Clause 4.6 Variation
Height of Buildings

Clause 4.3 – Height of Buildings
Penrith LEP

Proposed Residential Flat Development
12 Carsons Lane, St. Marys

Project 13-079-1
22 June 2015
Revision C

Prepared for
Samway Group

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REV	Description	DATE	AUTHOR	CHECKED
A	FOR DA Lodgement	15.05.14	KM	ND
B	FOR AMENDED DA SUBMSSION	30.1.15	KM	ND
C	BASEMENT AMENDED TO ACCOMMODATE HRV	22.06.15	KM	ND

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1. Introduction

This amended Clause 4.6 Variation request forms part of the amended DA submission to Council arising from Council's Request for Additional Information dated 25 November and subsequent correspondence and meetings regarding the basement design for the proposed development of four 8 storey residential flat buildings at 12 Carsons Lane, St. Marys.

This report has been updated to address the changes in the height, bulk and scale of the building following flood advice and after the incorporation of new design elements to respond to Council's urban design advice and to meet the Australian Standard for clearance of HRVs which is 4.5 m. Flood Planning Levels for the respective buildings are as follows:

- Building A – RL 31.2
- Building B – RL 31.7 (Ramp RL 31.2)
- Building C – Rl 30.2

Building D is not flood affected.

In the letter prepared by BG&E dated 28 January 2015 which has been provided to Council, the following is confirmed:

> *Floor levels and basement entry levels for the development have been set to meet the minimum requirements of Councils engineers, being:*
>
> - *All habitable floor levels provide a minimum 500mm freeboard to 100 year ARI flood levels.*
> - *The basement entry ramp level and any ventilation openings provide a minimum 300mm freeboard to 100 year ARI flood levels.*

This letter is provided for convenience in Appendix A of this report.

Because the ramp must meet a flood planning level prior to dropping into the basement, the 4.5 m clearance in the basement to meet the Australian Standard to allow an HRV access results in the total height of the building being raised by more than it would otherwise need to be raised if the site was not flood effected. This raising of the building to allow waste and servicing in the basement provides a better planning outcome than collecting waste on grade either near the common open space of the proposed development or the public domain, particularly considering the size of the proposed development is quite large. The additional height sought only occurs at Building B and thus there is only a negligible impact in terms of visual bulk and scale and shadow impacts in comparison to a building which did not allow for HRVs to access the basement.

1.1 Overview of Modifications since DA Lodgement

The abovementioned Flood Levels have resulted in the ground floor levels of the building being amended which impacts on the overall height of the building. A comparison of ground level RLs for each building is provided in the table below:

	Rev D (Original Lodgement) May 2014	Rev G Jan 2015	Rev I Jan 2015
Building A	30.5	RL 31.2	RL 31.2
Building B	30.5 (Ramp 31.4)	RL 31.7 (Ramp RL 31.2)	RL 32.25 (Ramp RL 31.2)
Building C	30.5	RL 30.2	RL 30.2
Building D	30.5	RL 30.2	RL 30.2

As can be seen, the verified Flood Planning Levels have resulted in a minor increase in the ground floor level of Buildings A and B and allowed a minor reduction in the ground floor levels of Buildings C and D. In this latest revision to achieve the 4.5 m clearance.

To minimise the overall height of the building in light of flood planning considerations, the proposed floor-to-floor heights have been reduced to 3.0 m which is standard and allows for adequate floor-to-ceiling heights together with tolerance for services and structure.

Finally, minor modifications to parapet heights and roof forms have been made in detailing of the amended façade which have resulted in very minor differences in overall building height.

These modifications have resulted in Buildings A and B being a comparison between the as-lodged DA and the amended DA building heights are provided in the table below.

		Rev D (DA Lodgement) May 2014 (RL)	Non compliance at East Elevation (m)	Rev I Jan 2015 (RL)	Difference (m)	Non compliance at East Elevation (m)
Building A	Parapet	55.1	+ 0.670	55.45	+ 0.44 m	+1.01
	Roof	54.9		55.20	+ 0.30	
	Overrun	56.05		56.00	- 0.05	
Building B	Parapet	55.1	+ 0.290	56.50	+ 1.40	+1.69
	Roof	54.9		56.25	+ 1.35	
	Overrun	56.05		57.05	+ 1.00	
Building C	Parapet	55.1	+0.925	54.45	- 0.65	+0.275
	Roof	54.9		54.20	- 0.70	
	Overrun	56.05		56.00	- 0.05	
Building D	Parapet	55.1	+1.135	54.45	- 0.65	+0.485
	Roof	54.9		54.20	- 0.70	
	Overrun	56.05		56.00	- 0.05	

As is indicated in the comparison above, the building height of Building A and B has increased by a small degree from the As-Lodged DA and the height of Building C and D has reduced in overall height.

Further to modifying the building height since the time of original DA lodgment by a small degree, through comments from Council, amendments to the façade design have been undertaken to increase the level of façade articulation, reduce the impact of bulk and scale and achieve greater variety in materials and finishes. In addition, significant analysis and engineering solutions for existing public infrastructure have been made after DA lodgment and additional public domain improvements have also been incorporated into the proposal.

