

Council assessment of clause 4.6 request

1 Overview

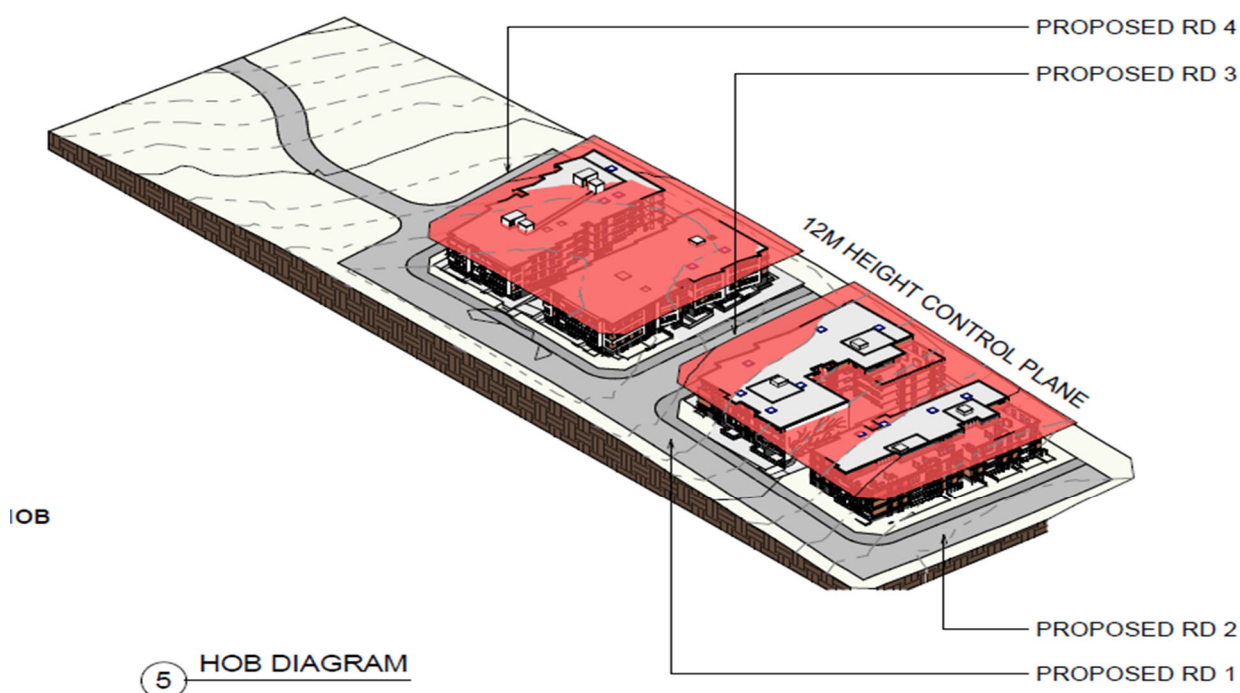
The applicant has lodged a Clause 4.6 variation request to vary the 12 m height control under Clause 4.3 of the State Environmental Planning Policy (Sydney Region Growth Centres) 2006. A copy of the applicant's Clause 4.6 submission is at attachment 7.

2 Visual representation of Height variations

The figures below identify the portions of the development that are proposed to exceed the height limit of 12 m and the portions that are proposed to be below the height limit.

The proposed non-compliance relates to roof slab, lift overruns, with some breaches to the portions of units on Lot 1 on Buildings A1 and A2. For Lot 2, the breach relates to uppermost portion of the units, roof slab, the communal open space structures and lift overruns of Buildings B1 and B2. These exceed the height by up to 2.4 m or 20% for proposed Lot 1 and 3.1 m or 25.8% for proposed Lot 2. Consequently, the proposed building height is 14.4 m for proposed Lot 1 and 15.1 m for proposed Lot 2 at the highest point (lift overruns). The habitable area over the height limit of Lot 1 is 1,188 m² or 13.7% of the top floors of buildings A1 and A2 and for Lot 2 it is 174 m² or 2% of the top floor buildings B1 and B2.

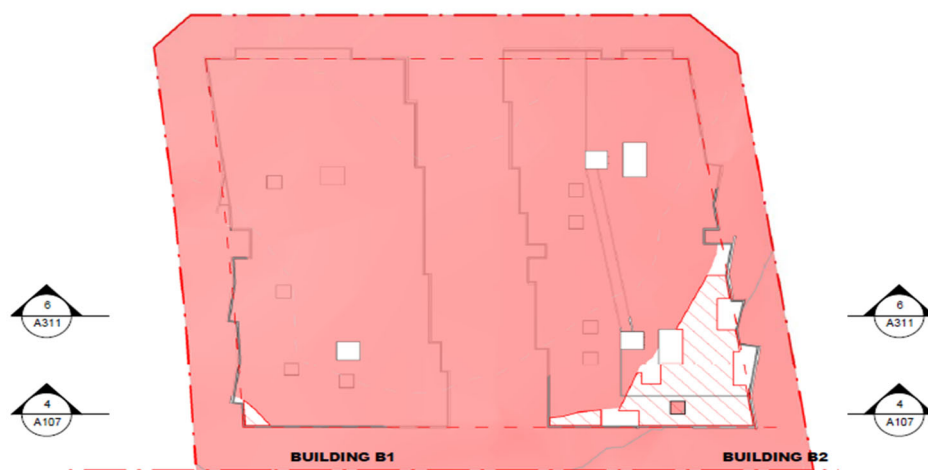
The areas coloured in white above the red 12 m height plane in the image below exceed the maximum building height permitted under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (for clearer reference, please refer to A107 Revision 2 dated 27 August 2021 at attachment 5).





