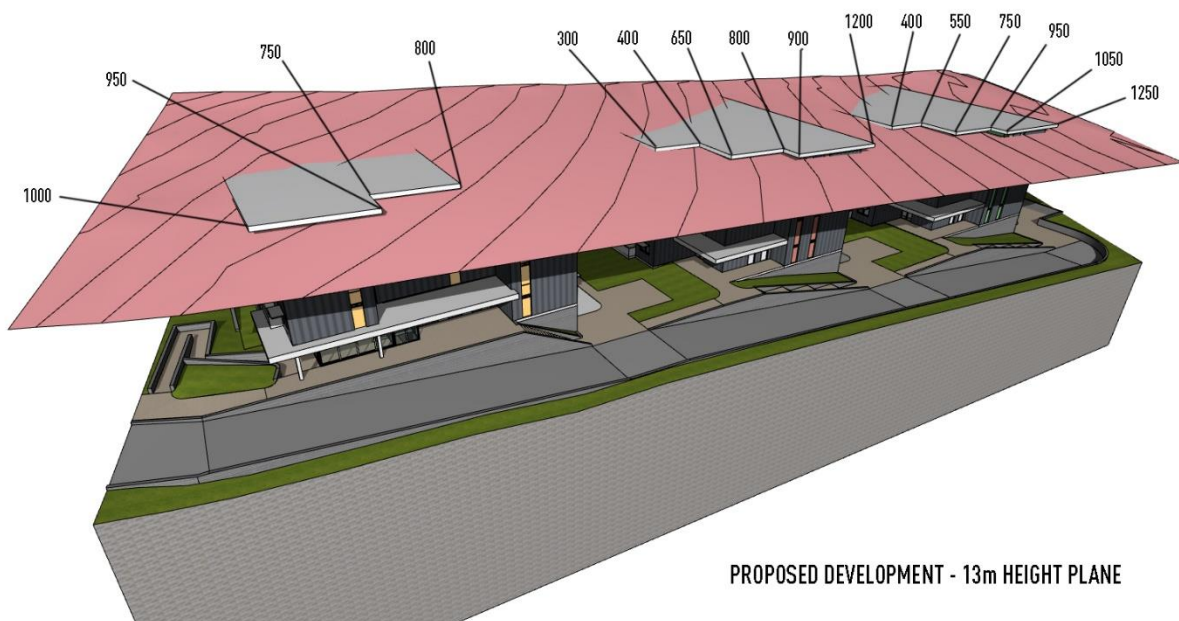


Figure 7: Building height. The red layer is 13m above ground level. The numbers indicate the additional height above 13m.

The development will be mostly visible towards the east and south. To the east is Munibung Creek which is a formalized stormwater drain. Further east is the Cardiff Motor Inn and the rear of residential lots which front Lachlan Road. As displayed in the shadow diagrams, no overshadowing will be created by the building height variation which would adversely impact the Cardiff Motor Inn or the private open space in the residential lots back yards. The height increase is not considered to have an unacceptable impact upon the privacy of those to the east. Within the proposed building there are three bedrooms facing the east along with two balconies accessed from internal living areas. All these

areas are under 13m in height and it is only the roof and a very minor area of the façade (which does not include any windows) which exceeds the height on this elevation.

The lot to the south is located downhill from the proposed site and they share a common boundary. This parcel of land is currently vacant. The shadow diagrams prepared show that this lot will not be unacceptably overshadowed on the winter solstice. The lot is quite large and wide, approximately 6,000m² and could be developed for a range of activities. If it was developed for mixed use residential and commercial like the proposed development, it is considered that there would be enough separation able to be provided between the two buildings to allow for adequate solar access. In terms of privacy, the southern elevation of the proposed building contains some minor height encroachment where the roof is above 13m. There are no windows or balconies that are above the maximum building height which would create an unreasonable impact upon a potential future development to the south.