1.2 The Report

This written request is made pursuant to Clause 4.6 of Penrith LEP 2010, and justifies why compliance with the development standard in Clause 4.3 pertaining to Height of Buildings is unreasonable or unnecessary in the circumstances of the case, and demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.

This request also explains how the proposed development will be in the public interest because it is consistent with the objectives of the Height of Buildings standard and the objectives for development within the B4-Mixed Use Zone in which the development is proposed to be carried out.

For the reasons set out, contravention of the development standard raises no matter of significance for State or regional environmental planning and there is clearly no public benefit in maintaining the development standard in this particular case.

1.3 Clause 4.6

Clause 4.6 of LEP 2010 states the following:

(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.

1.3.1 Clause 4.6 Variation Criteria

The relevant criteria for the assessment of this request are expressly set out in the Clause 4.6. In summary, they are that a written request from the applicant must be made to Council that seeks to justify the contravention of the development standard by adequately 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.*

Council must be satisfied that the proposed development will be in the public interest because it is consistent with:

(i) *the objectives of the particular standard; and*
(ii) *the objectives for development within the B4 Mixed Use Zone in this case*

The concurrence of the Director-General must be obtained. It is assumed that Council enjoys delegated authority of the DG in this regard.

In deciding whether to grant concurrence, Council must consider whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Director-General before granting concurrence.

We are not aware if there are any "other matters" required to be taken into consideration under subclause (5)(c) and assume there are none.

2. Standard from which variation is sought

This request for variation is submitted in relation to the Height of Buildings standard contained in Clause 4.3 of the Penrith Local Environmental Plan 2010.

The maximum Height of Buildings control is 24 m.

2.1 Departure from the Standard

The proposed development does not comply with Clause 4.3 of LEP 2010. The maximum height of the building is just over the 24 m noted on the LEP Height of Buildings map for the site with portions of the proposed building complying with the height limit in some locations and exceeding the height limit in others. This variation arises due to existing site topography together with the flood planning levels of the site. The maximum non-compliance occurs at the lift overrun with a maximum height non-compliance of approximately 2.24 m at Building B. The lift overrun shall have little to no visual impact.

The maximum non-compliance of the proposed roof parapet is 1.9 m and is greatest, again, at Building B. The building with the least extent of height non-compliance is Building D, which at the northern edge of the 8th storey complies with the LEP height limit of 24 m.

It is noted that the proposed 8th storey which is where non-compliances arise is setback from the level below where the building faces the side boundary, reducing the impact of bulk and scale of the non-compliance.

Figure 1: Example - Building B height non-compliance at section (Excerpt Section A-A)

3. Grounds for Clause 4.6 Variation

The subject site forms a crucial part of the St. Marys Town Centre. A site specific DCP applies to St. Marys Town Centre and the site is included in that DCP study area. The site adjoins a Council car park to the east and a public open space to the north which is earmarked for a potential future road.

3.1 Objectives of the Development Standard – LEP 2010

The LEP 2010 Clause 4.3 Objectives are:

(a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
(b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,*
(c) *to minimise the adverse impact of development on heritage conservation areas and heritage items,*
(d) *to nominate heights that will provide a transition in built form and land use intensity.*

3.1.1 Assessment against the relevant objectives of the LEP 2010

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

The subject site is located within St. Marys town centre, within the southern mixed use precinct. The area has been upzoned to include increase height and density compared to the existing height and density of built form. The figure below is an excerpt from the Penrith LEP 2010 height map.

