

**CLAUSE 4.6 VARIATION TO CLAUSE 4.3 – HEIGHT OF BUILDINGS  
OF APPENDIX 6 – AREA 20 PRECINCT PLAN OF THE STATE ENVIRONMENTAL PLANNING  
POLICY (SYDNEY REGION GROWTH CENTRES) 2006**

## **1. Introduction**

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This submission seeks a variation to Clause 4.3 under Appendix 6 – Area 20 Precinct Plan of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (Sydney Region Growth Centres SEPP), which relates to building height.

This submission has been prepared with regards to a development application seeking demolition of existing buildings and the construction of a residential flat complex comprising four (4) x four (4) storey residential flat buildings for a total of 200 units with basement parking, associated landscaping and Torrens title subdivision at No. 105 Cudgegong Road, Rouse Hill.

As detailed in this written request for a variation to building height being a development standard under Appendix 6 of the Sydney Region Growth Centres SEPP, the proposed development meets the requirements prescribed under Clause 4.6 within Appendix 6 of the Sydney Region Growth Centres SEPP – Area 20 Precinct Plan 2011.

## **2. Site Background**

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The subject site is commonly known as 105 Cudgegong Road, Rouse Hill, and is legally referred to as Lot 80 of Deposited Plan 208203. The site is located on the western side of Cudgegong Road. The site is a rectangular shape, with a frontage of 72.045m to Cudgegong Road and a depth of 280.86m. The site measures 2.023ha in area.

In terms of its topography, the site falls to the north-east and south-west, and rises in the centre of the property.

Existing on the site is a two-storey brick dwelling. The site is accessed by a gravel driveway from Cudgegong Road. An overheard powerline transmission easement owned by Endeavour Energy exists on the property with a width of 30.48m. Refer to Figure 1 – Site Location Map.

Development in the area is largely characterised by similarly large lot rural residential lots. However, the subject site falls within the North West Growth Centre, a new land release area for the purposes of meeting Sydney's housing demands for the next two decades. As such, the area is increasingly the subject to new development applications. The Site Analysis Plan (Drawing No. A101) submitted within the architectural packages details the applications approved, with Council or at the Pre-DA stage in proximity to the site.

Specifically, the subject site is located within the Cudgegong Road Station (Area 20) Precinct. This precinct is centred on the North West Rail Link and rail station near Cudgegong Road and Schofields Road. The remainder of the precinct, dispersing from the railway station and central commercial area around it, is dedicated to housing and supporting infrastructure (i.e. schools and green space), as outlined in the Precinct Indicative Layout Plan.

The subject site has not been identified as an item of heritage significance, nor is it located within a conservation area. There are no heritage items in the immediate vicinity of the site.

The site has not been identified containing native vegetation to be protected, nor is the site identified as being flood prone. The site has been identified as bushfire prone land.

The easternmost portion of the subject site is identified within the Sydney Region Growth Centres SEPP's land reservation acquisition maps as being dedicated local open space, zoned RE1 Public Recreation.

With reference to the Indicative Layout Plan, the subject site will be located within 800m of the Cudgegong Train Station. Bus routes are planned along Cudgegong Road, ensuring that the subject site will be accessible via public transport in the future.

