

CLAUSE 4.6 VARIATION

Clause 4.3 Height of Buildings
34-42 Tallawong Road,
Tallawong

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1. INTRODUCTION

This Clause 4.6 Variation Request ('the Request') has been prepared on behalf of CDMA ('the applicant') and accompanies a Development Application ('DA') for residential development at 34-42 Tallawong Road, Tallawong.

The Request seeks an exception from the Height of Building Standard prescribed for the site under Clause 4.6 of Appendix 12 of *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP). The variation is request is made pursuant to clause 4.3 of Clause 4.6 of Appendix 12 of the Growth Centres SEPP.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd (dated October 2021 and amended March 2022), the Architectural Design Report and architectural drawings prepared by Kann Finch (dated September 2021 and amended May 2022) and other technical inputs.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site is known as 34-42 Tallawong Road, Tallawong and is legally described as Lots 8 & 9 in DP 1249124 (formerly known as Lots 68 and 69 in DP30186). The site has an area of 4.048 hectares and is located in Riverstone East Precinct of the North West Growth Area.

The subject site was previously used for rural-residential purposes. It has been altered by historical land use practices and is extensively cleared, with an open grassland character and mature trees to the north-east. The site has sloping topography and falls approximately 6 metres from south-east corner to the north-west corner towards Tallawong Road.

Topographically, the site is in an area of gently undulating terrain in the northwest to southeast direction sloping between two to five degrees across the site.

Figure 1 Site Aerial



Source: Urbis

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for residential development at 34-42 Tallawong Road, Tallawong.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd, dated October 2021. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.

The proposed development includes the following works:

- Erection of nine residential flat buildings over six (6) stages comprising:
 - 911 apartments;
 - 164 sqm retail premises; and
 - 988 basement parking spaces.
- Extensive landscaping works across the site including the construction of a public plaza.
- Associated infrastructure works, including construction of internal roads and connections to service utilities.

Key numeric aspects of the proposal are summarised below. The proposal is described in further detail within the following sections of this report.

Table 1 Numeric Overview of Proposal

Parameter	Proposal
Land Uses	Nine residential flat buildings and two retail premises
Height (maximum)	28.08 metres (Building A)
Indicative Apartment Yield	911 Apartments including 92 adaptable apartments <ul style="list-style-type: none">▪ 1 bedroom – 149 apartments (16.4%)▪ 2 bedroom – 701 apartments (76.9%)▪ 3 bedroom – 61 apartments (6.7%)
Car parking	988 car spaces <ul style="list-style-type: none">▪ 806 residential spaces including 81 accessible residential spaces▪ 182 visitor car spaces including 18 accessible visitor spaces
Gross Floor Area (GFA)	82,610 sqm including 160 sqm of retail premises
Floor space ratio	2.56:1
Communal Open Space	6,806 sqm
Deep Soil zones	8,444 sqm

4. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. DEVELOPMENT STANDARD

A 26m height of building control applies to the entire site as prescribed within clause 4.3 of the Growth Centres SEPP.

The Growth Centres SEPP Dictionary defines 'building height' (or 'height of building') as follows:

the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

4.2. PROPOSED VARIATION TO HEIGHT OF BUILDINGS STANDARD

The proposed development presents a varied maximum height of 28.08 metres across the site. The proposed development exceeds the height of buildings development standard under the Growth Centres SEPP by a maximum of 2.08 metres.

The variations to the height controls are outlined in the **Table 3** below and in **Figure 2**.

