

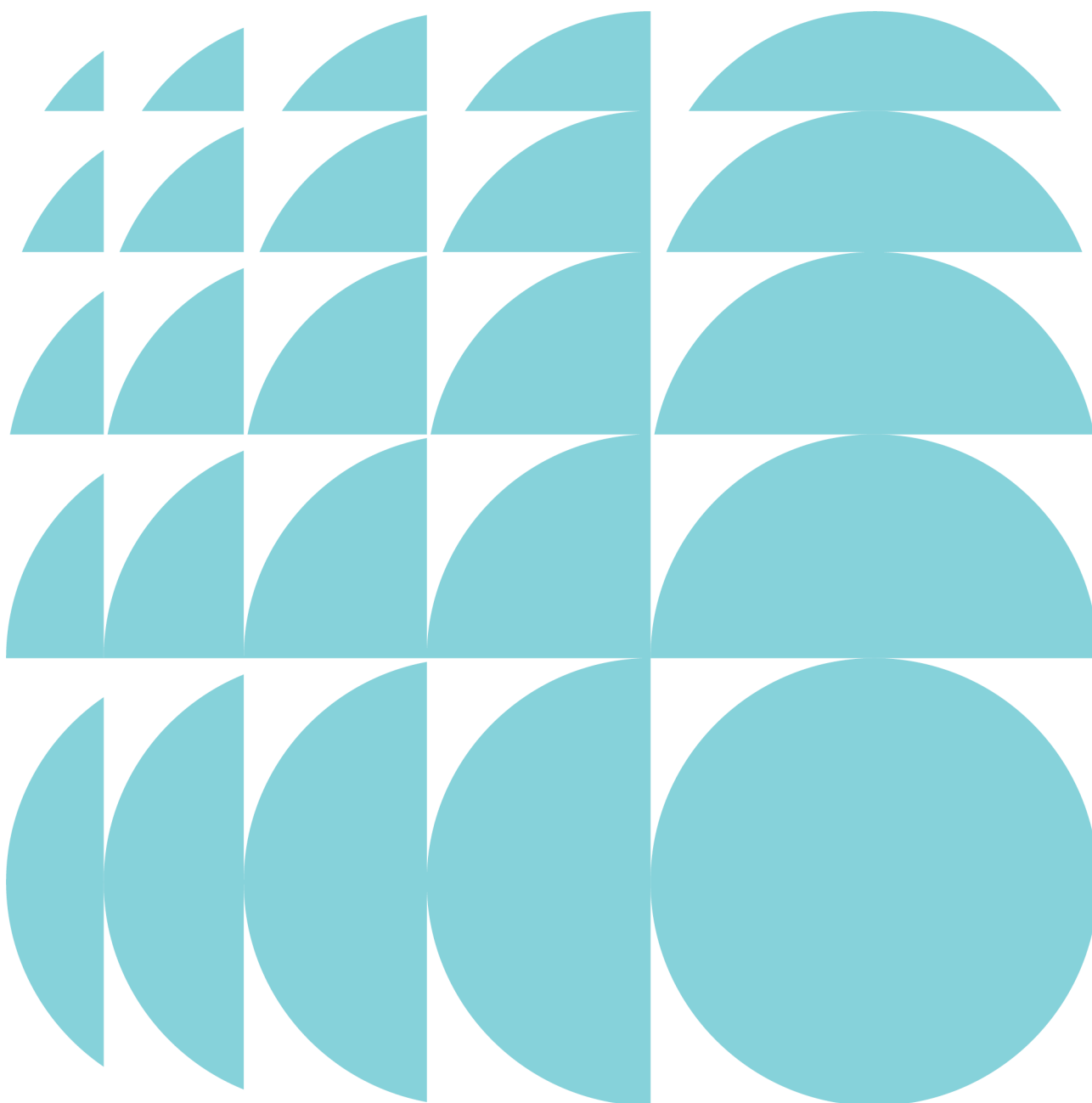
Clause 4.6 Variation Request

183 Narellan Road, Campbelltown

Concept Plan, Civil Works and Subdivision

Submitted to Campbelltown City Council
On behalf of Western Sydney University

1 December 2021 | 2200262



Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Western Sydney University (WSU). It is submitted to Campbelltown City Council (Council) in support of a staged development application (DA) for a Concept Master Plan for detached and terrace style small lot housing, bulk earthworks, subdivision and civil works at 183 Narellan Road, Campbelltown. The site is part of the WSU Campbelltown Campus (the Campus) that is now not required for educational purposes.

