

Request for Variation of Development Standards



Concept Development Application Mixed Use Residential Development

164-170 Croatia Avenue, Edmondson Park

Prepared on behalf of: Superstar Pty Ltd

January 21, 2021

Document control

Authors

Reviewed by	Michael File, Director
Prepared by	Anna Johnston, Associate

Project summary

Applicant	Superstar Pty Ltd
Land to be developed	164 and 170 Croatia Avenue, Edmondson Park
Legal description	Lot 25 DP228850 and 26 DP228850.
Project description	Concept Development Application for mixed use residential development within Edmondson Park Town Centre

Contents

Document control.....	ii
Executive Summary	v
1 Introduction	6
2 Site description	8
3 The proposal	10
4 Extent of variation to development standards	11
5 Justification of variation	13
5.1 Consideration of Clause 4.6 requirements	13
5.2 Consideration of the 'five part test'	16
6 Conclusion.....	18
Table 1: Height exceedance	11
Table 2: Consideration of Clause 4.3 Height of Buildings objectives.....	15
Table 3: Consideration of objectives of the B4 Mixed Use zone	16
Table 4: Consideration of 'five part test'	17
Figure 1: SSP SEPP height of buildings map	7
Figure 2: SSP SEPP floor space ratio map.....	7
Figure 3: Subject site.....	9
Figure 4: Proposed Site Layout and Building heights	10
Figure 5: Height diagram – south	12
Figure 6: Height diagram - north	12
Figure 7: Communal open space	14
Figure 8: Solar access to communal open space	14
Figure 9: Tree canopy cover	15

This page is left intentionally blank

Executive Summary

This report has been prepared to request a variation to a development standard subject to Clause 28 of the *State Environmental Planning Policy (State Significant Precincts) 2005* (the SSP SEPP) in connection with a Concept Development Application for land at 164-170 Croatia Avenue, Edmondson Park (the site).

The developable portion of the site is zoned B4 Mixed Use under the SSP SEPP and the following height of buildings controls apply (see Figure 1 and Figure 2):

- FSR of 2:1
- Maximum height of 24m.

The Concept DA proposal is compliant with the FSR control but seeks to exceed the 24m height control in a number of locations across the site with the objective being to provide for greater built form variation as well as to provide more generous open space at the ground level. No additional floorspace is proposed.

Clause 28 of the SSP SEPP sets out provisions for the variation of development standards.

The proposal seeks to vary the height limit of 24m in a number of locations by up to 6.8m (to a maximum height of 30.8m).

The maximum exceedance to the top of roof is 4.6m or 19%. The exceedance increases to 6.8m or 28% when incorporating the rooftop lift access and lift overruns. The lift overruns have been located to away from the building frontages and would not be visible from the streets. The accessibility to the rooftop will enhance the amenity for residents through provision of additional communal space and rooftop landscaping.

In summary the proposed variation to the maximum height of buildings control to allow for height of up to 30.8m is considered to be justified on the basis that:

- The exceedance seeks to allow for a greater variation of heights across the site whilst maintaining the overall floor space potential. This will provide built form variations across the site with a mix of lower rise buildings of 4-6 storeys along with taller 7-8 storey buildings, providing an enhanced urban form by increasing visual interest through a varied built form.
- No additional gross floor area is proposed beyond the permitted maximum of 2:1.
- Compliance with the height of buildings control would preclude significant variations in height across the site.
- The variation of building heights across the site enables sensitive transitions to maintain a human scale at the street level and minimise overshadowing of apartments and open space.
- The variation will also enable the built form to be consolidated allowing for more generous space at the ground level including increased open space, public domain areas and landscaping.
- For the adjoining parts of the Town Centre North, Landcom is seeking to amend the SSP SEPP to increase the maximum height to 50m, with a landmark building up to 67m. If this amendment is approved the building heights on the subject site would be significantly lower than within the adjacent parts of the town centre, regardless of the proposed height variation. This height increase would apply to parts of the Town Centre which are further from the train station than the site.
- The proposal has been considered by the Liverpool Design Excellence Panel who have supported a variation of height noting that it would like to see *diversity in the spatial quality of the built form* and that *variations in height are encouraged and supported, rather than a monotone pattern of building heights across the site*.

