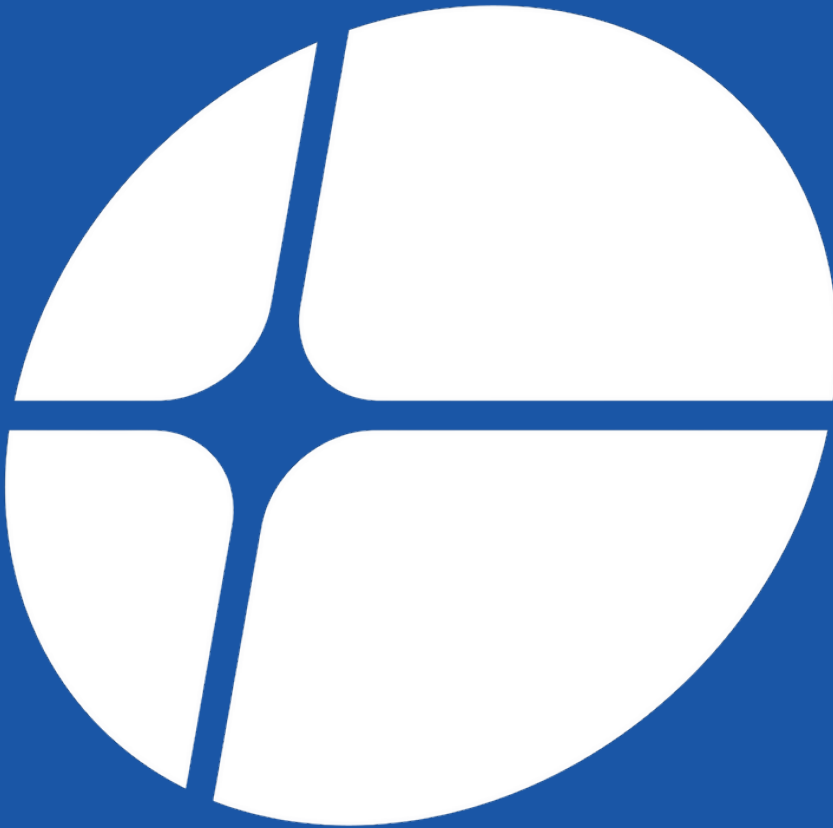


Clause 4.6

Request to vary a Development Standard - Height of Building



SSD-80875966

68-80 O'Connell Street, Caddens

Submitted to DPHI

On behalf of Caddens Estate Pty Ltd

October 2025

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1 Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Penrith Local Environmental Plan 2010* (Penrith LEP 2010).

This Request relates to Section 18(2) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) and supports a State Significant Development application (SSDA) for a mixed-use development, including in-fill affordable housing, on land at 68-80 O'Connell Street, Caddens in the Penrith local government area (LGA).

This Request has considered the detailed guidance within the NSW Department of Planning and Environment (DPHI) guideline *Varying Development Standards: A Guide, August 2011* (DPHI Guide) and addresses the findings and established principles (as relevant) in the following judgements of the NSW Land and Environment Court (the Court):

- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*
- *Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131*

The following sections of this Request critically analyse the proposed height variation, its impact and reasonableness.

This analysis demonstrates that an exception to the height of buildings development standard is warranted in this instance.

2 Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) includes various development standards as a means of achieving environmental planning objectives.

Clause 4.6 of the Standard Instrument allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard.

The DPHI Guide recommends that any request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. Table 1 below provides a summary of the relevant planning context and provides an overview of the proposed variation.