Clause 4.6 of the Campbelltown Local Environmental Plan 2015 (CLEP 2015) enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the development standard under clause 4.3A – Height restrictions for certain residential accommodation of the CLEP 2015 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 19 August 2020.

This clause 4.6 variation request demonstrates that compliance with the height restrictions for certain residential accommodation development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the FSR development standard, the proposed development:

- Is consistent with the objectives of the standard, in responding to the topography of the site and orientation of dwellings. Compliance with this development standard would be unreasonable and unnecessary in the circumstances of this development because the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Concept Plan incorporates building envelope designs which ensure that the proposed dwellings will step down the slope and maintain a two storey façade and building form when viewed from the north of each individual site. The extent of non-compliance is restricted to a small area of each building envelope. The proposed height and bulk of dwellings within the proposed building envelopes is in keeping with the intended scale of development on the site. In addition, the variation is required to provide vehicular access to garages for each dwelling from a secondary street. The siting of the proposed building envelopes reduces the potential for the variation to result in overshadowing impacts;
- Has sufficient environmental planning grounds by virtue of the topography of the site and appropriate residential interface to neighbouring development;
- Is consistent with the objectives of the SP2 zone by providing for residential development on an underutilised part of the WSU site which is not intended to be used for educational or research purposes, resulting in the orderly and economic development of land. The proposal does not result in any significant impacts to views, bushland or natural habitat on the site; and
- Other matters for consideration are met and satisfied by the proposal.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3A of the CLEP 2015.

2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3A of the Campbelltown LEP 2015. Clause 4.3A provides that the following forms of residential accommodation must not be higher than 2 storeys:

- (a) an attached dwelling,
- (b) a dual occupancy,
- (c) a dwelling house,
- (d) a dwelling that forms part of multi-dwelling housing,
- (e) a semi-detached dwelling,
- (f) a dwelling contained within a residential flat building,
- (g) a dwelling that form part of shop-top housing.

The Concept Plan includes envelopes for detached dwellings and terraced housing. These envelopes step down the existing slope of the land and certain portions of the envelope are three (3) storeys in height, noting that the dwellings and terrace envelopes are mainly two (2) storeys in height on balance. These envelopes have been provided in section form as part of the Concept Plan package and are reproduced in **Figure 1** and **Figure 2** below, with red outline identifying the location of the proposed variations.

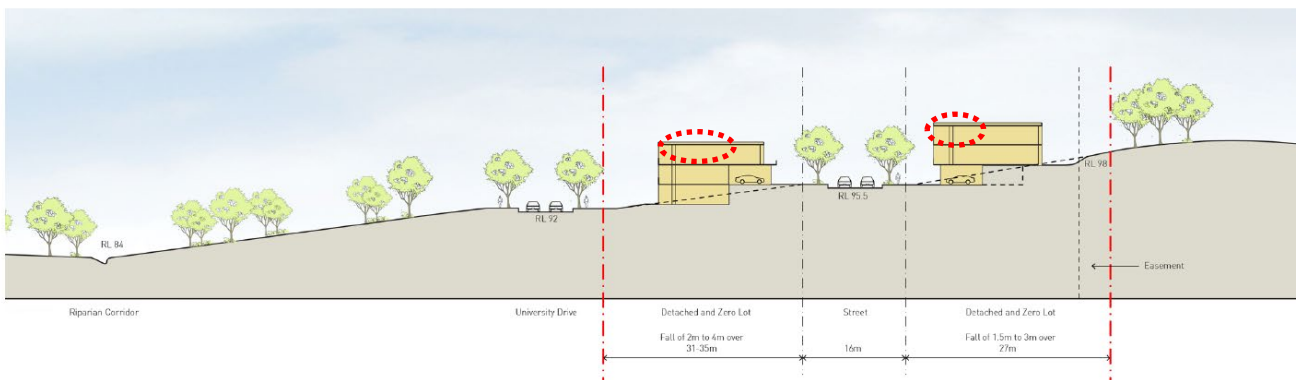


Figure 1 Detached Dwellings (west)

