

Exception to Development Standards Submission

This Exception to Development Standards Submission accompanies a Development Application (DA) proposing the construction of a residential apartment building at 28-32 Evan Street, Penrith (the site). Calculations in this submission are based on plans and information provided by Marchese Partners (are in accordance with the relevant definitions) and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by LPDS and other supporting technical documentation.

As required pursuant to Clause 4.6(3) of Penrith Local Environmental Plan 2010, this submission provides a written request to Council that justifies the proposal's departure from the height of buildings development standard is acceptable from an environmental planning point of view and that compliance with the standard is both unreasonable and unnecessary given the circumstances of the case.

There is judicial guidance on how variations under Clause 4.6 variation should be assessed. The following cases are taken into consideration in this request for variation.

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90; and*
- *Moskovich v Waverley Council [2016] NSWLEC 1015.*

Description of the planning instrument, development standard and proposed variation

What is the name of the environmental planning instrument that applies to the land?

Penrith Local Environmental Plan 2010 (LEP 2010).

What is the zoning of the land?

The site is zoned R4 High Density Residential.

What are the objectives of the zone?

The objectives of the R4 High Density Residential zone are:

- *to provide for the housing needs of the community within a high density residential environment.*
- *to provide a variety of housing types within a high density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *to ensure that a high level of residential amenity is achieved and maintained.*
- *to encourage the provision of affordable housing.*
- *to ensure that development reflects the desired future character and dwelling densities of the area.*

What is the development standard being varied?

Development Standards' are defined under Section 4(1) of the Environmental Planning and Assessment Act, 1979 (the **Act**) as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

- (a) *the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) ***the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,***
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*
- (f) *the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) *the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) *the volume, nature and type of traffic generated by the development,*
- (i) *road patterns,*
- (j) *drainage,*
- (k) *the carrying out of earthworks,*
- (l) *the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) *the provision of services, facilities and amenities demanded by development,*
- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) ***such other matters as may be prescribed. (my emphasis)***

The height of buildings control at Clause 4.3 of LEP 2010 is clearly a development standard as it relates to the height of a building or work specified in subclause (c).

Is the development standard a performance based control? Give details.

No.

Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.3 of LEP 2010.

What are the objectives of the development standard?

The objectives of the development standard are expressly stated at Clause 4.3(1) of LEP 2010 and 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 items, heritage conservation areas and areas of scenic or visual importance,
- (d) to nominate heights that will provide a high quality urban form for all buildings and a transition in built form and land use intensity.

What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3 of LEP 2010 establishes a maximum 18 metres height of building for the site.

What is the proposed numeric value of the development standard in the development application?

Section BB at **Figure 1**, demonstrates the proposed development as measured from ground level existing¹ has a maximum building height² of 21.881 metres (RL 58.70 to the top of the lift overrun).