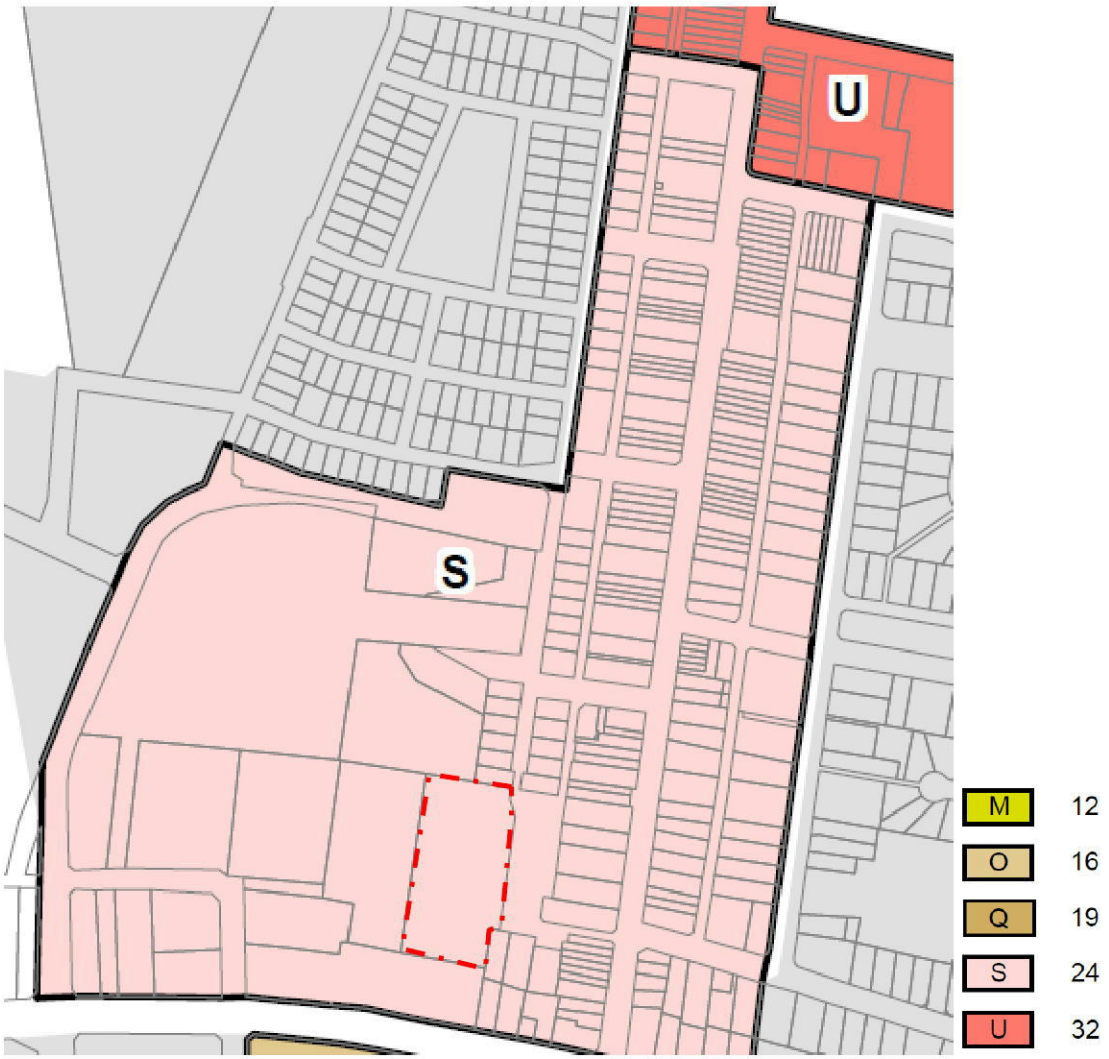

Figure 2: LEP 2010 Height Map

The map indicates that the permissible height of buildings on the subject site and on all sites surrounding the subject site is 24 m. Typically 24 m is considered 7-8 storeys depending on the land use proposed. The proposed development is 8 storeys with only the upper portion of the proposed 8th storey exceeding the height limit.

The other primary control limiting bulk and scale of built form is FSR. The FSR control for the subject site and all surrounding sites is 2.5:1. The proposed development complies with the FSR control of 2.5:1. Therefore, the additional height sought does not arise from excessive Gross Floor Area.

It is further noted that the Mirvac Shopping Centre site is located north of the subject site. The planned major redevelopment of that site will significantly change the character of built form in the area with greater height, bulk and scale for built form.

The proposed built form represents a different bulk and scale when compared to the character of the built form immediately proximate to the site in the existing condition. However, compatibility of built form is achieved through the following design elements:

- Increasing building setbacks to each of the property boundaries as the built form increases in height. This reduces the impact of bulk and scale on surrounding built forms.
- Increasing setbacks of the uppermost storey of each of the four buildings proposed, significantly reducing the visual bulk of the uppermost storey.
- 8th storey setbacks are increased significantly at the northern end of each building to reduce visual bulk as viewed from Lang Park and other sites to the north.
    - The 8th storey of Building A is setback 7.8 m from the level below and 17.47 m from the northern boundary (with a minor exception for one bedroom along the façade which is setback 16m).
    - The 8th storey of Building C is setback 7.3 m from the level below and a total of 18 m from the northern boundary (with the exception of a single bedroom along the façade with a setback of 16.5 m).
    - The northern façade of the 8th storey of Building B is setback 8-9m from the level below.
    - The northern façade of the 8th storey of Building D is setback 8m-9.5 m from the level below (with the minor exception for one bedroom along the façade which is setback 7.25 m from the level below).

Together with the increased setbacks of the buildings as they increase in height, materials are varied as the building increases in height with the lower portion of the buildings having a more solid character, the middle portion of the buildings having a more recessive form with framed elements and balconies, and the upper most storey of the buildings not only being setback but having a lighter colour and a greater extent of glazing. This is apparent in both the elevations (DA-401 to DA-404) and the photomontages which form part of the application. The image below is a view of the proposed development from the St. Marys Public School grounds.

Figure 3: Photomontage, View from St. Mays Public School Grounds

The proposed amended elevations have significantly increased the articulation of the façade which reduces the visual impact of bulk and scale on the area. The façade variation, together with materials and finishes proposed including green wall elements creates a high quality architectural expression which shall have a positive impact on the character of built form in the area.

