

Cl. 4.6 of Appendix 9 of the
State Environmental Planning Policy
(Sydney Region Growth Centres) 2006
Request to Vary the Maximum Building Height
Development Standard

Proposed Residential Flat Buildings Development
47 Ingleburn Road, Leppington



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For
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December 2020

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A handwritten signature in black ink, appearing to read 'Michael Gheorghiu', written in a cursive style.

Date:

4 December 2020

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1 Introduction

1.1 Overview

This Clause 4.6 of Appendix 9 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP) exceptions to development standard report (**Clause 4.6 Report**), requests a variation to the maximum building height development standard of 12 metres, for the proposed development located at 47 Ingleburn Road, Leppington (**Site**).

This Clause 4.6 Report supports the Statement of Environmental Effects (**SEE**) report, which has been prepared on behalf of 47 Developments Pty Ltd (**47 Developments**).

This Clause 4.6 Report and SEE include an assessment of the proposed works in terms of the matters for consideration as listed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) and Clause 50 of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**the Regulations**).

The preparation of this Clause 4.6 Report and supporting SEE, has relied upon the adequacy and accuracy of supporting architectural plans prepared by D+R Architects Pty Ltd in support of the development.

1.2 Clause 4.6 of the Growth Centres SEPP

Clause 4.6 of the Growth Centres SEPP provides the mechanism to vary development standards, which states:

“4.6 Exceptions to development standards

- (1) The objectives of this clause are as follows —*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating —*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless —*
 - (a) the consent authority is satisfied that —*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note —

When this Precinct Plan was made it did not include any of these zones other than Zone RU6 Transition and Zone E2 Environmental Conservation.

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

2 The Site

The site is located at 47 Ingleburn Road, Leppington. Refer to Figure 1 for the site's local context.



Figure 1. Subject Site

Table 1 provides additional details of the site.

Table 1. Site Description

Property	Details
Legal Description	Lot A in DP336688
Site Area	8,708.2sqm
Ingleburn Road Frontage	115.715 metres (Note: As per survey plan.)
Byron Road Frontage	78.105 metres (Note: As per survey plan.)
South-Western Boundary	108.305 metres (Note: As per survey plan.)
South-Eastern Boundary	77.75 metres (Note: As per survey plan.)

3 The Proposal

D+R Architects Pty Ltd designed the proposal. The proposed development is for residential flat buildings. Generally, the following works are proposed:

- Demolition of existing structures on the site;
- Construction of three residential flat buildings consisting of a total 115 apartments with basement car parking;
- A new road on the south-western boundary of the site;
- Associated civil engineering works; and
- Associated landscaping works.

4 Development Standards

The key environmental planning instrument (EPI) and relevant section of the EPI that applies to the site is Appendix 9 of the *State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (**Growth Centres SEPP**). In accordance with Clause 4.3 of the Growth Centres SEPP the maximum building height is 12 metres.

5 Proposed Variation

The proposed development seeks an exception to the maximum building height of 12 metres in the Growth Centres SEPP. The parts of the development that are above the maximum building height include:

Block A

- Roof and parapet walls on northern end;
- Lift overrun;
- Built form between Block and B;

Block B

- Roof;
- Clerestory windows;
- Lift overrun;
- Skylights;

Block C

- Roof and parapet walls on south-eastern end;

Block D

- Roof communal open space balustrade;
- Roof communal open space structure;
- Lift overrun;

Block E

- Roof;
- Lift overrun; and
- Skylights.

Refer to Figures 2 to 7, which show the elements of the proposal that exceed the maximum building height limit.

Table 2 below identifies the degree of exceedance of the building height.