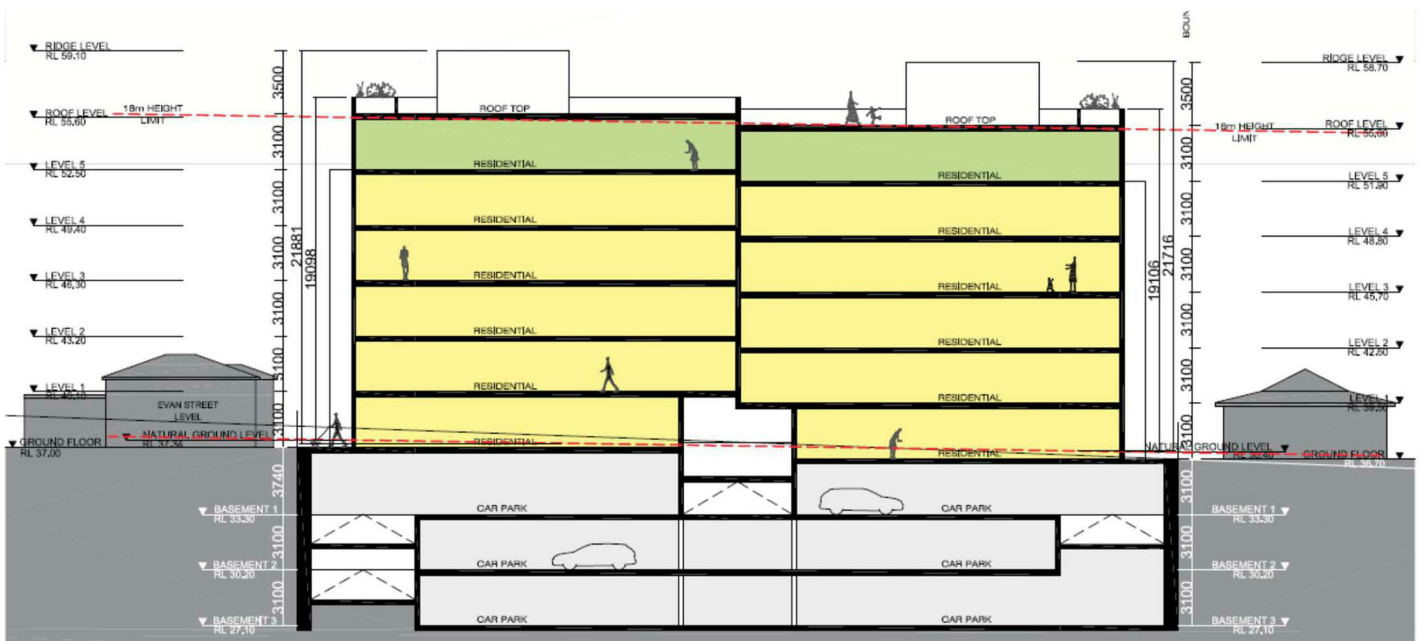


Figure 1 – Section B demonstrating the proposal's varied maximum building height

What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed percentage variation is 22% for the built form's maximum height of 21.881 metres.

¹ Pursuant to the Dictionary in LEP 2010, **ground level (existing)** means the existing level of a site at any point.

² Pursuant to the Dictionary in LEP 2010, **building height** means:

- (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.

Assessment of the proposed variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i))

Is the proposed development in the public interest because it is consistent with the objectives for development in the zone and the objectives of the particular standard?

Objectives of the zone

As stated at Clause 2.3 of LEP 2010, the objectives of the R4 Medium Density Residential zone are:

- *to provide for the housing needs of the community within a high density residential environment.*
- *to provide a variety of housing types within a high density residential environment.*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *to ensure that a high level of residential amenity is achieved and maintained.*
- *to encourage the provision of affordable housing.*
- *to ensure that development reflects the desired future character and dwelling densities of the area.*

The site may be developed with the stated variations to the overall building height without being inconsistent with the zone objectives. This is because in considering the question of consistency, the adopted approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council (1992) LGRA 21* where, is as follows at Paragraph [27]:

The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.

Consistency is not readily quantifiable in absolute numerical terms. The proposed development despite its departure from the height of buildings standard is consistent with the objectives of the R4 High Density Residential zone and is therefore a suitable and appropriate redevelopment of the site as:

- it provides for high density residential development an expected built form and land use on a high density residential allotment of land;
- it replaces an existing inconsistent land use (three, single dwellings, a low residential density built form) with a high density residential apartment building that is specifically consistent with the locality's desired future character;
- it provides an appropriate mix of housing choice for the community within an identified high density environment and desirable location;
- it provides for a range of apartment types;
- it provides a well designed high density residential development in proximity to services, amenities and facilities including the Penrith CBD and its surrounds;
- provides a high level of residential amenity for the future occupants within a high quality and architecturally designed built form;
- it does not affect the amenity of the surrounding area (including adjacent landowners) or the natural or cultural heritage of the area;
- it does not propose any non-residential land uses but at the same time allows the occupants to work from home as/if required and does not preclude the opportunity for appropriate non-residential development; and
- it does not preclude the appropriate (for similar purposes) redevelopment of adjacent properties.

Objectives of the Height of Buildings standard

- Objective(a) and (d):
 - the proposed residential apartment building form and its built form density (height, bulk and scale) is compatible with the anticipated high density residential apartment building typology that is achievable and has been approved on adjacent properties under the relevant LEP 2010 provisions;
 - the predominant building envelope complies with the height standard and all habitable accommodation is contained below the 18 metres height standard;
 - the number of storeys proposed is commensurate with the total height of the predominant building envelope which complies with the standard. The number of storeys proposed is consistent with that already approved on adjacent properties;
 - the built form elements that are located above the maximum height permitted, do not materially add to the perceived height, bulk and scale of the building. The lift overruns are setback from the built form's principal building alignment and therefore are not readily visible from the immediate public domain;
 - the height of the built form is not dissimilar to that which has been approved on adjacent properties. The proposal will not set an undue precedent and will not preclude appropriate redevelopment of adjoining properties. The architecture of the building provides an appropriate height and mass relationship to the existing and likely future character of the locality and therefore maintains a special and positive urban character;
 - the visual catchment contains several buildings that will present a similar height, bulk and scale and which will set the future character. Consequently, the technical non-compliance with the

standard does not result in a scale of building that is out of character with the surrounding development and the emerging character as expected. Therefore, it is considered the proposal will not set an undue precedent and will not preclude appropriate redevelopment of adjoining properties. The architecture of the building provides an appropriate height and mass relationship to the existing and likely future character of the locality and therefore maintains a special and positive urban character;