1 Introduction

This report has been prepared to request a variation to a development standard subject to Clause 28 of the *State Environmental Planning Policy (State Significant Precincts) 2005* (the SSP SEPP) in connection with a Concept Development Application for land at 164-170 Croatia Avenue, Edmondson Park (the site).

The land use and planning controls which apply to the southern portion of the site (being the developable area) are identified within the Edmondson Park South site listing in Appendix 16 of the SSP SEPP. Accordingly the provisions of the Liverpool Local Environmental Plan do not apply to these areas.

The developable portion of the site is zoned B4 Mixed Use under the SSP SEPP and the following height of buildings controls apply (see Figure 1 and Figure 2):

- FSR of 2:1
- Maximum height of 24m.

The Concept DA proposal is compliant with the FSR control but seeks to exceed the 24m height control in a number of locations across the site with the objective being to provide for greater built form variation as well as to provide more generous open space at the ground level.

Clause 28 of the SSP SEPP sets out provisions for the variation of development standards. The objectives of Clause 28 are:

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

Clause 28 requires Council to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances
- There are sufficient environmental planning grounds to justify contravening the development standard.

In making its determination Council must also consider whether 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.

Clause 28 requires the concurrence of the Secretary of the Department of Planning, Industry and Environment. However, all consent authorities have been granted assumed concurrence under *Planning Circular PS 20-002 Variations to Development Standards* (5 May 2020). The assumed concurrence includes a condition that numerical standards (such as height of buildings) cannot be varied by greater than 10% if determined by a delegated authority. It is noted that this restriction does not apply where the Council or Planning Panel is the decision maker. Accordingly, the assumed concurrence applies.

The Department of Planning, Industry and Environment has issued *Varying Development Standards – A Guide 2011* to assist applicants in applying to vary development standards. The guide sets out a ‘five part test’ which has been established by the NSW Land and Environment Court which may be considered in applying Clause 4.6 to determine whether the objection to the development standard is well founded.

The matters outlined above have been considered and addressed by this report.