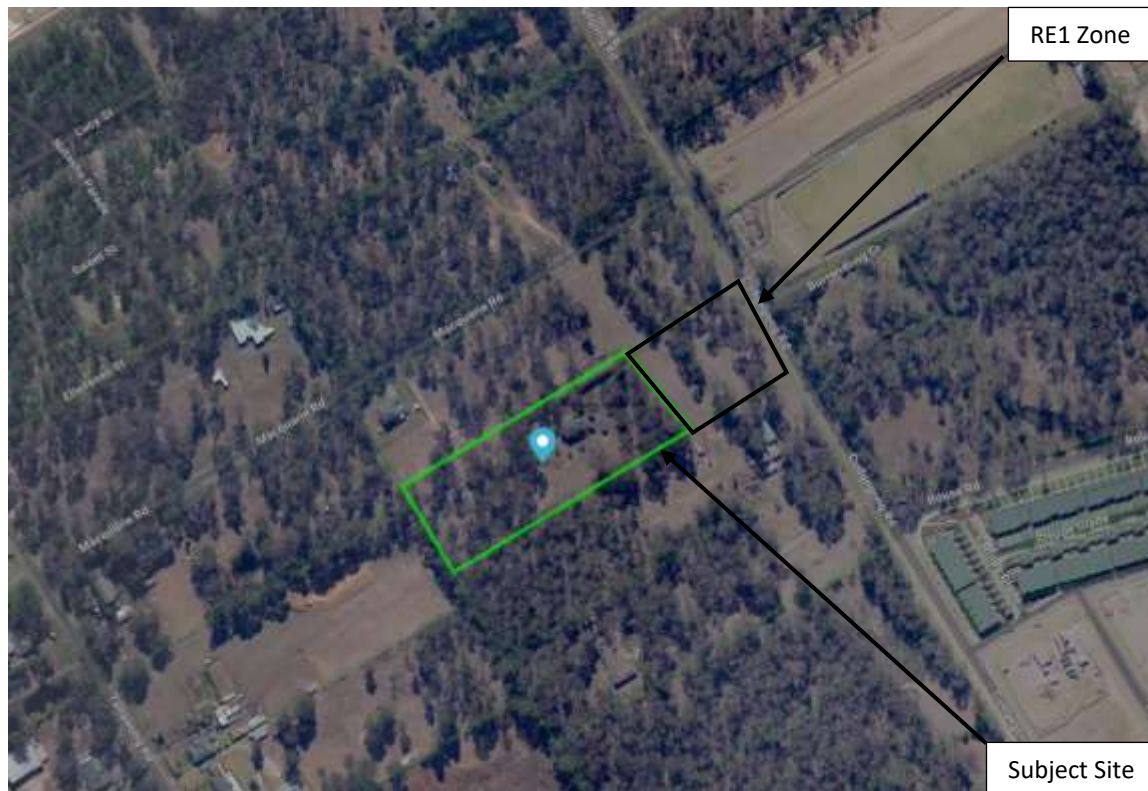


Figure 1 Site Location Map  
Source: SIX Maps

The subject site is zoned R3 Medium Density Residential and partly RE1 Public Recreation under the Sydney Region Growth Centres SEPP – Area 20 Precinct Plan 2011. Refer to Figure 2 below. The proposed residential flat buildings are permissible with consent in the zone.

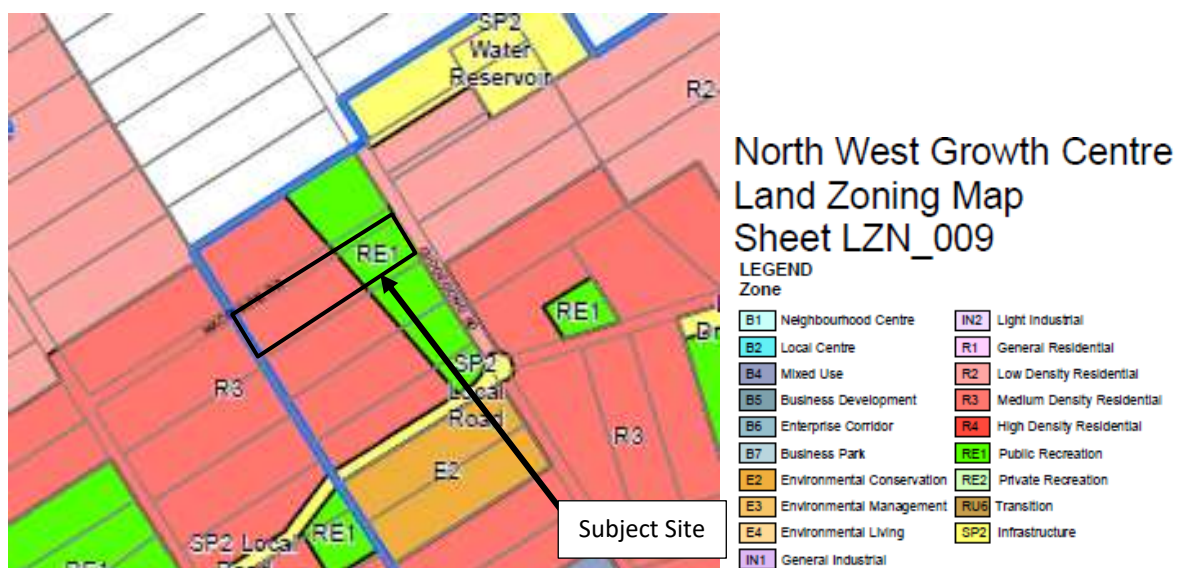


Figure 2 Land Zoning Map

### 3. Clause 4.6

This submission is made under Clause 4.6 within Appendix 6 of the Sydney Region Growth Centres SEPP – Exceptions to development standards. Clause 4.6 states the following:

#### ***“4.6 Exceptions to development standards***

- (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.*
- (2) Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (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.*
- (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 Director-General has been obtained.*
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
  - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** When this Precinct Plan was made it did not include any of these zones other than Zone E2 Environmental Conservation.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
  - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) clause 5.4."*

The use of Clause 4.6 to enable an exception to this development control is appropriate in this instance and the consent authority may be satisfied that all requirements of Clause 4.6 have been satisfied in terms of the merits of the proposed development and the content in this Clause 4.6 variation request report.