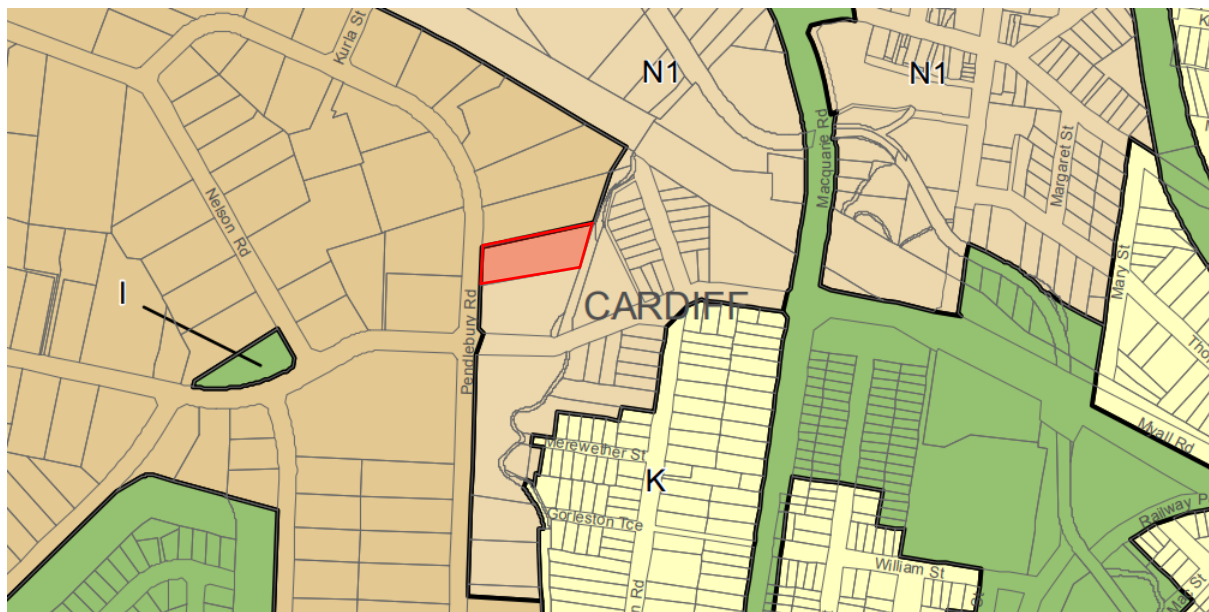


Figure 8: Building Height Map. Light brown is 13m, dark brown is 15m, yellow is 10m and green is 8.5m (Lake Macquaries LEP, 2014).

3.3 Objectives of the development standard

Under the Environmental Planning and Assessment Act, 1979 (the Act) a development standard is defined as:

‘provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being the provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development’.

Consistency of the proposed development with the development standard and associated objectives of Clause 4.3 of the LEP are a key consideration in determining whether to grant consent to a contravention of the development standard. The objectives of Clause 4.3 are outlined in sub clause (1):

- (a) to ensure the height of buildings are appropriate for their location,*
- (b) to permit building heights that encourage high quality urban form*

The development is considered to be compliant with the objectives of Clause 4.3, notwithstanding the noncompliance with the building height mapped on the LEP Map HOB_009C. An assessment of this is within Section 4 of this report.

4 Clause 4.6 - Exceptions to development standards

4.1 Objectives of clause 4.6

Clause 4.6 of the LEP states the following:

- (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.*

Clause 4.3 is the development standard that relates to the maximum height a development can be built to. Clause 4.6 provides flexibility in the application of this development standard, allowing for improved and consistent development outcomes.

The proposed development will enable the attainment of the relevant objects of the Act, which are:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The provision of affordable housing promotes the social and economic welfare of the community. Its placement within the suburb of Cardiff allows the development to have good amenity through the services available and the public transport connections which exist. This provides a development which will be sustainable and well-functioning in the long term. The variation to the building height is considered a negligible impact when considered against the positive contributions this development is going to provide the community socially and economically.

4.2 Applicability of Clause 4.6

The development standard in Clause 4.3 is not expressly excluded from the operation of Clause 4.6. Clause 4.6(2), therefore, grants the consent authority the discretion to consent to the proposed development despite the contravention of this development standard.

4.3 Considerations under clause 4.6

The consent authority's considerations in determining whether to grant consent for development that varies a development standard are outlined in Clause 4.6(3) and 4.6(4) of the LEP. These considerations are addressed below:

Clause 4.6(3)(a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The objectives of Clause 4.3 Height of Buildings are listed below along with an assessment against the objective of the noncompliance.

