



# **APPENDIX E: CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD: HEIGHT OF BUILDINGS**

Development Application  
DA/739/2019: 5 Uhrig Road, Lidcombe

Prepared for  
**UHRIG ROAD DEVELOPMENTS PTY LTD**  
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**URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:**

Director	Clare Brown
Associate Director	Samantha Wilson
Consultant	Jack Kerstens
Project Code	SA7320
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# 1. INTRODUCTION

This amended Clause 4.6 Variation Request (**Request**) has been prepared by Urbis on behalf of Uhrig Road Developments Pty Ltd (**the applicant**) and accompanies Development Application DA/739/2019 for the redevelopment of 5 Uhrig Road, Lidcombe (**the site**).

DA/739/2019 was lodged to the City of Parramatta Council (**Council**) on 18 December 2019. Following a preliminary assessment, Council issued a request for information (**RFI**) letter dated 2 June 2020. The applicant submitted a response to the request for information on 17 August 2020.

This Request seeks to vary the height of buildings development standard under clause 4.3 of the *Auburn Local Environmental Plan 2010* (**ALEP 2010**) and is made under clause 4.6 of the ALEP 2010.

This Request should be read in conjunction with the Response to Request for Information Report prepared by Urbis Pty Ltd, dated 17 August 2020 and the material prepared which accompanies the latest submission to Council.



## 2. SITE CONTEXT

The site formerly identified as 5 Uhrig Road, Lidcombe, was legally described as Lot 11 in DP 1217641. This has since been subdivided into two allotments legally described as Lot 98 (northern portion) and Lot 99 (southern portion) in DP 1217641.

The applicant identifies Lot 98 as the 'Stage 1 Development' of the former site (Lot 11). That development is currently under construction under DA D/126/2016.

This proposal is referred to as the 'Stage 2 Development' of the former site (Lot 11) and is located on the southern portion. The site is known as 5 Uhrig Road, Lidcombe, and is legally described as Lot 99 in DP 1248789.

The site is predominantly flat, vacant land with an average RL of 11.5m. There is a change in level along the eastern boundary from the existing Bus Terminal to the site of 1m to the north and 4m to the south.

The site is situated in the suburb of Lidcombe approximately 8km east of the Parramatta CBD, 14km west of the Sydney CBD and adjacent to the Sydney Olympic Park. The site is located within the Carter Street Precinct.

The locality is well connected to the regional road network through direct connections to the M4 Western Motorway and the Great Western Highway via the local roads of Carter Street, Hill Road, and Homebush Bay Drive. The area is further serviced by Olympic Park Railway Station, which links to Lidcombe Railway Station and connects the Sydney CBD and Sydney Airport. The site will be afforded future access to the Parramatta Light Rail Stage 2 and the future Metro.

An aerial photograph of the site is illustrated in **Figure 1**.

Figure 1 Aerial Image of the Site



Source: Near Map

### 3. PROPOSED DEVELOPMENT

Development Application DA/739/2019 seeks consent for the redevelopment of the site as follows:

- A total of 583 residential apartments, across the following building typologies:
  - Tower 1 (T1) – 29 storey mixed use residential tower including a four (4) storey podium with ground level retail;
  - Tower 2 (T2) – 22 storey residential tower including a five (5) storey podium;
  - Tower 3 (T3) – 19 storey mixed use residential tower including a six (6) storey podium with ground level retail; and
  - Tower 4 (T4) – five-storey low-rise residential flat building
  - Tower 5 (T5) – four-storey low-rise residential flat building
- Seven (7) storey commercial building with ground level retail, comprising:
  - 36 strata office suites; and
  - 18 retail tenancies;
- A four-level basement (three levels of vehicular parking and one mezzanine level for services / loading, bicycle parking and end of trip facilities) comprising a total of 818 car parking spaces which include:
  - 643 residential park spaces;
  - 117 visitor spaces;
  - 58 commercial spaces; and
  - 659 bicycle spaces;
- Site landscaping works including common open space and roof terraces;
- Public domain works including construction of new roads, installation of infrastructure services, new pedestrian footpaths and new street trees; and
- Subdivision of the site to enable dedication of future public roads.