Figure 1: SSP SEPP height of buildings map

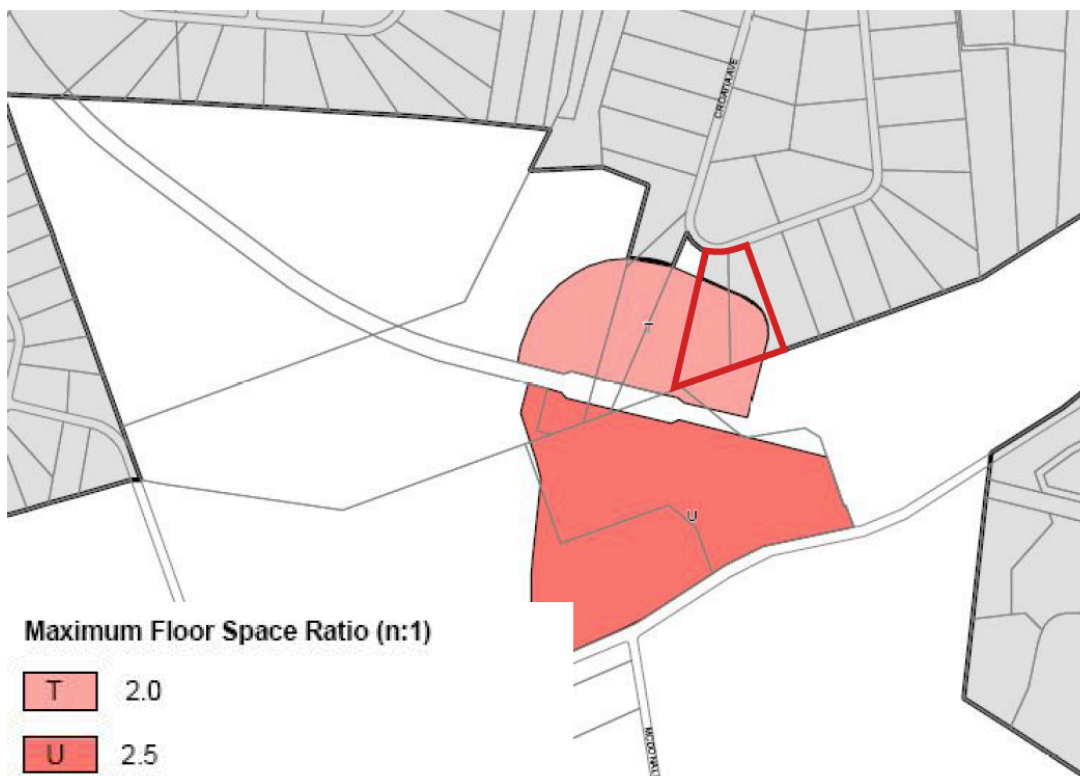


Figure 2: SSP SEPP floor space ratio map

2 Site description

This Statement of Environmental Effect applies 164 and 170 Croatia Avenue, Edmondson Park (the site) which comprises a total area of 4.292ha. The land is described as Lot 25 DP228850 and 26 DP228850.

The site is located within the Edmondson Park precinct of South West Priority Growth Area. It is located to the north east of the Edmondson Park Train Station within the Liverpool LGA, and is currently undeveloped vacant land. The southern portion of the site is largely cleared of vegetation with the exception of some scattered tree. Maxwells Creek traverses the northern part of the site this area comprises degraded riparian vegetation.

The southern portion of the site is located within the planned Edmonson Park Town Centre and is zoned B4 Mixed Use under the SSP SEPP. The B4 zone forms the developable area comprising 30,289sqm.

The northern portion of the lots are predominantly zoned RE1 Public Recreation and SP2 Infrastructure (Local Road) under the *Liverpool Local Environmental Plan 2008*. The Liverpool LEP identifies this land for acquisition and it is understood it is intended to be used for creek realignment works, drainage infrastructure and riparian open space.



Figure 3: Subject site

3 The proposal

The proposal comprises the following:

- Mixed use residential development across eight buildings comprising a total of 62,293sqm of new floor space (FSR of 2:1) providing for 686 apartments, approximately 2,000sqm of retail/commercial floor space providing 35 tenancies and a childcare centre
- Four basement car parks to service each of the development sites providing for loading, waste storage and removal and the following parking arrangements providing a total of 844 car parking spaces
- New streets to extend the road network from the adjacent Landcom Town Centre North site consistent with the Edmondson Park South Part 3A Concept Plan approval
- Dedication to council of 12,631sqm of riparian open space zone RE1 Public Recreation to support planned creek realignment, drainage infrastructure and open space.

The development is largely proposed to be located within the B4 Mixed Use zone, with the exception of the pedestrian path and tree planting within the Bernera Road reserve which is proposed to extend into the adjacent RE1 Public Recreation zone. All buildings would be located within the B4 zone.



Figure 4: Proposed Site Layout and Building heights

4 Extent of variation to development standards

This variation requests seeks a variation to the 24m height control which applies to the developable area of the site under the SSP SEPP. The proposal is fully compliant with the FSR control of 2:1.

The proposal seeks to vary the height limit of 24m in a number of locations by up to 6.8m (to a maximum height of 30.8m) as shown in Figure 5 and Figure 6. The exceedance for each building to the top of the roof, and including rooftop access and lift overruns, is outlined in Table 1.