(a) to ensure the height of buildings are appropriate for their location,

It is considered that the height exceedance of portions of the roof is negligible in comparison to the positive social and economic contribution this development will have on the locality. The site is located within a B4 Mixed Use zone which encourages residential, commercial, retail and other related uses to a height limit of 13m. Adjacent to the north and west of the development is IN2 Light Industrial zoned land, where the building height limit is 15m. The height exceedance varies up to 14.25m and is only for approximately 50% of the roof area as shown in Figure 7.

The site is part of a small portion of B4 zoned land on the northern side of Munibung Road, where the remainder is IN2 zoned land. The site is located at the entrance of the Cardiff Industrial Area, which is approached uphill westbound from the intersection of Macquarie Road and Munibung Road. The proposed height of the development will be consistent with the height allowable in the Industrial area, and the difference between the applicable 13m and the proposed 14.25m will not be noticeable from these angles.

Due to the surrounding permissible building heights, types of development in the area and small areas of height exceedance, it is considered that the proposed height exceedance can be considered appropriate within the context of the location.



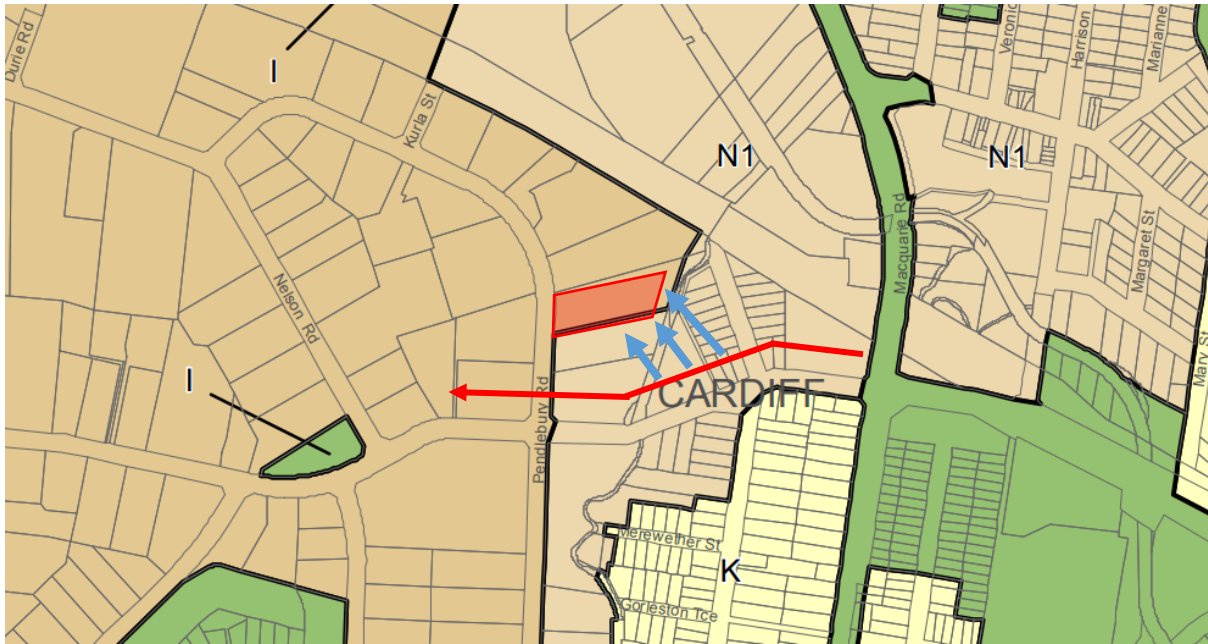


Figure 9: The westbound approach to the Industrial Area. Blue arrows are view points towards the site. Site shown in red (Lake Macquarie LEP, 2014).

(b) to permit building heights that encourage high quality urban form

The development has been designed by a registered Architect and is considered of a high quality, compatible with the existing and developing streetscape. The buildings placement on site allows setbacks of 6m and more to the surrounding neighbours. This provides a good level of separation between existing and future developments, reducing the likelihood that the height encroachment would have any impact.

The building height proposed in conjunction with the building design is considered to provide a quality built form within the existing and emerging business and industrial context. The height has been shown to provide no adverse impact that would warrant the strict compliance with the development standard. Therefore, any requirement for reduction in height is considered unnecessary and unreasonable.



