

Clause 4.6 Variation: Height of Buildings

2-36 Church Street, Lidcombe
Lidcombe C+ Mixed-Tenure Development

Submitted to Cumberland Council
On behalf of Lidcombe Church Property Pty Ltd

04 September 2018 | 218496



CONTACT

André Szczepanski Principal aszczepanski@ethosurban.com 02 9409 4936

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This document has been prepared by:



This document has been reviewed by:



André Szczepanski 29 August 2018 Jennie Buchanan 4 September 2018

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Ethos Urban Pty Ltd
ABN 13 615 087 931.
www.ethosurban.com
173 Sussex Street, Sydney
NSW 2000 t 61 2 9956 6952

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Lidcombe Church Property Pty Ltd. It is submitted to Cumberland Council (the Council) in support of a development application (DA) Council for four residential flat buildings at 2-36 Church Street, Lidcombe.

Clause 4.6 of *Auburn Local Environmental Plan 2010* (LEP 2010) enables Cumberland Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the development standard for height of buildings under clause 4.3 of LEP 2010, and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 5 September 2018.

This clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the height development standard, the proposed development:

- is consistent with the objectives of both height of buildings development standard and the R4 High Density Residential zone;
- has an appropriate built form response to the streetscape and surrounding development and results in little to no additional impact;
- delivers additional social housing, in line with the FSR bonus afforded by State Environmental Planning Policy (Affordable Rental Housing) 2009;
- delivers a variety of housing types in proximity to Lidcombe town centre and railway station, in line with the directions and objectives contained in *A Metropolis of Three Cities* and the District Plan.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of LEP 2010.

2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of LEP 2010. Clause 4.3 provides 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.”

Figure 1 shows the building locations relative to the site.



Figure 1 Building locations

Source: COX

The maximum building heights for the site are shown on the Height of Buildings Map in LEP 2010 (extracted in Figure 2).

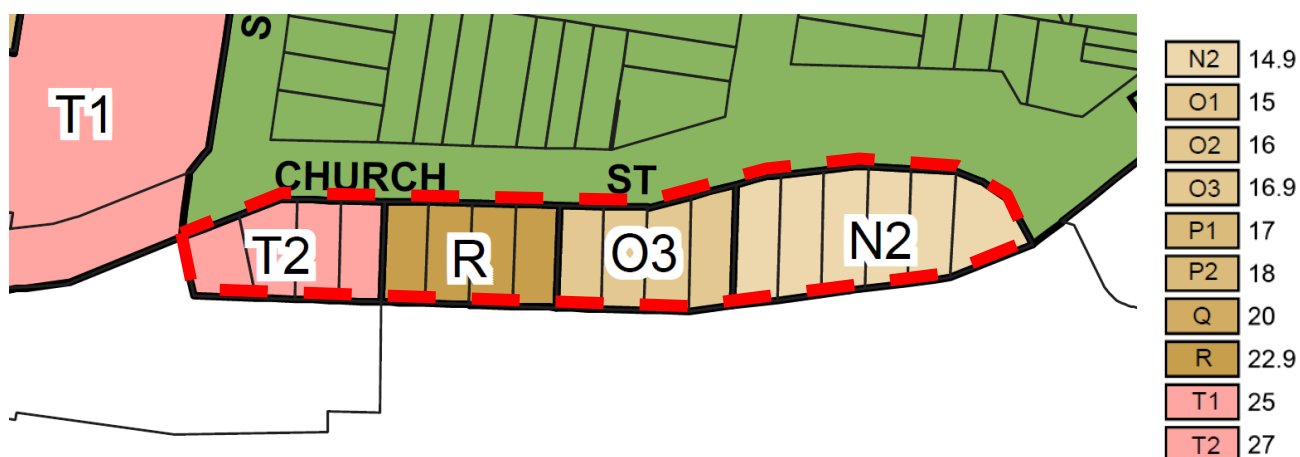


Figure 2 Maximum building height under LEP 2010 (site shown in red)

Source: Auburn Local Environmental Plan 2010

Table 1 shows the maximum heights by building and the extent of the variation to the height of buildings development standard.

Table 1 Height variation by building

Lot	Building	LEP 2010 Height	Development Height	Maximum Variation
1-6	Building A/B	14.9 m	12.4-17.7 m	2.8 m
7-10	Building B	16.9 m	19.2-21.9 m	5.0 m
11-14	Building C	22.9 m	28.4-31.9 m	9.0 m
15-18	Building D	27.0 m	25.4-28.1 m	1.1 m

The following elevations show the buildings against the LEP height plane.

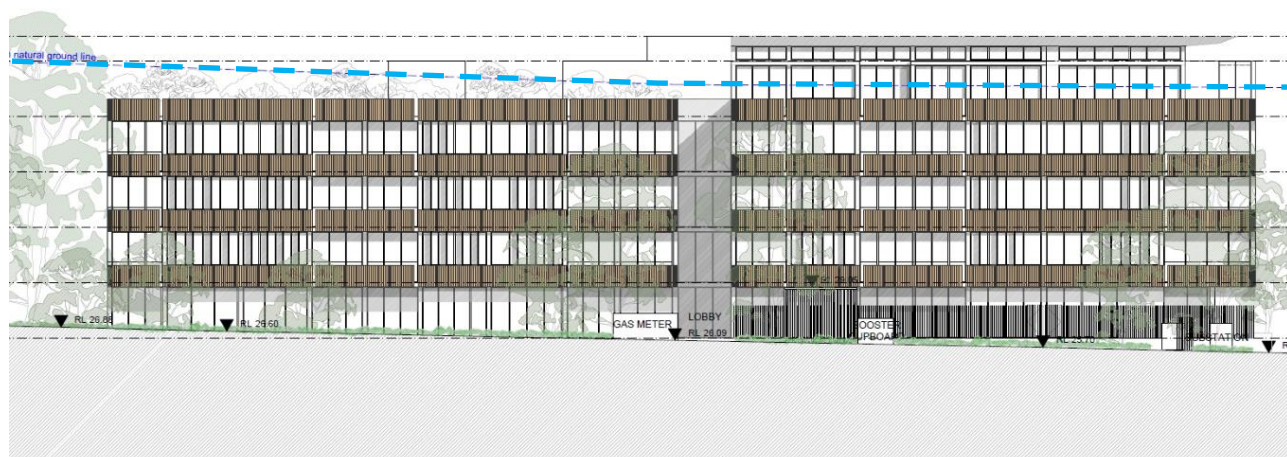


Figure 3 Building A – Elevation with 14.9 m height plane



Figure 4 Building B – Elevation with 16.9 m height plane



Figure 5 Building C – Elevation with 22.9 m height plane



Figure 6 Building D – Elevation with 27 m height plane

Figure 7 shows a 3D representation of the building elements that contravene the LEP height plane.