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

*"4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard."*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

"

- (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"*

This submission has been prepared having regard to the following guideline judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2)*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3)*
- *Micaul Holdings Pty v Randwick City Council [2015] NSWLEC 1386;*
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7; and*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*



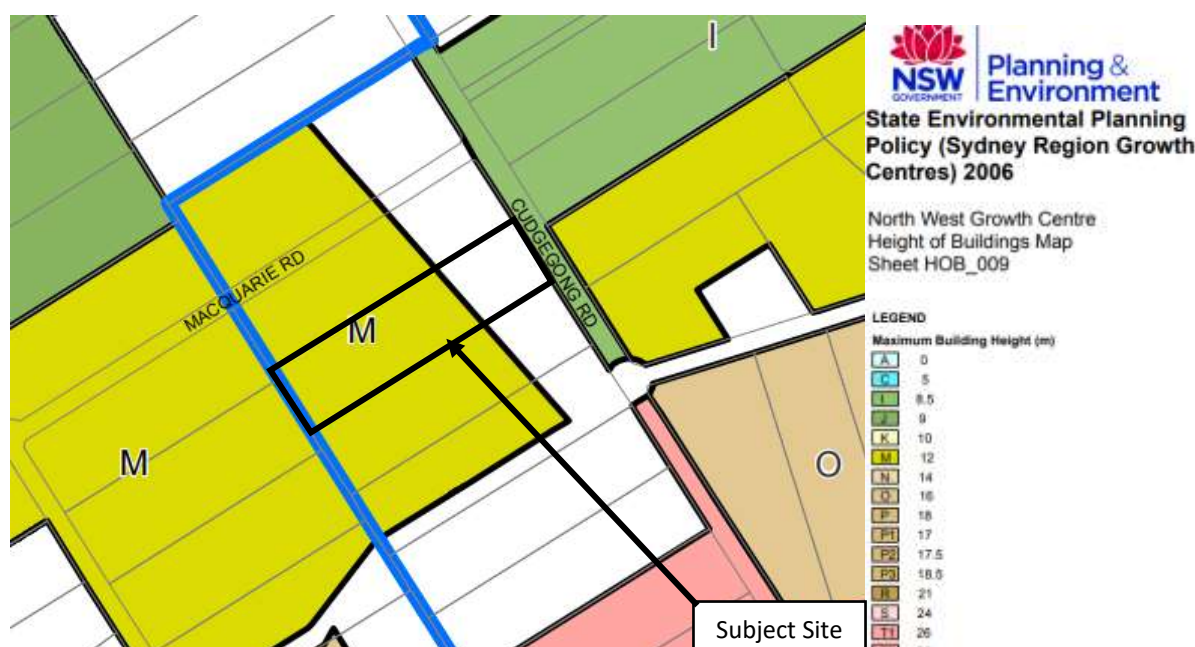
The Environmental Planning Instrument to which this variation relates to is Appendix 6 of the Sydney Region Growth Centres SEPP which relates to Area 20 Precinct Plan 2011.

The development standard to which this variation relates to is Clause 4.3 – Height of Buildings, which reads as follows:

- 1) *The objectives of this clause are as follows:*
  - (a) *to establish the maximum height of buildings on land within the Area 20 Precinct,*
  - (b) *to minimise the visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
  - (c) *to facilitate higher density development in and around commercial centres and major transport routes.*
- 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.*

The SEPP maps identify a maximum building height on the site of 12 metres. Refer to Figure 3.

**Figure 3: Height of Buildings Map**



Source: NSW Legislation, SEPP (Sydney Region Growth Centres) 2006

The maximum proposed height for Lot 1 is 14.4m and 15.1m for Lot 2.

A written justification is therefore required for the proposed variation to the height of buildings development standard, in accordance with Clause 4.6 of the Area 20 Precinct Plan 2011.

#### 4. Extent of Non-Compliance

As noted above, Clause 4.3 within Appendix 6 – Area 20 Precinct Plan 2011 of the Sydney Region Growth Centres SEPP states that a portion of the subject land is subject to a maximum building height of 12 metres.

