



Address: No. 896 Woodville Road, Villawood
Proposal: Shop Top Housing
DECEMBER 2024

CLAUSE 4.6 VARIATION (HEIGHT OF BUILDINGS)

CLAUSE 4.6 VARIATION (HEIGHT OF BUILDINGS)

WOODVILLE ROAD, VILLAWOOD

PROJECT INFORMATION

The Proposal: This Clause 4.6 Variation (Height of Buildings) accompanies a development application lodged with consent of the registered property owners. The proposal seeks approval for the demolition of the existing structures and construction of a shop top housing development comprising ground floor commercial premises and 148 dwellings over 3 levels of basement car parking.

Site: Lot 100 DP 1070965, Lot 3 DP 208677, Lot 1 DP 217764 & Lot 13 DP 220348
Nos. 896 – 898 Woodville Road & 15 Hilwa Street
VILLAWOOD NSW 2163

Architect: **tony owen ptncs**
Level 2, 12 - 16 Queen Street
CHIPPENDALE NSW 2008



CLAUSE 4.6 – VARIATION TO A DEVELOPMENT STANDARD

Clause 4.6 Exceptions to development standards of the Fairfield Local Environmental Plan 2013 (LEP) allows a consent authority the ability to provide an exception or flexibility in the application of a prescribed development standard in certain circumstances. Clause 4.6 of the LEP has the following objectives:

- (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.*

Clause 4.6(2) of the LEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the LEP, or any other environmental planning instrument. Clause 4.6(3) states that development consent must not be grant 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 circumstance of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.*

Development standard to be varied

Clause 4.3 of the Fairfield Local Environmental Plan 2013 establishes objectives and development standards for the height of buildings across the LGA. Clause 4.3(1) relates the following objectives of the height of buildings development standard:

- (1) The objectives of this clause are as follows:*
 - (a) to establish the maximum height for buildings,*
 - (b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*
 - (c) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
 - (d) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
 - (e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*
 - (f) to allow adequate natural light and ventilation between dwellings and sufficient separation for acoustic and visual privacy.*

Clause 4.3(2) relates that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

Building height (or height of building) is defined in the Dictionary of FLEP as follows:

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The applicable Height of Buildings Map prescribes a maximum height of 27 metres for the subject site.

The provisions at Section 18 of State Environmental Planning Policy (Housing) 2021 prescribe a maximum building height equivalent to the maximum permissible building height for the land **plus** an additional building height of up to 30%, subject to the provision of affordable housing within the development.

The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

18 Affordable housing requirements for additional building height

- (1) This section applies to development that includes residential development to which this division applies if the development—
- (a) includes residential flat buildings or shop top housing, and
 - (b) does not use the additional floor space ratio permitted under section 16.
- (2) The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).
- (3) The minimum affordable housing component, which must be at least 10%, is calculated as follows:

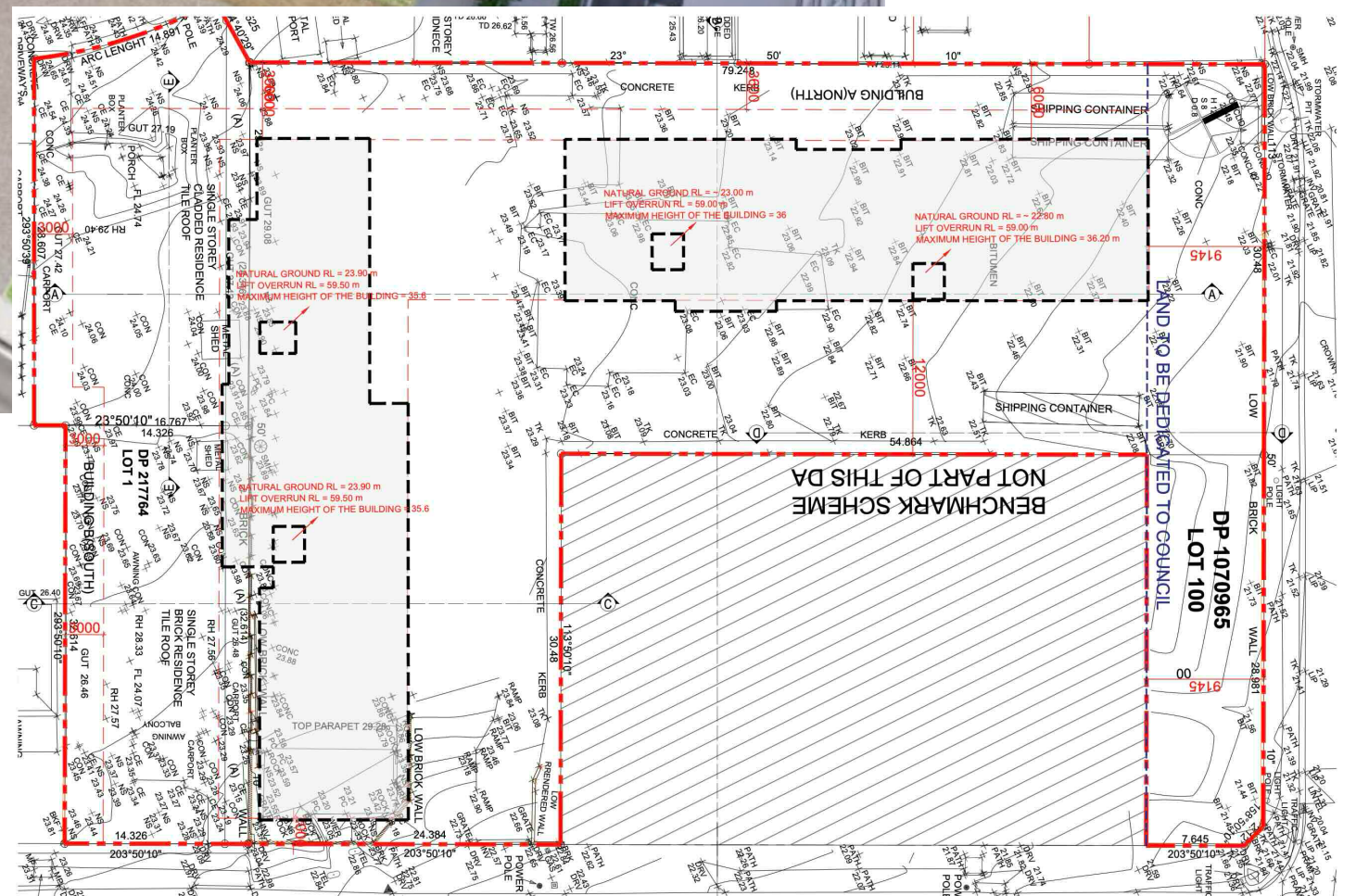
$$\text{affordable housing component} = \frac{\text{additional building height (as a percentage)}}{2}$$

The proposed development satisfies the requirement by providing 15% affordable housing (2,313.9m² of gross floor area, being 27 1, 2 & 3 bedroom apartments) so is eligible to receive the additional 30% height ‘bonus’ height, thereby permitting a maximum building height 35.1 metres. The proposed maximum building height is 36.2 metres, representing a 3% variation to the maximum prescribed building height.

Table 1 below table summarises the nature and extent of the height exceedance, otherwise illustrated at **Figures 1 & 2** over page, noting that only the lift overruns, plant and solar panels exceed the prescribed maximum building height.

TABLE 1
Measure of Proposed Height of Building Variations

Structure	Height Above Existing Ground Level	Existing Ground Level	Maximum Height	Height Exceedance	Percentage Exceedance
Lift Overrun 1	59.50m RL	23.90m RL	35.6m	0.5m	1.4%
Lift Overrun 2	59.50m RL	23.90m RL	35.6m	0.5m	1.4%
Lift Overrun 3	59.00m RL	23.00m RL	36.0m	0.9m	2.6%
Lift Overrun 4	59.00m RL	22.80m RL	36.2m	1.1m	3.1%



FIGURES 1 & 2

Building Height Plane and nominated maximum RL levels (Extract from Architectural Plans).

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

The ways in which compliance with a development standard can be shown to be unnecessary (in that it is achieved anyway) or unreasonable (in that no purpose would be served) are as follows:

- The objectives of the development standard are achieved notwithstanding non-compliance with the standard. Under this approach development standards are viewed not as the planning objectives, but as a means to achieve those objectives. If there is an alternative means to achieve the objective, then the objective would be achieved anyway (and hence compliance with the standard is unnecessary) and there is no purpose served by requiring compliance with the standard (and hence compliance would be unreasonable). This tends to be the most common way of establishing that compliance is unreasonable or unnecessary.
- To establish that the underlying objective or purpose of the standard is not relevant to the development, and hence compliance with the standard is unnecessary.
- To establish that the underlying objective or purpose of the standard would be defeated if compliance was required, and hence compliance with the standard is unreasonable.
- To establish that the development standard has been virtually abandoned or destroyed by Council's own decisions departing from the standard, and hence compliance with the standard is unnecessary or unreasonable.
- To establish that the zoning of the particular land was an anomaly or inappropriate, and as a result the development standard applying to zoning are also an anomaly or inappropriate, and hence compliance with the standard is unnecessary or unreasonable.

(Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46); Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118).

In this case, it is the most invoked first way set out in Winten that is relied upon. That is, the objectives of the development standard are achieved notwithstanding non-compliance with the development standard. It is commonly accepted that a development standard for height of buildings, is a planning tool used by consent authorities in conjunction with other planning controls to manage the size, bulk and scale of the built environment, and is intended to minimise negative amenity impacts such as overshadowing, overlooking or view loss.

The specific objectives of Clause 4.3 of the FLEP are identified below and a comment on the proposal's consistency with each objective is also provided.

First objective

(1)(a) to establish the maximum height for buildings,

Comment

The proposed development satisfies the objective of establishing the maximum height for buildings by respecting the overall intent of the planning controls and contributing to a harmonious built environment. Although the proposal exceeds the numerical height standard, it remains consistent with the overarching objective of maintaining an appropriate scale and form of development. The design respects the desired future character of the locality, ensuring the building height is proportionate to its setting, thereby contributing to a coherent streetscape and visual amenity.

Moreover, the variation will not result in any significant adverse environmental or amenity impacts. The development is compatible with surrounding land uses and future development patterns, as further discussed under other respective objectives. There is a direct and significant public benefit provided in the provision of much need affordable housing in the Villawood Town Centre.

The overshadowing impacts of the proposed lift overruns and offending plant are negligible.

Second objective

(1)(b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,

Comment

The proposed development satisfies the objective of ensuring the height of buildings are compatible with streetscape and character of the locality. The proposed building height has been designed to complement the evolving streetscape and character of the Villawood Town Centre, which is undergoing a transition to higher-density development. As the area shifts towards a more urbanised form, the additional height supports this transition by providing a modern and dynamic built form that aligns with the future vision for the locality. The development acknowledges the increasing density in the area while maintaining a balance between the existing low-rise elements and the anticipated shift to taller, more intense development. In doing so, the proposed building integrates harmoniously into the streetscape, contributing to the area's vibrancy without overwhelming the established urban fabric.

The design carefully responds to the existing built environment while also accommodating the planned future developments. By ensuring that the height, bulk and scale are appropriate to both the current context and the desired future character, the building enhances the overall cohesiveness of the urban landscape. It avoids any disruptive or jarring contrasts, instead offering a structure that respects the surrounding context. This approach ensures that the development not only complements the existing architectural language of the area but also supports the longer-term objectives for urban renewal and revitalisation, reinforcing Villawood's transition into a vibrant, higher-density town centre and the likely changes in land use and built form that will eventuate on adjoining lands, and is consistent with varied building heights of the Villawood Town Centre, ranging variously between 3 – 12 storeys.