- the technical numerical departure is inconsequential from a planning perspective as it does not materially add to the height, bulk and scale of the site's built form. The built form sits comfortably within its approved and likely future locational context;
- the proposed built form provides a consistent vertical and horizontal modulation. The built form's proposed height, bulk and scale sits comfortably within this established (approved) and likely (desired) future built form context;
- resulting from its high quality urban and architectural and landscape design solution, the apartment building will improve the locality's existing visual character and be consistent with that desired under the relevant planning controls. The locality is an existing urban environment that contains varied land uses, building envelopes, heights, types, densities, and architectural merit. The development fits within the desired form, scale and character of the locality as anticipated by the relevant planning controls and the ongoing redevelopment of properties;

- Objective (b):

- the proposed apartment building and its surrounds with its high quality architectural, urban and landscape design solution will be a positive addition to the site's locational built form character. The proposal represents an appropriate planning outcome without any adverse environmental impacts;
- relative to overshadowing, the impact on adjacent properties is acceptable as the resultant built form is expected. Appropriate curtilage to adjacent properties is maintained. It is noted the site is adjacent to a cemetery along its eastern boundary. This property is heritage listed and is unlikely to ever contain future built form;
- due to the likely future development density, built form will overshadow adjacent properties and the surrounding public domain;
- the design is consistent with the objectives of the control as it ensures the height, form and scale of the apartment building is not excessive and will also provide a continuity of building form. By this the proposal exhibits a similar height, bulk and scale to that existing (approved and under construction) and that expected on adjacent properties;
- any resultant overshadowing impact will not preclude the redevelopment of any adjacent property;
- the nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design. Privacy concerns have not impacted on the redevelopment of other properties in the surrounding locality for high density residential apartment buildings and amenity relative to visual and acoustic privacy will be maintained through the incorporation of appropriate architectural design elements;

- views over, across and via side boundary setbacks from adjacent properties to the site’s west and the surrounding public domain will remain;
 - vistas at ground level are not possible because of existing low density built form and future high density built form;
 - that part of the building (lift overrun and rooftop level) that exceeds the height standard is centrally massed so that it reduces potential view impacts on views and vistas from adjacent properties. The proposal will result in a near neutral (or equitable) outcome in terms of views / vistas loss;
 - the view and visual impact (to neighbouring properties and the surrounding public domain) of the proposed non-complying built form would not be significantly different from those of a strictly complying built form;
- Objective (c):
 - the site is not within a heritage conservation area;
 - curtilage to the adjacent heritage item has been retained;
 - the proposed residential apartment building form and its built form density (height, bulk and scale) is compatible with the anticipated high density residential apartment building typology that is achievable under the relevant LEP 2010 provisions. The built form and its relationship with the adjacent heritage item is therefore expected;
 - the built form elements that are located above the maximum height permitted, do not materially add to the perceived height, bulk and scale of the building and its impact on the adjacent heritage item. The lift overruns are setback from the built form’s principal building alignment and therefore are not readily visible from the immediate public domain;
 - the built form at the lower levels has been screened from view of the adjacent heritage item through high quality perimeter landscaping (hedging and trees) and boundary fencing; and
 - complementary external materials and finishes are proposed which will positively contribute to the future streetscape character and relationship with the adjacent heritage item.

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

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

A development at 28-32 Evan Street, Penrith that strictly complies with the 18 metres height of buildings standard is unreasonable or unnecessary given the following presented circumstances:

- the proposed residential apartment building form and its built form density (height, bulk and scale) is compatible with the anticipated high density residential apartment building typology that is achievable and has been approved on adjacent properties under the relevant LEP 2010 provisions. The site is in an area with excellent (i.e. walking distance) access to services, amenities and facilities;
- the predominant building envelope complies with the height standard;
- all habitable accommodation is contained below the 18 metres height standard;

- the number of storeys proposed is commensurate with the total height of the predominant building envelope which complies with the standard. The number of storeys proposed is consistent with that already approved on adjacent properties;
- the built form elements (lift overruns and parapet) that depart from the standard, do not materially add to the perceived height, bulk and scale of the building. The lift overruns are setback from the built form's principal building alignment and therefore are not readily visible from the immediate public domain;
- the site's flooding constraints (minimum habitable floor levels) increase the built form's height;
- the height, bulk and scale of the apartment building will not set an undue precedent;
- it has been demonstrated that the proposal will not result in any material environmental impacts to the adjoining and adjacent properties, particularly in terms of overshadowing, aural and visual privacy, solar access and natural ventilation, and views and vistas;
- the height of the building does not preclude redevelopment of the adjacent properties;
- the proposal exhibits design excellence; and
- it will permit the redevelopment of the site to facilitate a use which is predominantly in accordance with the adopted planning controls for the site and consistent with community expectations for the area.