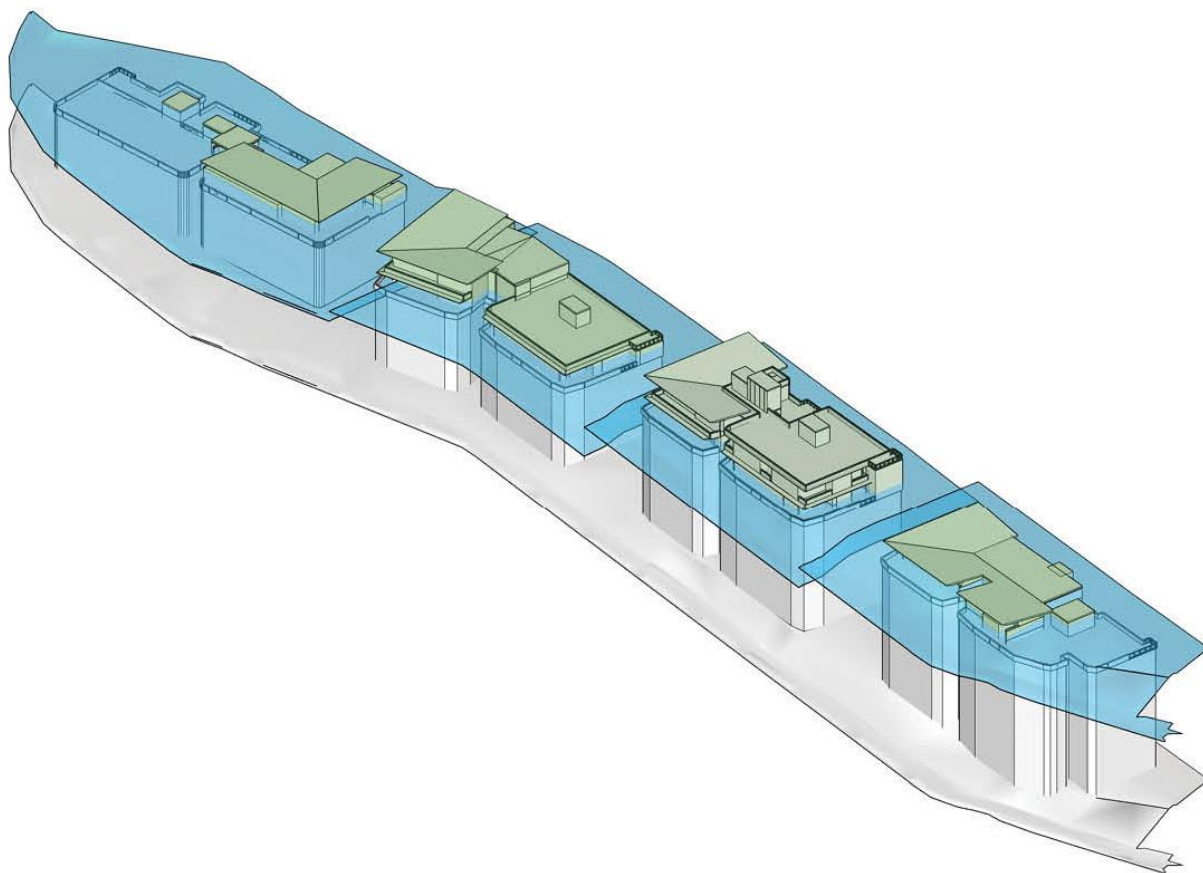


Figure 7 3D representation of height plane

It is noted that:

- only part of Buildings A and D are built to the maximum heights as described in **Table 1**
- for all buildings, approximately half of the building footprint is occupied by landscaped rooftop communal spaces;
- for each building, the floors above the height plane are set back by 2 m; and
- for Building C, the maximum height of 31.9 m represents the lift overrun; the predominant height of the building is lower, at 28.4 m.

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of LEP 2010 provides that:

4.6 Exceptions to development standards

- (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.*

Further, clause 4.6(4)(a) of LEP 2010 provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

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

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of LEP 2010, with respect to the height of buildings development standard, are each addressed below, including with regard to these decisions.

3.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of LEP 2010 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request. The five methods outlined in *Wehbe* include:

The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).

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 (**Fourth Method**).

The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of particular assistance in this matter is the First Method. This is addressed in **Section 3.1.1**.

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

The objectives of the development standard contained in clause 4.3 of LEP 2010 are:

- 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.

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

Under the existing height controls, heights of 4-9 storeys could be achieved if the buildings were to comply with the height of buildings development standard. To determine whether the proposed building heights are acceptable, the existing building height control is taken to represent a baseline for an "appropriate development density".

The question is therefore: *do the non-compliant components of the building represent a development density that is not appropriate?*

In *Veloshin v Randwick Council [2007] NSWLEC 428*, Roseth SC established a planning principle around assessment of height and bulk. This planning principle is considered appropriate in this instance, given height and bulk are the relevant drivers of development density.

The questions asked by Roseth SC that are most relevant to the proposed development are as follows:

1. Are the impacts consistent with impacts that may be reasonably expected under the controls?
2. How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?
3. Is the proposal consistent with the bulk and character intended by the planning controls?