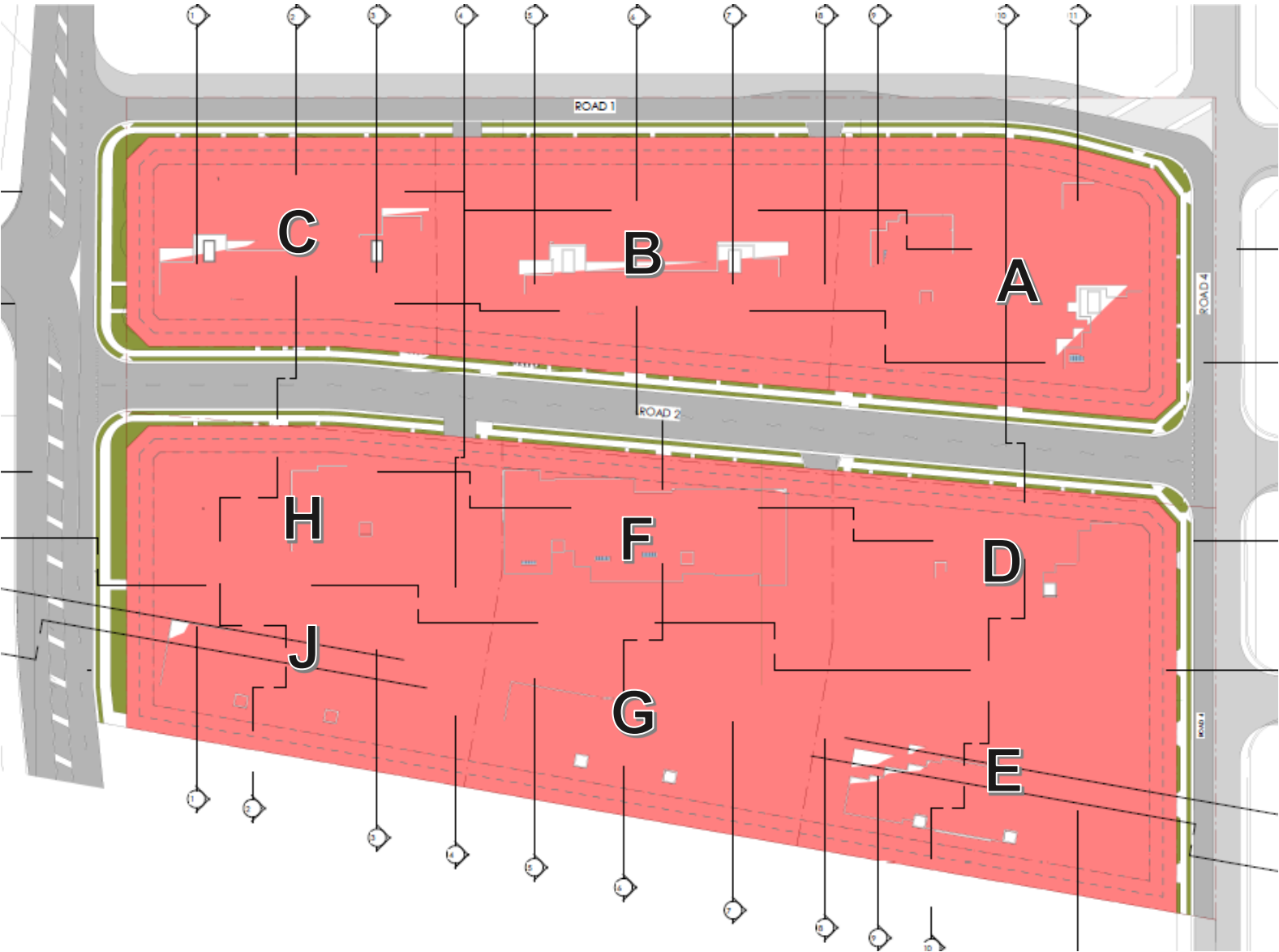
Table 2 Numeric height variations

Building	Proposed Maximum Height	Proposed Variation	Height Feature and Point ID
Building A	26.55 metres (height of building)	0.55 metres (2.1%)	HOB; A01
	26.22 metres (skylight)	0.22 metres (0.8%)	Skylight; A02
	26.21 metres (height of building)	0.21 metres (0.8%)	HOB; A03
	26.16 metres (plant)	0.16 metres (0.6%)	Plant fence; A04
	26.42 metres (height of building)	0.42 metres (1.6%)	HOB; A05
	27.09 metres (height of building)	1.09 metres (4.2%)	HOB; A06
	26.85 metres (roof slab)	0.86 metres (3.3%)	Roof Slab; A07
	28.08 metres (lift overrun)	2.08 metres (8%)	Lift O/R; A08
	27.75 metres (roof slab)	1.75 metres (6.7%)	Roof Slab; A09
	26.7 metres (slab)	0.73 metres (1.8%)	Slab; A10
	26.36 metres (height of building)	0.36 metres (1.4%)	HOB; A11
	26.29 metres (roof slab)	0.29 metres (1.1%)	Roof Slab; A12
	26.46 metres (skylight)	0.46 metres (1.8%)	Skylight; A13
Building B	26.26 metres (roof slab)	0.27 metres (1.0%)	Roof Slab; B01
	26.35 metres (height of building)	0.35 metres (1.3%)	HOB; B02
	26.85 metres (height of building)	0.85 metres (3.3%)	HOB; B03

Building	Proposed Maximum Height	Proposed Variation	Height Feature and Point ID
	26.47 metres (roof slab)	0.48 metres (1.8%)	Roof slab; B04
	27.89 metres (lift overrun)	1.9 metres (7.3%)	Lift O/R; B05
	27.57 metres (roof slab)	1.6 metres (6.0%)	Roof Slab; B06
	26.15 metres (roof slab)	0.15 metres (0.6%)	Roof Slab; B07
	27.35 metres (plant)	1.35 metres (5.2%)	Plant fence; B08