Information Requirement	Comment
Relevant Applicable Planning Instrument	<i>State Environmental Planning Policy (Housing) 2021</i> (Housing SEPP)
Zoning of the Land	<p>The site is subject to a split zoning as follows:</p> <ul style="list-style-type: none"> E1 Local Centre (western portion of the site). R4 High Density Residential (eastern portion of site) <p>The proposed height exceedance is located on the E1 part of the site.</p>
Objectives of the Zone	<p>The objectives of the zone E1 are:</p> <ul style="list-style-type: none"> <i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.</i> <i>To encourage investment in local commercial development that generates employment opportunities and economic growth.</i> <i>To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.</i> <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i> <i>To provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy.</i> <i>To create opportunities to improve the public domain and encourage the integration of centres with public transport and pedestrian networks.</i> <i>To promote development that is of a size and scale that is appropriate to meet local needs and does not adversely affect the amenity or character of the surrounding residential neighbourhood.</i>
Development Standard to be Varied	Section 18(2) of the Housing SEPP - <i>Affordable housing requirements for additional building height</i>

Information Requirement	Comment
Nature of the Development Standard	<p>A numerical building height control of 19.5m.</p> <p>The site is subject to a base height permitted by Clause 4.3 of the PLEP 2010 and a bonus height control permitted by Section 18 of the Housing SEPP.</p> <p>The numerical values are outlined below:</p> <ul style="list-style-type: none"> • Clause 4.3 of PLEP 2010: 15m • Section 18(2) of Housing SEPP: 15m + 30% = 19.5m <p>Therefore, the numerical value to be varied is 19.5m, pursuant to Section 18(2) of the Housing SEPP.</p>
Relevant Development Standard Clause	Section 18(2) of the Housing SEPP - Affordable housing requirements for additional building height
Objectives of the Development standard	<p>Section 18 of the Housing SEPP does not explicitly identify objectives of the development standard to be varied.</p> <p>Notwithstanding, Section 15A of the Housing SEPP outlines the Objective of the Division to which applies to Section 18 applies:</p> <p><i>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.</i></p>
Proposed Numeric Control	Maximum height 25.5m
Percentage Variation Between the Proposal and the Planning Instrument	The exceedance of the 19.5m building height control is 6m (approx. 30.77%)

Table 1: DPHI Guide recommended planning information and numeric overview

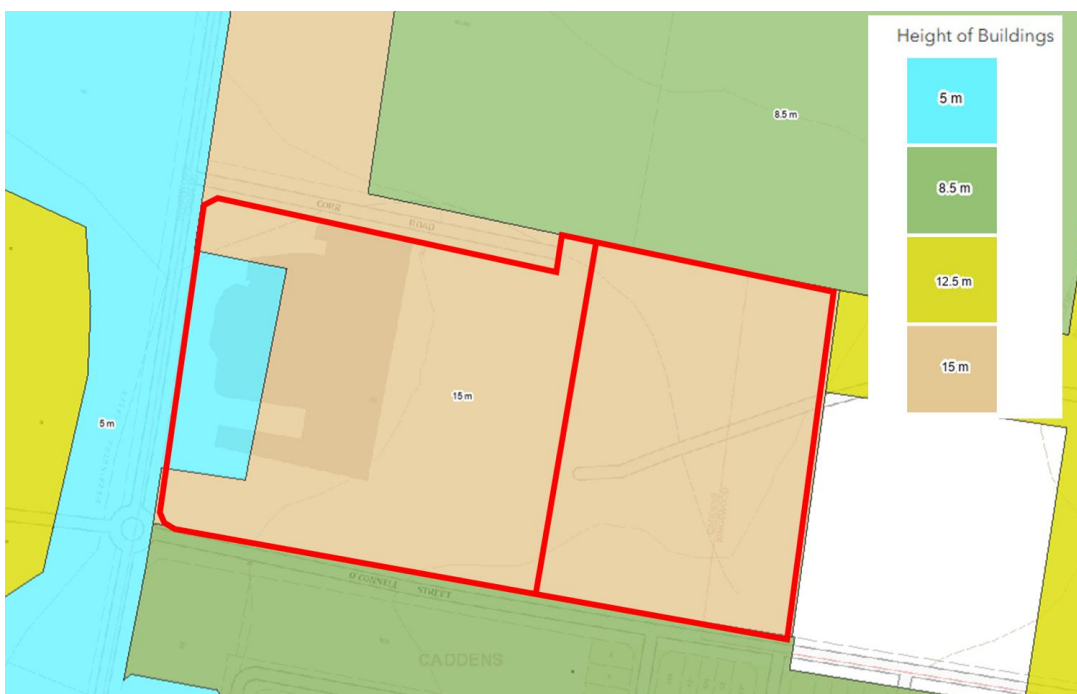


Figure 1: Clause 4.3 Height of buildings map (Source: PLEP 2010)

