



Clause 4.6 Variation Request

Oran Park Commercial Building 2

Oran Park Town Centre

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

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1 INTRODUCTION

On behalf of the proponent, we submit this Clause 4.6 variation request which accompanies a Development Application which seeks approval for the erection of a six-storey commercial office building, with a three-level basement car park, and associated street level landscaping works.

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 request should be read in conjunction with the associated Statement of Environmental Effects (SEE) and supporting documentation lodged with the Development Application.

Consistent with the vision for the Oran Park Town Centre outlined in the Part B DCP, the built form provides an activated streetscape and building form which is consistent with the surrounding approved commercial buildings.

Approval and delivery of the commercial building will provide further employment opportunities in a range of professions and further activate the western edge of the Oran Park Town Centre.

Consistent with the adjacent Commercial 1 Building, the proposal incorporates two key architectural features, being the full height internal atrium, which delivers natural lighting and ventilation to all levels of the building, and a common rooftop terrace, accessible for all employees. These features significantly enhance long term employee amenity and environmental sustainability for the proposal.

The inclusion of the large scale internal atrium will allow the building to achieve a high quality office space rating, bringing architectural, environmental and employment excellence in design and delivery to Oran Park Town Centre.

This proposal seeks support for a minor variation to the maximum permissible building height to allow the atrium roof, landscaped roof terrace and associated plant & equipment.

The building height and variation sought are consistent with the approvals issued for the adjoining Commercial 1 building.

The subject site is situated within the Oran Park Precinct of the South West Growth Centre. Accordingly, *State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – Appendix 1 Oran Park & Turner Road Precinct Plan* (the Growth Centres SEPP) is the guiding planning instrument.

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, as endorsed for the adjoining Commercial 1 building.

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.

This report, and supporting plans and documentation demonstrate that support for the full height internal atrium roof top terrace significantly enhance the environmental, sustainability and amenity of the building.

2 SITE & CONTEXT

2.1 Site Description

The subject site forms part of a large existing parcel which incorporates the balance of the Town Centre land, and is legally described as existing Lot 4 DP 270899.

The development site is situated on the western side of Oran Park Drive, and the southern side of Podium Way, directly adjoining the southern edge of the approved Commercial 1 building site.

A separate two lot subdivision Development Application was approved by Camden Council (1525/2017), which covered the Tranche 8 project area.

This application approved subdivision of Tranche 8 to create 2 lots, including the development site, being Lot 17, and construction of an access roadway and associated streetscape landscaping and services.

A separate Development Application will also be lodged concurrently for the further subdivision of Lot 3, to and extension of the roadway surrounding the site to Oran Park Drive.

As such, the development site is described as being proposed Lot 3 in a future Precinct Plan DP 280077 (unregistered – DA 1525/17) in a proposed subdivision of Lot 8 in DP 270899 (unregistered – DA1438/17) which is a proposed subdivision of Lot 4 in DP270899 (registered).

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 bordered by the approved Commercial 1 building to the north, Oran Park Drive to the east and a proposed local access road to the south and west.

The site is highly accessible to both local and regional vehicular movements given its proximity to Oran Park Drive and Peter Brock Drive. Vehicular access to the site will be achieved via an extension to the approved local roadway proposed under a separate DA.

Figure 1: Locality Plan



Figure 2: Site Plan



Figure 3: Development Site Plan (AJC)



3 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 site is situated within the Oran Park Precinct of the South West Growth Centre.

The development area 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).

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.

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.

h) What is proposed in the development application?

The application seeks approval for the erection of a six-storey commercial building within the Oran Park Town Centre, a regionally significant centre.

The commercial building a proposed achieves a maximum building height of 28.85m as a direct result of the proposed atrium roof and provision of lift access to the rooftop terrace and the need to provide connectivity between basement levels

The roof form and building envelope of the building itself is below the maximum permissible building height.

4 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.

We have also included Test 1(a) which addresses the objectives of the land use zone, consistent with recent decisions of the NSW Land & Environment Court, including *Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

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

The objectives of the lot size standard at Clause 4.3 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 proposed commercial building has been designed in conjunction with the preliminary Concept Plan for the balance of the Tranche 8 development area. The key element of this objective is addressed below:

Solar Access

Detailed solar access diagrams have been prepared and submitted with the Development Application which demonstrate that the building will not impact on solar access to planned residential apartment buildings to the west.