Referring to the architectural plans submitted, it is noted that the maximum building height for Lot 1 is 14.4 metres and 15.1m for Lot 2, exceeding the maximum permitted by 2.4m and 3.1 metres respectively. A maximum variation of 25.8% is sought.

The variation sought varies across the four buildings across the two allotments. The specifics are detailed below.

#### Lot 1, Building A1

A variation to habitable floor area, the roof slab and parapet and lift overrun is sought.

A total of 419m<sup>2</sup> of habitable floor area protrudes into the height limit, representing 4.83% of the overall floor area.

The maximum height for roof slab is 13.3m, the roof parapet 13.6m and the lift overrun is 14.4m, being variations of 1.3m, 1.6m and 2.4m respectively. A total of 37.11% of the roof slab protrudes into the height limit.

#### Lot 1, Building A2

A variation to habitable gross floor area, roof slab and parapet and lift overrun is sought.

A total of 769m<sup>2</sup> of habitable floor area protrudes into the height limit, representing 8.86% of the overall floor area.

The maximum height for the roof slab is 13.6m, the roof parapet is 13.9m and the lift overrun is 14.4m, being variations of 1.6m, 1.9m and 2.4m respectively. A total of 57.65% of the roof slab protrudes into the height limit.

#### Lot 2, Building B1

A variation to habitable floor area, the roof slab and parapet and lift overrun is sought.

A total of 4m<sup>2</sup> of floor area protrudes above the height limit, representing 0.05% of the total gross floor area.

The maximum height for the roof slab is 12.2m, the roof parapet is 12.5m and the lift overrun is 12.9m, being variations of 200mm, 500mm and 900mm respectively. A total of 0.32% of the roof slab protrudes into the height limit.

#### Lot 2, Building B2

A variation is sought to habitable gross floor area, roof slab and parapet, lift overrun and staircase, and the communal open space and associated balustrade and structures.

A total of 170m<sup>2</sup> of floor area protrudes above the height limit, representing 2.12% of the total gross floor area.

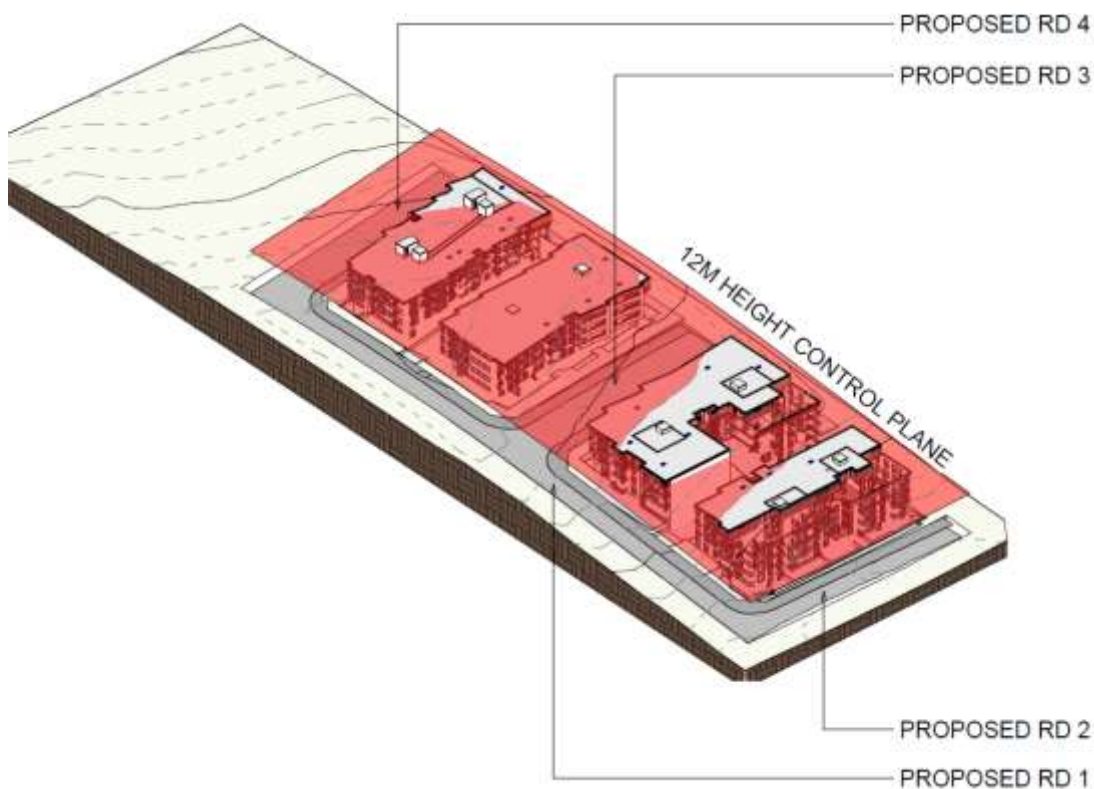
The maximum height for the roof slab is 13.1m, the roof parapet is 13.4m, the staircase to the rooftop communal open space is 15m and the lift overrun 15.1m. These present variations of 1.1m, 1.3m, 3m and 3.1m respectively. A total of 13.72% of the roof slab protrudes into the height limit.