Table 2. Building Height Exceedance Summary

Unit No.	Height above development standard	% Difference of 12m HOB
Block A		
• Roof and parapet walls on northern end;	Up to approximately 0.7 metres	5.8%
• Lift overrun;	Up to approximately 0.7 metres	5.8%
• Built form between Block and B	Up to approximately 2.0 metres	16.7%

Unit No.	Height above development standard	% Difference of 12m HOB
Block B		
• Roof;	Up to approximately 1.6 metres	13.3%
• Clerestory windows;	Up to approximately 2.0 metres	16.7%
• Lift overrun;	Up to approximately 1.0 metres	8.3%
• Skylights;	Up to approximately 0.4 metres	3.3%
Block C		
• Roof and parapet walls on south-eastern end;	Up to approximately 0.7 metres	5.8%
Block D		
• Roof communal open space balustrade;	Up to approximately 0.4 metres	3.3%
• Roof communal open space structure;	Up to approximately 1.2 metres	10.0%
• Lift overrun;	Up to approximately 2.4 metres	20.0%
Block E		
• Roof;	Up to approximately 0.6 metres	5.0%
• Lift overrun; and	Up to approximately 1.0 metres	8.3%
• Skylights.	Up to approximately 0.4 metres	3.3%

Refer to architectural design package and relevant elevations for each building that show the elements that are non-compliant with the maximum building height development standard.

Given the location of the non-complying built form and the no impacts of the non-compliance, it is considered that the non-compliance is acceptable for the site.



Figure 2. Areas that exceed maximum building height – north-east view



① 12m HEIGHT PLANE view along Ingleburn Rd looking West

Figure 3. Areas that exceed maximum building height – south-west view



Section AA - Through Block A & B

Figure 4. Areas that exceed maximum building height – Section through Blocks A and B