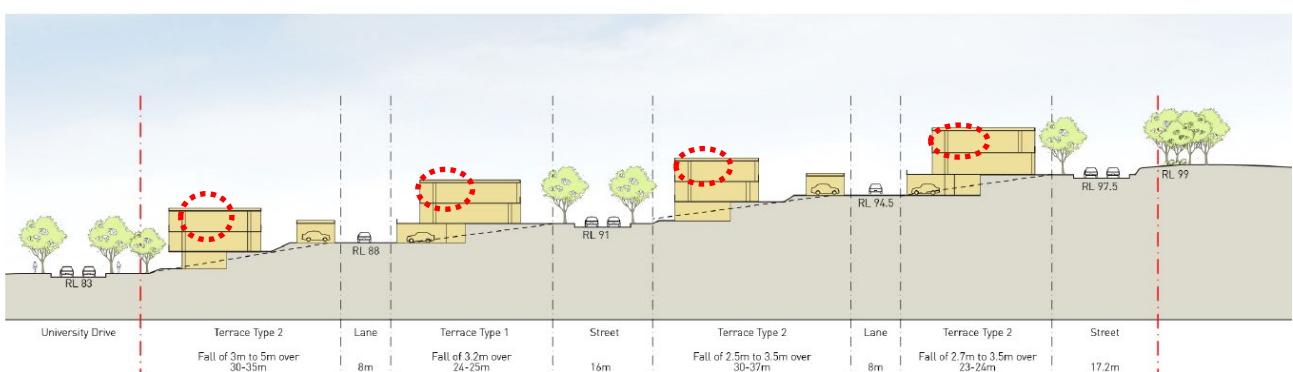


Figure 2 Terrace Precinct (east)

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the CLEP 2015 provides that:

4.6 Exceptions to development standards

- (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.*

Further, clause 4.6(4)(a) of the CLEP 2015 provides that:

- (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 Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of the CLEP 2015, with respect to the height restrictions for certain residential accommodation development standard, are each addressed below, including with regard to these decisions.

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

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the CLEP 2015 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).

- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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 (**Fourth Method**).
- 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 (**Fifth Method**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the First Method.

3.1.1 The underlying objectives or purposes of the development standard

The objective of the development standard contained in clause 4.3A of the CLEP 2015 is:

- to limit the number of storeys of certain types of residential development.

3.1.2 The objectives of the standard are achieved notwithstanding non-compliance with the standard

Objective: to limit the number of storeys of certain types of residential development.

Site Context - Topography

The Concept Plan presents a proportional and measured design response to the undulating nature of the site which slopes downwards from Narellan Road to the north towards the WSU campus to the south. The portion of the site containing terraces has a high point of approximately RL 99 at the north of the site, sloping to RL 83 at University Drive to the south, a distance of approximately 150m. The proposed subdivision pattern for the terraces provides for two streets and two laneways to which built form is located in between, whereas the subdivision pattern for the dwellings provides for one street with dwellings to the north and south. The proposed subdivision pattern includes roads that follow the contours of the site, and (shown in **Figure 3**) in combination with the existing slope of the land requires an appropriate building envelope design to facilitate residential development within the proposed allotments.