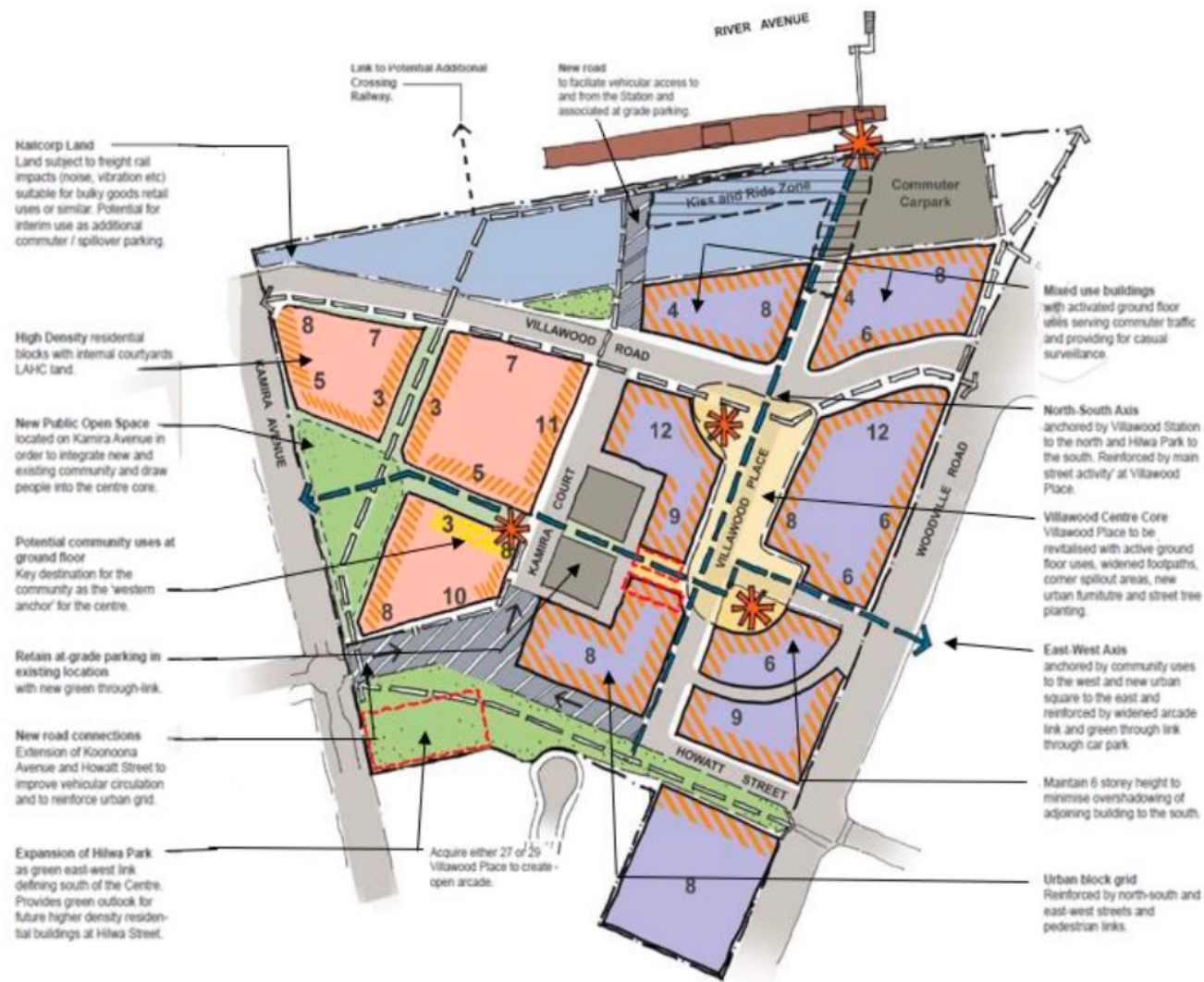


FIGURE 3
Varied building heights nominated by the Villawood Town Centre Development Control Plan 2020.

Third Objective

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

Comment

Visual Impact

The proposed development has been thoughtfully designed in accordance with the DCP and Apartment Design Guide (ADG) controls. The architectural plans present an attractive building that draws design cues from the DCP and reflects the requirements of the Villawood Urban Framework Structure Plan. The design responds to the context and planning controls through a combination of articulation, architectural elements and exterior finishes that reduce bulk and scale, integrating the building seamlessly into the locality and desired future streetscape. The use of a single level podium, different materials and finishes, breaks in the buildings massing, and different tones in the colour palette reduces the perceived scale and enhances the visual appeal, achieving the objective of minimizing visual impact.

Disruption of views

The proposal is not expected to give rise to any unacceptable level of view disruption but will still lead to some reduction in views/outlook from the adjoining properties as the subject site is currently only developed to 1-2 storeys in height. The view/outlook enjoyed across the site do not comprise any iconic buildings or well-established views to water ways. The view/outlook from Nos. 890 – 894 Woodville Road to the south is not significant and given the zoning and height limit is inherently vulnerable and unlikely to be retained in perpetuity. The proposal satisfies this objective to minimise the disruption of views. The dedication of land fronting Howatt Street not only enables the expansion of Hilwa Park but creation of a green east-west link between Villawood Road and Hilwa Park which will open up view corridors from the park but also creates separation between the proposed development and the existing development at Nos. 890 – 894 Woodville Road reducing the impact upon their views and outlook.