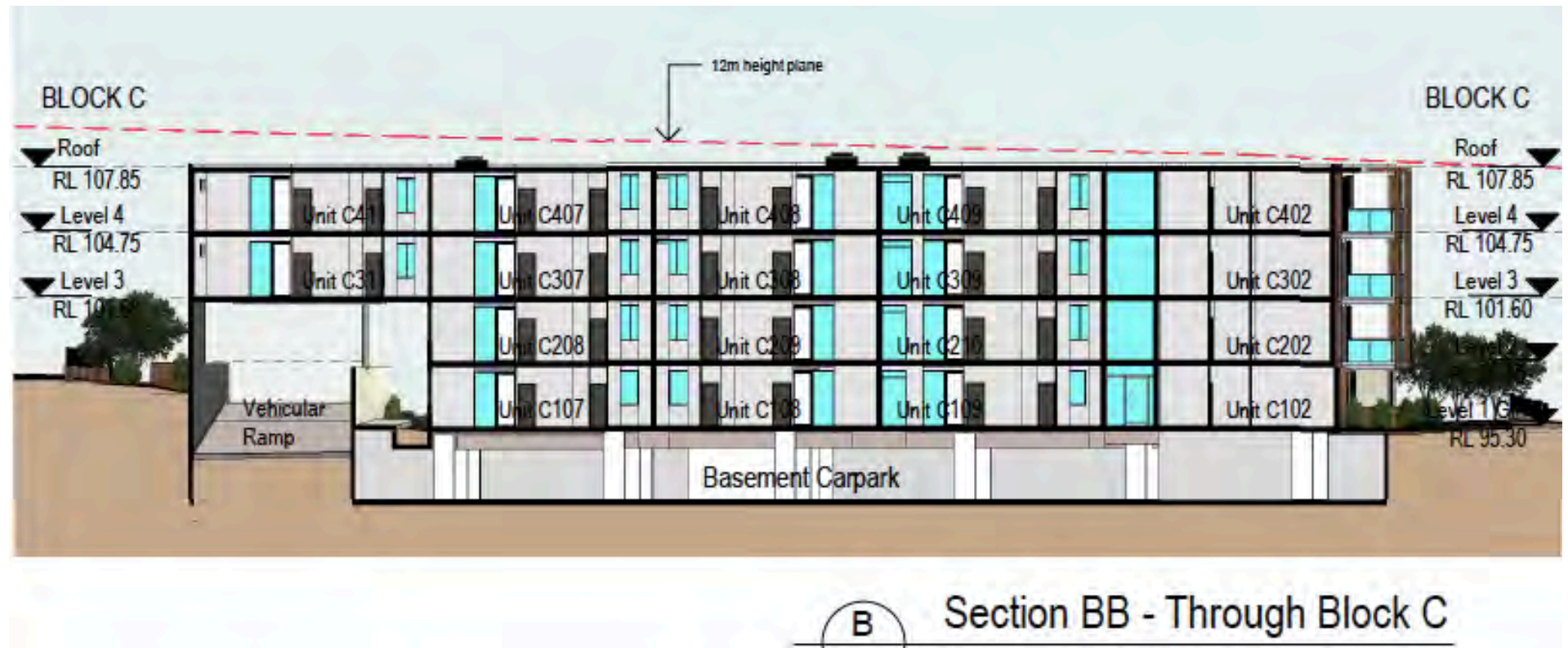


Figure 5. Areas that exceed maximum building height – Section through Blocks C

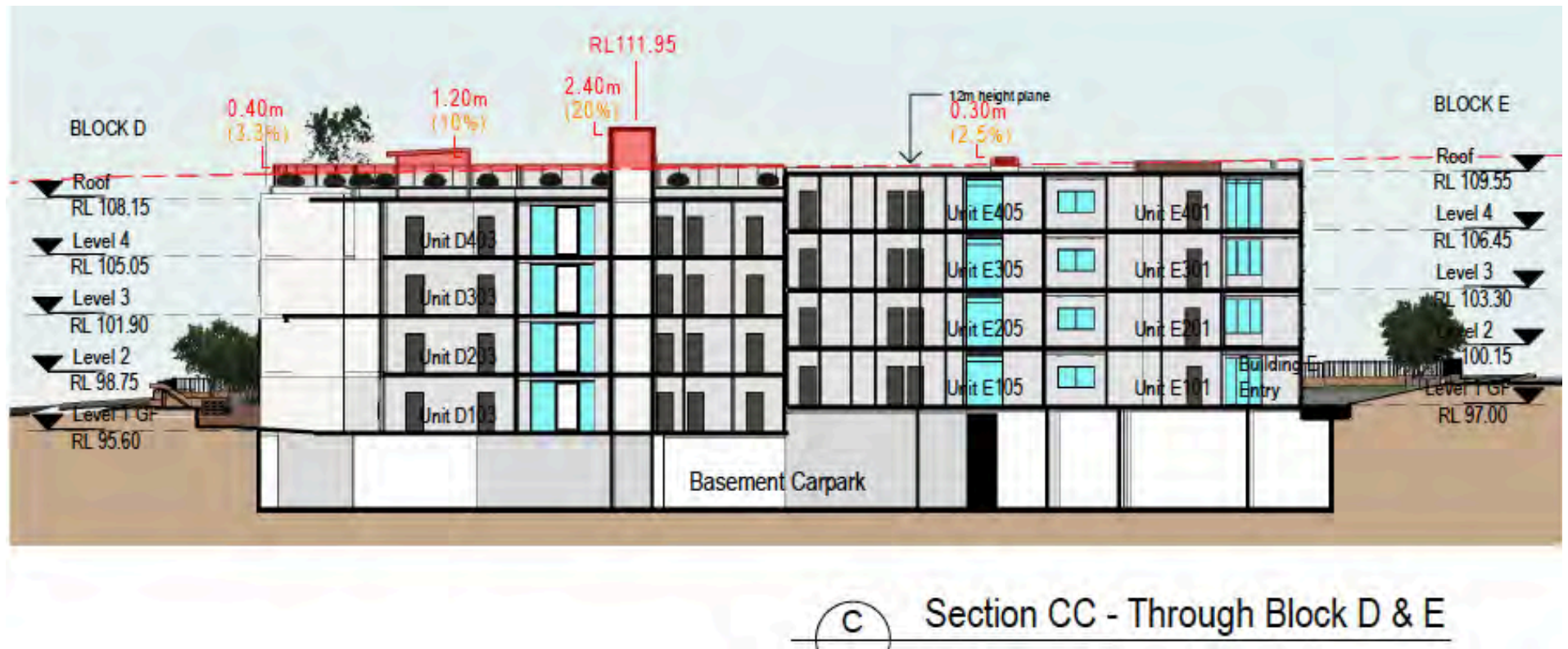


Figure 6. Areas that exceed maximum building height – Section through Blocks D and E