	26.33 metres (roof slab)	0.33 metres (1.3%)	Roof slab; B09
	26.63 metres (height of building)	0.62 metres (2.4%)	HOB; B10
	27.67 metres (lift overrun)	1.67 metres (6.4%)	Lift O/R; B11
	27.35 metres (roof slab)	1.35 metres (5.2%)	Roof Slab; B12
Building C	26.19 metres (roof slab)	0.19 metres (0.7%)	Roof slab; C01
	26.35 metres (height of building)	0.35 metres (1.3%)	HOB; C02
	26.67 metres (height of building)	0.67 metres (2.6%)	HOB; C03
	26.30 metres (roof slab)	0.30 metres (1.1%)	Roof Slab; C04
	27.70 metres (lift overrun)	1.7 metres (6.5%)	Lift O/R; C05
	27.38 metres (roof slab)	1.38 metres (5.3%)	Roof Slab; C06
	27.34 metres (plant)	1.34 metres (5.2%)	Plant Fence; C07
	26.77 metres (roof slab)	0.77 metres (2.9%)	Roof Slab; C08
	26.35 metres (height of building)	0.35 metres (1.3%)	HOB; C09
	26.15 metres (roof slab)	0.15 metres (0.6%)	Roof Slab; C10
	27.08 metres (lift overrun)	1.08 metres (4.2%)	Lift O/R; C11
Building D	26.11 metres (height of building)	0.12 metres (0.4%)	HOB; D01
	26.29 metres (height of building)	0.26 metres (1.1%)	HOB; D02
	26.87 metres (roof slab)	0.86 metres (3.3%)	Roof Slab; D03
	27.27 metres (lift overrun)	1.27 metres (4.9%)	Lift O/R; D04
	27.22 metres (plant)	1.22 metres (4.7%)	Plant Fence; D05
	26.27 metres (height of building)	0.27 metres (1.0%)	HOB; D06
Building E	26.10 metres (roof slab)	0.1 metres (0.4%)	Roof Slab; E01
	26.40 metres (height of building)	0.4 metres (1.6%)	HOB; E02
	26.05 metres (roof slab)	0.05 metres (0.2%)	Roof Slab; E01
	27.45 metres (plant room)	1.45 metres (5.6%)	Plant Fence; E04