In relation to the first question, the key issue is whether the additional massing above the height limit creates any significant additional impacts that would not be present if the development were to comply. In this regard, it is noted that the development still graduates from four storeys to nine storeys across the length of the site – the interfaces at the easternmost and westernmost extent of the site remain the same. Any additional overshadowing would also fall on the railway corridor. As such, the additional massing does not result in any significant additional adverse impacts. Environmental impacts are discussed further in **Section 3.2**.

In relation to the second question, the proposed development does not fundamentally depart from the desired bulk and scale under the relevant controls. The development is compliant on the eastern and western frontages of the site, and maintains an appropriate relationship with development to the west. The buildings will continue to be read as multi-storey residential buildings with graduated height plane.

In relation to the third question, it is noted that the intention of the zoning and density controls is to create a high-density residential environment in close proximity to transport nodes. The density proposed is commensurate with the site's proximity to Lidcombe Station and town centre, and would not create a bulk or character inconsistent with that envisaged by the applicable zoning or density controls.

Overall, the proposed building heights are considered to maintain an appropriate development density given the expected scale of development under the controls and the relationship with surrounding development. The additional height elements do not result in a significant difference in how the buildings will be read, nor do they produce any significant adverse impacts. Objective (a) is therefore achieved despite non-compliance with the standard.

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

In *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*, Roseth SC established a planning principle around compatibility in the urban environment. The planning principle poses two questions:

1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
2. Is the proposal's appearance in harmony with the buildings around it and the character of the street?

In relation to the first question, the proposal does not overshadow, isolate or otherwise impact any surrounding development. The site is contained on its own block and is bounded on all sides by either the rail corridor or Church Street. The site does not suffer from any critical interface issues that would preclude additional height. The site's unique characteristics lend themselves to increased density with minimal adverse impacts. The physical impacts of the additional height are therefore negligible and acceptable.

In relation to the second question, it is first noted that the western end of the site remains consistent with the height of the existing residential building diagonally opposite, to the northwest. A photo of this building is shown at **Figure 8**. As shown, the building is eight storeys in height, with a parapet on the corner, and an elevated ground floor. This is generally consistent with the height of the proposed Building D, which is nine storeys at the western edge.



Figure 8 81 Church Street, Lidcombe – northwest of subject site

Renders showing the streetscape views of the proposed buildings are shown at **Figure 9** and **Figure 10**. The non-compliant components of the development are outlined in the second image of each view.

The non-compliant levels have been designed to minimise bulk and scale impacts when viewed from Church Street and the surrounding areas. Specifically, the design incorporates the following mitigation measures:

- The upper levels have been set back by 2 m to reduce the visibility of the upper levels from the public domain.
- The upper levels are visually recessive and have been differentiated from the lower parts of the building with darker materiality.
- Thin roof structures top off the building and provide a lightweight and non-intrusive architectural 'cap'.



Figure 9 Render of proposed Buildings D and C, viewed from west (non-compliant components outlined in second image)

The most sensitive interface is arguably the interface with the R3 Medium Density Residential zone on the northern side of Church Street. The height limit to the north is 9 m, and existing development generally consists of detached dwellings and townhouses.

In relation to the development's interface to the north, the following points are made:

- The existing height limits already permit buildings with heights ranging from 4-9 storeys. The proposed variation to the height limit does not significantly change the perceived scale of the development when compared to a

compliant development. The upper levels have also been set back by two metres to mitigate any visual impact from the increased height.

- The development will provide significant street tree planting and planting on-site. This will serve to screen the development when viewed from the north or along the street, while also creating a human scale for pedestrians and motorists.
- The development is separated from the R3-zoned areas to the north by a 20-metre road reservation. The proposed development is also set back by 6-8 metres from Church Street, with an additional 2 metre setback for the upper levels. The separation between the proposed development and existing and future development to the north is therefore in excess of 26 metres, which is considered to be sufficient as a buffer and transition.
- Due to the half levels and the ability to take lifts to a rooftop space, the height variation has allowed for landscaped rooftop communal open spaces to be provided (see **Figure 11**). These rooftop spaces will support significant planting and will add greenery at the upper levels of each building, offsetting the built form along the street.



Figure 10 Render of proposed Buildings A and B, viewed from north



Figure 11 Section through Building D rooftop terrace

It is also noted that the site is located close to Lidcombe Station and town centre. The character of Lidcombe is due to change as it gradually transitions to a high-density, transport-oriented centre. In 2016, Cumberland Council released the *Draft Auburn and Lidcombe Town Centres Strategy*. This strategy was prepared “in recognition that Auburn and Lidcombe Town Centres are at a critical transition point”.

Lidcombe is also within the Greater Parramatta and Olympic Peninsula – a rapidly growing and changing region that will support significant residential and employment growth over the coming years.

Given the site and the areas to the north are well-within 800 metres of Lidcombe Station, it is expected that development will occur and the area will transition in character from its current scale to a high-density residential precinct supported by Lidcombe Station, which is currently one of the best-connected stations outside of the Sydney CBD.

Based on the above, the site is considered to be compatible with the character of the locality – both existing and future. Objective (b) is therefore achieved despite non-compliance with the standard.

3.1.2 Provision of social housing

As discussed in detail below in **Section 3.2.1**, the height non-compliance is a direct result of additional GFA provided for by the FSR bonus under the ARHSEPP. The overall GFA of the development is compliant with the combined GFA generated by the LEP and the ARHSEPP.

Compliance with the height control is considered unreasonable on this basis, as it would prevent the ARHSEPP FSR bonus from being achieved and would reduce the amount of social housing able to be provided.

3.1.3 Conclusion on clause 4.6(3)(a)

Compliance with the development standard is considered unreasonable or unnecessary in the circumstances of the case, as:

- the FSR of each building complies with the FSR generated by the LEP and the ARHSEPP bonus;
- the additional height is required to accommodate the ARHSEPP FSR bonus and facilitate the delivery of social housing; and
- the aims of cl. 4.3 (height of buildings) in LEP 2010 can be achieved notwithstanding the non-compliance, as:
 - the site continues to be consistent with the high-density residential character envisaged by the R4 High Density Residential zone and the site's proximity to public transport and the town centre;
 - the proposed heights maintain compliant interfaces on the eastern and western ends of the site;

- the additional height does not substantially change how the buildings will be read in the context of the overall development and the heights envisaged under the LEP; and
- the development will be screened by substantial street tree planting and will incorporate significant planting on the proposed rooftop communal open spaces.