LOT 1 HABITABLE AREA OVER HOB
1188 sqm

① **HOB lot 1**
1 : 500



LOT 2 HABITABLE AREA OVER HOB
174 sqm

② **HOB lot 2**
1 : 500

The figures below show the habitable area over the height of building



③ HOB LOT 1 SECTION
1 : 200



④ HOB LOT 2 SECTION
1 : 200

The figures below show sections of Lot 1 and 2 below the height of buildings





3 Clause 4.6 variation considerations

Clause 4.6 requires consideration of the following matters and a town planning comment is provided to each item.

3.1 Consideration as to whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

The underlying purpose of the standard is still considered relevant to the proposal. However, 100% compliance for plant and equipment and roof top common open space features is considered both unreasonable and unnecessary for the following reasons.

- A strict compliance to the proposed building height variation is unreasonable in the circumstances for just plant, equipment and roof top open space but not for habitable floor space breaches and so we will be conditioning the removal of any unit that encroach over the height plane.
- The proposed built form is suitable for the site, given the future development context and character within the Cudgegong Road development area.
- The proposed development does not have unreasonable visual impact on the locality given the land is zoned and the controls prescribed to the site permits a development of this scale.
- The portion of the rooftop features that exceed the height limit are parts of the roof slab, lift overruns, minor breaches to the uppermost portion of the units and communal open space structures. They will not result in detrimental overshadowing impacts to the adjoining properties nor they will be visible from the street.
- Despite the proposed breaches in the height of buildings control, the development achieves appropriate building envelopes and separation to the adjacent future residential land.
- The proposal does not solely rely upon the communal open space on the rooftop of the building on Lot 2 as an additional 576 m² will also be at the ground level in addition to 559 m² provided at the ground level of Lot 1.

3.2 Consideration of sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b))

The proposal demonstrates sufficient environmental planning grounds to justify contravening the height of buildings development standard for plant and equipment and roof top open space only for the following reasons:

- By deleting the units above the height plane, the proposal in its amended form will not create additional overshadowing, privacy and streetscape impacts and therefore will present no adverse impact on its surroundings.
- The development when its amended, will still be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone.
- However, the applicant's written request justifying the contravention of the development standard has not adequately addressed the matters required to be demonstrated by Clause 4.6(3) to support any encroachment of the habitable floor space above the height plane. Only plant and equipment of roof top common open space features will be supported by this submission.

3.3 The objectives of the standard are achieved notwithstanding non-compliance with the standard (Clause 4.6(4)(a)(ii))

Applicable environmental planning instrument	
Objectives of Clause 4.3 to be varied	How the proposal achieves the objective
(a) to establish the maximum height of buildings,	<p>The proposed encroachments to the maximum height control are not just limited to roof slab, lift overruns, and rooftop communal open space. Encroachments to the uppermost portions of the units in building A1 and portions of the habitable space of the units in building A2 encroached on the 12 m building height by 2.5m.</p> <p>There is also a proposed variation of portion of the habitable space in Building B2 of 0.2m.</p> <p>Whilst the bulk of the proposed buildings is within the maximum 12 m building height control, these height encroachments of habitable space in all the proposed buildings cannot be supported due to extra residential density that will be created and the precedent this will set. Only plant and equipment and roof top communal open space elements will be supported. Therefore, the applicant has to submit full amended architectural plans as part of the deferred commencement conditions.</p>
(b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space	<p>The predicted overshadowing is as expected for a 4-5 storey building on a site with the existing 12 m maximum height of building's development standard.</p> <p>The parts of the building causing the largest height non-compliance are the lift overruns and open space structures accommodating the rooftop communal open areas. These elements are not highly visible from the public domain and do not cause any overlooking issues to neighbours.</p> <p>Therefore, the visual, privacy and loss of solar access impacts of the proposed building are minimal and the proposal meets this objective.</p>
c) to facilitate higher density development in and around commercial centres and major transport routes.	<p>The proposed development is in the medium density residential zone which is surrounded by predominately medium density housing and close to a future local centre that will allow for commercial and mixed development uses. The proposed development is satisfactory in this regard.</p>

Therefore, the proposal is in the public interest because the development is consistent with the objectives of this particular development standard.

3.4 The objectives of the zoning are achieved notwithstanding non-compliance with the standard (Clause 4.6(4)(a)(ii))

Applicable environmental planning instrument	
Objectives of R3 Medium Density Residential zone	How the proposal achieves the objective
To provide for the housing needs of the community within a medium density residential environment.	Whilst the bulk of the proposed buildings is within the maximum 12 m building height control, the proposal will still have to be amended to ensure no units encroach the height plane and to be consistent with the planned medium density environment close to a future local centre and other mixed-use development sites.
To provide a variety of housing types within a medium density residential environment.	The proposal will provide a variety of housing types, including 1 to 3-bedroom apartments with single and dual aspects, including adaptable apartments.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed development will not hinder other land uses to 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 proposed development, along with the existing surrounding services, will be consistent with the desired medium density residential environment.

Therefore, the proposal is in the public interest because the development is consistent with the objectives of this particular development standard.

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

This Clause 4.6 written request to vary a development standard in an environmental planning instrument has been considered in accordance with Planning Circular PS 08-003. The Secretary (formerly Director-General) of the NSW Department of Planning and Environment's concurrence is assumed as this request is adequate, does not raise any matter of significance for State or regional environmental planning and there is no public benefit of maintaining the standard, as discussed above.

- 3.6 Based on the above assessment, the Clause 4.6 variation request is considered reasonable for plant and equipment and roof top communal open space elements only but not for habitable spaces and so these units that encroach the 12 m height plane will have to be deleted from the plans. On this basis only the development recommended for support.