3 Proposed Development

This Request supports an SSDA for the mixed-use development (including in-fill affordable housing) comprising a combination of shop-top housing, residential flat buildings and a retail premises (shop) at 68-80 O’Connell Street, Caddens. The subject site has an area of 54,032m². The site location is shown at the figures below.



LEGEND
 Site Boundary

Figure 2: The site in its immediate context (Source: Keylan)

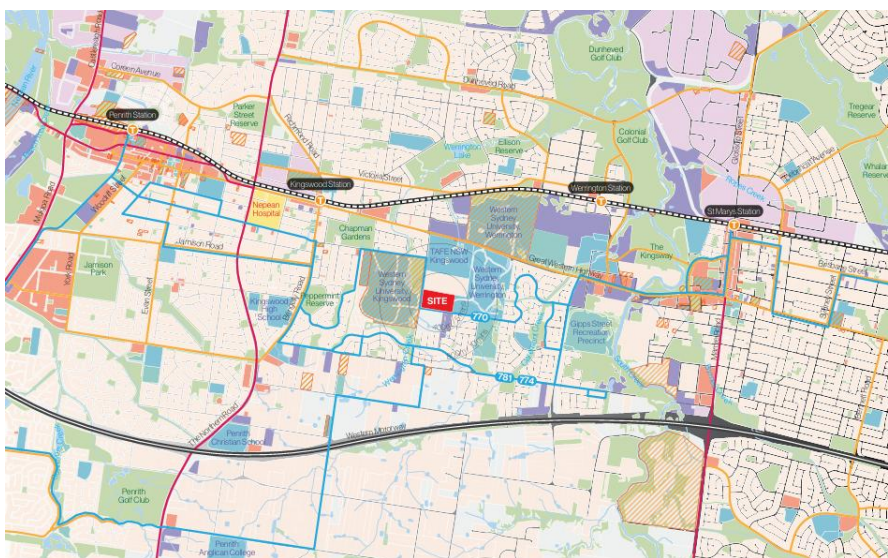


Figure 3: Site context (Base source: Group GSA)

The proposed development subject to the SSDA comprises the:

- demolition of an existing at grade car park and structures
- construction of 4 x 4 - 7 storey shop top housing buildings on the E1 Local Centre zoned land (68 O'Connell Street), comprising:
 - 177 residential dwellings
 - ground floor commercial, retail, medical uses and recreation facility (indoor) construction of a single storey commercial premises (shop) located at the southwestern corner of the E1 Local Centre zoned land (68 O'Connell Street), comprising two tenancies (which will be subject to future planning approval relating to the fitout)
- construction of basement carparking to service the shop top housing and commercial premises located on the E1 Local Centre zoned land (68 O'Connell Street)
- construction of 11 x 4 – 7 storey residential flat buildings on the R4 High Density Residential zoned land (80 O'Connell Street), including
 - 305 residential dwellings
 - basement carparking to service the proposed residential flat buildings
- internal roads (to be dedicated to Council as part of a separate process).
- associated infrastructure and services on the development site
- retention of Threatened Ecological Community (TEC) area in the north-eastern part of the site
- landscaping and communal open spaces including community park in the north-east, communal open spaces throughout and through site links.
- construction of public plaza used for events, markets and community gathering

The proposal also incorporates 15% affordable housing (73 units) and seeks to utilise the incentive controls under Chapter 2, Part 2, Division 1, Section 18 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) to achieve 30% additional building height.

The SSDA also seeks to modify the existing development consent at the site (DA17/0995) pursuant to Section 4.17(5) and Section 4.24(4) of the EP&A Act.