Building	Proposed Maximum Height	Proposed Variation	Height Feature and Point ID
	26.94 metres (roof slab)	0.94 metres (3.6%)	Roof Slab; E05
	27.15 metres (lift overrun)	1.15 metres (4.4%)	Lift O/R; E06
	26.69 metres (roof slab)	0.69 metres (2.7%)	Roof Slab; E07
	26.91 metres (lift overrun)	0.91 metres (3.5%)	Lift O/R; E08
Building F	26.71 metres (height of building)	0.7 metres (2.7%)	HOB; F01
	27.18 metres (plant)	1.18 metres (4.5%)	Plant Fence; F02
	26.93 metres (lift overrun)	0.93 metres (3.6%)	Lift O/R; F03
	26.73 metres (roof slab)	0.73 metres (2.8%)	Roof Slab; F04
	26.25 metres (skylight)	0.25 metres (1.0%)	Skylight; F05
	26.28 metres (skylight)	0.28 metres (1.1%)	Skylight; F06
	26.72 metres (roof slab)	0.72 metres (2.8%)	Roof Slab; F07
	26.92 metres (lift overrun)	0.92 metres (3.5%)	Light O/R; F08
	26.01 metres (roof slab)	0.01 metres (0.0%)	Roof Slab; F09
	26.83 metres (height of building)	0.83 metres (3.2%)	HOB; F10
Building G	26.15 metres (height of building)	0.15 metres (0.6%)	HOB; G01
	26.63 metres (roof slab)	0.63 metres (2.4%)	Roof Slab; G02
	27.10 metres (plant)	1.1 metres (4.3%)	Plant Fence; G03
	26.84 metres (lift overrun)	0.84 metres (3.2%)	Lift O/R; G04
	26.5 metres (roof slab)	0.5 metres (1.9%)	Roof Slab; G05
	26.7 metres (lift overrun)	0.7 metres (2.7%)	Lift O/R; G06
Building H	26.33 metres (height of building)	0.33 metres (1.3%)	HOB; H01
	27.15 metres (plant)	1.15 metres (4.4%)	Plant Fence; H02
	26.66 metres (roof slab)	0.66 metres (2.5%)	Roof Slab; H03
	26.86 metres (lift overrun)	0.86 metres (3.3%)	Lift O/R; H04
Building J	26.13 metres (roof slab)	0.13 metres (0.5%)	Roof Slab; J01
	26.50 metres (height of building)	0.5 metres (1.9%)	HOB; J02
	26.49 metres (roof slab)	0.49 metres (1.9%)	Roof Slab; J03
	27.05 metres (plant room)	1.05 metres (4.0%)	Plant Fence; J04
	26.78 metres (lift overrun)	0.78 metres (3.0%)	Lift O/R; J05
	26.16 metres (lift overrun)	0.16 metres (0.6%)	Lift O/R; J06

Figure 2 Proposed height plane



Source: Kann Finch

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of Appendix 12 Growth Centres SEPP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of Growth Centres SEPP are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18-003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of buildings development standard prescribed for the site in clause 4.3 of Appendix 12 Growth Centres SEPP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of buildings development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of buildings development standard in accordance with clause 4.3 of Appendix 12 Growth Centres SEPP.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of buildings development standard prescribed by clause 4.3 of Appendix 12 Growth Centres SEPP is a development standard capable of being varied under clause 4.6(2) of the Growth Centres SEPP