The communal open space balustrading is to a height of 13.8m, a variation of 1.8m. The proposed pergola to the communal open space will be to a height of 14.5m, a variation of 2.5m.

As indicated by the above numbers, the variation is attributable to generally modest amounts of habitable floor area, the roof slabs and parapets, the rooftop communal open space to Lot 2, Building B2 and lift overruns. The degree of variation differs across the site largely due to the

sloping nature of the land. It is worthy to acknowledge the habitable floor area varying the height limit accounts for partial variations only, not the full storey. This, and the broader degree of height variation, is demonstrated in the height plane replicated as Figure 4 below.

**Figure 4 - Height Plane**



Source: Dreamscapes Architects

Whilst a variation is sought, it is considered that the built form proposed is suitable for the site, given the future development context and character within the Cudgong Road development area of the North West Growth Centre.

## **5. Is Compliance With the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?**

The proposed variation from the development standard is assessed against the required tests in Clause 4.6. In addition, in addressing the requirements of Clause 4.6(3), the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) LEC 827* are considered.

In the matter of *Four2Five*, the Commissioner stated within the judgement the following, in reference to a variation:

*"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."*

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are as set out below:

<b>First</b>	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.</i>  <i>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
<b>Second</b>	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (not applicable)</i>
<b>Third</b>	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (not applicable)</i>
<b>Fourth</b>	<i>A fourth way is to establish that 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. (not applicable)</i>
<b>Fifth</b>	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the height of buildings standard, the first method is invoked.

The objectives supporting the maximum height of buildings standard identified in Clause 4.3 are discussed below. Consistency with the objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.3.

- 1) *The objectives of this clause are as follows:*
  - (a) *to establish the maximum height of buildings on land within the Area 20 Precinct,*

The proposed development generally responds to the maximum height of buildings standard, as exhibited by vast majority of the development being compliant. Where variations are sought to the roof slabs and parapets, these are not to the full extent of the roof, ensuring that regard has been given to the intended maximum height.

The development generally has had regard to the other controls applicable to the site in established a built form consistent with the desired future character of the area.

Notably, the property over the rear boundary, 84 Tallawong Road, was granted approval under SPP-17-00032 for four storey residential flat buildings with a height variation up to 3.97m for lift overruns, rooftop communal features and roof slab/parapets similarly attributable to topography.



A 3.7m variation was also granted to a second four storey shop top development on 84 Tallawong Road under SPP-17-00031 for the same elements protruding above the height. Both contribute to the consideration of the proposed development aligning with the objective to establish the established height of buildings.

*(b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*

The proposed development is considered to not have an unreasonable visual impact on the locality given the land is zoned and the controls prescribed to the site permit a development generally of this scale. The site is located within the North West Growth Centre in an R3 Medium Density Residential zoned area. The subject site and its surrounds are to be (and currently are) the subject of significant development over next 20 years in the accordance with the recent land releases.

It is worth noting approved developments within the area, particularly that of 25 Macquarie Road, Rouse Hill, being for 6 x 4 storey residential flat buildings and greater than 300 units, and the aforementioned approved developments on 84 Tallawong Road. The size and scale of the proposed development is comparable to approved applications in the area.

Notwithstanding the above similar development, the proposed development has been designed with a high architectural quality that encourages attractive design outcomes for future development in the area. Compliance has been achieved with the majority of Council's controls in terms of setbacks, with variations only sought to incorporate articulation where the controls do not specifically encourage it along the secondary street frontages and fourth storeys. The built form aside, both Lot 1 and 2 provide for ample communal spaces, landscaped area and deep soil.

An attractive material selection and colour palette has also been proposed. Refer to the submitted material and finishes schedule. The buildings leave a positive impression on the future streetscapes.

The proposed variations to the height control are considered generally to be minor for roof slabs and parapets and modest for those of a greater breach (lift overruns). The elements protruding above the height will not be immediately 'read' from the streets as varying height, particularly the greatest breaching elements that are centralised over the roof forms.