**Figure 2** below is a layout plan of the proposed development and **Figure 3** provides select perspective views (photomontages) of the future built form context.



The site plan for Stage 1 shows a rectangular development area. To the north is Paddock Street, to the west is Ibis Street, to the east is Frog Lane, and to the south is Stockyard Boulevard. The plan includes several building footprints labeled T1, T2, T3, T4, T5, and C1. Landscaping is indicated by green areas and tree symbols. A water feature is shown with a 'Water Level +10.70'. Numerous elevation points are marked with numbers in circles or as text. Specific areas are highlighted with numbered circles 1 through 10. The plan is labeled 'Stage 1' on the left side.

## 4 PROPOSED DEVELOPMENT



Figure 3 Photomontages of future built form



Picture 1 Aerial perspective view of the proposed development



Picture 2 Perspective view from the intersection of Road 2 and Road 9 (looking south-east)

Source: BVN

## 4. VARIATION TO HEIGHT OF BUILDINGS STANDARD

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

### 4.1. HEIGHT OF BUILDINGS STANDARD

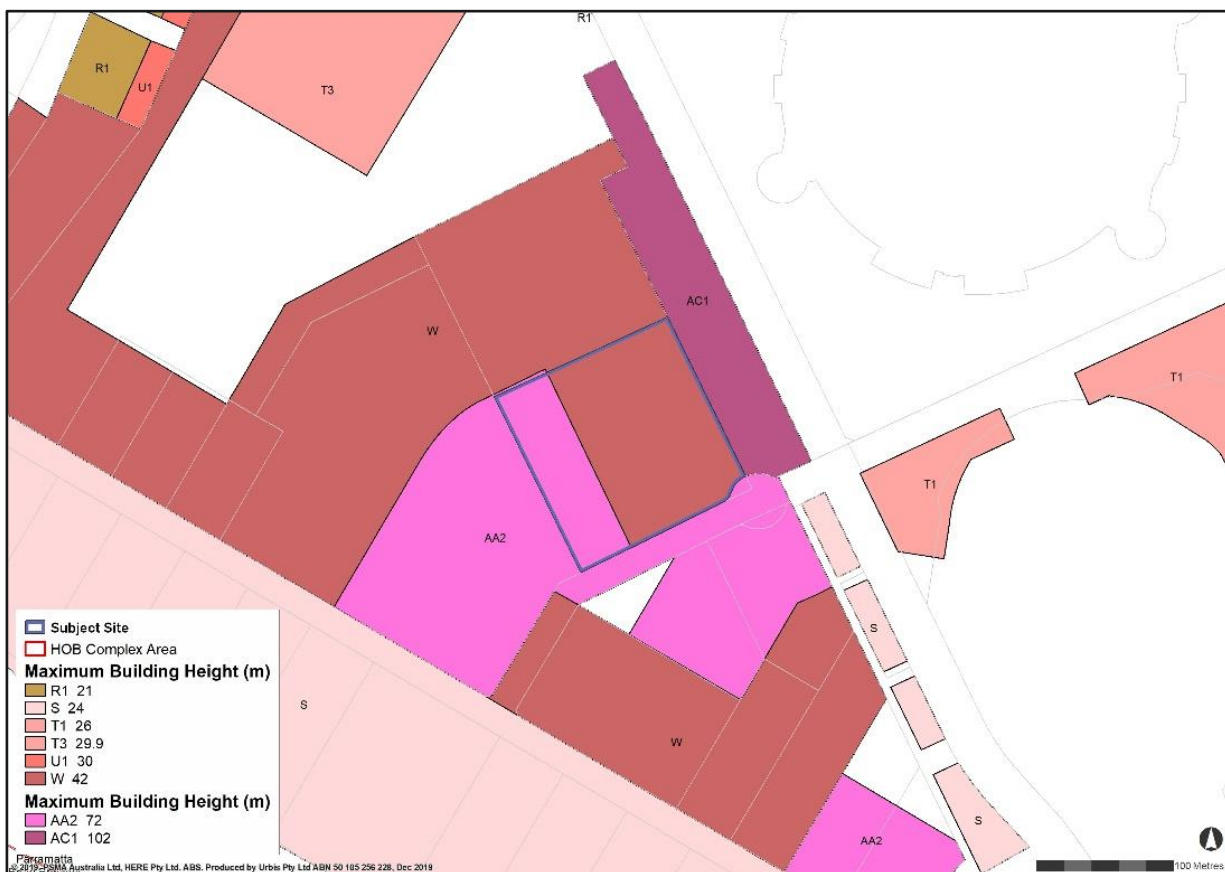
#### Auburn LEP 2010

The maximum height of building applicable to the site under clause 4.3 of the ALEP 2010 is 42m (eastern portion) or 72m (portion adjacent the western boundary).

The objectives of the height of buildings development standard under subclause 4.3(1) of ALEP 2010 are as follows:

- (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.

Figure 4 ALEP 2010 Height of Buildings Map



The variation to height of buildings development standard is outlined in **Section 4.2** of the Request.

#### Draft Carter Street Precinct Master Plan 2020

The NSW Department of Planning, Industry and Environment (**DPIE**) is currently exhibiting the 2020 revised draft Master Plan and Development Framework (planning controls) for the Carter Street Precinct in response to the announcement of the Sydney Metro West and the opportunity to provide additional homes within walking distance to the Metro station, which creates new opportunities for the Carter Street Precinct.