3.2 **Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard**

3.2.1 **Ground 1: Consistency with aims and FSR bonus under ARHSEPP**

The key driver behind the additional height is the development's eligibility to achieve additional floor space under Division 1 of the ARHSEPP. This FSR bonus is available to developments that provide affordable housing, and is designed as an incentive to facilitate the effective delivery of new affordable rental housing.

Social housing and Land and Housing Corporation

The NSW Land and Housing Corporation (LAHC) is a Public Trading Enterprise that was established under the *Housing Act 2001*. LAHC operates under the Department of Family and Community Services, and is responsible for the management of the NSW Government's social housing portfolio, which comprises some 130,000 properties.

Social housing is primarily Government-owned accommodation that provides for individuals and families who are unable to access suitable accommodation in the private rental market. On the spectrum of housing situations, social housing caters to low- and very low-income households, which typically comprise some of the most vulnerable members of society. These cohorts include people in poor health (mental and physical) or escaping violent or abusive situations. As of June 2014, there were approximately 60,000 approved applicants on the social housing waiting list.

Communities Plus

LAHC is a self-funding government agency that has historically funded the maintenance and provision of social housing through property sales (e.g. Millers Point) and receipt of rental income from tenants. In 2015, LAHC launched the Communities Plus program – a development program designed to deliver 23,000 new and replacement social housing dwellings through redevelopment of existing land.

Development delivered under Communities Plus is mixed-tenure – that is, a mix of both social and market housing. This mix serves two purposes: to offset the cost of delivering the new social housing, and to avoid concentrating large amounts of social housing.

2-36 Church Street is part of Communities Plus Neighbourhood Renewal Release 3 (<https://www.communitiesplus.com.au/release-three/overview>). As part of the release, Billbergia tendered for the site and is now partnering with LAHC to deliver 50 new social housing dwellings, which are contained in Building A. These dwellings will be managed by Evolve Housing, a Community Housing Provider (CHP). These social housing dwellings are critical social infrastructure and will deliver a significant public benefit by housing people who are unable to access accommodation on the private market.

ARHSEPP FSR bonus

Under cl. 13 of the ARHSEPP, development to which the Division applies is eligible for additional FSR if the percentage of the gross floor area of the development used for affordable housing is at least 20 per cent.

Under cl. 6 of the ARHSEPP, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.

As such, the development is eligible for the full FSR bonus under cl. 13, being 0.5:1 across Lots 1-14, and 0.52:1 across Lots 15-18. Calculation of gross floor area is discussed further in **Section 5.1** of the Statement of Environmental Effects and in the legal advice prepared by Holding Redlich at **Appendix C**.

The non-compliant elements of the development accommodate the additional GFA generated by the ARHSEPP FSR bonus.

The additional market housing generates a higher land value for LAHC and allows Billbergia to deliver additional social housing dwellings as part of the commercial arrangement for the development. As such, four additional social housing units will be provided as a direct result of the ARHSEPP bonus and the associated height variation. In this way, the height variation directly contributes to the provision of critical social infrastructure and public benefit, in the form of new social housing.

Consistency with aims of ARHSEPP

The aims of the ARHSEPP are as follows:

- a) to provide a consistent planning regime for the provision of affordable rental housing,
- b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,
- c) to facilitate the retention and mitigate the loss of existing affordable rental housing,
- d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,
- e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,
- f) to support local business centres by providing affordable rental housing for workers close to places of work,
- g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.

The height non-compliance is consistent with the aims of the ARHSEPP, given:

- the additional height facilitates the provision of five additional social housing dwellings by allowing the floor space bonus to be accommodated in an acceptable manner;
- the additional social housing will provide accommodation for low- and very-low income households, thereby assisting members of society that are most in need;
- the additional social housing is provided close to a major railway station and town centre, as well as numerous opportunities for employment, allowing for tenants to support the local business centre; and
- all market housing provided as a result of the height non-compliance directly contributes to the provision of additional social housing by offsetting the cost of delivery of the social housing; that is, the additional social housing would not be able to be provided without the additional market housing.

Demand for social housing within allocation zone

The social housing waiting list is administered by allocation zone. The site is within the GW02 Auburn Granville allocation zone (see **Figure 12**).