In terms of solar access to buildings and open space, the proposed built forms are consistent with the separation requirements to adjoining properties, ensuring the development of 95 Cudgegong Road is not unfairly constrained. The centralised lift overruns, communal open space and the like will have modest to no additional burden to the southern neighbour.

The public open space, being the future Lot 3, will not be impacted by the development in terms of solar access.

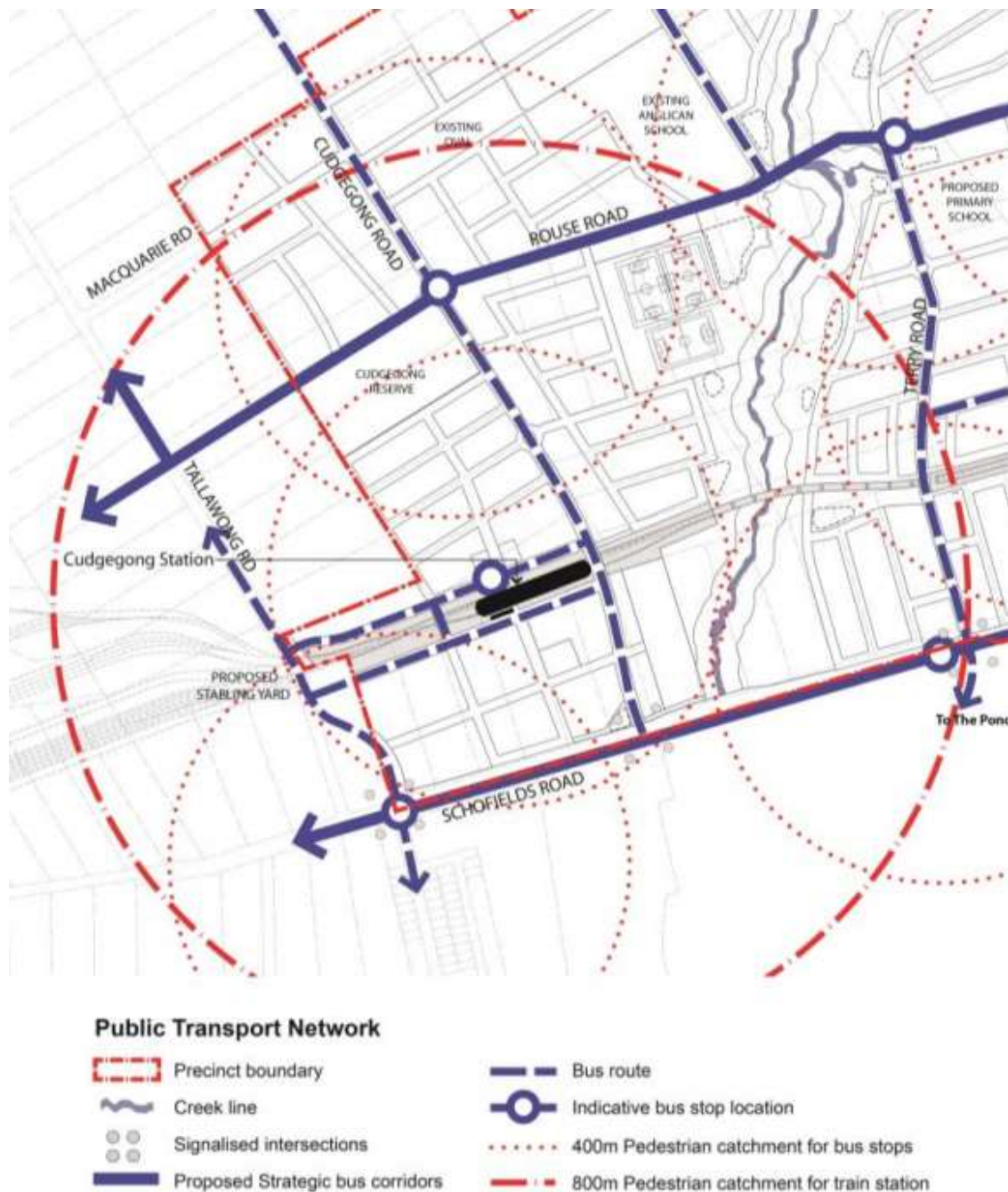
*(c) to facilitate higher density development in and around commercial centres and major transport routes.*

The site is located within 800mm of Cudgegong Road Station (and therefore the defined pedestrian catchment of the train station) and 100m of Cudgegong Road, a future highly accessible road per Figure 3-2: Public Transport Network within Schedule 4 Cudgegong Road Station (Area 20) Precinct replicated on the following page. Consequently, it is located in an area in proximity to major transport routes where higher density is encouraged. The proposal is accordingly suitable for the location.