Figure 10 Architects impression of completed building

Clause 4.6(3)(b) **There are sufficient environmental planning grounds to justify contravening the development standard**

Relevant Strategic Plan

Lake Macquarie City Council adopted the 'Imagine Lake Mac Strategy' (ILMS) on June 11 2019. This Strategy provides direction for land use within the city for the next 30 years. The suburb of Cardiff is identified in this strategic plan as an 'economic centre'. An economic centre is defined as providing *"a range of services, community facilities, retail and employment to a spatial catchment comprising of a number of suburbs"*. These economic centres are considered to generally include intensive multi-level housing, like the proposed development.

The site appears within the yellow area of the North West Growth Area map within the ILMS which indicates areas for urban intensification. In these areas the plan encourages intensive mixed use and residential development which are able to feed off economic centres. The development is considered to meet the aims and intention of this strategic framework and the variation to the building height is considered a minor site specific issue which could be accepted due to the developments capability to meet the strategic direction.

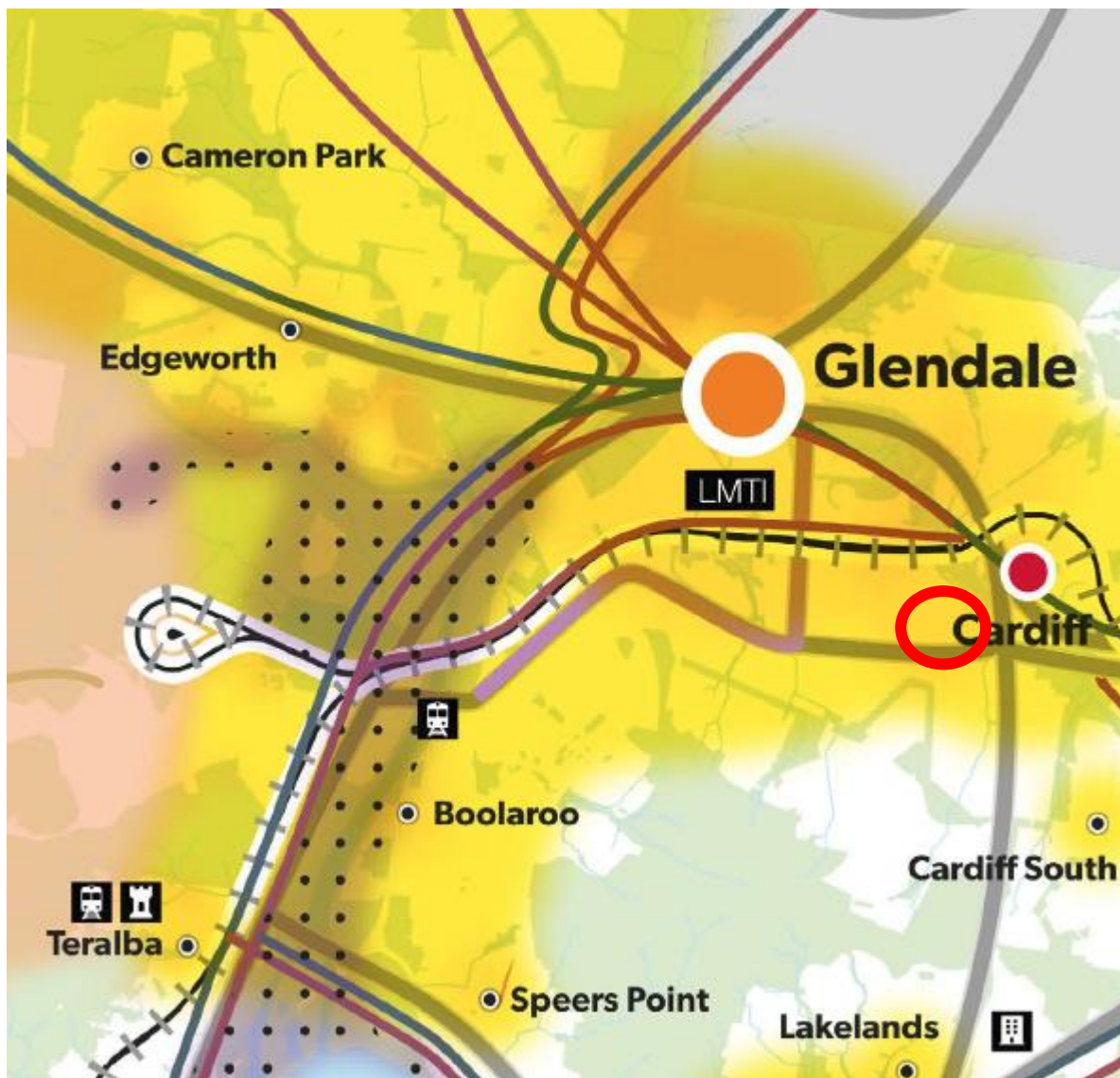


Figure 11: North West Growth Area (Imagine Lake Mac Strategy, 2019).