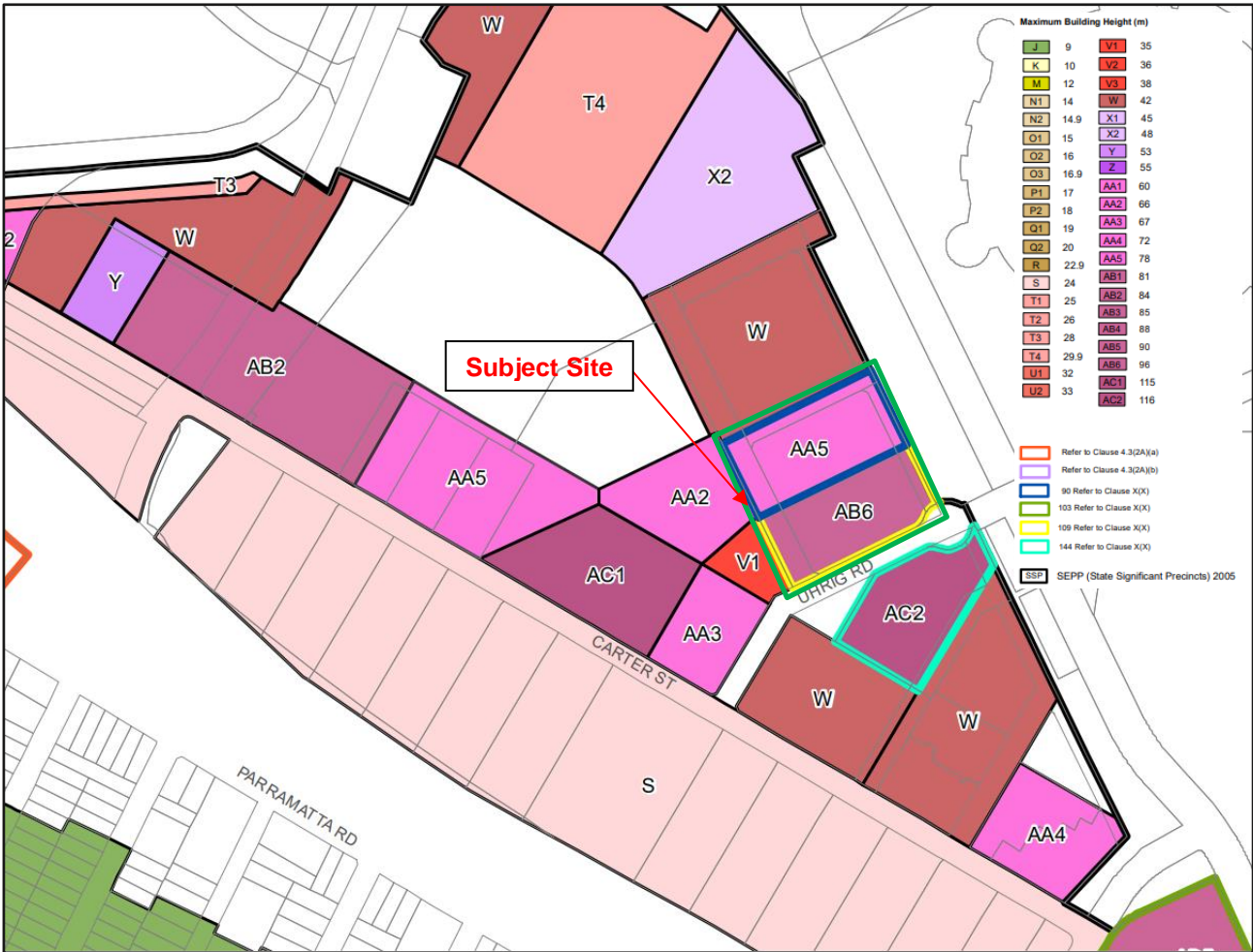


A State Environmental Planning Policy (**SEPP**) is proposed which will amend the ALEP 2010. The SEPP will amend existing clauses and provide new clauses within the Auburn LEP 2010, including related maps relating to height of building controls and floor space ratio controls.

The 2020 draft revised Master Plan refines the ALEP 2010 Height of Buildings controls and the 2018 exhibited draft Height of Building controls as result of submissions received during the exhibition. These changes refine final tower locations and heights across the Carter Street Precinct.

The site is subject to a revised height of buildings control of 78 metres across the northern portion of the site and 96 metres across the southern portion of the site (refer **Figure 5** below). It is noted that the site is also eligible for additional increases in height where coupled with a reduction in the provision of parking. The applicable incentive height of building control is 90 metres across the northern portion of the site and 109 metres across