The proposed development also achieves 21% deep soil (much greater than the 10% required in the DCP), which is concentrated in the setback zones and between Buildings C and D. This allows for mature tree planting and landscape which will work to screen and soften built form, particularly when viewed from Lang Park and St. Marys Public School. Tree planting is also proposed around the northern boundary of the site to create a soft edge to the adjacent park.

For the above reasons, the proposed built form is consistent with the desired future character of the area and compatible with the existing character of the area.

(a) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas, including parks, streets and lanes,

Visual Impact

The proposed development has a reasonable visual impact in the context of the height limit of 24 m, the FSR of 2.5:1 and the desired future character of the area. It is noted that Lang Park is identified for future redevelopment for resulting in a notably different character than the current condition. The establishment of a future road near the northern boundary of the subject site is also possible.

The proposed development is broken into 4 separate buildings with separations which are consistent with SEPP 65. As described above in relation to Objective A, the proposed development breaks up bulk and scale through increased setbacks as the building increases in height. The further setting back of the 8th storey, particularly to the north, serves to reduce the visual impact of bulk and scale when viewed from the Council car park, Lang Park and St. Marys Public School. The setting back of the upper storey of each building removes the portion of the building which exceeds the height limit from the public domain and mitigates potential visual impacts.

The proposed amended façade design has significantly increased the articulation of the façade which reduces the visual impact of bulk and scale by breaking down the solidity of the built form. Horizontal and vertical elements are balanced to create a dynamic and varied façade which breaks up the mass of each individual elevation.

The façade variation, together with materials and finishes proposed including green wall elements creates a high quality architectural expression which shall have a positive impact on the character of built form in the area. Modifications to the building height have resulted in lower buildings at the western edge of the site, the portion of the site more at the periphery of the town centre and which interfaces with the school site.

Public domain works including landscape planting, lighting and seating is proposed at the eastern and northern boundaries of the site to contribute to the quality of the public domain. This also enhances the landscape buffer between the proposed built form and surrounding sites.

Materials are also varied at the uppermost storey, accentuating the recessive character of this storey and a lightweight pergola form is proposed which adds shadow and depth to the façade and also gives the sense that the upper storey is floating above the rest of the building.

Proposed deep soil setbacks contribute to the screening and softening of built form through tree and other landscape planting. For these reasons the proposed development achieves a visual impact which is consistent with an area zoned for buildings with a height of 24 m and FSRs in the order of 2.5:1. The increased height at the upper portion of the eighth storey does not give rise to unreasonable visual impacts and will be virtually imperceptible when viewed from the public domain.

Views

The proposed development breaks built form into 4 separate buildings. This preserves views through the site setbacks and through the centre of the site both in a north-south and east-west direction.

View impact analysis undertaken and presented in DA-014, DA-015 and DA-921, DA-922 and DA-923 demonstrate that the proposed building height does not eliminate views towards the distance escarpment and Blue Mountains beyond to the west. This outcome is reasonable and consistent with the principles of view sharing set out in *Tenacity Consulting v Warringah [2004] NSW 140.*

It is noted that LEP 2010 zones sites on each side of the subject site for a 24 m height limit indicating that in the context of future built form, views to the west will be impacted by built form and view sharing will be reduced overall. It is clear that the St. Marys town centre is earmarked for increased height and density which results in greater bulk and scale, with the likelihood that some loss of views will occur when compared to the historic scale of built form in St. Marys which generally rises no more than 4 storeys.

Solar Access

The proposed development, being oriented on the north-south axis, reduces overshadowing impacts when compared to an east-west oriented development because the resulting shadow moves relatively quickly.

The proposed development does not overshadow public parks.

Shadow impacts on the school grounds to the west are only for a short period of time in the morning. For instance the existing netball courts which are located very close to the subject site's western boundary are overshadowed at 9:00 a.m. By 10:00 a.m. approximately ½ of each court is overshadowed and by 11:00 a.m. there is no overshadowing of the school grounds. Given the school's published lunch and playtime are between 12:00 p.m. and 1:30 p.m. and generally outdoor sports practice and the like are conducted in the afternoon, the overshadowing will have no material impact on the amenity of the outdoor parts of the school grounds. Regardless of the

position of the netball courts on the school ground, 4 hours of full solar access is maintained to the school ground between 9 a.m. and 3 p.m. on June 21.

To the east of the subject site is a surface car park, whereby overshadowing will have no adverse impact. In the context of future built form the shadow to the east begins around noon and only impacts that part of the car park which in the future context is identified as a roadway. Shadow impacts extend east of the future road by 2:00 p.m., resulting in generally only 1 hour of overshadowing impact of any significance. It is noted that the sites to the east of the subject site are identified as part of the "Queen Street Mixed Use" precinct and are likely to be mixed use or residential buildings similar to those proposed. Shadowing is also likely to be broken by future development between Carinya Avenue and West Lane, further reducing shadow impact between 2:00 p.m. and 3:00 p.m. from the proposed development.