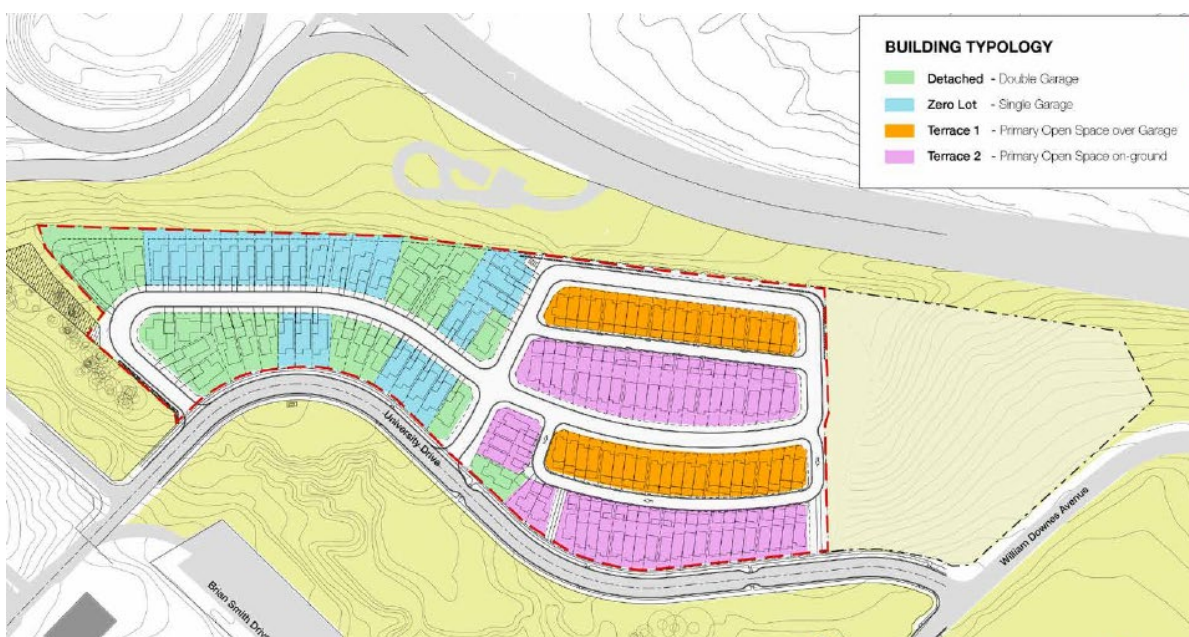


Figure 3 Proposed plan of subdivision and building typology

Envelope Design Response

The proposed design of dwellings and terraces seeks to respond to the slope of the land and steps down the slope whilst maintaining a general north-south orientation to enable appropriate solar access to dwellings and for development to respond to the site topography. Built form appears as two storey development to the north, whilst the slope requires the envelope to appear as three storeys to the south as shown in **Figure 1** and **Figure 2** to enable garage access from streets located to the rear of the lots. The proposed envelopes will provide a consistent built form response to site topography and the need to provide vehicular access to lots, and is a logical and proportional interface with surrounding residential development following the slope of the land.

In each case, the proposed variation is minor in nature and the three storey portion of the envelope comprises approximately half (or less than half) of the depth of the dwelling or terrace. The specifics of the variation will be confirmed at DA stage for the proposed residential development, however, on balance, the Concept Plan results in envelopes which are generally compliant with the two storey requirement.

Vehicular Access

The proposed variation is in part required to facilitate vehicular access to and from each dwelling, specifically for dwellings or terraces which have vehicular access facing south. The slope of the land is such that these dwellings and terraces cannot provide vehicular access if the envelope was strictly two storeys in height, as shown in **Figure 4** and **Figure 5**.

Specifically in relation to the proposed terrace envelopes on the eastern portion of the site, these buildings obtain access from the rear, via one way laneways as opposed to the two laned streets. This means that the streets do not contain driveways and garages. This development outcome results in a walkable, well landscaped street environment which is not dominated by garages and driveways.

In the western portion of the site, the proposed envelopes provide for detached dwellings. In this layout, garages and driveways are located only on one side of the street, minimising the impact of crossings and vehicular movements on footpaths and opportunities for landscaping and street tree planting within the street verge.