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of the Growth Centres SEPP.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standard as specified in clause 4.3 of Appendix 12 Growth Centres SEPP are detailed in **Table 3** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 3 Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
<i>(a) to establish the maximum height of buildings,</i>	<p>The variation aligns with the intention of the 26 metre height controls by providing an 8 storey development with minor variations to the proposed maximum height of 26 metres from lift cores, plant rooms and minor roof structures (i.e. roof slab and skylight) as a result of the slope of the site.</p>
<i>(b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,</i>	<p>The proposal has been designed, positioned and orientated to ensure the additional height does not adversely impact on the amenity of adjoining and neighbouring properties as outlined in the following subsections.</p> <p>Visual impact</p> <p>The visual impact of future development on this site was addressed in detail with the recently gazetted Planning Proposal, which increased the height of building standard to 26 metres for the subject site. As part of this process, consideration was given to the relative location of Rouse Hill House, located approximately 1.6km from the subject site. With intervening landform and existing vegetation (forming part of proposed local parks and the Rouse Hill Regional Park), it was concluded that there would be no view impact from the additional height.</p> <p>As part of the previous Planning Proposal package prepared for the site, a Visual Impact Assessment was prepared by Ethos Urban which considered the visual impacts of built form at 34-42 Tallawong Road from Rouse Hill House. In conjunction with Weir Phillips Heritage, a selection of viewpoints were assessed with the following conclusions:</p> <ul style="list-style-type: none"> ▪ The overall height including the non-compliance across the site does not have negative effects on features which are associated with high visual significance or scenic quality within view corridor. ▪ The vegetation/existing tree line present in the photographs is assumed to be retained as they form part of proposed Local Parks and the Rouse Hill Regional Park. ▪ The proposal does not decrease the presence or conflict with existing visual character of built form, building scale and urban fabric. ▪ It is clear that there are other structures such as the Sydney Water Reservoir are already established within the view corridor. ▪ The nature of the selected views does not change and the height/scale of the proposal is in line with the visual character of the Tallawong Station precinct. ▪ The view composition is retained in all views. ▪ No view loss or blocking is apparent.

<p>Objectives</p>	<p>Assessment</p> <p>An assessment of the proposed scheme against the findings and recommendations of the original VIA has been prepared by Ethos Urban (refer to Appendix L). The report confirms:</p> <ul style="list-style-type: none"> ▪ The non-complaint built form results in negligible changes to the assessment of the original VIA. ▪ The current DA is consistent with the recommendations and conclusions of the original VIA. ▪ No additional mitigation measures (such as landscaping) are required to satisfy the original findings outlined in the Planning Proposal documentation as the proposal will not be visible above the surveyed tree line from Rouse Hill House. <p>Visual Bulk</p> <p>All buildings are well articulated and when viewed from the public domain present a coherent streetscape that contributes to the overall aesthetic and sense of place.</p> <p>The proposal is articulated as an eight-storey built form across the site with:</p> <ul style="list-style-type: none"> ▪ A two storey off form concrete frame to form 'the base' with undercut façade to the lower ground and ground levels ▪ Strong expression of the horizontal for 'the middle' through painted white off form concrete 'beam banding' that frames glazing and individual-coloured panels set back from the face of each beam band and punctuated with rebates that contain the beam banding composition in modulated sections that balance the vertical ▪ A set back 'top' with floating locally coloured soffit overhangs that create a distinct modulated cap. <p>Each of the 9 buildings responds to the particular topography with non-compliances on the roof generally setback to ensure they are not visible from the public domain.</p>
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Figure 3 Proposed site plan



