



Clause 4.6 Variation Request

Bomaderry Build to Rent Residential Apartment Buildings

Corner of Bolong Road and Beinda Street

Bomaderry

April 2024

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A handwritten signature in black ink, appearing to read 'M Rodger', with a long horizontal stroke extending to the right.

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1 INTRODUCTION

On behalf of the proponent, we submit this Clause 4.6 variation request which accompanies a Development Application which seeks approval for the erection of a medium rise Build to Rent residential apartment building development which will provide accommodation for a range of single person households, families and key workers in the locality.

The proposal also incorporates subdivision to consolidate the existing allotments.

This Development Application is lodged as a Crown Development under Division 4.6 of the Environmental Planning and Assessment Act 1979.

The proposal incorporates the following elements:

- Demolition of existing dwelling and associated structures.
- Preliminary site earthworks and vegetation removal.
- The erection of two predominantly three storey (with four storey western units) Build to Rent Residential Flat Buildings accommodating 60 apartments, with a broad mix of Studio, 1, 2 and 3 bedroom apartments incorporating:
 - 8 X Studio Units
 - 17 X 1 bed units;
 - 19 X 2 bedroom units;
 - 14 x two-storey terrace-style 2 bedroom units;
 - 2 X 3 bedroom units.
- Ground level entrance and lobby areas for both buildings.
- Ground level communal room for residents.
- Ground level open air undercroft parking for each building incorporating a total of 70 vehicle parking spaces.
- Motorbike parking incorporating 1 space.
- Bicycle parking for a total of 46 bicycles.
- Waste storage room in the undercroft ground level area.
- Landscaping works including external areas and a landscaped level 1 internal terrace areas for residents on each building.
- Consolidation of the existing allotments to create a single allotment, being Lot 1.
- Construction of kerb and gutter along the Beinda Street frontage of the site.
- Construction of a pedestrian footpath along the Beinda Street frontage of the site.

As part of the development, 20% of the units will be allocated for affordable rental housing

This application is accompanied by detailed architectural, engineering and landscape plans which incorporate all proposed structures and site works.

This request has been prepared in accordance with the Department of Planning & Environment (DP&E) Guideline, Varying Development Standards: A Guide, August 2011, and relevant matters set out in the 'five-part test' established by the NSW Land and Environment Court.

This request should be read in conjunction with the associated Statement of Environmental Effects (SEE) and supporting documentation lodged with the Development Application.

This application seeks a minor variation to the permissible building height to accommodate small sections of the roof elements and a small portion of the two-storey apartments.

The primary bulk and scale of the built form is contained within the permissible building height.

The maximum building height of the eastern building RL 19.75, representing a maximum building height variation of 1.06m (being 9.6%).

The maximum building height of the western building RL 22.25, representing a maximum building height variation of 1.02m (being 9.2%).

The subject site is situated within the Shoalhaven Local Government Area (LGA), as such, *Shoalhaven Local Environmental Plan (SLEP) 2014* is the guiding planning instrument.

Clause 4.6 of SLEP 2014 allows the Consent Authority to approve a development which contravenes a development standard.

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards and to achieve better outcomes for development by allowing flexibility in particular circumstances.

This report, and supporting plans and documentation demonstrate that support for the minor variation will allow enhanced internal design outcomes and ensure plant and equipment is appropriately contained within the roof space.

2 SITE & CONTEXT

The subject site is located in the southern part of the suburb of Bomaderry on the corner of Bolong Road and Beinda Street, Bomaderry

The site is located on the southern side of Beinda Street and western side of Bolong Road and existing residential vehicle access is achieved via both roadways.

The development site is zoned R3 Medium Density under *the Shoalhaven Local environmental Plan (SLEP) 2014*.

The subject site comprises a number of existing residential properties located at the corner of Bolong Road and Beinda Street Bolong.

The subject site encompasses three properties which incorporate eight separate allotments located along the southern side of Beinda Street.

The site is located within the Shoalhaven Government Area (LGA), in the suburb of Bombaderry.