Table 1: Height exceedance

Building	Height exceedance to top of roof	Height exceedance including rooftop lift access and lift overrun
Building A	1.8m (8%)	3.5m (15%)
Building B	2.0m (8%)	3.4m (14%)
Building C	4.2m (18%)	NA – lift overruns integrated into roof design
Building D	4.6m (19%)	NA – lift overruns integrated into roof design
Building E	1.9m (8%)	6.1m (25%)
Building F	3.1m (13%)	6.8m (28%)
Building G	no exceedance	no exceedance
Building H	2.5m (10%)	6.4m (27%)

The maximum exceedance to the top of roof is 4.6m or 19%. The exceedance increases to 6.8m or 28% when incorporating the rooftop lift access and lift overruns. The lift overruns have been located to away from the building frontages and would not be visible from the streets. The accessibility to the rooftop will enhance the amenity for residents through provision of additional communal space and rooftop landscaping.

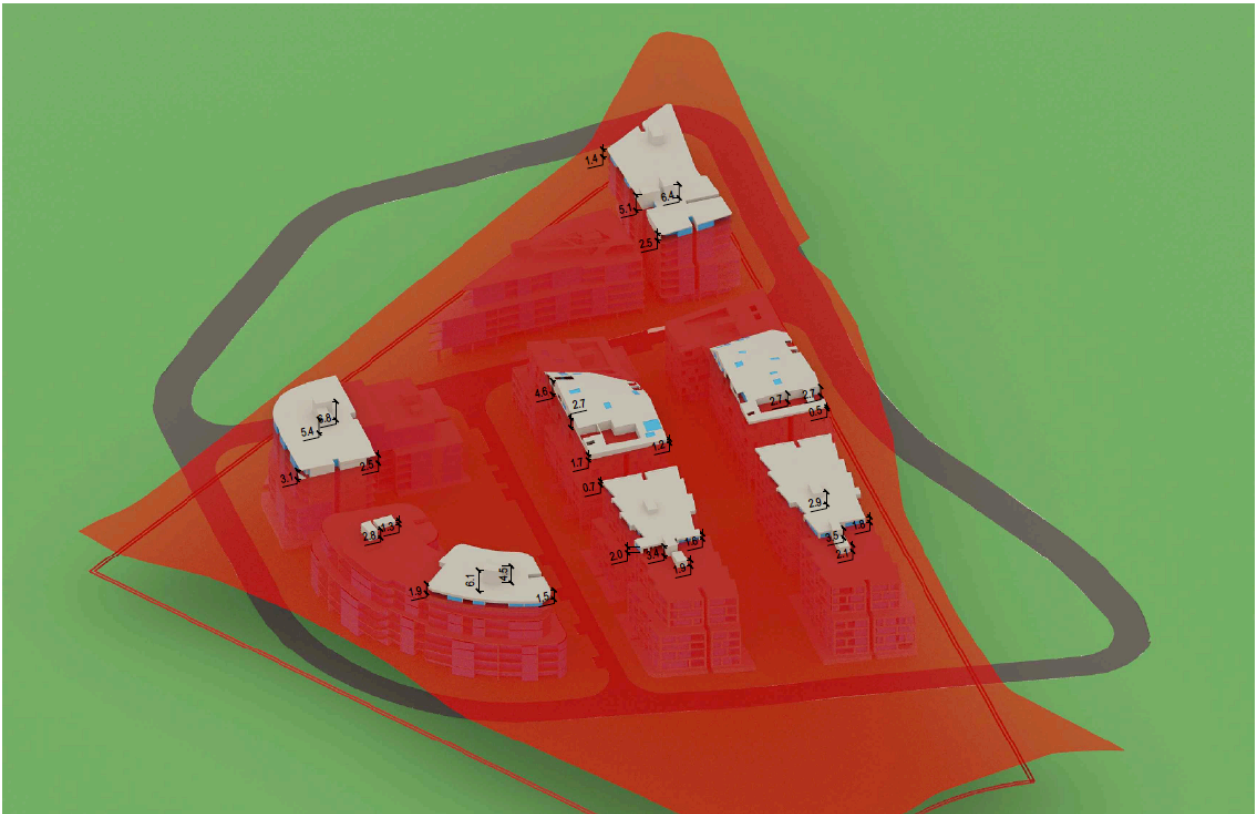


Figure 5: Height diagram – south

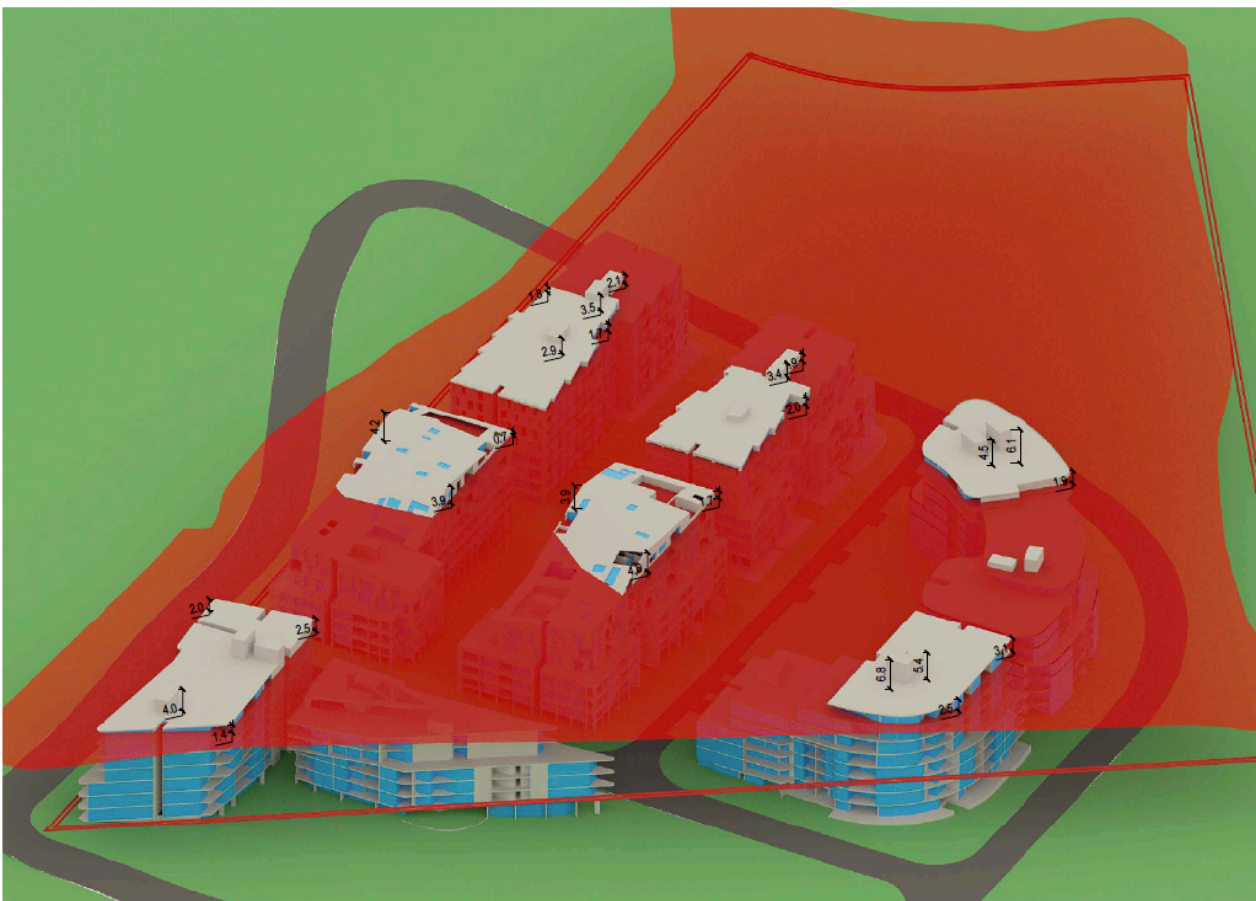


Figure 6: Height diagram - north

5 Justification of variation

This section of the report provides consideration of the requirements of Clause 28 of the SSP SEPP as well as the 'five part test' set out in *Varying Development Standards – A Guide 2011*.