Loss of privacy

The proposal generally will lead to a loss privacy for surrounding low density dwellings in the locality but this is expected as the Town Centre is in the process of being redeveloped and is transitioning from low density to higher density residential and mixed use development reflected in the planning controls. The proposed building achieves ADG minimum building separations for habitable area to existing adjoining properties and any proposed building openings adjacent to adjoining neighbour boundaries that have potential for privacy loss have appropriate mitigation measures such as planter boxes and privacy screens to ensure visual privacy is achieved.

Loss of solar access

The architectural package includes detailed solar access analysis which demonstrates that the proposed development will not unreasonably overshadow development on adjacent and nearby sites over and above what would reasonably be expected given the redevelopment driven by the Town Centre's planning controls. Any uplift in height leads to an increase in over shadowing especially so when the subject site has a 60m boundary running east west. Efforts have been made through the early design phase to model the overshadowing in an attempt limit the extent of overshadowing where possible but still arrive at a viable building consistent with the vision created by the planning controls. The shadow diagrams presented also show that the shadows cast by a development that is compliant in terms of height are very similar to that which was expected from a height complaint design, achieving the objective of minimizing the loss of solar access.

Fourth Objective

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

Comment

Height

The lift overruns are the only elements that exceed the 35.1 metre height limit. Since these elements are recessed from the building sides being centrally located on the roof, the building appears to be height-compliant from adjoining properties and surrounding public areas. The height exceedance not discernible from the streetscape meaning the building presents as being complaint in terms of height in satisfaction of the objective.

Bulk and Scale

It should also be noted that there is no floor space ratio control under FLEP relating to the site instead the massing and scale are determined by the design envelope arising from the interplay of the LEP, DCP and ADG controls. The proposed development presents as 11 storey building that is compliant with all these requirements that dictate mass and scale save for height. The components of the building that exceed the height limit are hidden from view meaning the building presents as being complaint in terms of bulk and scale in satisfaction of the objective.

Existing Character

The existing character of the Villawood Town Centre is mixture of commercial buildings, shop top housing and residential flat buildings of various ages and architectural style ranging in height from 1 – 12 storeys (see also **Figure 3** for desired future building heights), and is zoned E1 – Local Centre. Villawood is currently an under-performing local centre, focused around Villawood Place, and its run down character is reflective of a history of economic decline since the development of alternative comprehensive centres including Bass Hill Plaza and other social changes. Community facilities located on Land and Housing Corporation (LAHC) land are also in need of renewal. A number of mixed use development proposals have been approved within the centre since 2015. There is potential for significant renewal and a transformation from a centre of decline to a place of prosperity and opportunity.

The Villawood Town Centre Urban Design Study, which later informed the Villawood Town Centre Planning Proposal, was undertaken to identify key urban design, built form and place making actions to improve the vitality and vibrancy of the Villawood Town Centre. The Study was prepared to provide greater density and housing choice within close proximity to Villawood Train Station. It was also prepared to stimulate economic development within the town centre. Council’s recent endorsement of the Villawood Town Centre Planning Proposal and subsequent Villawood Town Centre Development Control Plan 2020 is the culmination of these efforts to revitalise the Centre.

Desired Future Character

The desired future character for this site is expressed in a Desired Future Character Statement contained in the DCP and reproduced below:

Desired Future Character

This Plan aims to encourage the redevelopment of Villawood Local Town Centre into a visually attractive, vibrant, revitalised and pedestrian-friendly environment. It further seeks to enhance the commercial viability and housing diversity that will create a distinct identity for Villawood Town Centre.

The range of services offered by the Centre should predominantly be aimed at satisfying the needs of the local population. These services include the transport facilities, such as the railway line, bus services and the Council owned car parking facility. All in which will provide a better vision of connectivity to ensure the safety of pedestrians whilst providing a satisfactory response to the needs of the drivers.

Ideally, Villawood will become an active, vibrant Town Centre in which people can enjoy spending business and leisure time. The desired development for the Town Centre is a retailing and commercial activity, supported by necessary larger operations such as the Aldi supermarket.

Existing and additional R4 High Density Residential zones, together with multi storey E1 Local Centre zones will increase population and provide opportunities for mix use developments and dwelling types. The R4 High Density Residential zoned land with a total area of 17,350m² and a maximum height of building of twelve (12) storeys will provide opportunities for approximately 360-400 apartment units to benefit from the redeveloped and revitalised E1 Local Centre shops and services. The E1 Local Centre with a total area of 28,209m² will also increase the surrounding open space; interconnection between the pedestrian network and new shop top housing.