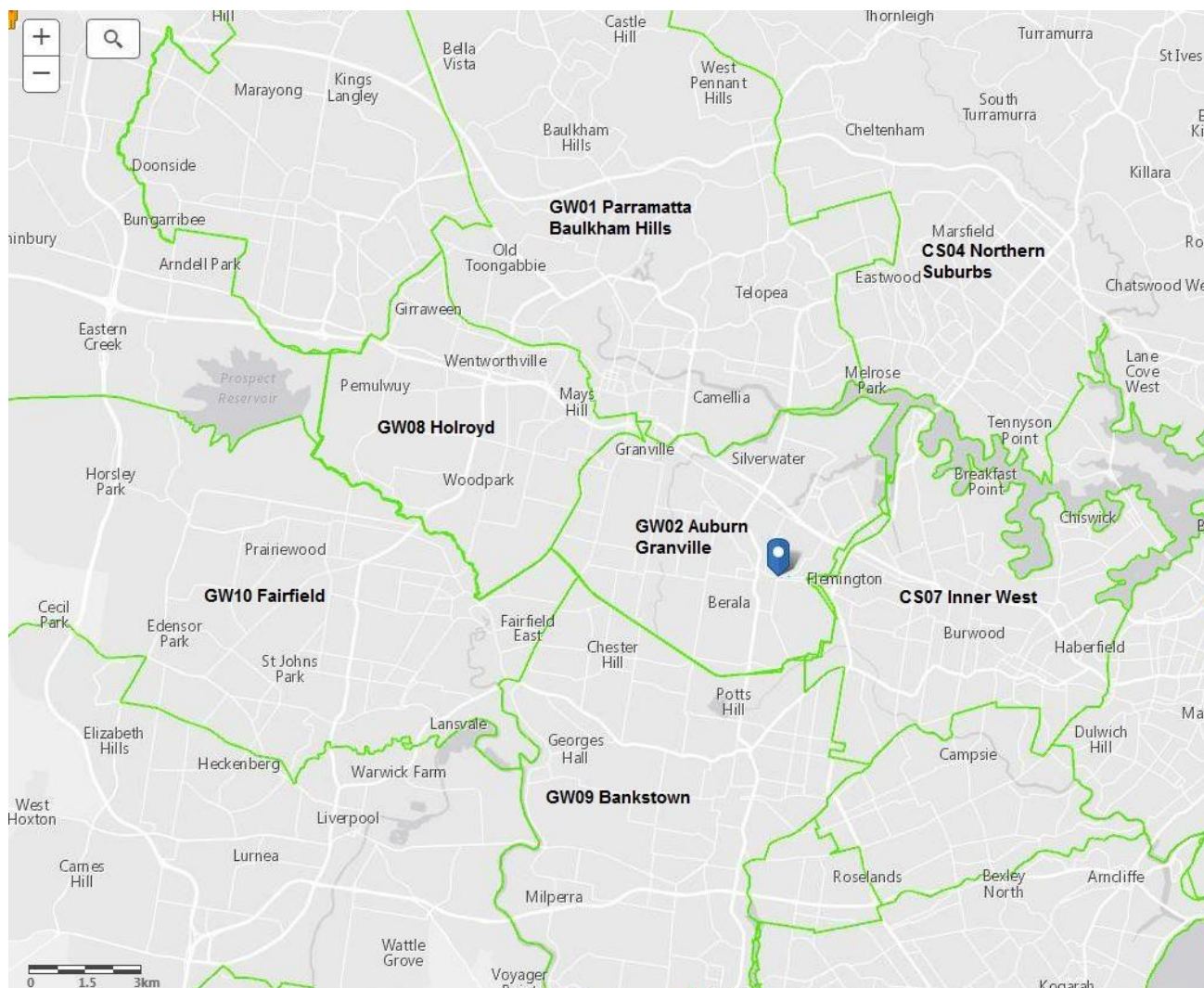


Figure 12 Allocation zones

Source: Land and Housing Corporation

As of 30 June 2018, within the GW02 Auburn Granville allocation zone:

- 173 households are awaiting a studio dwelling (expected waiting time 5-10 years);
- 96 households are awaiting a one-bedroom dwelling (expected waiting time 10+ years);
- 309 households are awaiting a two-bedroom dwelling (expected waiting time 10+ years); and
- 386 households are awaiting a three-bedroom dwelling or larger (expected waiting time 10+ years).

There is clearly significant demand for social housing dwellings within the allocation zone. This is compounded by other requirements that tenants may have – for example, an accessible dwelling. The need for smaller, more accessible dwellings is also increasing given the ageing demographic and the ongoing reduction in average household size.

Additionally, LAHC's portfolio is heavily geared towards larger 3+ bedroom dwellings. This is a result of significant amounts of larger social housing dwellings being constructed in the 1960s and 1970s. These dwellings catered to the larger number of families in the social housing system at the time. This has resulted in a significant amount of 'underoccupancy' in the social housing portfolio – that is, tenants occupying dwellings that are too large to meet their needs.

The proposed dwellings will directly accommodate tenants from the waiting list, and will assist in reducing underoccupancy across the portfolio by providing dwellings that better cater to the needs of today's social housing demographic.

Legal precedents

Holding Redlich have provided a number of legal precedents (see **Appendix C**) where height has been exceeded to accommodate an FSR bonus under the ARHSEPP.

In *WY Constructions Pty Ltd v Canterbury-Bankstown Council [2017] NSWLEC 1671*, Dixon C held that “the variation will result in an improved environmental outcome of maximising development pursuant to SEPP ARH and in the R4 High Density Residential zone on an infill site that is well located to accommodate that development.”

In *Valen Properties Pty Ltd ATF Valen Properties Trust v Hurstville City Council [2015] NSWLEC 1045*, Fakes C held that the provision of affordable housing was a relevant environmental planning ground for the purpose of satisfying clause 4.6(3)(b) of the LEP.

Conclusion

The additional height is a direct result of the need to accommodate the FSR bonus achieved under Division 1 of the ARHSEPP. The FSR of the development complies with the combined maximum FSR under the LEP and ARHSEPP.

The FSR bonus provides a significant public benefit by delivering critical social infrastructure in the form of additional social housing. The additional social housing will accommodate households in urgent need of housing, and will assist in reducing the significant waiting list and underoccupancy in the LAHC portfolio. As such, the height non-compliance is necessary in achieving consistency with the aims of the ARHSEPP.

3.2.2 Ground 2: Compliance with the height limit would result in poorer amenity and built form outcomes

In the pre-DA meeting held with Cumberland Council on 6 August 2018, Council commented that the additional GFA generated by the ARHSEPP could potentially be accommodated below the height limit.

COX has investigated the possibility of this and has determined that a development compliant with the height limit would result in a poorer overall outcome, both in terms of residential amenity and built form.

Figure 13 shows the likely built form outcome with a compliant building height. As shown, the buildings floor plates on the lower levels would become significantly larger. Although this would comply with ADG building separation, the resultant building lengths and larger floor plates would create a dominant and relentless street wall, and would substantially reduce the amount of space at ground level available for landscaping and communal open space.

It is also noted that the increased building lengths would potentially reduce residential amenity by increasing floor plate sizes, which could lead to suboptimal outcomes, such as non-compliant cross-ventilation, too many units per lift core, and apartments with snorkel bedrooms.