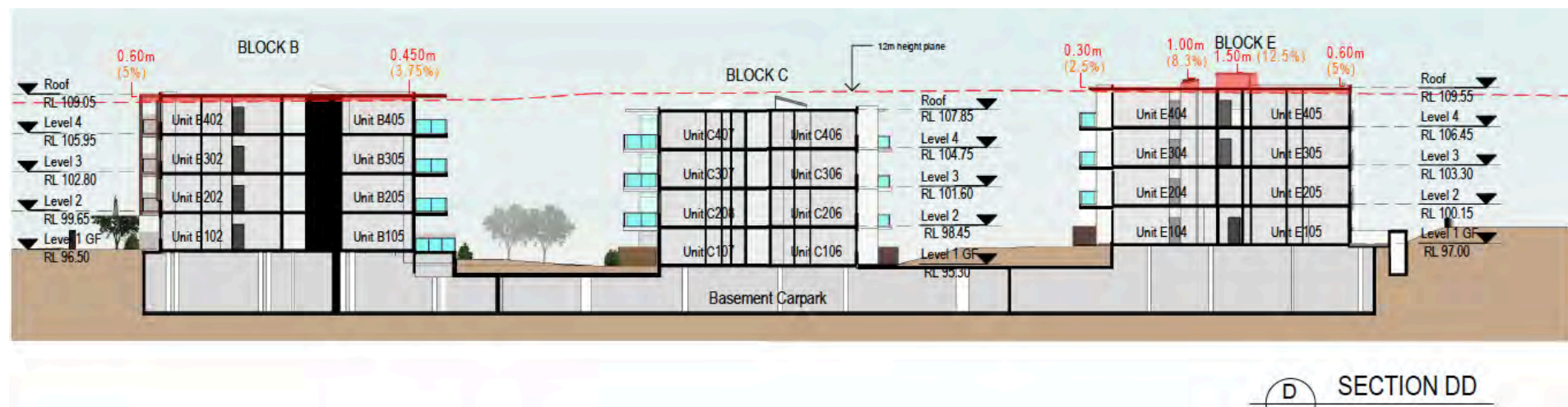


Figure 7. Areas that exceed maximum building height – Section through Blocks B, C and E

6 Justification for Request

This Clause 4.6 Report seeks a relaxation of the development standards in Clause 4.3 of Appendix 9 of the Growth Centres SEPP in support of the proposal.

6.1 Clause 4.6 Assessment

For development consent to be granted to a non-complying development, Council must be satisfied that the provisions of Clause 4.6(3)-(5) of Appendix 9 of the Growth Centres SEPP have been satisfied. The proposed development has been assessed under these provisions, having regard to the application of these provisions established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 82;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3'); and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Accordingly, the following assessment is made.

6.1.1 Clause 4.6(3)

Clause 4.6(3), stipulates that development consent will not be granted to a non-complying development unless it can be demonstrated that:

- (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(3)(a) - Unreasonable or Unnecessary Assessment

Preston CJ in *Wehbe v Pittwater Council* [2007] NSW LEC 827 outlined five criteria which may demonstrate that compliance with a development standard is "unreasonable or unnecessary".¹ The criteria are articulated as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
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.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*²

¹ *Wehbe v Pittwater Council* [2007] NSW LEC 827, [42]-[49].

² *Ibid.*

An assessment of the above criteria in relation to the subject development is outlined below:

(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard

The development is consistent with the objectives of the standard and does not create any significant environmental impacts. Consequently, strict compliance with the development standard is unnecessary as the development meets the objectives of the LEP. It is also unreasonable, in that no purpose would be served through strict compliance by the proposed development. As such, it is unreasonable and unnecessary in this circumstance to comply with the development standard.

Refer to the table below the assessment of the development standard objectives.