This Plan aims to build on the opportunities of the Town Centre to achieve an active commercial hub will deliver a vibrant, attractive and safe Town Centre that will provide the daily needs, recreation, and socialising to the residents of Villawood.

The proposed shop top housing development has been designed with careful consideration of the DCP, resulting in only a few very minor and acceptable instances of non-compliance. The proposal achieves a suitable contextual fit for the site, as intended, without causing any unacceptable amenity impacts on neighbouring properties notwithstanding the height exceedance. The proposed development presents attractive facades with active frontages in the form of commercial/retail tenancies to the Howatt Street and Woodville Road as required by DCP. Therefore, the proposed development is consistent with both the existing character and the anticipated future character of the Villawood Town Centre, meeting this objective. The proposed development has been designed to align with the DCP and, as the newest addition to the streetscape replacing several underutilised and somewhat rundown existing building it is considered compatible with the future character of the area, meeting this objective.

Fifth Objective

(1)(e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,

Comment

The site is predominately flat, and the proposed development has been carefully designed having regard to the requirements of the planning controls created by the DCP and LEP in conjunction with the strengths and opportunities created by the site attributes to ensure that the height of the building aligns with the natural topography of the area. The placement and orientation of the taller elements of the building consider existing view corridors, solar access and overshadowing impacts while minimising where possible any potential impact on key sightlines from surrounding properties. The building is positioned and scaled to complement the landscape, respecting the natural contours, and ensuring that it does not unreasonably dominate the skyline. Additionally, detailed assessments have been conducted to ensure the building does not obstruct important views or vistas, both from public spaces and neighbouring private properties. The dedication of land fronting Howatt Street not only enables the expansion of Hilwa Park but creation of a green east-west link between Villawood Road and Hilwa Park which will open view corridors from the park but also creates separation between the proposed development and the existing development at Nos. 890 – 894 Woodville Road reducing the impact upon their views.

Sixth Objective

(1)(f) to allow adequate natural light and ventilation between dwellings and sufficient separation for acoustic and visual privacy.

Comment

The proposed development has been designed with careful consideration to ensure adequate natural light and ventilation, sufficient separation for acoustic and visual privacy between dwellings within the proposal and adjoining developments. The design satisfies the ADG requirements detailed in 3F- Visual Privacy, 4A – Solar and Daylight Access, 4B – Natural Ventilation, 4H – Acoustic Privacy and the respective DCP controls. The building layout incorporates appropriate setbacks and separation distances between residential units, promoting cross-ventilation and maximising the entry of natural light into each dwelling. Furthermore, the design provides sufficient spatial separation to preserve acoustic and visual privacy, with the positioning of windows, balconies, and other openings strategically arranged to minimise direct lines of sight between neighbouring units and to reduce noise transfer. Privacy screening devices are also incorporated into the design as required to maintain privacy as required. These measures ensure that the development meets the standards for residential amenity and privacy.

Summary

The proposed development incorporates additional building height that has been carefully designed to align with the objectives of the height control, ensuring that potential impacts are minimised while future amenity is enhanced for residents. Although the proposal exceeds the height limit set by the planning controls, the variation is justified as the extent of 'non-compliance' is carefully managed in the design to ensure it is not visually intrusive, will not adversely affect the streetscape or character of the area, will not impact views, privacy, or solar access for neighbouring properties, and supports the broader planning objectives.

Objective (a): The proposal acknowledges the height limit established in the controls and seeks a variation to this maximum height in order to provide improved amenity for future occupants and support the provision of affordable housing. The additional height remains reasonable and does not create any undue impact on the surrounding area, while fulfilling a critical housing need.

Objective (b): The proposed height complements the evolving streetscape and character of the Villawood Town Centre, which is transitioning to higher-density development. The building form integrates with both existing and planned future developments, contributing positively to the area's character without overwhelming or disrupting the established urban fabric. The design integrates with the existing built form while supporting the future vision for the area, ensuring it remains consistent with the evolving urban character.

Objective (c): The design minimises visual impact and disruption of views by strategically placing taller elements of the building where they will not obstruct key sightlines. Additionally, privacy is preserved through careful placement of windows and openings, and solar access to adjoining properties remains acceptable given the increase in density and height due to the building's orientation and setbacks. The design minimises visual impact, disruptions to views, and ensures that privacy and solar access are not compromised for existing developments. Careful attention has been given to the placement and massing of the building where possible to reduce any overshadowing, with windows and openings designed to protect the privacy of adjoining properties.