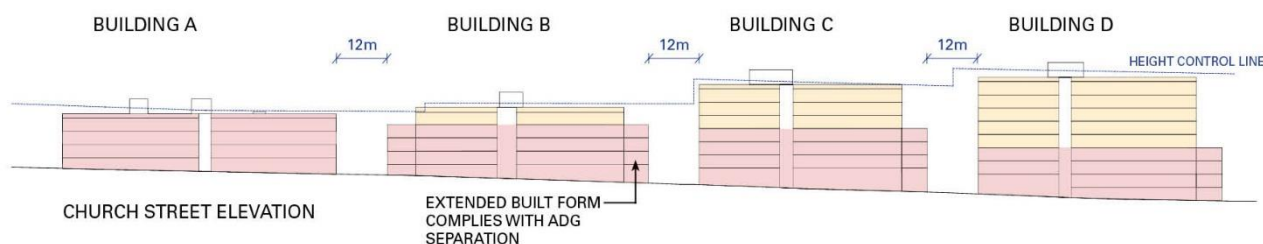


Figure 13 Likely building forms with compliant height

Given the length of the site and its narrowness from north to south, COX has opted to accommodate the additional GFA above the height limit, as shown in **Figure 14**.

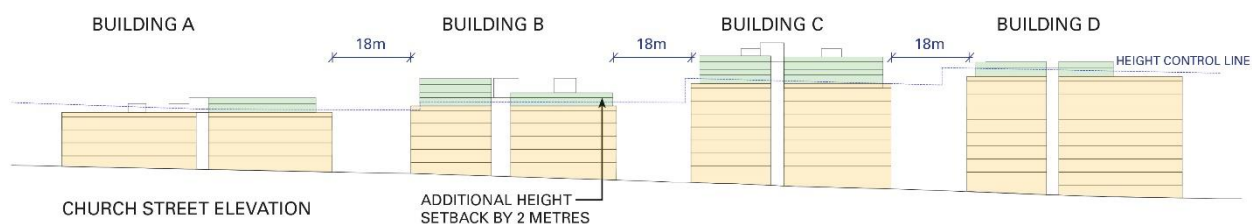


Figure 14 Building forms with non-compliant height

This solution is considered to be a superior solution, as:

- any additional overshadowing would fall on the railway corridor;
- ground floor area for communal open space, landscaping and deep soil is maintained;
- smaller floor plates result in larger gaps between the buildings, resulting in a less dominant street wall characteristic;
- smaller floor plates result in greater amenity for apartments by increasing the number of corners per unit and reducing the number of units per floor; and
- the potential for additional landscaping at ground floor significantly outweighs the negligible drawbacks of the additional height.

The built form resulting from this strategy is shown in the photomontage at **Figure 15**. As shown, the articulated building forms, combined with increased building separation, result in a superior streetscape when viewed from the public domain.



Figure 15 Photomontage of proposed development showing building separation**3.2.3 Ground 2: Height non-compliance results in little to no additional impact**

The site's unique geometry and location mean that the additional height results in little to no additional impact on the surrounding area:

- **Site isolation:** The site is located on its own block, and is bounded by Church Street to the north and the rail corridor to the south. The site has no direct interfaces with other properties (other than with Railcorp land to the west) and therefore does not isolate or otherwise affect the development potential of surrounding properties.
- **Views:** The proposed additional height does not result in any view loss for any surrounding residences. The nearest building likely to be affected is 81 Church Street, to the northwest of the site. It is noted that the part of the building closest to 81 Church Street is compliant with the height limit and therefore results in no additional view loss to the building.
- **Overshadowing:** Additional overshadowing cast by the upper levels of the development falls primarily on the railway corridor, and will not adversely affect any of the surrounding properties. **Figure 16** shows the development's overshadowing impact at 9 am and 3 pm on June 21.



① JUNE 21 - 9:00 A.M.
NTS



③ JUNE 21 - 3:00 P.M.
NTS

Figure 16 Overshadowing at 9 am and 3 pm on June 21

3.2.4 Conclusion on clause 4.6(3)(b)

It is considered that there are sufficient environmental planning grounds to justify contravention of the development standard, in the basis that:

- the development is eligible for an FSR bonus under the ARHSEPP for providing affordable housing (in the form of social housing); the variation to the height limit is needed to accommodate this additional density;
- the additional dwellings provided through the FSR bonus will result in the provision of an additional four social housing dwellings, which will directly address the waiting list and underoccupancy across the LAHC portfolio;
- accommodating the FSR bonus within the height limit would result in poorer outcomes, both in terms of residential amenity and built form; and
- the additional height results in little to no additional impact to surrounding areas, in terms of overshadowing, site isolation or view loss.

3.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

3.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in section 3.1.2 of this report.

3.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the R4 High Density Zone, as demonstrated below.

Objective (a): To provide for the housing needs of the community within a high density residential environment.

The proposed development will provide a range of social and market housing (including adaptable dwellings) that meet the needs of the community and future social housing tenants. The market dwellings will cater to demand in the local area, with specific regard to the development's proximity to the town centre and railway station. The social dwellings cater to social housing need within the allocation zone, and will respond to demand for various housing types based on the waiting list.

The dwellings will be provided in buildings that have a high level of residential amenity and will exhibit design excellence. The dwellings provide a range of communal open spaces, both at ground level and rooftop, allowing residents to recreate within a high-density residential environment.

Objective (b): To provide a variety of housing types within a high density residential environment.

The proposed development provides diversity, both in tenure (incorporating market and social housing) and typology. The proposed dwelling mix includes a significant number of three-bedroom dwellings (20% of total), as well as smaller one- and two-bedroom dwellings. A variety of unit sizes have also been provided to cater to different price points and needs. In addition, the ground floor provides for two- and three-bedroom units with larger terraces and discrete access to provide for families or other demographics that may require ground floor access and additional space.

Objective (c): To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposed development provides residential accommodation in proximity to the Lidcombe town centre, and will support the growth and development of local businesses and services.

Objective (d): To encourage high density residential development in close proximity to bus service nodes and railway stations.

The proposed development is within 400 metres of Lidcombe Station – one of Sydney's most connected railway stations outside of the Sydney CBD. The development is easily accessible with a short walk along Church Street.

3.3.3 Overall public interest

The provision of additional social housing is strongly in the public interest, as it will assist in relieving housing stress for the most vulnerable members of society. Social housing is critical social infrastructure that is required to support those who cannot access accommodation in the private rental market.