5.1 Consideration of Clause 4.6 requirements

Clause 4.6(3)(a): compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Compliance with the development standard is considered unreasonable and unnecessary in this instance.

The maximum height of buildings of 24m would allow for development of up to seven storeys. The exceedance seeks to allow for a greater variation of heights across the site whilst maintaining the overall floor space potential. It will provide for greater height and built form variations across the site allowing for a mix of lower rise buildings of 4-6 storeys along with taller 7-8 storey buildings. This approach will provide for an enhanced urban design outcome by increasing visual interest through a varied built form. It also allows varying building heights to be distributed across the site to maintain a human scale at the street level and minimise overshadowing of apartments and open space and enable the built form to be consolidated allowing for more generous space at the ground level including increased open space, public domain areas and landscaping.

Further, for the adjoining parts of the Town Centre North, Landcom is seeking to amend the SSP SEPP to increase the maximum height to 50m, with a landmark building up to 67m. If this amendment is approved the building heights on the subject site would be significantly lower than within the adjacent parts of the town centre, regardless of the proposed height variation. For the Frasers Town Centre Core to the south of the station maximum building heights ranging up to 67.4m have been approved and are currently under development.

Clause 4.6(3)(a): there are sufficient environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify the proposed variation as outlined below.

As mentioned above the proposed approach of allowing for a mix of building heights up to eight storeys will have a number of environmental planning benefits including enhanced urban design, reduced overshadowing through the sensitive location of height across the site, and consolidation of built form to provide for increased open space and landscaping.

The proposal has been considered by the Liverpool Design Excellence Panel who have supported a variation of height noting that it would like to see *diversity in the spatial quality of the built form* and that *variations in height are encouraged and supported, rather than a monotone pattern of building heights across the site*.

The proposed building layout allows for generous open space provision at the ground level as shown at Figure 7 with all development sites significantly exceeding the Apartment Design Guideline requirement for 25% of communal open space. The distribution of built form has also allowed for areas of open space to achieve a high level of solar access which can meet the requirements of the Apartment Design Guide (see Figure 8).

The consolidation of built form has also allowed for landscaping and tree canopy cover to be maximised which will contribute to the character and amenity of the area and heat reduction. A canopy cover of 33.3% is achievable within the developable area (see Figure 9), which significantly exceeds the 25% target for medium and high density areas in the NSW Government Architect draft Greener Places Guideline.

The exceedance for lift overruns is directly to facilitate access to rooftop open space significantly enhancing amenity for residents.