Table 3. Assessment of Development Standard Objectives

Property	Details
<i>"4.3 Height of buildings</i>	
<i>(1) The objectives of this clause are as follows—</i>	
<i>(a) to establish the maximum height of buildings</i>	The proposal and site is subject to a maximum building height of 12 metres.
<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 does not have any adverse visual impact on adjoining properties or the area.</p> <p>The area is changing in character as a result of the Growth Centres and ILP. More intense residential development is encouraged and expected for the area as seen in the surrounding suburbs.</p> <p>The areas of non-compliance present as a series of elements that form part of the roof and do not generate any visual impacts. Also, they do not affect the amenity of adjoining development and land in terms of solar access to buildings and open space.</p>
<i>(c) to facilitate higher density development in and around commercial centres and major transport routes.</i>	Not applicable

(ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.

(iii) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Not applicable.

(iv) The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Not applicable.

(v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Not applicable.

The Clause 4.6 exception to development standard request appropriately addresses *Wehbe v Pittwater Council [2007] NSW LEC 827*, therefore the proposed variation satisfies cl 4.6(3)(a) and is well founded.

Further Discussion of Unreasonable or Unnecessary Assessment

The elements that generate the non-compliance are a series of elements that form part of the roof and include parts of the roof. These areas would be perceived as any other roof element and do obstruct any views for adjoining properties. Importantly given the skilful architectural design these elements would not either be seen from the streetscape or not dominate the streetscape.

As will be discussed in the next section of this report the proposed non-complying element has no material environmental impact with respect to overshadowing on proposed buildings and adjoining properties. Additionally, the non-complying element does not generate any view loss or obstruction views from adjoining properties.

Given the location of the non-complying portions of the built form and the limited impacts of the non-compliance, it is considered that the non-compliance is acceptable in the circumstances of the case. Hence, compliance with the development standard is unreasonable and unnecessary as the impact generated is no greater or worse than if the proposal complied with the development standard.

Clause 4.6(3)(b) - Environmental Planning Grounds

Clause 4.6(3)(b) requires sufficient environmental planning grounds to be demonstrated to justify a contravention of the development standard.

The proposed development is mostly compliant with the maximum building height of 12 metres prescribed by the Growth Centres SEPP. The main building forms that exceed the height limit are the parts of the roof to each block, lift overruns, skylights and roof communal open space balustrade. Figures 2 to 7 clearly show the degree of non-compliance generated by the proposal.

The height non-compliance can create two issues of concern:

- Potential excessive and unacceptable overshadowing as a result of the additional bulk above the maximum building height; and
- View obstruction.

Overshadowing

As demonstrated in Figures 8 to 10 of this report, show the shadows generated by the proposal. Figure 8 clearly show that at 9am in mid-winter the shadow falls on part of the property to the south of the site, however most of the shadow falls on the proposed new road. By 10am that shadow has completely left the property to the south of the subject site and the shadow falls mainly on the proposed new road and on the site itself.

Importantly, the proposed development does impact available sunlight to the adjoining property to the east of the subject site. The adjoining property to the east receives sunlight for the majority of the day in mid-winter. The shadow cast by the proposal only starts to strike the adjoining property between 1:30pm and 2pm. Based on these shadow diagrams it is evident that the proposed non-complying elements would have no adverse overshadowing impact on adjoining properties.

In circumstances where an impact would be generated it is normal practice to assess the impact against the planning principles established under *The Benevolent Society v Waverley Council* [2010] NSWLEC at 133-144 and in turn under *Parsonage v Ku-ring-gai* [2004] NSWLEC 347; (2004) 139 LGERA 354. The overshadowing impact planning principles talk to assessing the amount of sunlight that would be lost as well as retained, impacts arising from poor design, amount of sunlight of sunlight that strikes a window, impacts generated by other features such as fences and consideration of a changing area.

In this circumstance, the non-complying elements do not cause any loss of sunlight and do not strike any windows whereby an adverse impact would be generated. Moreover, the proposal generates a good quality design outcome for the subject site. Therefore, strict compliance with the development standard is unnecessary and unreasonable.

Further, the development is not out of character and not inconsistent with proposed future development in the area. The proposal is consistent with the future desired character under the objectives of the R3 Medium Density Residential land use zone.