Furthermore, the design and orientation of the building has ensured that high levels of streetscape solar access will be maintained to planned and existing roadways and footpath areas.

Bulk & Scale

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

The proposed building is identical in bulk & scale to the approved Commercial 1 building directly to the north of the proposal.

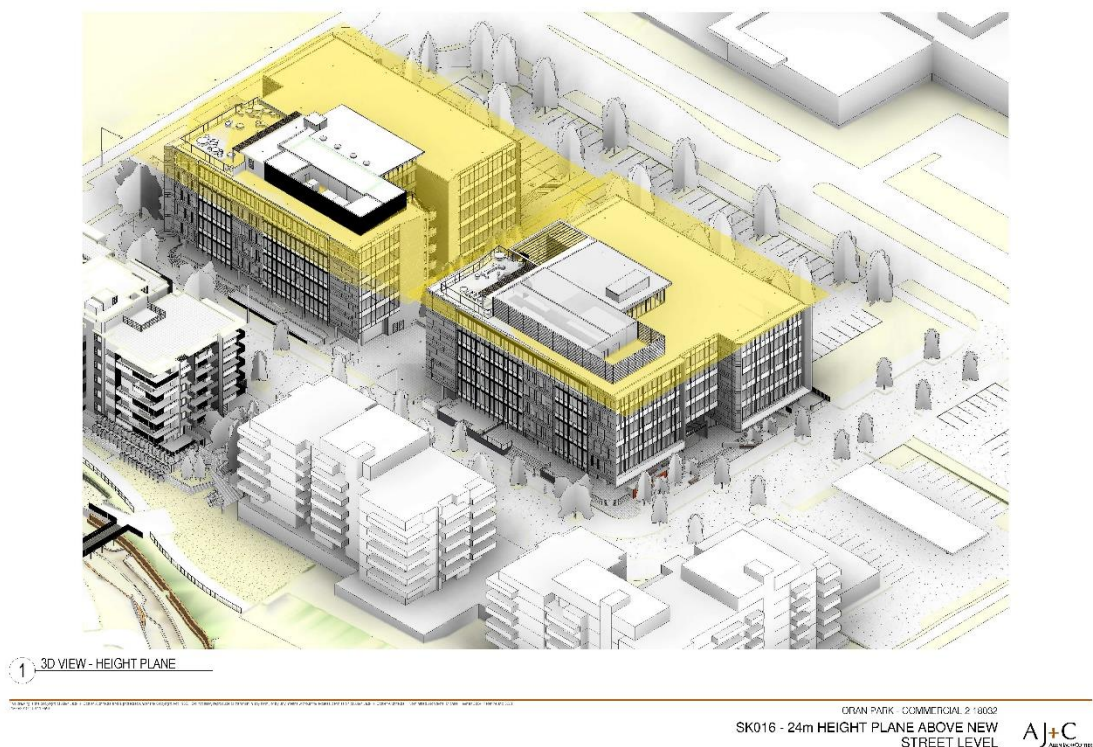
The building form is also consistent with the large scale mixed-use retail / commercial building on the eastern side of Oran Park Drive, adjacent to the site.

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

As demonstrated in Figure 4 below, the Commercial 2 building is wholly consistent with the bulk and scale of the approved building to the north which is currently under construction.

Figure 4 also demonstrates that only the atrium roof, lift access shaft to the rooftop communal area and plant equipment extend beyond the height plane. These elements will not be visible from the street level, and as such will be indiscernible to pedestrians.

Figure 4: Building Height Plane (AJC)



(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.

Development Control (2) of Clause 7.3 provides guidance on the appropriate locations for high quality building form and height stating that *Prominent street corners should be reinforced in a visual context through concentrating building height and built form.*

The proposed building is situated on a semi-prominent street corner at the southern end of Fordham Way, visible from Oran Park Drive.

The building design specifically responds to the site-specific design considerations and concentrates building height on a prominent street corner and is appropriate in its context when considered against the objectives and controls for building heights listed in the DCP.