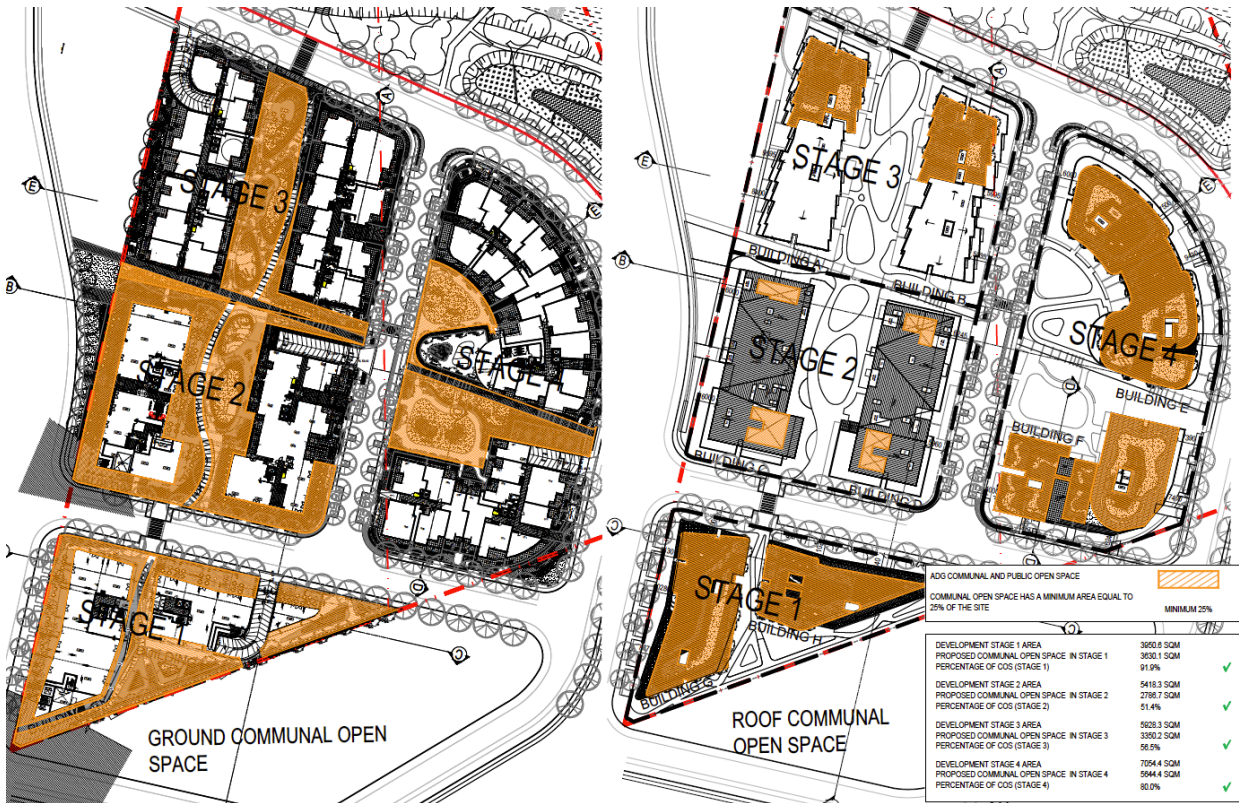


Figure 7: Communal open space



Figure 8: Solar access to communal open space



Figure 9: Tree canopy cover

Clause 4.6(4)(a)(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

The SSP SEPP does not outline any objectives for the height of buildings standard. In the absence of objectives, the objectives of Clause 4.3 Height of Buildings under the Liverpool LEP have been considered in Table 2. The objectives of the B4 Mixed Use zone are considered in Table 3. The proposal is consistent with all relevant objectives.

Table 2: Consideration of Clause 4.3 Height of Buildings objectives

Objective	Consideration
To establish the maximum height limit in which buildings can be designed and floor space can be achieved	This request seek to vary the maximum height limit in which buildings can be designed and floor space can be achieved.
To permit building heights that encourage high quality urban form	As outlined above the variation will provide for enhanced urban form outcomes including increased built form variation, enhanced solar access and increased open space, public domain and landscaping. This position has been supported by the Liverpool Design Excellence Panel.
To ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight	As outlined above solar access and views to the sky from public areas and communal open space are maintained through the sensitive distribution of building height.

Objective	Consideration
	Proposed apartments are also able to achieve a high level of solar access with 80% achieving a minimum of 2 hours of solar access in midwinter.
To nominate heights that will provide an appropriate transition in built form and land use intensity	The proposed exceedance will allow for appropriate transitions and land use intensity with built form stepping down towards street frontages and adjacent sites and for height distributed to provide for solar access to open space and apartments.