the southern portion of the site (which is equivalent to an additional 4-storeys). The proposed development is entirely consistent with the revised height of buildings control under the draft amendments to ALEP 2010. The proposed development does not seek to utilise the Incentive Clause at this time.

Figure 5 2020 revised draft Height of Building Map



Source: DPIE

## 4.2. PROPOSED VARIATION TO HEIGHT OF BUILDINGS STANDARD

The proposed development presents a varied 72.15 metre (northern portion) and 94.25 metre (southern portion) maximum building height across the site. The proposed development exceeds the building height standard under the ALEP 2010 by a maximum of 52.25 metres (Tower 1 located in south-east corner).

The proposed development is entirely consistent with the revised height of buildings controls under the 2020 draft Master Plan for the Carter Street Precinct which will amend the 'Height of Buildings Map' under the ALEP 2010.

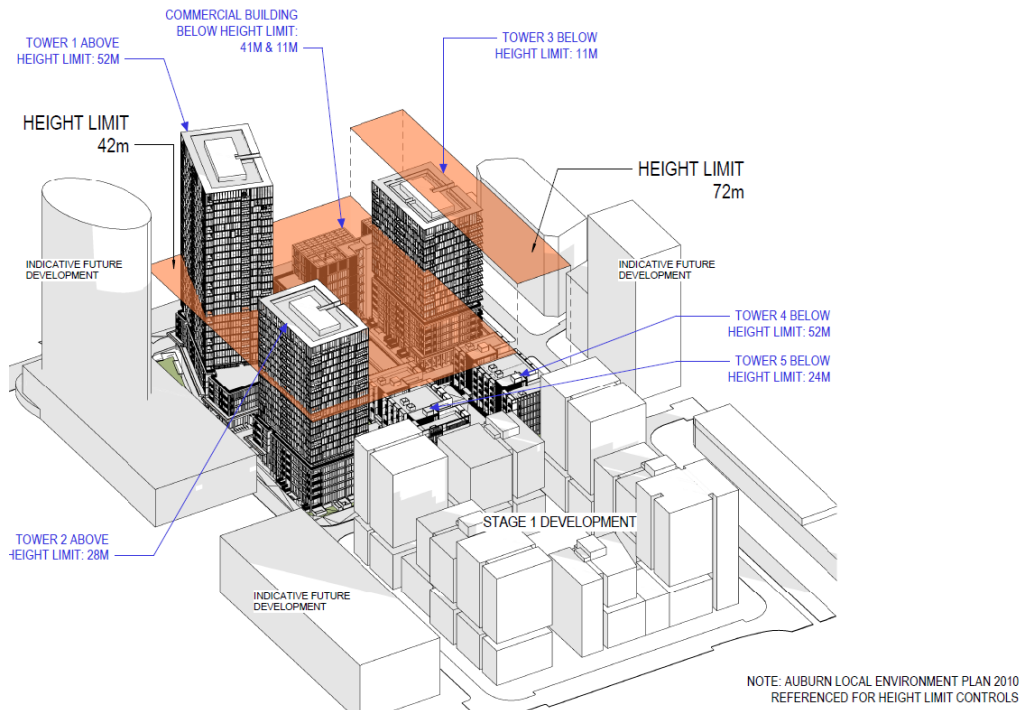
The variations to the height controls are outlined in the table below.