The subject site is legally described as follows:

- 4 Beinda Street – Lot 1, Lot 2, Lot 3 and Lot 4 DP25566
- 57 Bolong Road – Lot 5, Lot 6 & Lot 7 DP25566; and
- 53 Bolong Road – Lot 1 DP329959

The subject site is located in the southern part of the suburb of Bomaderry on the corner of Bolong Road and Beinda Street.

The site is located on the southern side of Beinda Street and western side of Bolong Road and existing residential vehicle access is achieved via both roadways.

The site is well located in relation to local services, key local public transport links, key roadway connections and open space areas.

The site is situated approximately 400m from the southern end of the Bomaderry Town Centre main street retail and commercial precinct which offers a range of key local services for residents including Post Office, supermarket, pharmacy, restaurant and hotel and a range of retail shops.

The Bomaderry Train Station is located in the Main Street precinct, approximately 600m from the site, being a less than 10 minute walk. Bomaderry Train Station is an active local transport hub, as it forms the final station on the South Coast line, and therefore services a wide catchment extending beyond the suburb of Bomaderry.

The site is also located within a walkable catchment of the Bomaderry east industrial and employment area which incorporates the large scale Manildra Group Shoalhaven Starch facility. As described by Manildra Group, the facility is the largest wheat starch & gluten plant of its kind in the world and operates in conjunction with a 'world first' ethanol distillery.

The area also incorporates a range of supporting businesses and agricultural enterprises providing various employment opportunities.

The site is also situated adjacent to a local smaller scale employment area on the eastern side of Bolong Road. This local employment and service hub includes a range commercial, hardware and service based business.

The site is well served by access to a range of open space and recreation areas including Bomaderry Oval – only 80m north east of the site – which incorporates a large scale sports oval and associated Lions Park playground area.

Thurgate Oval, located 70m to the north incorporates a large scale off-leash dog park and areas for informal recreation activities.

The Nowra TAFE College is also situated within a walkable catchment of the site, being located less than 400m to the west on Beinda Street.

Beinda Street and Bolong Road both provide direct connections to the broader key road network, facilitating access to the Princes Highway which connects to the Nowra CBD in the southern side of the Shoalhaven River, Berry to the north and the broader South Coast / Illawarra Region.

Vehicular access to the site is currently achieved via Beinda Steet and Bolong Road.