Relevant Local Environmental Plan

Guided by Section 4.15 of the Act, the development is subject to consent in accordance with Lake Macquarie City Councils Local Environmental Plan 2014 (LEP). The aims of the LEP include:

- (a) to recognise the importance of Lake Macquarie and its waterways, including the coast, as an environmental, social, recreational and economic asset to Lake Macquarie City and the Hunter and Central Coast regions,
- (b) to implement a planning framework that protects areas of significant conservation importance, while facilitating development and public facilities in appropriate areas, that are accessible to a range of population groups, to accommodate Lake Macquarie City's social and economic needs,
- (c) to promote the efficient and equitable provision of public services, infrastructure and amenities,
- (d) to facilitate a range of accommodation types throughout Lake Macquarie City so that housing stock meets the diversity of community needs and is affordable to as large a proportion of the population as possible,
- (e) to apply the principles of ecologically sustainable development,

- (f) *to encourage development that enhances the sustainability of Lake Macquarie City, including the ability to adapt to and mitigate against climate change.*

This development in particular relates to the aims (b), (d) and (e). The development provides development that will service the needs of very low, low to moderate income earners who require housing. The development of this housing ensures that there are enough workers within Lake Macquarie to work within essential services that are typically lower paid occupations. By providing this housing Lake Macquarie will retain its working population and have continued economic growth as a result.

The variation of the height of this building is outweighed by the positive impact that this development will have economically and socially within the community. We consider that the variation is acceptable when measured within the grounds of environmental planning.

Clause 4.6(4)(a)(i) and (ii) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)

Whether the proposal is in the public interest can be assessed by its compliance 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 assessment contained within Section 3 and 4 of this report has demonstrated that the proposal is consistent with both the objectives of the standard within Clause 4.3 of the LEP and the objectives for development within B4 zoning.

Accordingly, the consent authority can be satisfied that the development is in the public's interest.

Clause 4.6(4)(b) The concurrence of the Secretary has been obtained

Further to the considerations above, Clause 4.6(4)(b) states that the concurrence from the Secretary must be obtained for the contravention of this development standard.

In this case, concurrence from the Secretary is not applicable according to the planning circular 'Variations to development standards' PS18-003 Issued 21st February 2018. The circular states that:

"All consent authorities may assume the Secretary's concurrence under:

- *Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006 or any other provision of an environmental planning instrument to the same effect, or*
- *State Environmental Planning Policy No 1 – Development Standards."*

The circular then specifically states:

"Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff."

As the development is to be approved by the Regional Planning Panel (RPP), the developments contravention of the building height will be considered by the RPP rather than Council or the Secretary. Therefore, concurrence of the Secretary is not required.

Clause 4.6(5)(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

There are no significant matters for State or regional environmental planning that will be affected by the variation of this development standard for this particular development.

Clause 4.6(5)(b) The public benefit of maintaining the development standard

Maintaining the building height on site will not provide any better public benefits compared to the consent to the variation of Clause 4.3.

It is not considered that the public will gain benefit from the insistence of the maintenance of the development standard in this instance. The building height limitation can prevent an appropriately sized and placed building to be developed on site. It is considered that the public will benefit from the inclusion of a building which provides 60 affordable housing units which greatly outweighs the considered negligible impact of the variation to the height.



5 Conclusion

The relevant considerations of Clause 4.6 have been discussed above, and support the variation of the development standard for this instance. This report has systematically addressed the matters required to be demonstrated by Clause 4.6(3), and satisfied the considerations required to be made by Council under Clause 4.6(4)(a)(i). The deviation from the prescribed building heights is consistent with the zone objectives and the objectives of the development standard Clause 4.3(1), and RPP may be satisfied that it is in the public interest pursuant to Clause 4.6()(a)(ii).

In accordance with the requirements of sub-clause 4.6(4), development consent may be granted for the proposed development.