To the south of the subject site, sites are subject to a shadow which swings quickly across sites. Solar access is maintained between proposed buildings on the subject site allowing solar access through to sites to the south between 10:00 a.m. and 1:00 p.m.

Because the site is located west and south of existing or future roads and laneways, overshadowing impacts are not unreasonable and only occur for a few hours in the late afternoon. Proposed setbacks to the street are increased as the building rises and are appropriate within the context of the site's zoning and the desire for built form to contribute to the definition of the street itself.

As demonstrated in the shadow studies (hour-by-hour) presented in DA-931, the proposed development maintains reasonable solar access to surrounding sites. The proposed additional height sought does not materially increase the shadow impact on sites when compared to a building which met the 24 m height limit.

(a) *to minimise the adverse impact of development on heritage conservation areas and heritage items,*

The subject site is adjacent to a heritage item (the school). However, the portion of the site which is heritage significant is approximately 100 m from the subject site. A heritage impact assessment prepared by Heritage Architect and Landscape Architect Mr. Garry Stanley forms part of this application. The report finds that the proposed development does not give rise to adverse impacts on heritage in the area.

It is noted that the upper portion of the development is generously setback from the levels below, creating a visually recessive form and reducing the overall impact of bulk and scale on surrounding area. This together with the distance of the site from heritage significant structures, results in the development having no adverse impact on heritage conservation areas and heritage items. The amended design has reduced the height of Buildings C and D which face the school grounds to a point where the height non-compliance is almost completely eliminated. The minor height non-compliance does not give rise to an adverse impact or exacerbate adverse impacts.

(d) to nominate heights that will provide a transition in built form and land use intensity.

The subject site is located in an area undergoing change. The future desired character of the area as set out by LEP 2010 and the St. Marys Town Centre plan is markedly different to the existing character of the area. The existing context of the site is largely defined by the large surface car park, the expansive school grounds and Lang Park. Larger structures such as the Mirvac Shopping centre have significant bulk arising from large expanses of blank walls but their scale is generally 2-3 storeys.

The future context of the site places the site within the centre of a 24 m height limit and a 2.5:1 FSR limit.