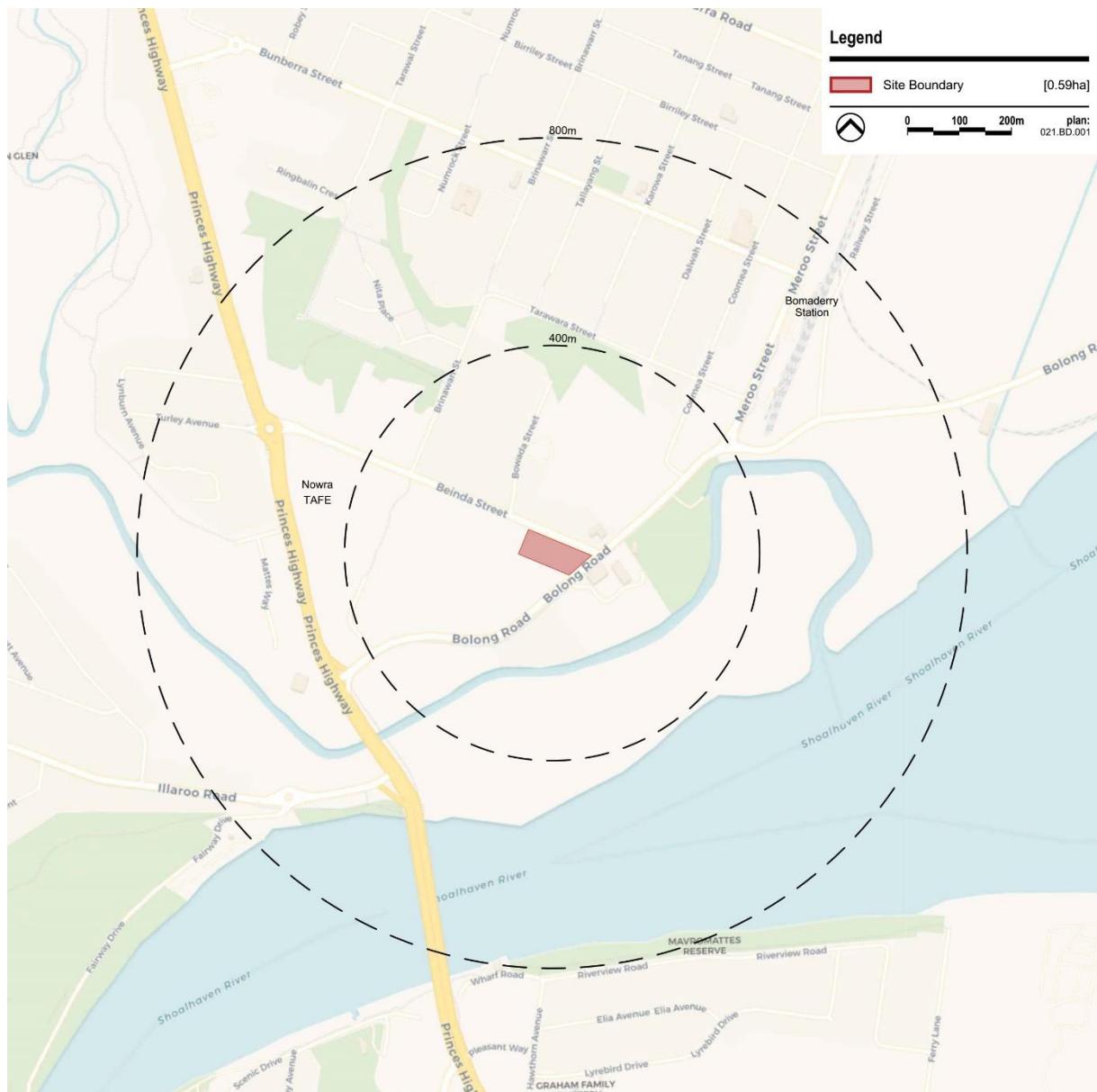


Figure 1 – Local Context Plan



Figure 2 – Site Plan



3 OUTLINE OF THE PLANNING INSTRUMENT AND PROPOSED VARIATION

a) What is the name of the environmental planning instrument that applies to the land?

The Environmental Planning Instrument pertaining to the site is *Shoalhaven Local Environmental Plan (SLEP) 2014*.

b) What is the zoning of the land?

The land on which the development site is situated is zoned R3 Medium Density under the SLEP 2014.

c) What are the objectives of the zone?

The objectives of the R3 Medium Density under the SLEP 2014 are as follows:

- *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 provide opportunities for development for the purposes of tourist and visitor accommodation where this does not conflict with the residential environment.*

d) What is the development standard being varied?

This variation request relates to Clause 4.3 Height of Buildings of SLEP 2014, which prescribes maximum building height land within the LGA.

e) Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 (2A) specifies that if the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.

There is no building height shown on the LEP maps.

As such, the maximum building height is 11m.



Figure 3: SLEP Building Height Plan

f) What are the objectives of the development standard?

The Objectives of Clause 4.3 Height of Buildings are as follows:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.*

g) What is proposed numeric value of the development standard

The maximum building height is 11m.

h) What is proposed in the development application?

This Development Application seeks approval for the construction of a three to four storey Build to Rent Residential Flat Building comprising 60 units above an open air under croft parking area and associated landscaping and site works.

As shown in the sections below, the building form predominantly complies with the maximum building height limit over the site.

The topography of the site impacts building form over the site as it relates to the apartment buildings. The slope and crossfall result in minor portions of the roof extending above the maximum building line.

The maximum building height of the eastern building RL 19.75, representing a maximum building height variation of 1.06m (being 9.6%).

The maximum building height of the western building RL 22.25, representing a maximum building height variation of 1.02m (being 9.2%).