3.3.4 Conclusion on clause 4.5(4)(a)(ii)

The proposed development is in the public interest, as it:

- is consistent with the objectives of the height of buildings development standard, as discussed in **Section 3.1.1**;
- is consistent with the objectives of the R4 High Density Residential zone, as the development provides a range of housing types, both in terms of tenure and typology, in a location close to a major railway station and town centre; and
- provides additional social housing that is required to support those who cannot access accommodation in the private rental market.

3.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

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

The variation of the height of buildings development standard does not raise any matter of significance for State or regional planning.

The site is within the Central City District, which comprises Blacktown, Cumberland, Parramatta and The Hills LGAs. The Central City District is home to Parramatta, one of the three metropolitan centres identified in the Greater Sydney Region Plan (*A Metropolis of Three Cities*).

The site is located approximately 400 metres east of Lidcombe Station. The site's location in relation to Lidcombe Station is shown in **Figure 17**. Google Maps estimates the walk to be approximately 5 minutes from the western end of the site, or 8 minutes from the eastern end of the site.



Figure 17 Site context

Source: COX

Lidcombe Station is one of the most significant transport hubs in the Sydney Trains network (see **Figure 18**). The station accommodates trains from four of the eight train lines, including:

- T1 Western Line: Access to Sydney CBD, Parramatta and Penrith.
- T2 Inner West and Leppington Line: Access to Sydney CBD, Parramatta, Liverpool and Leppington.
- T3 Bankstown Line: Access to Sydney CBD, Bankstown and Liverpool.
- T7 Olympic Park Line: Access to Olympic Park.



Figure 18 Lidcombe's relationship to broader railway network

Source: Sydney Trains Network Map

From Lidcombe Station, the following travel times can be achieved during morning and afternoon peak hours:

- Central Station: 23 minutes
- Parramatta: 7 minutes
- Liverpool: 30 minutes
- Olympic Park: 5 minutes

Planning Priority C9 of the Central City District Plan is:

Delivering integrated land use and transport planning and a 30-minute city.

Planning Priority C5 of the Central City District Plan is:

Providing housing supply, choice and affordability, with access to jobs, services and public transport.

As a subset to these Planning Priorities, the District Plan provides locational criteria for urban renewal. The development's consistency with these criteria is discussed in **Table 2**.

Table 2 Locational criteria for urban renewal

Criteria	Proposal
accessibility to jobs, noting that over half of Greater Sydney's jobs are generated in metropolitan and strategic centres	Satisfied The proposed development is within 30 minutes of the Sydney CBD, Parramatta CBD, Liverpool CBD, and Olympic Park, as well as a number of other strategic centres.
catchment areas within walking distance (10 minutes) of centres with rail, light rail or regional bus transport	Satisfied The site is located 400 metres from Lidcombe Station. The site is 5-8 minutes walking distance from Lidcombe Station, according to Google Maps.
areas of high social housing concentration where there is good access to services, transport and jobs	Satisfied The site is owned by Land and Housing Corporation and is part of the Communities Plus mixed-tenure social housing development program. The development will provide 50 social housing dwellings with good access to services, transport and jobs.

Source: Central City District Plan

Based on the above, the site has excellent access to services, transport and jobs, and is demonstrably suitable for high-density development, in line with the directions and objectives contained in *A Metropolis of Three Cities* and the District Plan.

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

As discussed above, there is no public benefit in maintaining the development standard in this instance, as:

- the additional height has little to no impact on surrounding properties; therefore there would be little to no reduction in impact if the development standard were maintained;
- as discussed in **Section 3.2.2**, compliance with the height limit would result in poorer built form and residential amenity outcomes; and
- any reduction in overall GFA would result in fewer social housing dwellings, and a diminished ability to assist in reducing the social housing waiting list.

3.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

Nil.

4.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard, contained in clause 4.3 of Auburn LEP 2010, is unreasonable and unnecessary in the circumstances of the case, and that the justification is well-founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height of buildings development standard, the proposed development:

- is consistent with the objectives of both height of buildings development standard and the R4 High Density Residential zone;
- has an appropriate built form response to the streetscape and surrounding development and results in little to no additional impact;
- delivers additional social housing, in line with the FSR bonus afforded by State Environmental Planning Policy (Affordable Rental Housing) 2009;
- delivers a variety of housing types in proximity to Lidcombe town centre and railway station, in line with the directions and objectives contained in *A Metropolis of Three Cities* and the District Plan.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of LEP 2010.

20 August 2019

218496

Hamish McNulty
General Manager
Cumberland Council
PO Box 42
Merrylands NSW 2160

Attention: William Attard, Principal Development Planner

Dear Mr McNulty

RE: Deferral of Determination - Sydney Central City Planning Panel Response

We refer to Council's letter of 31 July 2019 advising of additional matters to be addressed following the briefing of the Sydney Central City Planning Panel (SCCPP). This letter provides additional justification addressing the matters raised by the SCCPP.

The additional matters related to:

- exceedance of the Height of Buildings development standard; and
- character analysis and the Clause 4.7 Variation Statement.

The SCCPP specifically noted the following points:

- *Doubt about compatibility of proposal with purpose of height standard (i.e. ALEP Clause 4.3(1)(b));*
- *Concern that the tallest buildings are adjacent to the narrowest section of separation to R3 zone;*
- *Need to character test? Yes, would assist;*
- *Given the site is at a zone interface (from R4 to R3), careful consideration is needed about the relative scales of proposed and existing buildings;*
- *Recognition that additional social housing would be beneficial.*

Response

We note that the SCCPP's response focuses on the scale of the tallest building on the site (Building D) and its relationship with the lower-density areas to the north.

We firstly note that the existing planning controls already allow for a height that is significantly different to that of the R3-zoned areas to the north. Notably, the western part of the site has an existing height limit of 27m, an 18m difference from the R3-zoned areas to the north. As such, a compliant development would still result in a significant difference in scale when compared with the existing medium-density development to the north.

The existing height limits on and around the site are shown in **Figure 1**.