Would the underlying objective or purpose of the standard be defeated or thwarted if compliance was required?

Compliance with the underlying objective of the 18 metres height of buildings standard would be thwarted if strict compliance with the standard was required in the circumstances as the quality of the residential outcome would be compromised for no sound planning reason. The built form elements (lift overruns and parapet) that depart from the standard, do not materially add to the perceived height, bulk and scale of the building. All habitable accommodation is located below the height standard.

The resultant built form is one that exhibits substantial merit relative to architectural, urban and landscape design. It also includes appropriate environmental initiatives. It does not preclude or isolate an adjacent property(s) from being redeveloped for high density residential purposes.

Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

The development standard cannot said to be abandoned. Variations to the height of buildings standard (and others) have been granted in appropriate circumstances of the case.

Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The primary issue in this DA is whether there are sufficient environmental planning grounds to allow the variation to the standard. The environmental planning grounds which are deemed to be sufficient to justify a variation are discussed previously and further in detail below.

In the 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined in her judgement that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not 'satisfied' because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or feature of the site that justifies the non-compliance. Whether there are sufficient environmental planning grounds to justify contravening the development standard is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* is to be considered. In this case, the Council appealed against the original decision, raising very technical legal arguments about whether each item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February 2017, the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ... and that there are sufficient environmental planning grounds to justify contravening the development standard. He held that this means:

the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary.

Accordingly, and regarding the proposed development at 28-32 Evan Street, Penrith there are sufficient environmental planning grounds to justify contravening the height of buildings standard being:

- the proposal satisfies the objectives of the R4 High Density Residential zone;
- the proposal satisfies the objectives of the height of buildings standard;
- the proposed residential apartment building form and its built form density (height, bulk and scale) is compatible with the anticipated high density residential apartment building typology that is achievable and has been approved on adjacent properties under the relevant LEP 2010 provisions. The site is in an area with excellent (i.e. walking distance) access to services, amenities and facilities;
- the visual catchment contains several buildings that will present a similar height, bulk and scale and which will set the character to a large degree. Consequently, the technical non-compliance with the standard does not result in a scale of building that is out of character with the surrounding development and the emerging and expected character;
- the proposal will achieve a positive urban design outcome and will improve the streetscape through contemporary architecture styling;

- that part of the building which departs from the standard adds to its visual interest whilst still maintaining a human scale relative to anticipated future built form. Further it does not contain any habitable accommodation;
- the proposal responds and contributes to its context by engaging its desired future character as envisaged by the proposed land uses and densities permissible in the surrounding locality. The surrounding area is unlikely to remain in its current built form for long. The future character is currently more critical than the existing context which will enable other site's to contribute to the future character with their own development and thus enable the full realisation of Council's strategic direction for the locality's redevelopment;
- it has been demonstrated that the proposal will not result in any material environmental impacts to the adjoining and adjacent properties, particularly in terms of overshadowing, aural and visual privacy, solar access and natural ventilation, and views and vistas; and
- environmental initiatives are proposed, including:
 - compliance with all BASIX requirements;
 - all apartments have been designed to maximise access to natural light and ventilation to minimise use of artificial light, heating and cooling;
 - 63% apartments are naturally cross ventilated;
 - 70% of apartments receive more than 2 hours of direct solar access between 9am and 3pm during the winter solstice;
 - all outdoor private spaces are designed as extension of the living room to enhance and encourage outdoor and indoor living, while at same time acting as a transition space to modulate temperature in the apartment;
 - openings to balconies have an awning, louvers, eave or terrace above to minimise solar gain in summer;
 - on site detention and rainwater tanks which are capable of being reused for irrigation purposes and grey water;
 - areas of soft deep soil landscaping will allow for infiltration/absorption and re-use rather than runoff;
 - the use of energy efficient plumbing fixtures and water systems will be used;
 - primary living areas are connected to the external facades and glazing. These areas will benefit from the ability to make use of trapped solar heat gain through its glazing during the winter months;
 - the engagement with the outdoors, the natural ventilation, the increase in natural light and the passive solar controls will reduce energy consumption;
 - the site's landscape solution has been specifically designed for adaptable living or recreation that is suitable for vegetation and able to sustain vegetation growth;
 - the site's landscape quality is improved from that existing. The landscaping enhances the vegetated and landscape and townscape character of the redevelopment precinct;