Figure 4 Renders of proposed façades and built form



Picture 1 Building F



Picture 2 Building C



Picture 3 Building D



Picture 4 Building B

Source: Kann Finch

Visual Privacy

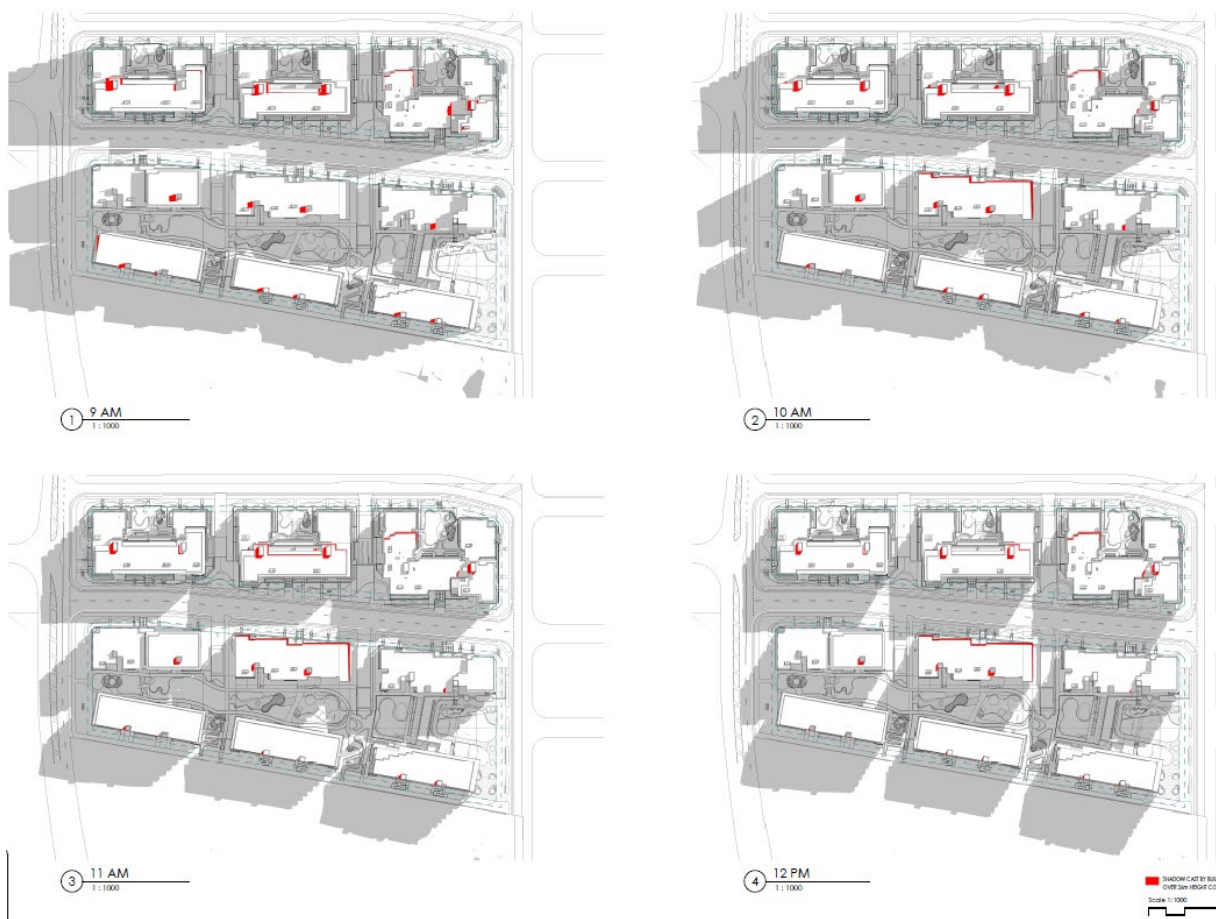
The proposed development provides adequate building separation to surrounding buildings in accordance with the requirements of the Apartment Design Guide (ADG). As such, privacy issues to surrounding dwellings have therefore successfully been mitigated through building design and the height noncompliance will not detrimentally impact the visual privacy of neighbouring properties.

Overshadowing

Shadow diagrams for the proposed development have been prepared Kann Finch and are illustrated in **Figure 6**. These diagrams demonstrate that overshadowing generally falls within the site and results in minor impacts to the south of the site.

Overall, the height non-compliance does not result in any impacts on the solar amenity of the subject site or surrounding development with all shadows caused by the non-complaint height remaining within the site boundary.

Figure 5 Proposed Shadow Diagrams with impacts from height non-compliance in red





Source: Kann Finch

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

The variation has been informed from a detailed site context analysis and optimisation of the development potential of the site. The proposal represents a design which identified on balance the most appropriate development response for the site having regard to the existing high density development to the south and, the site's location in the Tallawong Town Centre as well as the ability to maximise public benefits and the environmental amenity of the surrounding properties.

The area is undergoing transition with the future character focusing on higher density development surrounding the Tallawong Metro Station.

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

The proposal provides residential accommodation and associated facilities in close proximity to the Tallawong Metro Station. If the proposed development was reduced in height, the proposed development would need to be reduced by a whole storey across the site as the sloping topography of the site reduces the ability to provide necessary services required on the roof. This would result in a development that did not reflect the intentions of the recent Planning Proposal to provide 8 storey residential development across site.

If a compliant roof structure was required for the development, this would result in a negative impact on the overall residential amenity of the site and provide a reduced number of apartments in a highly accessible location. Compliance in the circumstances is therefore unreasonable.