1 Shadow Diagram June 21 - 9am

Figure 8. 9am shadow mid winter



① Shadow Diagram June 21 - 10am

Figure 9. 10am shadow mid winter



① Shadow Diagram June 21 - 2pm

Figure 10. 2pm shadow mid winter

Visual Impacts

In relation to visual impacts, the non-complying elements form part of the roof structure. These elements balance the overall design of the proposal and through a skilful design ensures that these elements do not dominate the streetscape. Further, these elements do obstruct any views from surrounding properties.

In circumstances where a view loss or view sharing impact would be generated it is normal practice to assess the impact against the planning principles established under *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 at 25-29. The view loss and view sharing impact planning principles talk to assessing whether a proposal retains views enjoyed by adjoining properties, assessing which views are lost and the importance of those views such as water views, where the views are obtained from, extent of views enjoyed by adjoining properties and assess the reasonableness of the proposal.

In this circumstance, given that the non-complying elements do not cause any loss of views to adjoining properties and promotes view sharing then the assessment of the abovementioned planning principles are not required. Therefore, strict compliance with the development standard is unnecessary and unreasonable.

Neutral and Beneficial Effect

Pursuant to the decision in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 it need not be demonstrated that the non-complying development has a "neutral or beneficial effect relative to a compliant development."³ Should the design be amended to comply, it would cause an inferior design and planning outcome with no better environmental outcome. Accordingly, the proposal is optimal as it stands.

Furthermore, in *Initial Action*, at [23], Preston CJ held:

"... The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purposes of the EPA Act, including the objects in Section 1.3 of the EPA Act."

An assessment of the Objects Section 1.3 of the Act is provided in the table below. The assessment found that the proposal does offend any of the Objects of the Act.

Table 4. Section 1.3 of the Act Assessment

Objects under Section 1.3 of the Act	Assessment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	Not applicable. The proposal does impact any of the State's natural and other resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal meets the objectives of the R3 Medium Density Residential zone and Council's inherent desired future character for the area. The proposal is considered suitable for the site and that it meets this object because, <ul style="list-style-type: none">• It does not generate any adverse

³ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [86].

Objects under Section 1.3 of the Act	Assessment
	<p>environmental impact;</p> <ul style="list-style-type: none"> • Provides housing in a growth area, locating housing in close proximity to employment and uses/services/functions and future centre, while contributing the to economic role of the centre; and • Provides greater housing choice in the area, while also providing housing in proximity to public transport, which achieves the objectives of the land use zone.
(c) to promote the orderly and economic use and development of land,	The proposal achieves an orderly and economic use of the land. Refer to above assessment under Object (b).
(d) to promote the delivery and maintenance of affordable housing,	The proposal does not include affordable housing and there is no requirement or mechanism under Council's LEP or under the Growth Centres SEPP to provide affordable housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Not applicable. The site does not include any threatened and other species of native animals and plants, ecological communities and their habitats.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Not applicable. The site does not include any built and cultural heritage, including Aboriginal cultural heritage.
(g) to promote good design and amenity of the built environment,	The proposal is considered to be a good design outcome for the site, as it achieves a high quality residential amenity for future residents.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal seeks to achieve the proper construction and maintenance of the building. Any development consent would be subject to strict Conditions of Consent that the developer and building contractor would need to adhere to and demonstrate compliance with relevant Council requirements, National Construction Code requirements and Australian Standards.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	Leppington is located within strategic growth area. The proposal achieves the NSW State Government's core aim under the Greater Sydney Region Plan to deliver a '30-minute city' by locating housing close to strategic

Objects under Section 1.3 of the Act	Assessment
	centres and employment. The above is reinforced by the proposal meeting the objectives of the R3 Medium Density Residential zone and Council's inherent desired future character for the area.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposal is subject to standard planning process for development consent. The proposal has been publicly exhibited and received no community submissions.

As such, given the assessment of the Objects of the Act and assessment of potential environmental impacts, there is sufficient justification for the proposal on environmental planning grounds, which are particular to the subject site, to allow for the contravention of the development standard.⁴

6.1.2 Clause 4.6(4)(a)(i)

Clause 4.6(4)(a)(i) requires that the consent authority be satisfied that this request to vary the maximum building height has adequately addressed the matters required to demonstrate subclause (3). The assessment of the non-compliance and justification for the request is presented in above sections of this report. The assessment and justification is well founded on the basis of the proposal's ability to meet the objectives of the maximum building height development standard, justification that compliance is unnecessary in the circumstance and that there are sufficient environmental planning grounds to justify the contravention. Refer to assessment and justification in the above sections of this report.