Table 1 Proposed height variations

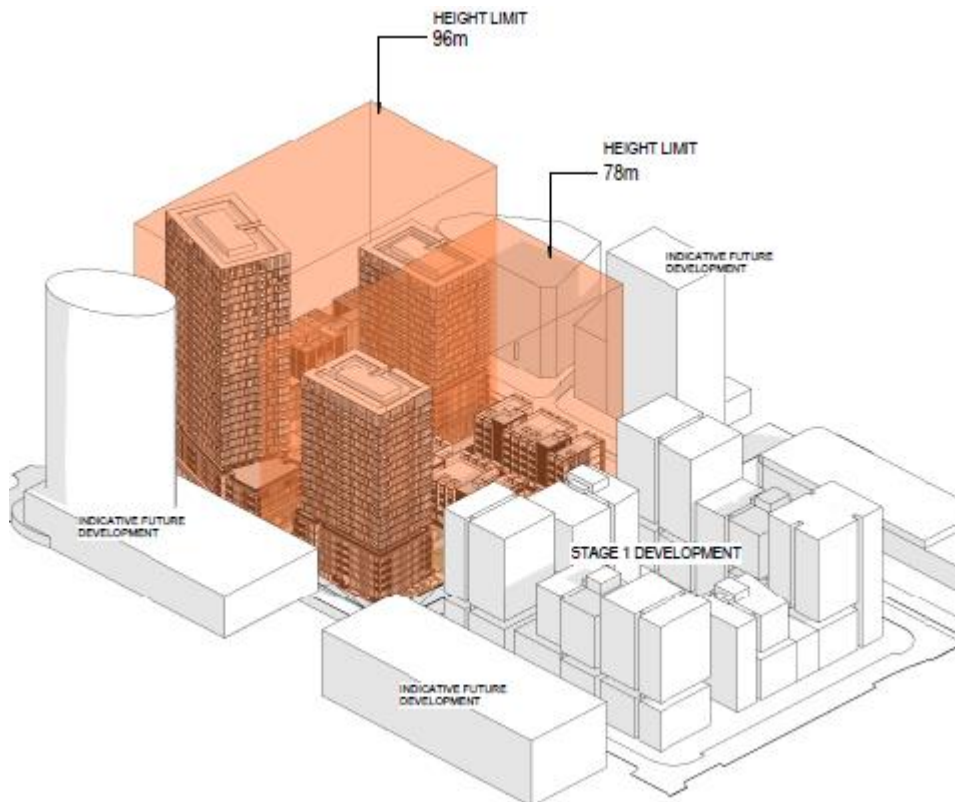
Building	ALEP 2010 Control	2020 Draft Master Plan Control	Proposed	Variation to ALEP 2010	Variation to 2020 Draft Master Plan
<b>Tower 1</b>	42m	96m	94.25m	52.25m	No variation
<b>Tower 2</b>	42m	78m	72.15m	30.15m	No variation
<b>Tower 3</b>	42m (eastern) and 72m (western)	96m	61.66m	19.66m (above 42m control only)	No variation
<b>Tower 4</b>	42m (eastern) and 72m (western)	78m	20.88m	No variation	No variation
<b>Tower 5</b>	42m (eastern) and 72m (western)	78m	18m	No variation	No variation
<b>Commercial Building 1</b>	42m (eastern) and 72m (western)	96m	30.67m	No variation	No variation

**Figure 6** below illustrates the proposed developments breach of the ALEP 2010 height of building control, in comparison to the proposed building heights with regards to the 2020 revised draft building height control.