The objectives of Clause 4.3 are reasoned to be achieved in this instance.

Compliance with the development standard is submitted to be unreasonable and unnecessary in the circumstances of the case.

**Figure 5 – Public Transport Network Map**



Source: Schedule 4 of Cudgegong Road (Area 20) Precinct Plan

## 6. Are there Sufficient Environmental Planning Grounds?

As required by Clause 4.6 (3)(b), it must be demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

As indicated in Figure 4 earlier in this submission, the majority of the development does comply with the height of buildings standard. The degree of breach sought is contributed strongly several elements.

For Lot 1, the maximum proposed variation is 2.4m and is contained primarily to lift overruns and partial roof slabs and parapets and is driven by the slope of the site and the necessity to provide greater 4.5m clearance to the basement artificially raising the building.

As the section below demonstrates there is a significant degree of slope of the site. Across the entire built upon area of both Lots 1 and 2, there is a level change of approximately 8m (RL 61.5 to RL 69.5) per the survey plan prepared by Mepstead & Associates. This proposes a challenge to manage the built form and respond to the site. It is submitted that this has been achieved, noting the treatment of the westernmost point (at the bottom of the slope on the developable land), being the stepping of Building A1. Reference should be made to the full section in the architectural drawing set, being Drawing No. A311.

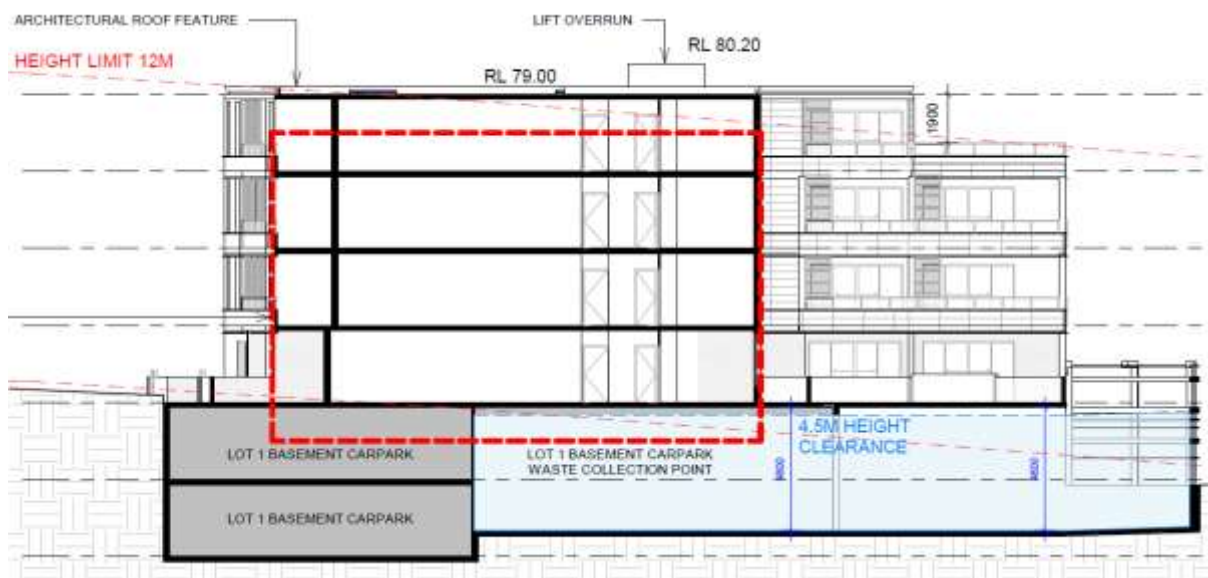
**Figure 6 – Longitudinal Section**



Source: Dreamscapes Architects, Drawing No. A311

Finally, to accommodate Council's request to provide 4.5m clearance for their waste vehicles to access the basement for collection, part of the built form of Lot 1 is artificially increased in height. While the development will be serviced by a private contractor which could have a lesser height, Council has requested the full 4.5m clearance provided for futureproofing waste collection. Refer to the section below that indicates the outline of the building envelope were the 4.5m clearance would not be required superimposed on the proposed building envelope. As this demonstrates, the floor space would be entirely below the height limit, with a minor variation to the lift overrun, were the additional height clearance not required.

**Figure 7 – Height Clearance Comparison for Lot 1**



Regarding Lot 2, the maximum variation sought is 3.1m relating lift overruns, rooftop communal open space, pergola and roof slab and parapet.