Figure 4: Building Elevations (St Clair Architects)

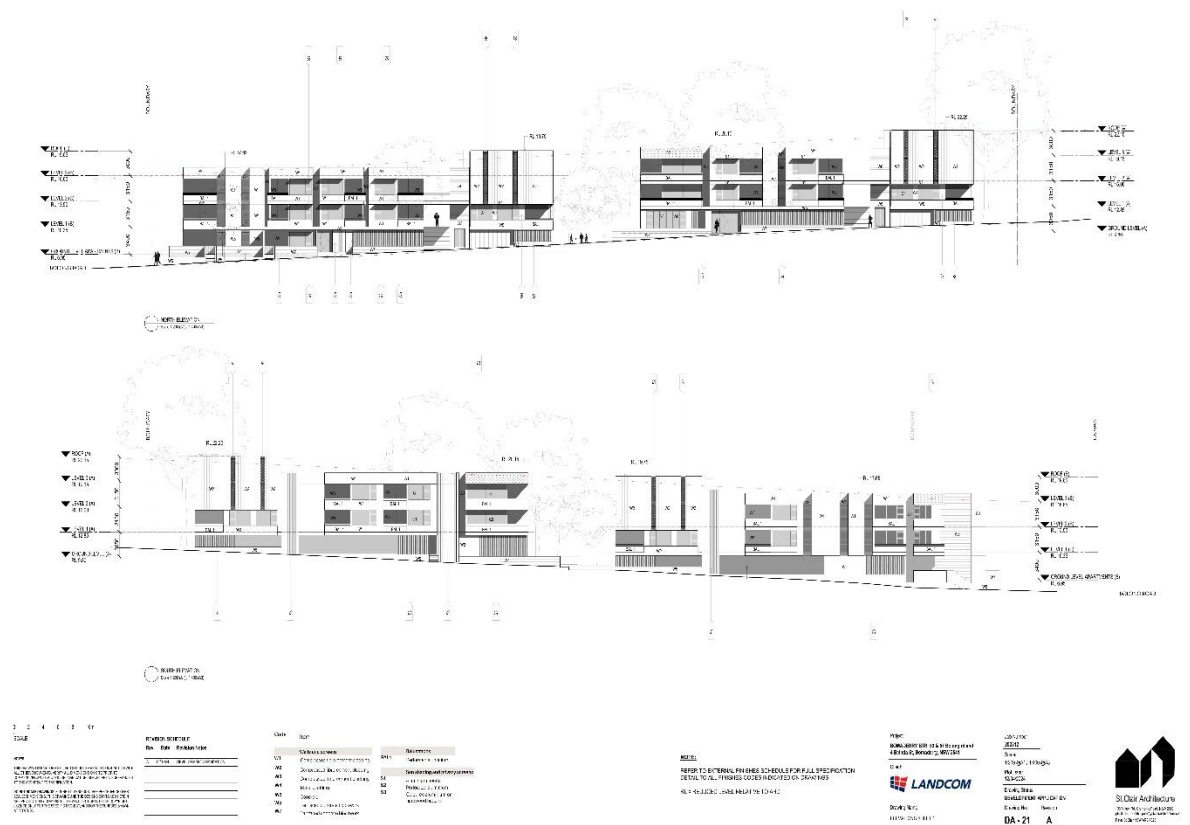
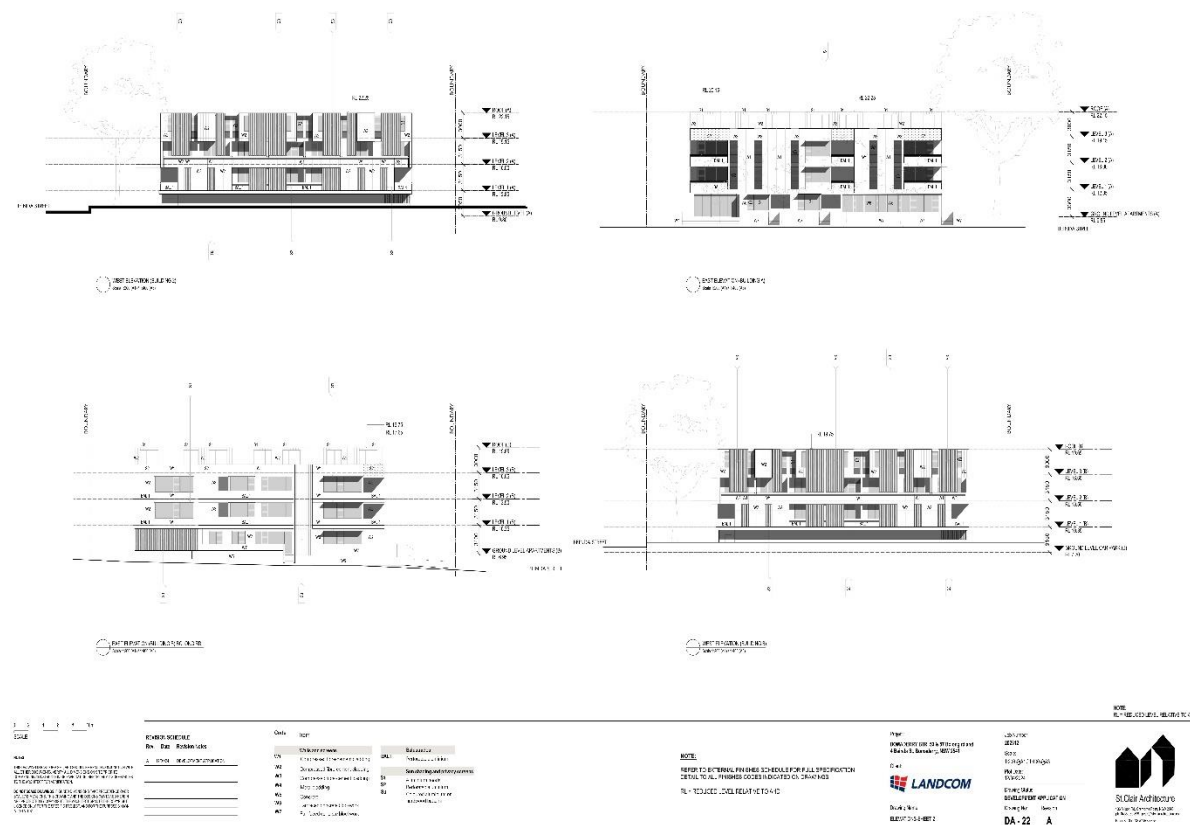