Figure 6 Proposed building height variation



Picture 3 ALEP 2010 height plane diagram



Picture 4 Carter Street Precinct 2020 draft planning controls height plane diagram

Source: BVN



## 5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of ALEP 2010 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of ALEP 2010 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 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*
- (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.*

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 Request demonstrates that compliance with the height of buildings development standard prescribed for the site in clause 4.3 of ALEP 2010 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.

## 6. ASSESSMENT OF CLAUSE 4.6 VARIATION

This section presents a comprehensive assessment of the request to vary the development standards relating to the height of buildings under clause 4.3 of ALEP 2010.

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.

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

The height of buildings control prescribed by clause 4.3 of ALEP 2010 is a development standard capable of being varied under clause 4.6(2) of ALEP 2010.

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 ALEP 2010.

### 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 ALEP 2010 are detailed in **Table 2** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
<i>(a) to establish a maximum height of buildings to enable appropriate development density to be achieved.</i>	<p>The proposed variation to the height of buildings control will enable the redevelopment of the site with a varied built form which achieves design excellence and enables the permitted GFA to be achieved but not exceeded.</p> <p>The proposal does not compromise and will be consistent with the strategic intent for the site and wider precinct which seeks to establish an increased maximum height of buildings control through the 2020 revised draft Master Plan for the Carter Street Precinct.</p> <p>In view of the future context for the Carter Street Precinct and the broader Sydney Olympic Park precinct, the proposed built form, land uses and GFA allocations enable an appropriate development to be delivered across the site which achieves design excellence and delivers a high quality embellished public domain.</p>
<i>(b) to ensure that the height of buildings is compatible with the character of the locality.</i>	<p>The Carter Street Precinct has been earmarked to undergo significant transition from its historical character towards primarily a high-density residential area with commercial, retail and business activities interspersed. This is anchored by the Parramatta Light Rail Stage 2 project.</p> <p>The proposal is consistent with the Carter Street Precinct 2020 draft revised Master Plan and the 'structure plan' outlined in the Development Framework 2020. Notably, the proposal promotes a "village centre" to the Uhrig Road frontage with mixed use residential / commercial buildings incorporating active ground floor retail and a dedicated commercial office building. Further, the proposed street network and street typologies have been designed accordingly to facilitate the intended movement network throughout the Carter Street Precinct.</p> <p>The proposed tower locations are compatible with the strategic direction and future character of the Carter Street Precinct and wider locality, including the Sydney Olympic Park area.</p> <p>The proposal appropriately interacts with the future context and significant uplift on neighbouring lands identified in the 2020 revised draft Master Plan for the Carter Street Precinct and the Sydney Olympic Park Master Plan 2030.</p>

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 proposed development is entirely consistent with the 2020 revised Master Plan and draft planning controls for the Carter Street Precinct. In particular, the proposal is consistent with the amendments proposed to the land use zoning, increased height of buildings and increased floor space ratio controls.

As such, strict compliance with the controls outlined in the ALEP 2010 would be contrary to the desired future character established under the draft controls and the proposal would not contribute to the State Government's vision for the Carter Street Precinct.

The proposed development achieves the relevant land use zoning objectives for the B2 Local Centre zone as outlined further in **Table 3** of this request.

In summary, the proposed development provides a range of retail and commercial business opportunities, as well as high-density residential development, in proximity to existing and future planned public transport infrastructure. This maximises public transport patronage and encourages active transit methods. Further, the commercial floor space opportunities and range of retail spaces provide an activated public realm and contribute towards attracting business which will stimulate employment and the local economy.