The rooftop communal open space is proposed to ensure a high quality space is provided for the benefit of future residents that achieves good solar access. While the ground level space does achieve 2 hours of solar access, it is to a lesser extent than the rooftop space is able to achieve and allows for a variety of spaces within the development. Disabled access to this space requires the lift overrun to extend to a higher point, being 3.1m above the height limit.

While habitable floor area does exceed the height, this is limited in scope to portions of rooms and not entire levels or units in the building. The slope of the land is a strong driver to this variation.

The emphasis of the breach in relation to the provision of the rooftop communal open space is exemplified by the percentage of habitable floor area above the height control being limited to 0.05% of Building B1 and 2.12% of B2. The resultant greatest breach is therefore predominantly the communal open space enhancing the amenity of the development for future residents.

In view of the above, the proposal has addressed the site constraints, streetscape character, architectural and aesthetics characteristics, and is consistent with the objectives of the development standard.

The proposal results in a development that provides for an orderly and economic use of the land.

In this case, there are sufficient environmental planning grounds to vary the development standard for height of buildings in the Appendix 6 of the Sydney Region Growth Centres SEPP – Area 20 Precinct Plan 2011.

## **7. Is the Variation in the Public Interest?**

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Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 5.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.3 as detailed above.

Furthermore, it is important to also consider the objectives of the R3 Medium Density Residential zone in relation to the development, which are as follows:

### **Zone R3 Medium Density Residential**

#### **1. Objectives of the zone**

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment*

The following comments are made in relation to the zone objectives:

- The provision of additional residential accommodation in the Cudgegong Road Station Precinct fulfils the purpose of the land release, to provide for the housing needs of Sydney residents in the future. The proposed residential flat buildings are at a medium density scale.
- A variety of unit types are proposed, including 1, 2 and 3 bedroom units.
- The proposal includes land zoned RE1 Public Recreation which is to be dedicated to providing parkland for the future residents of the area.
- The proposal is only for residential use.

Given the above, the proposed development meets the objectives of the zone.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standards, noting the development will be in the public interest.

## **8. Public Benefit of Maintaining the Standard**

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It is considered that the public benefit will not be undermined by varying the standard. The proposal provides for the orderly and economic development of the site. Given the site's orientation, location and context it is considered that the site is well suited for the development, given its location and proximity to similar scaled developments, local infrastructure and other amenities.

The built form, bulk and scale is considered suitable within the context of the Cudgegong Road Station (Area 20) Precinct within the North West Growth Centre and is consistent with approved developments within the area, particularly that of 25 Macquarie Road, Rouse Hill, and those approved such as the adjoining property to the south-west, 84 Tallawong Road.

The development is generally consistent with the current planning controls and as detailed under point 4 of this submission. The provision of basement levels will remove the burden of on-street parking in the area.

It is not considered that the variation sought raises any matter of significance for State or regional environmental planning.

The departure from the building height control within the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 allows for the orderly and economic development of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

## **9. Is the Variation Well Founded?**

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It is considered that this has been adequately addressed in Parts 5 to 7 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the Appendix 6 of the Sydney Region Growth Centres SEPP in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standards;
- The development meets the objectives of the standard to be varied (height of buildings) and objectives of the R3 Medium Density Residential zoning of the land;



- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State of Regional Significance; and
- The development submitted aligns with the predominantly mixed use/residential nature of the neighbourhood.

Based on the above, the variation is considered to be well founded.

## 10. General

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Clause 4.6 also states that:

*“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*

*(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*

*(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

**Note.** *When this Precinct Plan was made it did not include any of these zones other than Zone E2 Environmental Conservation*

*(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).*

*(8) This clause does not allow development consent to be granted for development that would contravene any of the following:*

*(a) a development standard for complying development,*

*(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

*(c) clause 5.4.”*

This variation does not relate to the subdivision of land in the stated land use zones. The variation sought is not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

A BASIX certificate has been prepared in relation to the proposed development and is submitted under separate cover.

Clause 5.4 is not applicable in this instance.

## **11. Conclusion**

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The proposal does not strictly comply with the maximum building height controls as prescribed by Clause 4.3 of Appendix 6 – Area 20 Precinct Plan of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006.

Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the Appendix 6 – Area 20 Precinct Plan of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the Appendix 6 – Area 20 Precinct Plan of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 to vary this development controls is appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum building height is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.

Should you have any questions, please do not hesitate to contact me.

Darren Laybutt  
**GAT & Associates**  
Plan 3021