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

Comment: The proposal does not seek approval for any residential components and as such, this objective is not applicable.

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

Comment: The main building form of the commercial building generally achieves compliance with the specified maximum building height.

The requested variation relates to internal atrium roof and the need to provide access to the roof top terrace area.

The discussion above has also demonstrated that this subject site is an appropriate location for the built form, as it will frame a prominent Town Centre street corner.

As such, the proposal is consistent with the objective to deliver site appropriate height controls.

Test 1(a). The objectives of the zone

The objectives of the B2 Local Centre 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 proposed building delivers business and employment opportunities for people who live and work in the area.

The provision of lift access to the rooftop terrace will specifically enhance amenity for workers in the building.

- *To encourage employment opportunities in accessible locations.*

Comment: Approval of the proposed commercial building will specifically deliver employment opportunities in a location which is highly accessible for pedestrians, cyclists and vehicle traffic.

Notwithstanding, the breach of the building height for the provision of lift access to the rooftop terrace is neither consistent / nor inconsistent with this 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 employment opportunities in a location highly accessible to public transport.

Notwithstanding, the breach of the building height for the provision of lift access to the rooftop terrace is neither consistent / nor inconsistent with this objective.

- *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 proposal does not seek approval for any residential development components.

This objective is not applicable.

Notwithstanding, the breach of the building height for the provision of lift access to the rooftop terrace is neither consistent / nor inconsistent with this objective.

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

Comment: The proposal does not seek approval for any residential development components.

This objective is not applicable.

Notwithstanding, the breach of the building height for the provision of lift access to the rooftop terrace is neither consistent / nor inconsistent with this objective.

- *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 does not seek approval for any residential development components.

The proposed six-storey commercial building is consistent with this objective in terms of delivering higher order commercial land use than typically permitted in the neighbourhood centre or missed use zones.

Notwithstanding, the breach of the building height for the provision of lift access to the rooftop terrace is neither consistent / nor inconsistent with this objective.

We do note that the provision of lift access to the rooftop terrace enhances amenity for people working in the building, which is commensurate with the higher order use of the land.

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

Comment: The proposal does not seek approval for any residential development components.

This objective is not applicable.

Notwithstanding, the breach of the building height for the provision of lift access to the rooftop terrace is neither consistent / nor inconsistent with this objective.

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 issued Development Consent 1526/2017 in July 2018.

DC 1526/2017 granted approval for the erection of a six storey commercial building directly to the north of the proposed Commercial 2 building under this application.

The consent granted approval for a building height of 28.15m, being a 4.15m variation to the maximum building heights for the subject site specified under Clause 4.3 (5) State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – Appendix 1 Oran Park & Turner Road Precinct Plan.

The proposed building is consistent in terms of building height, bulk and scale and streetscape presentation to the adjacent approved Commercial 1 building.

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.

Requiring strict compliance with the building standard would result in removal of the internal atrium and roof top terrace area. This would significantly reduce the environmental performance and amenity of the building.

In this regard, contravention of the development standard is considered to be acceptable as the lift well provides specific benefits for workers being:

- Provision of lift access ensures all ability access to the rooftop terrace. The rooftop terrace does not breach the height limit.
- The lift access is via one of the lift wells which services the whole of the building, providing benefit for tenants and workers within the building.
- The breach of the height limit does not allow for any additional floor space or units associated with the development. The proposal could achieve compliance with the building height limit through removal of lift access to the rooftop terrace. However, this would be a negative outcome for workers.

Requiring strict compliance with the building standard would result in removal of the roof top terrace area. This would significantly reduce the solar access to common open space areas and the amenity of the building.

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 atrium significantly enhances environmental performance and amenity of the building for future employees and workers.
- The subject site is a significant corner within the Town Centre context, with the bulk and scale of the building responding to surrounding existing and planned development.

5 IS THE VARIATION IN THE PUBLIC INTEREST

Environmental sustainability and workplace health from key aspects of the proposed building form through the inclusion of a full height internal atrium and roof top terrace area.

The commercial building incorporates a six-storey office / commercial use building, with floor plates designed around a central open atrium structure, delivering natural light and ventilation to the building interior.