The proposed development is also consistent with the various objectives, development principles and controls outlined in the Carter Street Precinct Development Framework 2020 (the Development Framework). In particular, the following is noted:

- The development provides a range of built form outcomes with varying building heights (ranging from 4-30 storeys) and differing massing approaches which transition and respond to the surrounding areas to deliver a high-quality living environment,
- The commercial building and mixed-use residential buildings comprising ground floor retail opportunities (Towers 1 and 3), together with the public through-site link, contribute towards the creation of a vibrant and activated village centre oriented to Uhrig Road,
- The proposed development provides a mix of housing sizes and living choices within different building typologies,
- The proposed development incorporates an interconnected street network which facilitates walking and cycling opportunities, as well as high public transport patronage, and
- The proposed development responds to the sites constraints and incorporates sustainability measures to reduce the impacts on the surrounding natural environment.

Overall, it is considered that strict compliance would negatively impact on the ability of the proposed development to achieve the B2 Local Centre land use zoning objectives and the various development principles and objectives outlined in the Carter Street Precinct Development Framework 2020.

- **The burden placed on the community (by requiring strict compliance with the height of building 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]).

The proposed development delivers a range of public benefits for the community. Notably, this includes the following:

- Diverse mix of housing opportunities and building typologies in proximity to existing and future planned transport infrastructure,
- A range of employment opportunities through the provision of a commercial office building and active ground floor retail uses to stimulate the local economy,
- The design contributes towards the delivery of the 'village centre' oriented towards Uhrig Road,
- A range of publicly accessible and communal open space areas for future visitors and residents,
- Provision of a through-site link to improve pedestrian movement throughout the site and precinct, and

- Provision of new road infrastructure together with footpaths, cycleways, a publicly accessible internal shareway and opportunities to interface with the future light rail terminus.

The design of the built form in terms of height and massing has been carefully considered and specifically located to provide a good urban design response which minimises overshadowing and reduces the perception of bulk and scale. As such, the impacts of the additional height are very minor.

The benefits the proposed development delivers for the community significantly outweighs the inconsequential non-compliance with the maximum height of building control under the ALEP 2010. The proposed development is entirely consistent with the future desired character of the Carter Street Precinct as established in the 2020 revised Master Plan and draft planning controls.

### **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 are sufficient environmental planning grounds to justify the proposed variation to the development standard, including the following:

- The proposal is consistent with objectives of the development standard (clause 4.3) as demonstrated above and the objectives of the B2 Local Centre zone. The proposal will deliver employment, retail and business activities in a highly accessible location adjacent the Parramatta Light Rail Stage 2, SOPA station and future metro stop. It will also deliver a high density residential neighbourhood supported by open space and an attractive public domain.
- The proposal aligns with the strategic intent of the Carter Street Precinct and is compatible with the context and neighbourhood character of surrounding sites. The proposal achieves the development density envisaged under the 2020 draft Master Plan for the Carter Street Precinct. In addition, the development does not compromise future development under the Sydney Olympic Park Master Plan 2030.
- The proposed building heights are consistent with the proposed changes to the ALEP 2010 'Height of Building Map' outlined in the 2020 draft Master Plan for the Carter Street Precinct, which is currently on exhibition. It is noted that the proposal also demonstrates consistency with the Carter Street Precinct draft Development Framework 2020.
- The proposal delivers an articulated built form which achieves design excellence and reduces perceivable bulk. High levels of amenity are provided for future residents and commercial / retail tenants with the delivery of several communal open space areas across the site which break up the built form. The proposal also achieves compliance with solar access and natural cross ventilation controls contained in the ADG.
- If strict numerical compliance were required, the proposal would need to redistribute GFA to lower levels. This would compromise the delivery of the two new road corridors, internal shareway and the through-site link, communal open space areas and site landscaping works which represent significant public benefit. This would also compromise building separation distances, visual privacy and solar access to residential dwellings which would result in poor amenity for future inhabitants.

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)(A)(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 2** above. The proposal is also consistent with the land use objectives that apply to the site under ALEP 2010. The site is located within the B2 Local Centre zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 3** below.