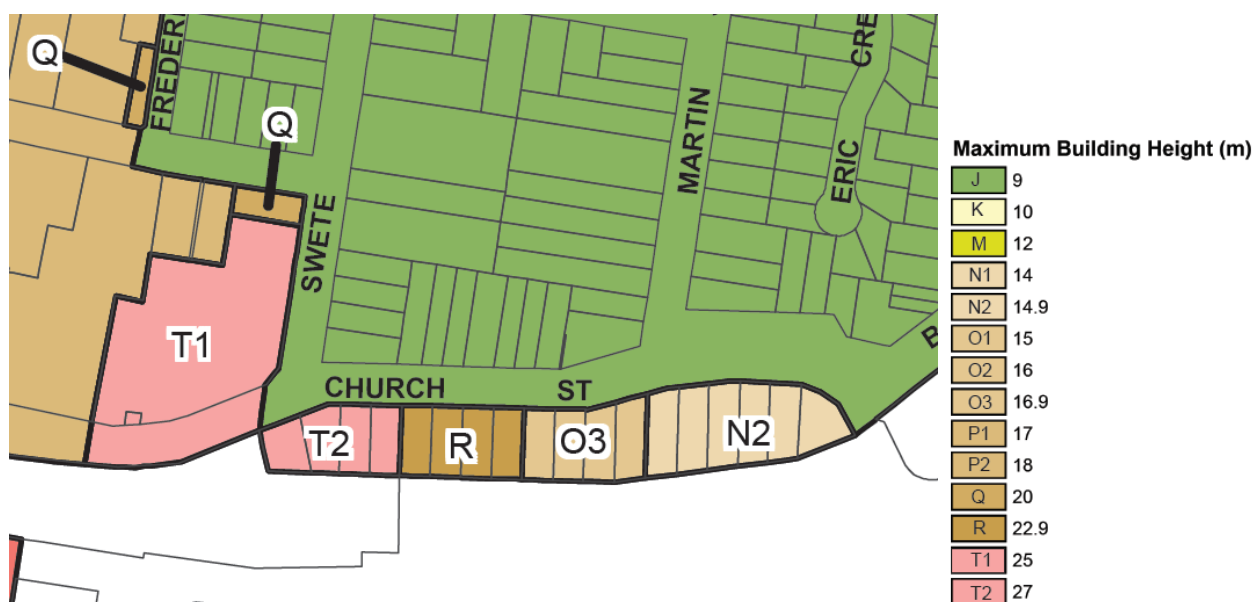


Figure 1 Maximum heights on and around the site

Therefore, Council has determined that the future desired character for the site is for a scale that relates more to the town centre to the west than the lower density areas to the north. In other words, the controls, as set by Council, already allow for a compliant development on the site to achieve a scale that is very different to the scale of the R3-zoned areas to the north.

In our view, the question is therefore not whether the development is compatible with the R3 zone to the north, but **whether the proposed variation fundamentally alters Council's future desired character for the site and surrounds.**

In this regard, we note the following:

- The proposed development has been designed to response to the height of the existing building to the west, which is subject to a maximum height of 25m, while providing the best transition possible to the north through the use of setbacks, architectural detailing and landscaping. In our view, this is the intention of the existing height control, which envisages the tallest building on the western part of the site.
- The westernmost building (Building D), which is located at the narrowest part of the site and is therefore closest to the R3-zoned land to the north, largely maintains a compliant height. Only recessive, lightweight roof elements are visible from street level, and these elements do not fundamentally change the perceived scale of the building. The design and height of this building serves to maintain Council's desired future character for the site and maintains the desired relationship with the existing building to the west. The non-compliant components of Building D are shown in **Figure 2**. Specific design elements include the following:
 - The upper levels have been set back by 2 m to reduce the visibility of the upper levels from the public domain.
 - The upper levels are visually recessive and have been differentiated from the lower parts of the building with darker materiality.
 - Thin roof structures top off the building and provide a lightweight and non-intrusive architectural 'cap'.



Figure 2 Non-compliant components of proposed development (Building D in foreground)

- The remainder of the site maintains the intent of the controls, which is to transition gradually from west to east, from 9 storeys down to 4 storeys.
- Given the site and the areas to the north are well-within 800 metres of Lidcombe Station, it is expected that development will occur and the area will transition in character from its current scale to a high-density residential precinct supported by Lidcombe Station, which is currently one of the best-connected stations outside of the Sydney CBD.

Further, as noted in the Clause 4.6 Variation Report submitted with the original DA, the following points are made in relation to the development's interface to the north:

- The upper levels of the proposed have been set back by two metres to mitigate any visual impact from the increased height.
- The development will provide significant street tree planting and planting on-site. This will serve to screen the development when viewed from the north or along the street, while also creating a human scale for pedestrians and motorists.
- The development is separated from the R3-zoned areas to the north by a 20-metre road reservation. The proposed development is also set back by 6-8 metres from Church Street, with an additional 2 metre setback for the upper levels. The separation between the proposed development and existing and future development to the north is therefore in excess of 26 metres, which is considered to be sufficient as a buffer and transition.
- Due to the half levels and the ability to take lifts to a rooftop space, the height variation has allowed for landscaped rooftop communal open spaces to be provided. These rooftop spaces will support significant planting and will add greenery at the upper levels of each building, offsetting the built form along the street.

In conclusion, we note that while the proposed development clearly has a very different scale to the existing medium-density development to the north, the proposed height variations do not fundamentally diverge from Council's future desired character for the site, as set by the existing controls. These controls already allow for buildings ranging in scale from 4 to 9 storeys.

As such, in our view, the proposed development is consistent with 4.3(1)(b) of ALEP, in that the proposed development continues to ensure that the height of buildings on the site is consistent with Council's vision of the

type of development it deems to be “compatible with the character of the locality”, bearing in mind that character can include both current and future desired character.

The other arguments, as put forward in the Clause 4.6 Variation Report, continue to be valid and should be read in conjunction with this supplementary response.

We trust this response provides the additional detail required to address the matters raised by the SCCPP. Should you have any questions, please contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'A' followed by a long horizontal line.

André Szczepanski
Principal
9409 4940
andre@ethosurban.com