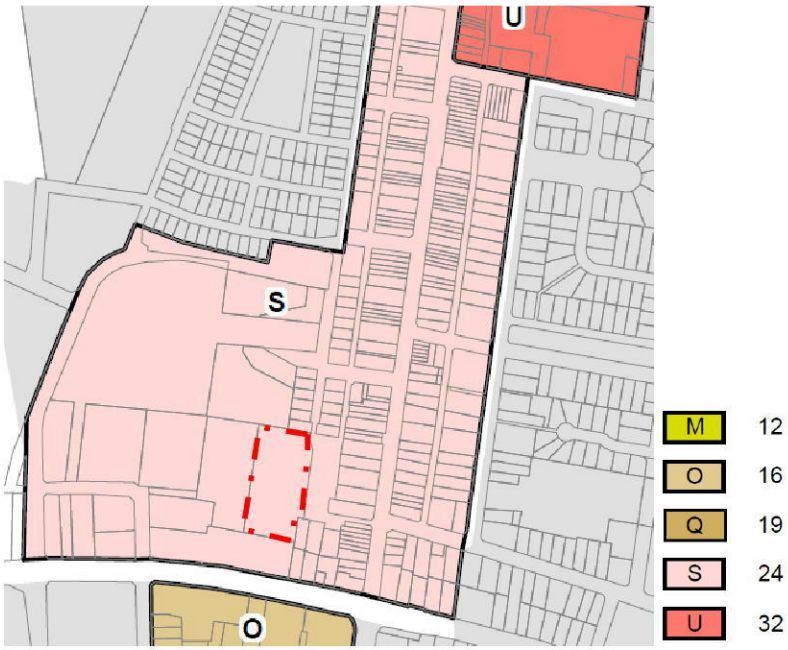

Figure 4: LEP 2010 Height Map

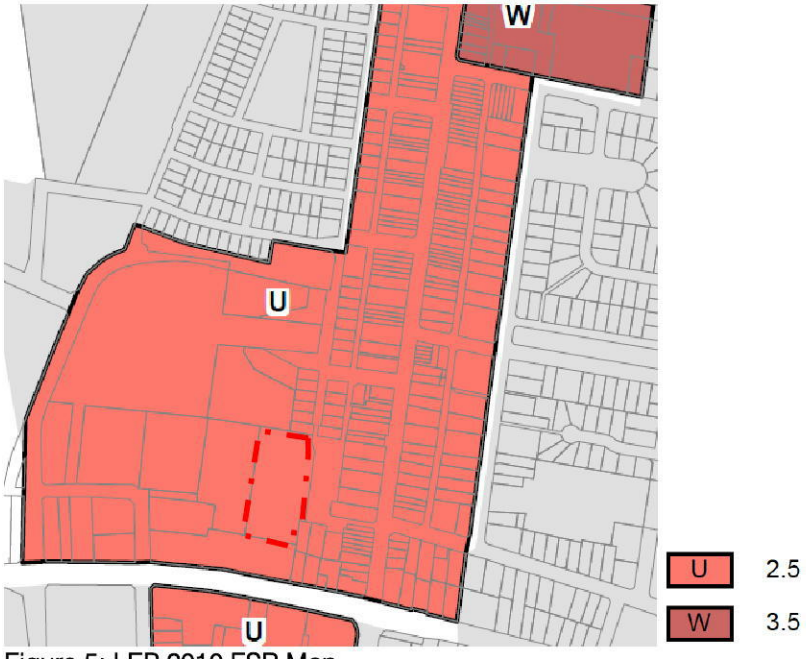

Figure 5: LEP 2010 FSR Map

In terms of building density and intensity of use, the proposed development complies with the 2.5:1 FSR control and the height non-compliance is only over the upper portion of the upper storey of the development. Due to the transport accessibility of the site and its location within the town centre, reducing residential density on the site in order to comply with the height control would diminish the site's opportunity to contribute to sustainable development principles based on urban consolidation, transit oriented development and the efficient use of existing infrastructure. The proposed residential density of 1 unit per 37 m^2 of site area is reasonable for a site with an FSR of 2.5:1 which is located in an accessible location within an existing town centre. The proposed development otherwise complies with the FSR control for the site indicating it is a reasonable density and intensity of development.

The land use intensity proposed is ameliorated too by the proposed public domain works to the public car park, Lang Park as well as upgrades to existing stormwater infrastructure.

In terms of height, the site is not located within a transition zone, being at the heart of a 24 m height limit. In this respect, the additional height sought within the setback upper storey of each of the four proposed buildings does not hinder the achievement of a transition in built form where statutory Height and FSR controls change. The location of the site within the centre of the height zone contributes to the minor height non-compliance having a negligible visual impact.

The proposed development achieves a transition in bulk and scale within the existing context by increasing building setbacks to site boundaries as the building rises as well as creating a recessive character to the uppermost storey by using significant additional setbacks, a simple flat roof, soft tones to the proposed material, and additional articulation of the exterior enclosing wall of the storey. A lightweight louvered pergola is proposed above the 8th storey adding to the modelling and articulation of the façade and giving the storey a lightweight, floating character. The negligible visual impact of the upper storey of the development is apparent in the photomontages. These photomontages demonstrate that the uppermost storey of the building is recessive in character and gives each of the buildings predominantly a seven storey character instead of an eight storey character.

Finally, the proposed building height in no way arises due to a land use intensity which is inconsistent with the LEP. The proposed development complies with the FSR control of 2.5:1. The proposed development also complies with the RFDC building separation guidelines by providing setbacks to the site boundary which are ½ of the total RFDC separation, anticipating the separations would be shared equitably with adjacent future built form.

3.2 Objectives of the Zone – LEP 2010

The second consideration under clause 4.6(4)(a)(ii) is to ensure the development is consistent with the objectives for development within the zone.

The objectives of the B4 zone are:

- *To provide a mixture of compatible land uses.*

- *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.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*
- *To create opportunities to improve public amenity.*

3.2.1 Assessment against the relevant objectives

- *To provide a mixture of compatible land uses.*

The B4-Mixed Use zone is the zone most suited to achieving a flexibility in land use as it permits a full range of residential and non-residential land uses. DCP 2010 indicates the character which is sought around this zone in its identification of ground floor and 1st floor uses. It is noted that the south east corner of the subject site is earmarked for ground floor commercial uses (Figure E5.3 DCP 2010) although the viability of such a use is highly questionable considering it has no street frontage and would have very little visibility from the public domain. Other sites at the western side of Carsons Lane in immediate proximity to the subject site are not earmarked for ground floor commercial uses. This indicates a small residential pocket centred on the intersection of Carsons Lane and Carinya Avenue.

The proposed residential flat buildings are permissible within the zone. The site is well suited to high density residential development due to it being within convenient walking distance of a railway station but behind the main street of St. Marys Town Centre. The additional height sought allows for a development to be achieved which meets Council's building density controls and at the same time achieves good residential amenity in terms of building separation, unit depths and the like. The additional height sought allows for additional housing to be located in a strategically significant location, overcome flooding issues and achieve basement waste collection which greatly reduces potential impacts arising from waste management on grade, consistent with the state strategic planning policy which seeks increase densities in established area within walking distance of existing train stations in order to more efficiently utilise existing infrastructure and slow the encroachment of urban development at the fringe of Sydney. It is also noted that the proposed development includes a stormwater diversion plan and flood strategy which compensates for the proposed development sought.

The proposed development also includes public domain improvements to the Council car park and Lang Park which helps contributes to the quality of the streetscape and helps to create a sense of place in the public realm.