The proposed maximum height is 25.5m, exceeding the height development standard (subject to affordable housing height bonus under the Housing SEPP) by 6m. The extent of this non-compliance is shown in the figures below and within the architectural plans prepared by Group GSA (Appendix 8 of the SSDA Package).

Out of the entire development, the height exceedance is limited to two buildings, Buildings S and T. All other buildings within the development are compliant with the applicable height controls.

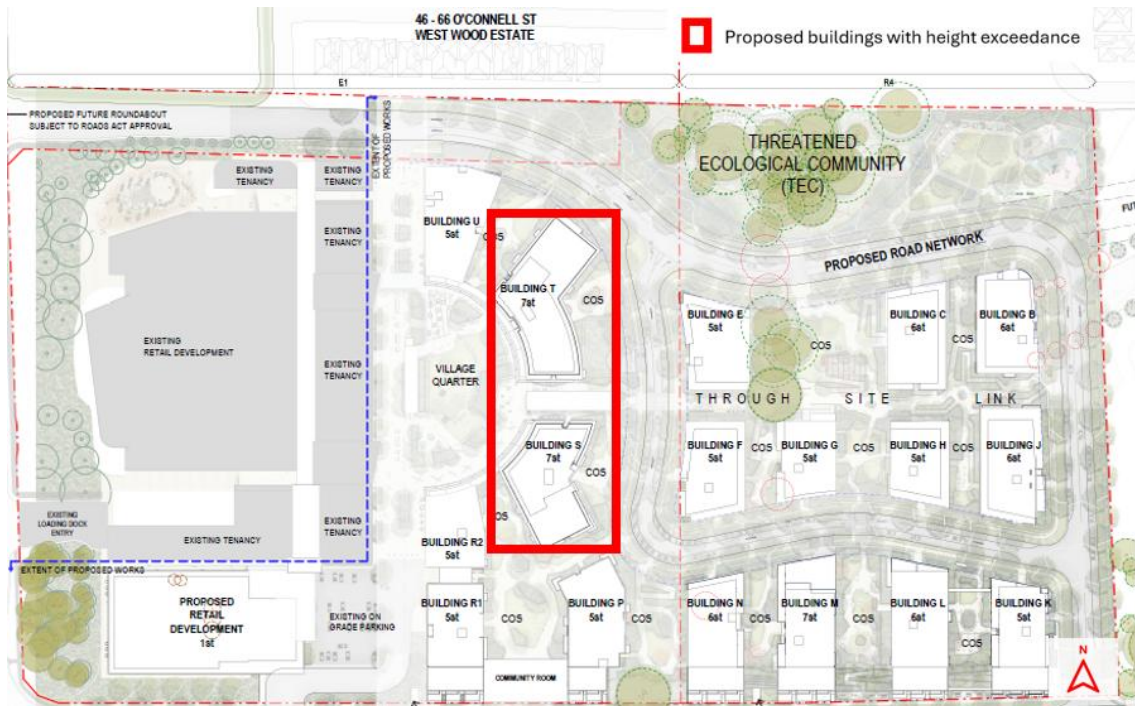


Figure 4: Site Plan illustrating Buildings S and T in red (Source: Group GSA)