- The burden placed on the community (by requiring strict compliance with the standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

This way is not relevant in the circumstances of this particular application.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposed development achieves the objectives of the development standard prescribed in clause 4.3 of the Growth Centres SEPP, as described in **Section 6.2** above and achieves the objectives of the R3 Medium Density Residential zone.
- The design and built form strategy has been thoroughly planned and is capable of achieving design excellence as described in the Design Report prepared by Kann Finch.
- The area of non-compliance is considered non-trafficable and non-habitable area. Accordingly, the potential for adverse privacy and overlooking impacts is considered negligible;
- The design responds positively to the site conditions and the surrounding environment and generally reflects the height control of the site with minor non-compliances to provide plant and lift overrun on the roof on a sloping site.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 3** above. The proposal is also consistent with the land use objectives that apply to the site under Appendix 12 of the Growth Centres SEPP. The site is located within the R3 Medium Density Residential zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 4** below.

Table 4 Assessment of compliance with land use zone objectives

Objective	Assessment
<i>To provide for the housing needs of the community within a medium density residential environment.</i>	<p>The proposed height variation ensures that the housing needs of the community can be provided within a high amenity residential environment.</p> <p>The variation ensures that ADG and high amenity level can be achieved within the building including minimum floor to floor heights in order to provide a high level of amenity for future residents.</p>
<i>To provide a variety of housing types within a medium density residential environment.</i>	<p>The proposed variation meets this objective by providing a range of 1, 2 and 3 bedroom apartments in a growing residential environment.</p> <p>This will provide contribute to housing choice and mix and address market demand in the North West Growth Centre. The proposal therefore contributes to greater housing diversity in the area by providing additional housing in a new release area with direct access to the Tallawong Metro Station and Town Centre.</p>
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	<p>The non-compliance will not impact the ability for facilities and services to be provided in the area to meet the needs of residents. The proposal is consistent with the intentions of the recently gazetted Planning Proposal for the site and provides housing within close proximity to the future Tallawong Town Centre, while also providing pedestrian and cycle connectivity.</p>
<i>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.</i>	<p>The non-compliance will not impact on the proposal's support of educational, recreational, community and religious activities in the surrounding area.</p> <p>Further it will support the well-being of the community by facilitating the provision of high quality apartments that will be integrated with the future adjoining Town Centre.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height of buildings development standard as 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.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of buildings development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of buildings development standard and the land use zone objectives despite the technical non-compliance.

The principal aim of the proposal is to provide high quality residential accommodation in close proximity to the Tallawong town centre and Metro Station. The proposed variation to the height control of the Growth Centres SEPP does not result in the loss of amenity to the adjoining properties from overshadowing or loss of privacy. Minor variations, such as for roof-slabs, lift over-runs etc, are common and have been supported with other developments in the local area.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within Clause 4.3 of the Growth Centres SEPP is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- **The proposed development achieves the objectives of the building height development standard and the land use zoning objectives** despite the minor numerical non-compliance in some localised areas of the buildings. The majority of the building envelopes are compliant with the height of buildings development standard.
- **The proposed development has been designed to be compatible with the intended scale and character of the locality.** The proposed variations will not add to the perceived scale of the development and relate specifically to non-trafficable area which is not visible from the street. The variations to the height do not impact on the overall visual character of the area and cannot be perceived from any heritage views including Rouse Hill House.
- **The proposed development will facilitate greater housing choice surrounding Tallawong Metro Station.** The proposal will provide high quality apartments within an attractive landscaped setting and proximity to public transport and services that responds to the surrounding character of the area.
- **Strict compliance with the building height development standard could thwart the achievement of underlying objectives of the zone and the Planning Proposal recently gazetted by Blacktown Council.** Each of the proposed buildings has been sensitively located and designed to optimise the compatibility of the proposal with the existing and future streetscape, having regard to the objectives of the zone listed above.
- **Further, the proposed redevelopment of the site improves connectivity** to the Metro Station with large communal areas of open space and a Public Plaza.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

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