Table 3 Assessment of compliance with land use zone objectives

Objective	Assessment
a) <i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	<p>The proposal includes the provision of a dedicated seven storey commercial office building which consists of 36 potential commercial office suites (strata) and 18 ground floor retail tenancies. Two of the residential towers also include commercial / retail premises in the podium levels to further activate the respective street frontages for site visitors.</p> <p>This encourages employment generating uses and business opportunities that will contribute to the local economy in highly accessible locations proximate to existing and future transport networks.</p> <p>In addition, the proposal includes the provision of communal open space areas and public domain works including a publicly accessible internal shareway and through-site link, dedication of an area at the Uhrig Road frontage to accommodate a future light rail stop and an extension to Road 10 (to be dedicated to Council in the future).</p>
b) <i>To encourage employment opportunities in accessible locations.</i>	Refer above.
c) <i>To maximise public transport patronage and encourage walking and cycling.</i>	The site is located in proximity to the Sydney Olympic Park train station and will benefit in the future from the Parramatta Light Rail Stage 2 terminus which is anticipated to be located at the

Objective	Assessment
	<p>junction of Uhrig Road and Road 2. The site will also be afforded access to the future Sydney Metro West.</p> <p>The proposal is a pedestrian oriented environment and includes the provision of a new through-site link which connects Uhrig Road through to the new internal shareway and further onto Road 9. Further, the proposed road corridors and those delivered as part of the Stage 1 DA (D/1269/2016) provide adequate services which encourage walking and cycling networks.</p>
d) <i>To encourage high density residential development.</i>	Through the provision of 583 apartments, the proposal will provide high density residential development in proximity to existing and future planned public transport opportunities. These are distributed across five residential towers / built form elements ranging in heights from 4-30 storeys.
e) <i>To encourage appropriate businesses that contribute to economic growth.</i>	As discussed previously, the proposal includes a seven storey commercial office building that provides potential business opportunities for 36 strata office suites. In addition, the ground floor levels of the mixed-use buildings (Towers 1 and 3) incorporate commercial / retail opportunities. The proposed commercial and retail land uses provide floor space opportunities that will attract and encourage businesses to the area which will stimulate the local economy.
f) <i>To achieve an accessible, attractive and safe public domain</i>	The proposal will deliver a vibrant public domain that is highly accessible for future site users and provides a pedestrian oriented environment with a high degree of permeability.

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height of building development standard as it is consistent with the objectives of the particular standard and the objectives for development within the B2 Local Centre 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. Instead, the proposal facilitates the delivery of the Carter Street Precinct redevelopment which has been earmarked by the State Government for a significant increase in residential and commercial development to address growing population demands and interact with the Parramatta Light Rail Stage 2 project. 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 B2 Local Centre land use zone objectives despite the technical non-compliance.

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. It is anticipated that the ALEP 2010 will be amended to incorporate the proposed increased building heights outlined in the Carter Street Precinct 2020 draft revised Master Plan, of which the proposal is consistent with.

- **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

The proposal seeks approval for a variation to the maximum height of buildings development standard contained within clause 4.3 of the ALEP 2010. This variation request is made pursuant to clause 4.6 of the ALEP 2010.

Compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the proposal and sufficient environmental planning grounds have been established to justify contravening the standard. The objectives of the development standard in terms of enabling an appropriate density to be developed and ensuring height is compatible with the character of the area will be achieved notwithstanding non-compliance with the maximum height of building, and thus, demonstrates that the development standard is unreasonable and unnecessary in this case. The proposed building heights are consistent with the increased building height controls outlined in the Carter Street Precinct 2020 draft revised Master Plan (currently on exhibition), which is intended to amend the controls as they relate to the ALEP 2010.

The proposed development will deliver on the State Government's vision for the Carter Street Precinct and allow for future residents / site users to benefit from the delivery of housing, commercial floor space, retail opportunities, road corridors and a pedestrian oriented environment with publicly accessible communal open space.

The proposal is in the public interest and that the proposed clause 4.6 variation request to the maximum height of buildings development standard prescribed by clause 4.3 of the ALEP 2010 is well founded and should be supported by Council to enable appropriate delivery of the Carter Street Precinct redevelopment.

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# APPENDIX A