Objective (d): The proposal is compatible with the height, bulk, and scale of both existing buildings and the desired future character of the locality. While the building exceeds the prescribed height limit, it fits within the broader urban design context of a transitioning town centre. The current density of adjoining developments to the south and west reflects older planning controls, whereas the Villawood Town Centre is transitioning to a higher-density future, which is expected to result in taller buildings. As established in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, compatibility is not about sameness, but about harmonious coexistence, which this development achieves by responding to its context while supporting future growth. As the area evolves, taller buildings like the proposed development will form part of the area's desired future character.

Objective (e): The taller elements of the building have been appropriately located to respect view corridors and align with the natural topography of the site. The design ensures that important views are maintained, and the building complements the surrounding landscape, fitting naturally into the area's topography without overwhelming the natural or built environment of the setting.

Objective (f): The proposed design allows for adequate natural light and ventilation between dwellings, with appropriate separation distances that ensure sufficient airflow and sunlight for residents. The building's layout also preserves acoustic and visual privacy, creating a high standard of living for future occupants while ensuring minimal impact on neighbouring properties. The building allows for cross-ventilation and acceptable levels of solar access, while maintaining sufficient separation to ensure acoustic and visual privacy. This enhances the overall living quality for future residents.

Finally, strict compliance with the height control is unreasonable and unnecessary where the proposal meets all other relevant built form controls and satisfies the broader objectives of the planning controls, except for building height. The development achieves a balance between maintaining compatibility with the existing character and supporting the desired future character of the area. It follows that the consent authority would be satisfied that compliance with the height standard is unnecessary given the context and design merits of the proposal. The development achieves the intended objectives of the height control by balancing the need for additional housing and ensuring compatibility with both the current and future urban context. In this instance, the consent authority can be satisfied that the variation is appropriate and that the proposed development will contribute positively to the area's future character and urban fabric. Therefore, the consent authority can be satisfied that strict compliance with the height control is neither reasonable nor necessary in this instance.

Are there Sufficient Environmental Planning Grounds to justify contravening the development standards?

In Initial Action the Court found at [23]-[24] that:

23. As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient." First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

In summary, the environmental planning grounds in support of the proposed variation to the height control include as follows:

1. Alignment with Planning Objectives and Controls

The proposal aligns with the strategic vision for the Villawood Town Centre, which anticipates higher-density development and taller buildings, facilitating urban renewal and growth in line with local and state planning strategies. The proposed shop top housing development has been designed with careful consideration of the Villawood Town Centre DCP to arrive at a proposal that presents as contextually responsive development consistent with planning controls, the zone objectives and the objectives of the Height of Building development standard prescribed by the LEP, despite the variation.

2. Provision of Affordable Housing

The development provides affordable housing, which is supported by the Housing SEPP, allowing a 30% height bonus. This contributes to addressing housing affordability issues, a key objective of state-level planning policies and providing a direct public benefit in the provision of much need affordable housing in the Villawood Town Centre.

3. Minimisation of Adverse Impacts

The proposed additional height has been designed to minimise adverse impacts on surrounding properties, including visual impacts, disruption of views, privacy, and overshadowing. The building form has been carefully positioned and massed to reduce any potential negative effects where possible will achieving the intent of the planning controls. The height exceedance is only for lift overruns central to the roof tops which will not be discernible or likely to cause adverse impacts.

4. Compatibility with Existing and Desired Future Character

Notwithstanding the height exceedance the proposal achieves a suitable contextual fit for the site, as intended, without causing any unacceptable amenity impacts on neighbouring properties. The proposed development presents commercial/retail tenancies to the Howatt street and Villawood Road which is consistent with both the existing character and the anticipated future character of the Villawood Town Centre. Despite the variation, the proposed development remains consistent with the desired future character of the area, and it can be anticipated that the future character of the area will continue to trend towards higher density built forms, which is likely to intensify height, bulk, scale and use in response to the NSW Government's affordable housing provisions. The proposal is consistent with the desired future character of the area, which anticipates a transition to higher-density development. The additional height supports this transition and is compatible with the scale, bulk, and form expected in the town centre.