Table 3: Consideration of objectives of the B4 Mixed Use zone

Objective	Consideration
To provide a mixture of compatible land uses	The proposal provides for a mix of compatible uses including small retail / commercial tenancies, residential apartments and a childcare facility with supporting open space and streets.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The proposal provides for business, retail, and residential uses within close proximity of a train station. The proposal will enhance public transport patronage through location of development adjacent to a train station and seeks to maximise pedestrian and cycle accessibility.

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

Clause 28 requires the concurrence of the Secretary of the Department of Planning, Industry and Environment. However, all consent authorities have been granted assumed concurrence under *Planning Circular PS 20-002 Variations to Development Standards* (5 May 2020). The assumed concurrence includes a condition that numerical standards (such as height of buildings) cannot be varied by greater than 10% if determined by a delegated authority. It is noted that this restriction does not apply where the Council or Planning Panel is the decision maker. Accordingly, the assumed concurrence applies and the concurrence of the Secretary is not required.

5.2 Consideration of the ‘five part test’

The Department of Planning, Industry and Environment has issued *Varying Development Standards – A Guide 2011* to assist applicants applying to vary development standards. The guide sets out a ‘five part test’ which has been established by the NSW Land and Environment Court which may be considered to determine whether an objection to a development standard is well founded. The ‘five part test’ establishes a number of ways that variations to development standards can be justified. A application to vary a development standard is not required to meet all of the tests.

Table 4: Consideration of 'five part test'

Objective	Consideration
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The SSP SEPP does not outline any objectives for the height of buildings standard. In the absence of objectives, the objectives of Clause 4.3 Height of Buildings under the Liverpool LEP have been considered in Table 2, and can be achieved.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary	This test is not applicable in this instance.
The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable	An objective of Clause 4.3 Height of Buildings of the Liverpool LEP is <i>to permit building heights that encourage high quality urban form</i> . Compliance with this objective be would be more difficult to achieve were the 24m height limit maintained. The proposal to allow heights of up to 30.8m will allow for enhanced urban form through variations in height across the site, reduced overshadowing through the sensitive location of height across the site, and consolidation of built form to provide for increased open space and landscaping.
The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard.	This test is not applicable in this instance. However, it is important to note that for the adjoining parts of the Town Centre North, Landcom is seeking to amend the SSP SEPP to increase the maximum height to 50m, with a landmark building up to 67m. If this amendment is approved the building heights on the subject site would be significantly lower than within the adjacent parts of the town centre, regardless of the proposed height variation. This height increase would apply to parts of the Town Centre which are further from the train station than the site.
The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	This test is not applicable in this instance.

6 Conclusion

In summary the proposed variation to the maximum height of buildings control to allow for height of up to 30.8m is considered to be justified on the basis that:

- The exceedance seeks to allow for a greater variation of heights across the site whilst maintaining the overall floor space potential. This will provide built form variations across the site with a mix of lower rise buildings of 4-6 storeys along with taller 7-8 storey buildings, providing an enhanced urban form by increasing visual interest through a varied built form.
- No additional gross floor area is proposed beyond the permitted maximum of 2:1
- Compliance with the height of buildings control would preclude significant variations in height across the site.
- The variation of building heights across the site enables sensitive transitions to maintain a human scale at the street level and minimise overshadowing of apartments and open space.
- The variation will also enable the built form to be consolidated allowing for more generous space at the ground level including increased open space, public domain areas and landscaping.
- For the adjoining parts of the Town Centre North, Landcom is seeking to amend the SSP SEPP to increase the maximum height to 50m, with a landmark building up to 67m. If this amendment is approved the building heights on the subject site would be significantly lower than within the adjacent parts of the town centre, regardless of the proposed height variation. This height increase would apply to parts of the Town Centre which are further from the train station than the site.
- The proposal has been considered by the Liverpool Design Excellence Panel who have supported a variation of height noting that it would like to see *diversity in the spatial quality of the built form* and that *variations in height are encouraged and supported, rather than a monotone pattern of building heights across the site*.