The central atrium extends the full height of the building to the roof level, and will provide a spectacular internal architectural feature. The inclusion of the Atrium enables the building to achieve a Grade A office space rating.

All of the future tenancies will receive direct sunlight to the internal areas from both the external windows and the central atrium, ensuring light, bright and well ventilated work space areas.

Support for this proposal will enable the delivery of a high quality environmentally sustainable commercial building within the Oran Park Town Centre.

Specifically, support for the proposed variation will significantly and directly enhance the health and well-being of future employees and the building as a whole, providing access to natural daylight and landscaped rooftop terrace.

The proposed commercial building is considered to be in the public interest as:

- The proposal will significantly increase employment opportunities for both existing and future residents and the broader Camden Local Government Area, particularly delivering “*white collar*” jobs.
- The proposal will contribute to the creation of a vibrant mixed use precinct on the western edge of the Town Centre, acting as a transition between residential neighbourhoods and the Town Centre core.
- The proposal is consistent with the vision for the on-going delivery of the Oran Park Town Centre established under the Part B DCP.
- The site is highly accessible for local residents with access to key on-road and off-road pedestrian and cycle linkages throughout the Oran Park Town project.
- The site is highly accessible to both local residents and the wider community due to its proximity to Oran Park Drive & Peter Brock Drive.
- The site is well suited in its proximity to the planned future Oran Park Rail Station.
- Provision of lift access to the rooftop will provide universal access to the rooftop communal open space, and is to the benefit of all workers and tenants.
- The proposal has been designed as part of an integrated development outcome with the balance of the Tranche 8 Precinct.

6 LOCAL PLANNING PRECEDENTS

Oran Park commercial Building 1 (DC 1526/2017)

Camden Council issued Development Consent 1526/2017 in July 2018.

DC 1526/2017 granted approval for the erection of a six storey commercial building directly to the north of the proposed Commercial 2 building under this application.

The consent granted approval for a building height of 28.15m, being a 4.15m variation to the maximum building heights for the subject site specified under the Growth Centres SEPP.

The approved building represented the first stage of the commercial development, which includes both Commercial 1 & Commercial 2 buildings.

Gregory Hills Private Hospital (SSD 7387)

The NSW Department of Planning issued a Concept Plan approval for the Gregory Hills Private Hospital on 27th April 2017.

The proposal sought approval for a new six storey private hospital with ancillary services. Specifically, the proposal sought approval will be sought under the concept proposal for building footprints, envelopes with a maximum height up to 26.3 metres, indicative uses, access, loading, landscaping and parking.

Maximum building heights for the subject site are specified under Clause 4.3 (5) State Environmental Planning Policy (Sydney Region Growth Centres) 2006 – Appendix 1 Oran Park & Turner Road Precinct Plan. Clause 4.3(5) states a maximum building height of 15m for the subject land.

The Concept Plan approval granted consent for a building height variation of 11.3m, allowing an additional two-storeys above the nominal four-storey height limit.

The Department of Planning assessment report noted that support for the variation was in the public interest given the provision of additional hospital beds.

Approval of the concept plan demonstrates that the proposed building height variation is comparatively minor, and that variations which provide enhanced public benefit and amenity, such as the proposed internal atrium should be supported.

7 CONCLUSION

This Clause 4.6 variation request seeks support for a minor variation to the prescribed maximum building height (4.85m) relating to the erection of a six-storey commercial office building, with a three-level basement car park, and associated street level landscaping works.

The variation as proposed will allow for the delivery of two key elements being the internal atrium roof and a roof top landscaped terrace area (and associated plant).

The full height internal atrium delivers natural lighting and ventilation to all levels of the building. The rooftop terrace is accessible for all employees and will provide a valuable break-out space. These features significantly enhance long term employee amenity and environmental sustainability for the proposal.

The inclusion of the large scale internal atrium will allow the building to achieve a Grade A office space rating, bringing architectural, environmental and employment excellence in design and delivery to Oran Park Town Centre.

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 is consistent in terms of bulk and scale with the adjoining Commercial 1 Building to the north approved under DC, which sought an identical type of height variation;
- 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 will have a positive environmental impact and is in the public interest.

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