Figure 5: Building Elevations (St Clair Architects)



4 FIVE PART TEST

Clause 4.6 provides appropriate flexibility in the application of development standards to achieve enhanced planning and urban design outcomes where appropriate.

As required under Clause 4.6 (3) the proposed variation to lot sizes is considered appropriate as follows:

(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The NSW Land and Environment Court had established the principle of a five-part test in determining whether compliance with a development standard is unnecessary (*Refer Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 & Wehbe v Pittwater Council [2007] NSW LEC 827*). The most common and appropriate manner of demonstrating that compliance is unnecessary, was whether the proposal met the objectives of the standard regardless of the variation.

The following discussion provides a response to each of the five (5) "tests" established by the court and demonstrates above that the objectives of the standard are achieved notwithstanding the noncompliance.

We have also included Test 1(a) which addresses the objectives of the land use zone, consistent with recent decisions of the NSW Land & Environment Court, including *Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

Test 1. The objectives of the standard are achieved notwithstanding noncompliance with the standard

The objectives of the building height standard at Clause 4.3 are as follows:

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,

Comment: The architectural plans and report submitted with the application demonstrate that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality.

The proposed height variation will not be discernible from a pedestrian view point and the buildings will appear as consistent with the desired scale and character of the locality.

The building had been designed as two separate building forms to respond to the existing built form character.

The proposal is predominantly less than 11m in height, with the building form and character considered to be consistent with the desired future character of the medium density housing precinct.

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

Comment: As demonstrated in this SoEE and associated supporting studies the proposed building height:

- Will not have a significant visual impact;
- Will not result in disruption of any views
- Will not result in any loss of privacy or solar access to adjoining properties.

The building has been deliberately set back from Beinda Street to allow retention of the existing mature trees so as to minimise the visual impact and maintain the existing streetscape character.

The building has been setback from property boundaries consistent with the ADG requirements to ensure there is no loss of privacy or solar access to any existing adjoining properties.

The site and orientation of the development ensure that the building will not impact any key view lines or scenic landscapes.