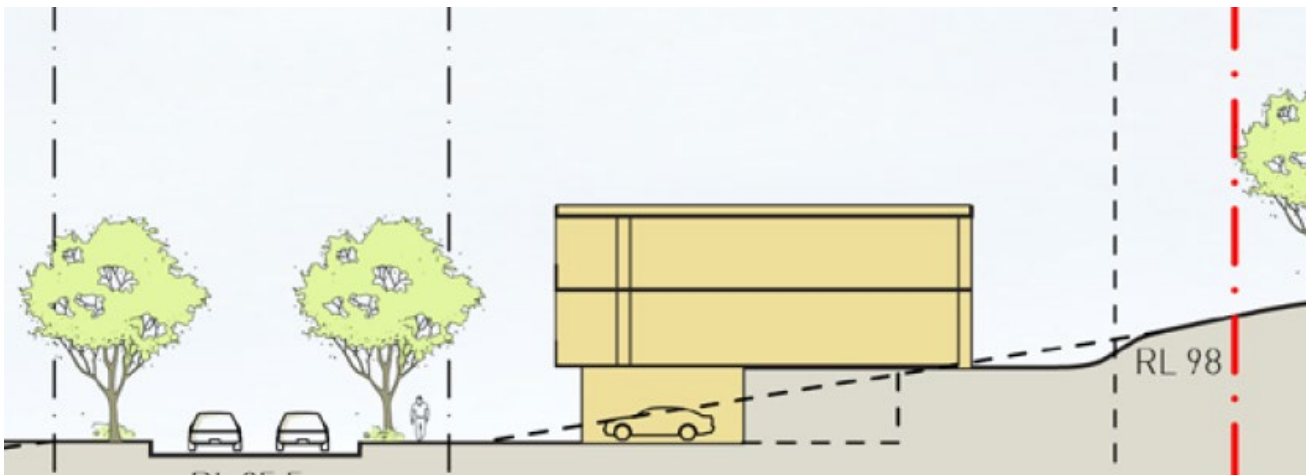


Figure 4 Example of dwelling vehicular access

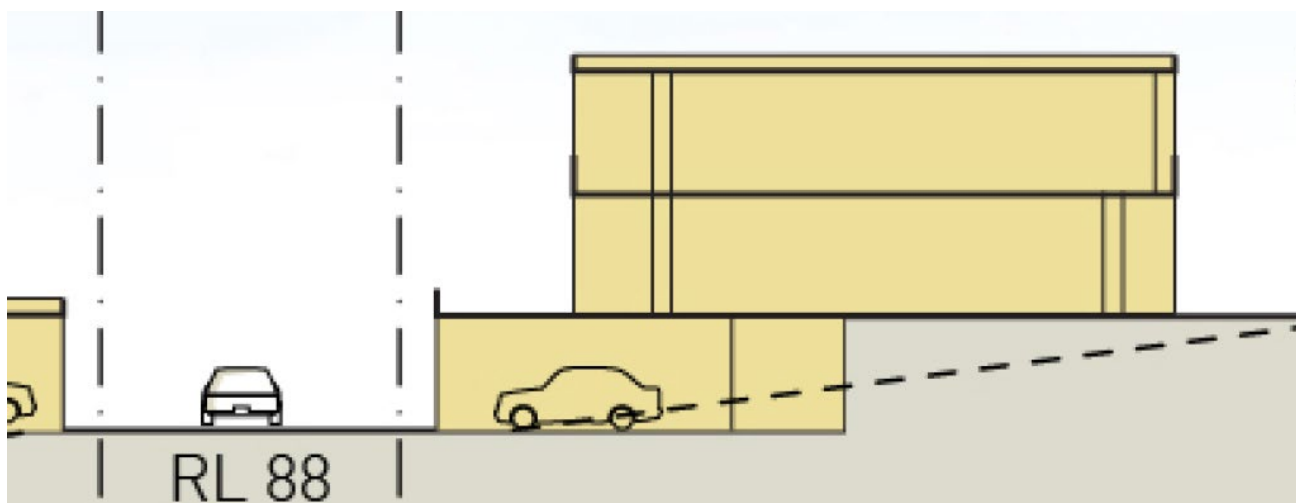


Figure 5 Example of terrace vehicular access

Therefore, a minor variation to the height in storeys is required to provide on site vehicular access to dwellings and terraces within the site.

Overshadowing

The siting of the dwellings and terraces to the south of their respective lots minimises the overshadowing impacts of the buildings. Although the height variation is located to the south of the site, adjoining residential envelopes further to the south are also sited in a similar fashion, across a laneway or street. The siting of the envelopes results in increased building separation between each row of terraces/dwellings which in turn minimises or avoid the potential for overshadowing impacts. Detailed design of dwellings and garages within the proposed envelopes will enable specific overshadowing impacts to be addressed. Although the exact nature of overshadowing impacts is yet to be determined at this time, the siting of the proposal despite the location of south facing three storey built form demonstrates that overshadowing impacts will be minimal or avoided, both for dwellings and private open space.