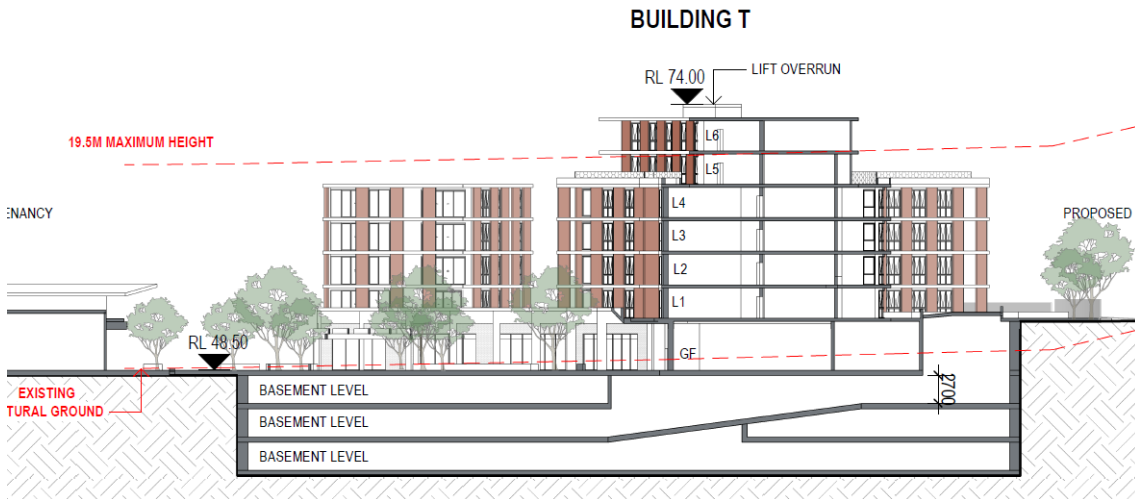


Figure 5: Height exceedance of Building T (Source: Group GSA)

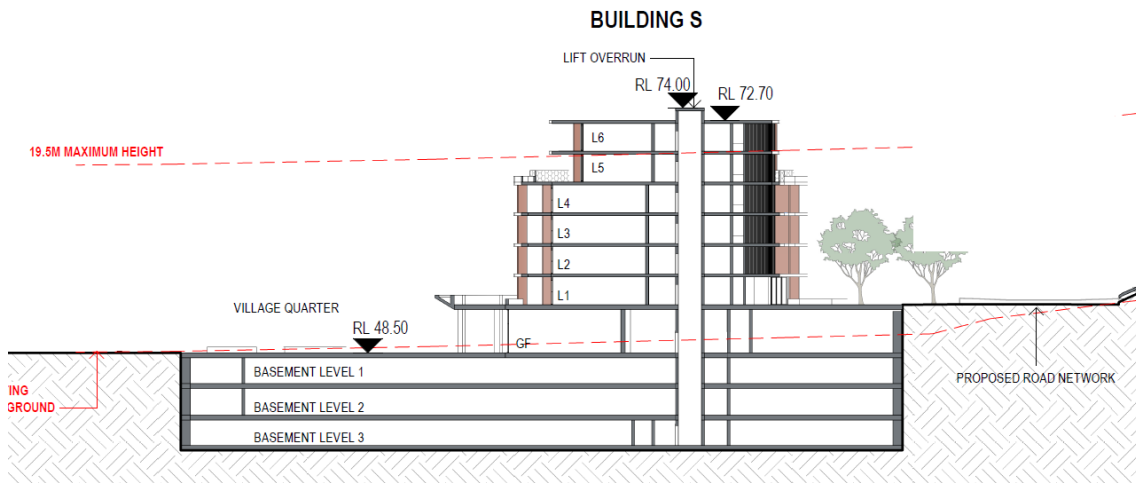


Figure 6: Height exceedance of Building S (Source: Group GSA)

3.1 Proposed variation

As noted above, all buildings within the development comply with the applicable height control of 19.5m, with the exception of Buildings S and T.

As illustrated in Figures 5 and 6, the height exceedance relates to the recessed top storey and lift overruns for Buildings S and T. The maximum proposed height is 25.5m which equates to a 6m variation.

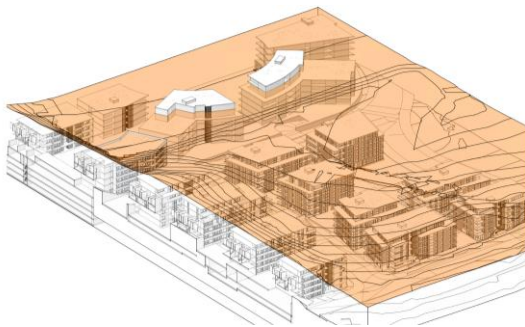


Figure 7: Proposed height exceedance looking northwest (Source: Group GSA)