(c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

Comment: Heritage 21 have prepared a detailed Statement of Heritage Impact in association with this application.

Heritage 21 have concluded that the proposed development complies with pertinent heritage controls and would engender neutral impact on the heritage significance of the adjoining site.

Heritage 21 have recommended the application be supported on consideration of heritage grounds.

Test 1(a). The objectives of the zone

The objectives of the R3 Medium Density under the SLEP 2014 are as follows:

- *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.*

The proposal is consistent with the objectives of the R3 Medium Density zone as it provides for medium density residential development contributes the variety of housing types in the locality.

The proposal is consistent with the objective to allow housing on a medium density residential environment.

- *To provide opportunities for development for the purposes of tourist and visitor accommodation where this does not conflict with the residential environment.*

Comment: The proposal does not seek approval for a tourist or visitor accommodation. As such, this objective is not applicable.

Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The application does not rely on this test for approval.

Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

The application does not rely on this test for approval.

Test 4: 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.

The proposal does not rely on this test for approval.

Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The application does not rely on this test for approval.

Given the discussion above, strict compliance with the development standard is unnecessary.

(b) There are sufficient environmental planning grounds to justify contravening the development standard

A detailed Statement of Environmental Effects (SEE) has been prepared and submitted with this application and provides a comprehensive environmental planning assessment of the proposed development.

The SEE has demonstrated that the proposal is generally compliant with all adopted planning controls and guidelines for the site. The SEE has also demonstrated that there are no adverse environmental impacts as a result of the proposal.

Requiring strict compliance with the building standard would not achieve any discernible change to building heights from the ground level.

In this regard, contravention of the development standard is considered to be acceptable as follows:

- The proposal is consistent with the objectives of the zone and the objectives of the height control.
- The proposed building height and scale is consistent with the long term vision for the site as a medium density neighbourhood.
- The breach of the height limit does not have any environmental impacts on the surrounding locality or landholdings.
- The proposed building height variation is minor in scale and will not be discernible from a pedestrian streetscape perspective.
- Requiring strict compliance would not result in an enhanced urban design or environmental outcome.

5 IS THE VARIATION IN THE PUBLIC INTEREST

The proposed minor variation to building heights is considered to be in the public interest as:

- The proposed building height variation is minor in scale (being less than 1m) and will not be discernible from a pedestrian streetscape perspective.
- The building height variation allows for the delivery of the two-storey apartments, enhance the housing diversity in the project and the broader locality.
- Support for the proposal will significantly enhance housing diversity, affordability and rental accommodation for both existing and future residents in the locality.
- The proposal will deliver the first Build to Rent project in the locality, providing opportunity for long term rental accommodation for residents.
- The site is ideally located within a walkable catchment of local shops, Bomaderry Town Centre Main Street, schools, TAFE, playing fields and Bomaderry Railway station. The site is also within the cycle catchment of the Nowra Town Centre.

6 CONCLUSION

This Clause 4.6 variation request seeks support for a minor variation to the prescribed maximum building height relating to the delivery of a three / four storey Build to Rent residential flat building.

The building height variation is minor in nature and is required to accommodate minor rooftop areas due to the site grade and landform.

The objective of Clause 4.6 is to provide an appropriate degree of flexibility in applying development standards and to achieve better outcomes for development by allowing flexibility circumstances.

This variation request has demonstrated that:

- Compliance with the development standard is considered unreasonable and unnecessary in the circumstances.
- Compliance with the development standard would require excessive site excavation and parking areas below the flood level which is not a preferred outcome.
- The building form has been designed to minimise the variation to building height as much as possible through providing two separate buildings which step down the site responding to site slope.
- The proposed height variation is not discernible from a pedestrian scale at street level.
- There are sufficient environmental planning grounds to justify the contravention.
- The proposal maintains consistency with the objectives of the R3 medium density zone.
- The proposal is consistent with the objectives of Clause 4.3 Building Height, despite the non-compliance.
- The proposed development is an appropriate response to the context of the site, and the breach of the standard is compatible with the existing and future character of the area; and
- Support for the proposed variation will have a positive community impact through provision of a Build to Rent apartment building and is in the public interest.

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