6.1.3 Clause 4.6(4)(a)(ii)

Clause 4.6(4)(a)(ii) requires that a consent authority must be satisfied that the proposed development is in the public interest because it is consistent with the objectives of the development standard and of the particular land use zone. Refer to page 15 of this report for an assessment of the maximum building height development standard objectives. The assessment found that the proposal satisfies the relevant objectives.

In relation to the land use zone objectives, the subject site is zoned as R3 Medium Density Residential (R3 Zone) under Appendix 9 of the Growth Centres SEPP. An assessment of the R3 Zone objectives is provided in Table 5 of this report. The assessment found that the proposal satisfies the relevant land use zone objectives.

⁴ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, [60]; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90,[29].

Table 5. Assessment of R3 Land Use Zone Objectives

Property	Details
(1) Objectives of Zone	
To provide for the housing needs of the community within a medium density residential environment.	The proposal, as a medium-density residential development is consistent with the desired future character for the area and provides for the housing needs of the community.
To provide a variety of housing types within a medium density residential environment.	The proposal offers a variety of dwelling types to the growth area including 1, 2 and 3 bedroom units.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal provides housing and does not proposal other land uses such as shops or facilities. The proposal is in close proximity to shops and other facilities located in the Leppington Town Centre.
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.	Not applicable.

6.1.4 Clause 4.6(5)

The NSW Department of Planning, Infrastructure and Environment (**DPIE**) has issued a Planning Circular (PS20-002) dated 5 May 2020 which provides guidance with respect to assumed concurrence of the Secretary when determining a development application that is supported by a Clause 4.6 request. The Planning Circular outlines Secretary's concurrence cannot be assumed for development that contravenes a development standard by more than 10%. However, because this proposal is in the NSW Land and Environment Court (LEC), Section 39(6) of the *Land and Environment Court Act 19179* (LEC Act) is relevant and provides:

(6) *Notwithstanding any other provision of this Section, if an appeal relates to an application made to a council within the meaning of the Local Government Act 1993 or a consent authority within the meaning of the Environmental Planning and Assessment Act 1979 and that council or consent authority may not approve of, consent to, or deal with, or grant a permission in respect of, the application except after consultation with, or with the concurrence or approval of, any person or body —*

(a) *the Court may determine the appeal whether or not the consultation has taken place and whether or not the concurrence or approval has been granted, and*

- (b) *in a case where the concurrence or approval has been granted—the Court may vary or revoke any conditions imposed by that person or body or may impose any conditions that could have been imposed by that person or body.*

An assessment of the above criteria in relation to the subject development is outlined below:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The proposed non-compliance with the maximum building height development standard does not raise any matters of significance for State or regional environmental planning. The contravention only relates to a local environmental planning matter and control.

(b) the public benefit of maintaining the development standard, and

Should the proposal comply with the maximum building height development standard, it would result in a less optimal proposal while not generating any further benefit with respect to overshadowing and visual impacts. The proposal does not generate any adverse environmental impacts with respect to the non-compliance with the maximum building height development standard as assessed and demonstrated in the previous sections of this report. Therefore, there is no extra merit for providing a compliant scheme.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other matters to be taken into consideration by the Secretary before granting concurrence. The proposal results in an orderly and economic development for the site.

7 Conclusion

In conclusion the consent authority can be satisfied that:

- (a) This Clause 4.6 request adequately addressed the matters required to be demonstrated in Clause 4.6(3) in that:
 - (i) it demonstrates that compliance with the height development standard in clause 4.3 is unreasonable or unnecessary in the circumstances of the case, and
 - (ii) it demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard,
- (b) The proposed development will be in the public interest because:
 - (i) it is consistent with the objectives of the height development standard, as set out in Section 6.1.1 of this report, and
 - (ii) it is consistent with the objectives of the R3 zone, as set out in Section 6.1.3 of this report.

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