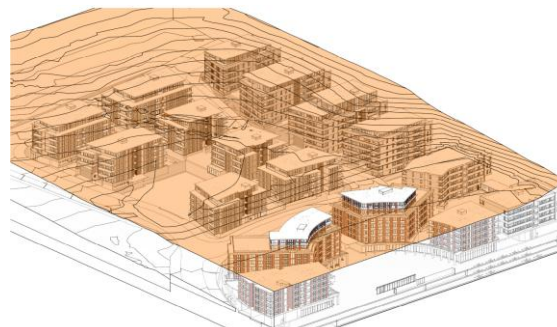


Figure 8: Proposed height exceedance looking southeast (Source: Group GSA)

4 Legislative Context

4.1 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the PLEP 2010 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (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 PLEP 2010 provides that, unless expressly excluded from the operation of clause 4.6, and subject to clause 4.6, development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP 2010 or any other environmental planning instrument.

The Housing SEPP is an environmental planning instrument (EPI).

1.1.1. Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

4.2 Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

4.2.1 Wehbe v Pittwater Council (2007)

This case establishes five potential grounds ‘Wehbe tests’ to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

4.2.2 Initial Action Pty Ltd v Woollahra Municipal Council (2018)

Initial Action Pty Ltd v Woollahra Municipal Council [2018] (Initial Action) further clarifies the correct approach for the consideration of clause 4.6 requests. Clause 4.6 does not require that a development that contravenes a development standard to have a *neutral or better* environmental planning outcome than a fully compliant development.

In *Initial Action*, the Court also confirmed that the five common ways of establishing that compliance with a development standard is unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007)* continue to apply.

4.2.3 Linfield Developments Pty Ltd v Cumberland Council (2019)

The ‘third’ Wehbe test is concerned with the underlying object or purpose of the development standard and that it would be defeated, thwarted or undermined if strict compliance was required. The reference to ‘undermined’ is an extension of Wehbe which was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]) (Linfield). In Linfield, the court found that:

“...requiring compliance would thwart or undermine at least one of the objectives of the height control development standard...”

5 Assessment of the Variation to Height Development Standard

The Penrith LEP 2010 sets a standard height of building development control of 15m for the site. Chapter 2, Part 2, Division 1, Section 18(2) of the Housing SEPP provides for an additional building height of up to 30% for developments that include affordable housing. The applicable building height for the site is therefore 19.5m.

The proposed height of Buildings S and T is 25.5m. All other buildings within the development comply with the 19.5m building height.

The location of the proposed additional height in the central part of the site is a specific design response that:

- Responds to the site's unique topography
- Minimises visual impacts from the surrounding area
- Redistributes height and density throughout the site given the removal of building A in the northeast of the site in order to conserve an area of Threatened Ecological Community adjacent to the site and in response to feedback received from Penrith City Council during pre-lodgement consultation
- Responds to the existing retail land uses at Caddens Corner on the western portion of the site

The following assessment comprehensively considers the provisions of Clause 4.6 with regard to the relevant case law.

5.1 Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

Wehbe establishes at least five potential alternative grounds to ascertain whether strict compliance with a development standard is unreasonable or unnecessary. An assessment against the relevant tests is provided below to outline how compliance with the height of building development standard is unreasonable and unnecessary.

5.1.1 Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

Section 18 of the Housing SEPP does not explicitly identify objectives of the development standard to be varied. Notwithstanding, Section 15A of the Housing SEPP outlines the objective of the Division to which applies to Section 18 applies.

The objective of Chapter 2, Part 2, Division 1, Section 15A of the Housing SEPP are as follows:

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.

The proposed development is for a mixed-use development, including in-fill affordable housing, comprising a combination of shop-top housing, residential flat buildings, commercial and retail premises, medical centre and recreation facility (indoor).

The development will deliver a total of 482 apartments. Of this, 73 apartments will be dedicated as affordable housing for a period of 15 years in accordance with the requirements of the Housing SEPP. The inclusion of affordable housing ensures that lower-income households have access to well-located, high-quality homes, helping to ease pressure on the rental market and reduce housing stress.

As such, the proposal directly responds to and aligns with the objective of Chapter 2, Part 2, Division 1, Section 15A of the Housing SEPP.