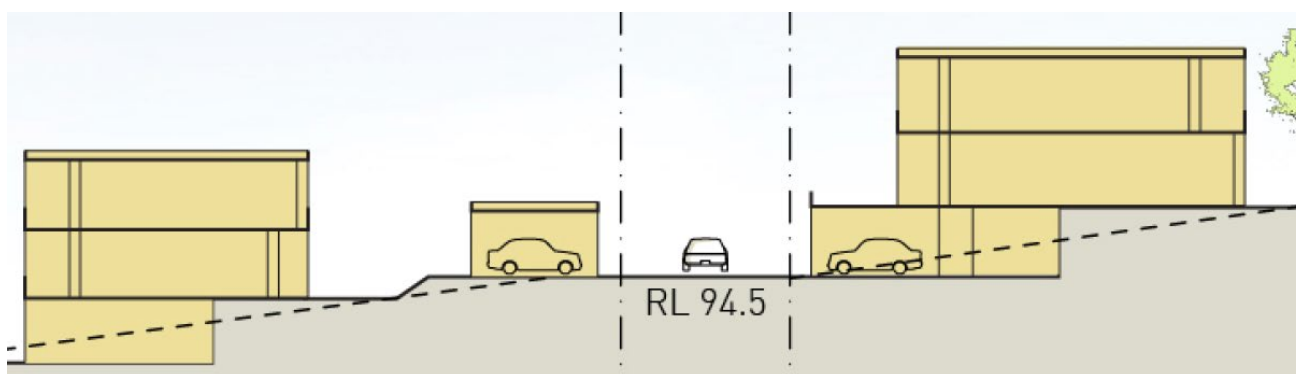


Figure 6 Building separation between terraces

3.1.3 Conclusion on clause 4.6(3)(a)

The unique topography of the site results in the minor variation to the two storey residential height standard. The design response is appropriate and measured in ensuring built form steps down the site and maintains a uniform and balanced appearance throughout the residential area. The variation also allows for sufficient and orderly vehicular access, particularly in the terraced housing areas to the east of the site which prioritise laneway vehicular access to maintain natural amenity and a walkable environment to the main street. The proposed building envelopes are sited to provide sufficient building separation which further ensure that overshadowing impacts are minimised as a result of the variation.

Therefore, the proposed variation achieves the objectives of the standard.

3.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

The proposal has sufficient environmental planning grounds as follows:

3.2.1 Ground 1: Topography

The unique topography of the site and nature of the proposal as a Concept Master Plan allow for a precinct wide measured design response to this constraint. As discussed in **Section 3.1.2**, which contains further detail in relation to the slope and topography of the site, the proposed envelopes step down the undulating slope from north to south which directly result in the variation. The proposed building envelopes and inclusion of laneways avoids the need for significant retaining walls and benching of the site that would result in more substantial visual impacts and increase the extent of ground disturbance at the subdivision and civil works stage.

3.2.2 Ground 2: Interface with neighbouring development

As discussed in **Section 3.1.2**, the element of the development which varies the height of buildings development standard is the southern portion of the proposed building envelope. The northern portion of the buildings continues to present as 2 storeys and the variation to the development standard results from the slope of the land which drops away to the south. The variation in the standard provides for a good design outcome through retaining the presentation of the terraces and dwellings as a 2 storey building to the streetscape, despite the significant site constraint caused by the fall in the land.

Therefore, due to the topography of the site and the ability of the proposal to provide a coherent and congruent residential interface there are sufficient environmental planning grounds for approval despite the variation in the height standard.

3.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

3.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height restrictions for certain residential accommodation development standard, for the reasons discussed in **Section 3.1.2** of this report.

3.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the SP2 Infrastructure (Educational Establishment) Zone, as demonstrated below.

Objective (a): To provide for infrastructure and related uses.

The Concept Master Plan, early works and subdivision works facilitate the future residential development of the site in an accessible area close to WSU. The site has been identified by WSU as no longer required for educational purposes due to a shifting in university strategy. It has recognised the ability of the site to be developed for residential uses in a manner consistent with previous residential stages delivered across the broader campus site. Furthermore, the site is not located within the core education precinct as identified in the Western City District Plan.

Objective (b): To prevent development that is not compatible with or that may detract from the provision of infrastructure.

WSU no longer considers the site to form part of its future university strategy and do not intend to develop the site for the purposes of education. As such, the proposal is compatible with WSU's vision for its broader landholding and retaining the site for educational purposes detracts from the provision of educational infrastructure as will not form the orderly and economical development of land for WSU.

Objective (c): To encourage activities involving research and development.

The future development facilitated by the Concept Master Plan will provide for a greater range of housing choice in the area and deliver an affordable product relative to other parts of the Sydney region by providing housing with a lower price entry point such as small lot housing, particularly for first home buyers. The provision of more affordable housing located near WSU's campus will improve the accessibility of the university for prospective students and staff, allowing WSU to attract and retain talent and improve its research and development arm as well as other university activities.

Objective (d): To optimise value-adding development opportunities, particularly those associated with research.

The proposal allows for the provision of affordable residential accommodation close to the WSU campus and will provide opportunities for students and staff to live, work and study in a walkable community. Co-locating residential and educational uses allows for a more attractive research and study environment, attracting highly skilled students and staff and can enable the growth of WSU's research capabilities.

Objective (e): To provide for the retention and creation of view corridors.

The Concept Plan proposes three storey development across the site in response to the undulating topography of the site whilst ensuring views and outlook is maintained.