5. Positive Contribution to the Streetscape

The design of the building, including its height, enhances the evolving streetscape, providing a modern and cohesive visual appearance that complements both existing and future developments in the locality. The building will lead to activation of Howatt Street and Woodville Road commensurate with the requirements of the planning controls for the site.

6. Respect for Natural Topography and View Corridors

The taller elements of the building are situated to respect existing view corridors and follow the natural topography of the area. This ensures that key sightlines are maintained and the building fits within the landscape context without overwhelming it.

7. Environmental Sustainability and Amenity Impacts

Notwithstanding the proposed height exceedance, the design provides a built form offering acceptable levels of solar access to nearby residential development noting the Town Centre is in transition to higher density-built form and there will not be significant additional negative impacts beyond a compliant building envelope. The design ensures adequate natural light, ventilation and separation between dwellings within the development and on adjoining lands. As the design achieves adequate natural light and ventilation it reduces energy reliance promoting environmental sustainability and providing future occupants with a high level of amenity. The proposal whilst exceeding the height control will not result in any unacceptable visual impact, view impact, loss of privacy or acoustic comfort or loss of solar access. The building will also not give rise to any known significant negative environmental impacts in the locality.

8. Efficient Use of Land

By accommodating a higher building form, the development optimises the use of land in a key urban centre, supporting more efficient and sustainable urban growth while minimising sprawl. The higher density makes the proposal more economically viable and unlocks vehicle access for the Apex Service Station site through a right of carriageway. This provision allows for a

breakthrough wall at basement level, eliminating the need for Apex to construct access on Woodville Road or Howatt Street, which would otherwise compromise safe and efficient traffic flows near the intersection.

9. Reduction in height would result in reduced public benefit

Strict compliance with the height limit prescribed in FLEP would result in the loss of much need affordable housing within the Villawood Town Centre and reducing the public benefit associated with the provision of affordable housing in such an accessible locality. The reduction in height and corresponding loss of dwellings would also undermine the economic viability of the project and reduce trade for local businesses in the Town Centre.

In *Eather v Randwick City Council* [2021] NSWLEC 1075 the Court said at [38] '*the fact of the particularly small departure from the actual numerical standard and lack of any material impacts consequential of the departure are sufficient environmental planning grounds to justify contravening the development standard*'. As discussed above, the non-compliant development does not result in any meaningful additional adverse environmental impact and is a particularly small variation of only 3% (limited only to lift overruns and rooftop plant not readily visible from the public domain).

Conclusion

Strict application of the maximum height of buildings development standard outlined in Section 18(2) of SEPP Housing has been determined to be both unreasonable and unnecessary in this case. There are ample environmental planning grounds that justify a variation. A more favourable planning outcome is achieved by not rigidly enforcing the height limit, as doing so would require the loss of the affordable housing components of the development and undermine the viability of the project. This is particularly relevant when the development has otherwise been shown to align with the LEP's objectives regarding building height and the objective of the SEPP, which is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

The proposed development represents a high-quality design outcome that activates the streetscape and transforms an underutilised parcel of land, contributing positively to the locality's urban character. The proposed building height allows for this activation while maintaining compatibility with the existing and emerging built form in the area. Additionally, the over-height elements relate only to lift overruns and rooftop plant central to the roof tops, which have been carefully designed to ensure they are not visually intrusive and do not give rise to any negative amenity impacts, such as disruptions to views, loss of privacy, or overshadowing of neighbouring properties.

Moreover, reducing the building height to comply with the development standard would be contrary to Section 1.3(c) of the Environmental Planning and Assessment Act (EPAA), as it would hinder the orderly and economic use and development of the land. This approach would also conflict with the core aims of the SEPP, which seek to encourage the development of housing that meets the needs of vulnerable community members, including those in very low to moderate income brackets.

The proposed variation allows for the most efficient and economic use of the land, facilitating an appropriate built form without negatively impacting the amenity of surrounding properties. Based on the above, it is evident that there are sufficient environmental planning grounds to justify the proposed height non-compliance in this instance. The contravention does not raise any matters of State or regional significance. The proposal is compatible with existing development and aligns with the desired future character of the locality. Additionally, there is no public benefit in enforcing the height of building standard, as the proposed outcome, including the provision of much-needed affordable housing, achieves a superior planning result. No other matters need to be considered by the Director-General. Therefore, it is reasonable and appropriate to vary the building height development standard as proposed.