The additional height which arises in the proposed development is due largely to planning for flood events. The portion of the building which exceeds the height limit is well recessed and has little visual impact in terms of bulk and scale on the public domain. The increase in housing choice and residential density achieved on the site contributes to the economic viability of the town centre by contributing to a critical population mass to support and stimulate business activity in the area.

- *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 proposed development complies with the FSR control for the site. The increase in height allows for a higher amenity outcome in comparison to a lower, squatter building form and supports this objective due to the high level of transport accessibility of the site. A lower building would result in less floor space and less residential density in close proximity of major public transport infrastructure or a lower building which achieves the FSR of 2.5:1 but with a lower level of amenity. Again, the height non-compliance arises due to flood levels and truck clearance heights into the basement. The height non-compliance therefore achieves the envisaged scale of development being eight storeys while minimising the impact of waste on the character of the development and ensuring that flood impacts are minimised and that in a flood event, water will be unlikely to enter the basement.

The proposed use and density is fully consistent with strategic planning objectives to increase density in urban centres with railway stations. Decreasing the height of the proposed development to seven storeys, would reduce density and would not as successfully capture the opportunity for locating housing in accessible locations where walking, cycling and public transport use are real alternatives to constant reliance of the private motor vehicle. It is noted that the proposed 8th storey is only a partial storey with generous setbacks from the level below and significant setbacks toward the north.

Due to the accessibility of the site and its location within the town centre, reducing residential density on the site in order to comply with the height control would diminish the site's opportunity to contribute to sustainable development principles based on urban consolidation, transit oriented development and the efficient use of existing infrastructure. The proposed residential density of 1 unit per 37 m^2 of site area is reasonable for a site with an FSR of 2.5:1 which is located in an accessible location within an existing town centre. The proposed development otherwise complies with the FSR control for the site indicating it is a reasonable density and intensity of development.

The proposed use supports the commercial core of the town centre and the range of good and services which are available. The proposed development meets the objective of the zone and the minor height non-compliance in no way hinders the attainment of the objective.

- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

The proposed development is located within the heart of the B4 zone. It is not proximate to a zone boundary. The proposed development minimises conflict between adjoining land uses within the B4 zone through achieving generous setbacks, particularly to the sensitive land use of the Public School. The high density residential use is compatible to its built form context, being within the 400-800 m catchment to the railway station, which under the Transit Oriented Development model is optimal for located high density residential development, creating a critical

mass for sites within the 400 m catchment to the railway station which are proportionally more commercial.

The locating of high density residential close to public parks and public schools represents a synergy between existing land uses, locating families close to the social infrastructure they need. The proposed improvements to the car park and Lang Park (landscape planting, lighting and seating) enhances the public domain. These improved areas which also benefit from casual surveillance, giving them a feeling of security. While the size is not located at a zone boundary, the proposed development does respond to its immediate context with appropriate setbacks, landscape, public domain works and infrastructure upgrades to ameliorate any potential conflict between land uses.

The proposed height-non-compliance in no way hinders the attainment of the zone objective.

- *To create opportunities to improve public amenity*

The locating of high density residential within walking distance to a railway station, in an established town centre close to public parks and public schools represents a synergy between existing land uses, locating families close to the social infrastructure they need. The proposed improvements to the car park and Lang Park (landscape planting, lighting and seating) enhances the public domain and adds to amenity. These improved areas which also benefit from casual surveillance, giving them a feeling of security. The works which have been undertaken in relation to stormwater infrastructure and flooding impacts has resulted in infrastructure upgrades.

The proposed development responds to its immediate context with appropriate setbacks, landscape, public domain works and infrastructure upgrades to ameliorate any potential conflict between land uses. Recent amendments to the façade design and landscape plans for the site have achieved a high quality aesthetic outcome with a high level of building articulation, meaningful landscape and public domain improvements.

The proposed development is located on a site which is in proximity to a railway station but is largely underutilized in the context of the zoning of the site and the future built form context of the site. The key component of the proposed development which contributes to the public amenity of the area, is the urban design elements utilized towards the eastern and northern boundaries.

The proposed built form is aligned to the future alignment of the Carinya Avenue extension. The proposed development contributes to the public domain by creating a small landscaped setback which adds to the landscape character of the public domain. This creates additional area for street tree planting allowing for a double row of tree planting, one at the site boundary and one within the future footpath and verge within the public domain. Street lighting and public seating is also proposed. This treatment is extended to the northern boundary at the southern edge of Lang Park to create a consistent aesthetic and enhance the amenity of the public domain. This creates a high quality landscape setting for pedestrians and allows the development to be stitched into the future public domain once sites to the east and north are redeveloped, including any future new road alignments.

Increased setbacks at the fourth storey and eighth storey help to create a human scale to the public domain and the increased extent of façade articulation further contributes to maintaining a reasonable scale to the public domain.

At the north eastern corner of the site, where Carinya Avenue becomes existing public car park and where the future road alignment will have a curve, the building design creates interest by creating a chamfered corner, further enhancing and defining the street alignment. A curved balcony form facing Lang Park subtly responds to the natural character of the park.