Future dwellings will be built with the slope to step down the slope and provide a two-storey appearance from Narellan Road as shown in **Figure 2**, which provides a section view from Narellan Road down to University Drive. This maintains the appearance of lower scale development and retains existing views from the public domain. The site also does not sit within the significant view catchment as identified in the DCP, which is located further to the east.

Objective (f): To preserve bushland, wildlife corridors and natural habitat.

The proposal seeks to preserve bushland, wildlife corridors and natural habitat. As described in the SEE accompanying this application, the proposal does not impact on native vegetation including PCT 849 *Grey Box – Forest Red Gum grassy woodland on flats of the Cumberland Plain, Sydney Basin Bioregion* (Cumberland shale plains woodland) which is not located on the development site. Further, species of threatened flora or fauna were identified during a biodiversity survey, and no hollow bearing trees are present on the development site.

The Concept Plan has been sited to minimise and avoid impacts through its location on land that contains only exotic grassland.

Objective (g): To maintain the visual amenity of prominent ridgelines.

The site does not sit within the significant view catchment as identified in the DCP, which is located further to the east. As such, the visual amenity of prominent ridgelines is maintained.

3.3.3 Overall public interest

On balance, the proposed development is in the public interest in that:

- It will be adequately serviced by roads, utilities and stormwater infrastructure, as proposed in this application
- The proposed development is generally considered with and supports the WSU Master Plan;
- It will provide high amenity through maximising lots with an outlook to open space areas;
- Appropriate works and protocols will be undertaken to make the site suitable with regards to contamination noting the site has been identified as suitable for the future intended use;
- The works will support the built form and public domain objectives of the WSU site; and
- It will help to stimulate the housing markets in the local and regional area of Campbelltown.

3.3.4 Conclusion on clause 4.6(4)(a)(ii)

The proposal is in the public interest because it is consistent with the objectives of the zone, consistent with the objectives of the height restriction and is generally in the public interest. The proposal enables development which will present as two storey residential buildings to Narellan Road, provides an appropriate response to the undulating topography of the site whilst minimising cut and fill, does not present unreasonable view impacts, supports the broader WSU campus and WSU Master Plan and provides low and medium density housing at an affordable price point for future residents.

3.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence.*

These matters are addressed in detail below.

3.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the height restriction for certain residential accommodation development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, A Plan for Growing Sydney in that it:

- Provides affordable accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- allows for the use of the Site to continue to provide local employment opportunities to WSU and the greater Macarthur region;
- is well located and within walking distance to public transport connections, Macarthur Square and WSU; and
- does not affect any heritage assets.

3.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the additional height proposed is in response to the undulating slope of the site, is minor in nature (accounting for a maximum of half of the building envelope depth) and the proposed variation would not give rise to any adverse environmental impacts such as overshadowing, noting exact impacts are to be confirmed at detailed DA stage. The proposal is in the public interest generally in that it is consistent with the objectives of the standard and the objectives of the zone.

The site is unique in that the slope of the site does not allow for uniform two storey residential development to be feasibly located on the site without a variation to the height in storeys and it is not considered that there would be any public benefit for the height of the proposed envelopes to be reduced.

3.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

No other matters are required to be taken into consideration by the Director-General before granting concurrence.

4.0 Conclusion

The assessment above demonstrates that compliance with the height restrictions for certain residential accommodation development standard contained in clause 4.3A of the CLEP 2015 is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the height restrictions for certain residential accommodation development standard, the proposed development:

- Is consistent with the objectives of the standard, in responding to the topography of the site and orientation of dwellings. Compliance with this development standard would be unreasonable and unnecessary in the circumstances of this development because the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Concept Plan incorporates a building envelope design which ensures that the proposed envelopes step down the slope and maintains a two storey outlook to the north of each individual site, which is in keeping with the intended scale of development on the site. In addition, the variation is required to provide vehicular access to each building and the siting of the envelopes of the proposal reduces the potential for the variation to result in overshadowing impacts;
- Has sufficient environmental planning grounds by virtue of the topography of the site and appropriate residential interface to neighbouring development;
- Is consistent with the objectives of the SP2 zone by providing for residential development on underutilised land and is consistent with overall plans for the WSU Campbelltown site, resulting in the orderly and economic development of land. The proposal retains existing views and preserves bushland and natural habitat on the site; and
- Other matters for consideration are met and satisfied by the proposal.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the CLEP 2015.