- the proposed landscaping (and built form location) does not result in the loss of significant mature vegetation. New plantings are proposed which will positively contribute to the landscape and scenic quality of the immediate locality;
- the nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design. In this regard, the proposal represents an appropriate planning outcome with any adverse environmental impacts; and
- within this context, the site can accommodate the building height proposed and the development is of an intensity and scale commensurate with the evolving character and the prevailing urban conditions and capacity of the locality.

Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

The proposed development supports state government policies of urban consolidation and *A Plan for Growing Sydney*. It increases residential densities which in turn improve the viability and vibrancy of local government areas. Given its accessible and desirable location (relative to amenities, services and facilities), the site is ideally suited to increased density in accordance with the relevant NSW State Government urban consolidation policies.

The proposed built form is compatible with the anticipated high density residential apartment building typology that is achievable and has been approved on adjacent properties under the relevant LEP 2010 provisions.

How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

The objects of the Act as specified in Section 5(a) (i) and (ii), are in our opinion, achieved by the proposed development in that:

- it constitutes *“proper management, development and conservation of natural and man-made resources”*;
- it promotes *“the social and economic welfare of the community and a better environment”* by better utilising the existing resources and infrastructure of the community; and
- it would result in *“the promotion and co-ordination of the orderly and economic use and development of land”*.

A strictly complying development would result in a poorer urban design response to the overall site and the area generally and in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act as the resultant height, bulk and scale is similar to that already considered acceptable on adjacent properties.

The site’s redevelopment and subsequent departure from the height of buildings standard does not preclude or isolate an adjacent property(s) from being redeveloped for high density residential purposes. The site’s resultant built form is one that exhibits substantial merit relative to architectural, urban and

landscape design and is consistent with that already permitted on adjacent land. It also includes substantial environmental initiatives.

The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 5(a)(i) and (ii).

Is there public benefit in maintaining the development standard?

Generally, there is a public benefit in maintaining standards. However, there is public interest in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the height of buildings standard would serve no purpose other than to impose numerical inflexibility that would achieve no planning purpose. A rigid and inflexible compliance based approach to the development standard forgoes the opportunity to provide a benchmark architectural expression and urban and landscape design solution for the site. This is a desirable outcome and which should be encouraged.

Following a review of other DA's on land with a similar characteristic, it can be demonstrated that Council (and alternative consent authorities) has considered applications favourably which depart from the development standards subject to a satisfactory environmental performance. The proposal is consistent with this principle. The resultant built form (including its height, bulk, scale and siting) is one which is expected given the desired future built form character.

There are no other reasons as to why it is not in the public interest and its refusal based on the standard's technical departure is not warranted. Therefore, it is argued that there is no public benefit in technically maintaining the adopted height of buildings planning control.

On balance, the variation to the height of buildings standard is an appropriate use of the provisions of Clause 4.6. Accordingly, there is in the specific circumstances of the case, no public benefit in strictly maintaining the development standard

Is the objection well founded?

For the reasons outlined in previous sections, it is considered the objection is well founded in this instance and granting an exception to the development can be supported given the presented circumstances of the case. The development does not contravene the objects specified with 5(a)(i) and (ii) of the Act.

Conclusion

The proposed variation to the height of buildings standard is based on the reasons contained within this formal request for an exception to the standard. The proposal will not result in unacceptable impacts regarding the amenity of adjoining and adjacent properties and the surrounding public domain. A development strictly complying with the numerical height of buildings standard would not significantly improve the amenity of surrounding land uses.

The non-compliance is not considered to result in any precedents for future development within the LGA given the site considerations and surrounding pattern of development, and the combination of zoning and differentiated controls applying to the whole of the site.

It is concluded that the objection:

- is well founded;
- compliance with the standard is both unnecessary and unreasonable as:
 - the proposal is consistent with the objectives of the R4 High Density Residential zone;
 - the proposal is consistent with the objectives of the standard;
 - the resultant built form is one that exhibits substantial merit relative to architectural, urban and landscape design;
 - the departure does not result in adverse environmental and amenity impacts to adjacent properties and the surrounding public domain;
 - it provides for high density residential development an expected built form and land use on a high density residential allotment of land;
 - it provides for a well designed high density residential development in proximity to services, amenities and facilities; and
- there are sufficient environmental planning grounds in which to support the proposal.