Landscape planting creates defensible space to prevent people climbing the proposed front garden fences, but a permeable upper portion of courtyard fences allows for a degree of visual permeability, reducing the visual impact that high, hard edged courtyard walls can create. Proposed fencing and associated landscape creates a clear demarcation between public and private space and avoids ambiguous spaces, or areas of entrapment. Furthermore, individual entrances from ground floor units to the street are proposed, creating street address within the residential urban context. The development also achieves casual surveillance of the public domain, enhancing the sense of safety.

The additional height sought, being well setback from the key public domain interfaces has a negligible visual impact on the public domain and does not adversely impact on the amenity of public spaces.

The proposed development in responding to future desired character and contributing to the public amenity.

4. Clause 4.6(5) Concurrence of the DG

We have assumed that the Council enjoys delegated authority from the DG to concur to this request.

That being so, the development raises no matter of State or regional planning significance.

5. The Public Interest

There is no public benefit in maintaining a height of 24 m when the objectives of the zone are met regardless of the non-compliance. The additional building scale which arises does not have an unreasonable material effect on the surrounding built form. In having a partial eight storey within the development, a development which complies with the applicable FSR control can be established while providing scope for generous setbacks, building articulation, landscape planting and the like. The non-compliance actually facilitates a development which has better amenity in that waste can be collected in the basement, away from the public domain and the common open space within the development while at the same time meeting flood planning requirements.

In our opinion, a lower, fatter built form would be a worse outcome on the site than a taller more varied built form. At the same time, due to the accessibility of the site and its location within the

town centre, reducing residential density on the site in order to comply with the height control would diminish the site's opportunity to contribute to sustainable development principles based on urban consolidation, transit oriented development and the efficient use of existing infrastructure. The proposed residential density of 1 unit per 37 m^2 of site area is reasonable for a site with an FSR of 2.5:1 which is located in an accessible location within an existing town centre. The proposed development otherwise complies with the FSR control for the site indicating it is a reasonable density and intensity of development. The amended design achieves a high quality architectural expression, landscape outcome and public domain works which justify the technical non-compliance with the height control.

The public interest is achieved for the following reasons:

- The proposed development is an appropriate land use intensity for the site. It complies with the applicable FSR control.
- The increased height places density on a site which has the capacity for it,
- The establishing a partial 8th storey within the context of the 2.5:1 FSR control, allows for a built form with better articulation and architectural expression than a building which was shorter and squatter. It also allows for the proposed residential apartments to achieve better amenity through building setbacks and façade articulation.
- The portion of the building which exceeds the height limit is well setback from the levels below and has a recessive character. It has no adverse visual impact on the area.
- The additional height sought allows for reasonable flood planning principles to be put in place on the site.
- The additional height sought allows for garbage collection to be collected in the basement, minimising odour and noise which can arise from an outdoor ground level collection.
- The proposed buildings are setback from heritage significant areas, minimising the potential impact of additional bulk and scale.
- The additional height sought allows the design to achieve the permitted land use intensity indicated by the applicable FSR control, while increasing the scope for achieving a well-articulated and visually dynamic built form. The aesthetic quality of the development contributes to the quality of the public domain rather than detracting from it. In our opinion, a lower, squatter building would represent a less successful urban design outcome.
- The site is accessible, being located in immediate proximity of frequent bus services and within walking distance of the railway station.
- The additional height casts a negligible additional shadow when compared to a development which complied with the standard and this difference has no material effect.
- The proposed development contributes to the quality of the public domain by addressing the future extension of Carinya Avenue as well as a future street near the

northern boundary of the site where Lang Park is currently located. Streetscape improvements include double rows of street tree planting, public seating and lighting.

- The proposed development provides ample off street parking complying with Council's standard, while at the same time providing bicycle parking and being located in an accessible area, providing a real alternative to constant reliance on the private motor vehicle.
- The proposed development provides significant common open space and private open space for the benefit of future residents and overall enhances the amenity of the area.

6. Conclusion

From the above, it follows that the proposed development satisfies the objectives of Council's Height of Buildings standard and the objectives of the zone, notwithstanding the minor non-compliance with the Height of Buildings LEP standard.

The portion of the building which is over the 24 m height limit is well setback and is visually recessive when viewed from the public domain. The proposed development achieves setbacks to the site boundary consistent with SEPP 65 and the proposed development complies with the key control for building density and land use intensity – FSR. The proposed development also achieves more than double the deep soil required under the St. Marys Town Centre Plan, indicating that built form on the site is not excessive.

The proposed amended façade design achieves a high level of articulation and a visually dynamic façade which balances vertical and horizontal elements. The proposed built form is consistent with the future context of the site and does not give rise to unreasonable environmental, visual or amenity impacts on the locality.

In permitting the additional height, a high quality development which achieves good residential amenity in accordance with SEPP 65 and the RFDC is possible with a residential density and gross floor area appropriate to the St. Marys town centre.

The consent authority should be satisfied that the request is justified.