Furthermore, the remainder of apartments in the development will contribute to housing supply and diversity within the Penrith LGA.

It is noted that while the development standard to be varied is contained within the Housing SEPP, consideration has also been given to the relevant Cl.43 objectives of the PLEP 2010, as outlined in the table below.

Objective	Comment
<p><i>(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,</i></p>	<ul style="list-style-type: none"> • The majority of the development complies with the 19.5m height plane identified for the site, which is considered to offset and balance the additional height sought to Buildings S and T. • The additional height for Buildings S and T offers a varied building height and scale without contributing to excessive bulk of these structures. • Given the proposed height exceedance is located centrally within the site, it will not be readily visible from the public domain and will not noticeably add to the perceived bulk or scale of the development.
<p><i>(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,</i></p>	<ul style="list-style-type: none"> • It is noted the western portion of the site (68 O’Connell Street) currently comprises an existing commercial shopping centre development and the eastern portion of the site (80 O’Connell Street) is a cleared vacant lot. • The subject site adjoins the R1 General Residential zone to the south however, given the proposed height exceedance is located centrally within the site, it minimises visual impact, disruption to views, loss of privacy and loss of solar access to existing developments surrounding the proposal. • The proposed setbacks of Building S and T achieve compliance with the ADG’s separation distances. Compliance with these requirements ensures that the height exceedance does not create any privacy impacts for residential properties to the south. • On the basis of the above, and despite the height variation, the proposed development provides reasonable measures to minimise adverse visual and privacy impacts and therefore meets this objective of the clause.

Objective	Comment
<i>(c) to minimise the adverse impact of development on heritage items, heritage conservation areas and areas of scenic or visual importance,</i>	<ul style="list-style-type: none"> • The site does not contain any heritage items, nor is it located within a Heritage Conservation Area; however, it is located to the east of the 'Teacher's residence (former)' (Item 670), a local heritage item which is identified under Schedule 5 of the PLEP 2010 located at 56 Second Avenue Kingswood. • The existing shopping centre at Caddens Corner and O'Connell Street together with the existing buildings within the Western Sydney University Kingwood campus and existing bushland to the north-west of the site provide adequate buffer between the development site and the local heritage item. As such the proposal will have no unacceptable impact on the heritage curtilage of local heritage item 670.
<i>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.</i>	<ul style="list-style-type: none"> • The site layout has been carefully designed to optimise land use efficiency and maximise functionality. • As such the location of the proposed height exceedance is centrally located within the site and marks the sites transition from E1 Local Centre, including retail, commercial and medical premises, to R4 High Density Residential, multi-story residential flat buildings. • The remaining Buildings provide complying heights, which assist in facilitating a transition in the built form.

Table 2: Cl.43 objectives PLEP 2010

5.1.2 Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

N/A.

The underlying objective or purpose of the section 18 of the Housing SEPP is to deliver new in-fill affordable housing. As such, the underlying objective or purpose is relevant and therefore Wehbe Test 2 is not relied upon in this instance.

5.1.3 Wehbe Test 3: The underlying object or purpose would be defeated, thwarted or undermined if compliance was required and therefore compliance is unreasonable

Strict compliance with the Section 18 of the Housing SEPP would defeat, thwart and undermine the underlying objective or purpose of Chapter 2, Part 2, Division 1 of the Housing SEPP. This was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]).

In the case that strict compliance with the height control was required, this would reduce the quantum of affordable housing GFA proposed, relative to the total housing yield, contrary to the objectives of the Housing SEPP.

The proposed exceedance of the height control arises directly from design changes made in response to feedback received from Council during discussions in January 2025. Council raised concerns regarding potential adverse impacts on the protection and integration of the adjoining Threatened Ecological Community (TEC), specifically in relation to the location of the previously presented design option which included Building A in the north-eastern corner of the site, as shown in Figure 9.

To address these concerns, the site plan was reconfigured to remove Building A from the development (as shown in Figure 10), necessitating a modest increase in building height elsewhere on the site to maintain the overall compliant development yield and associated quantum of affordable housing.

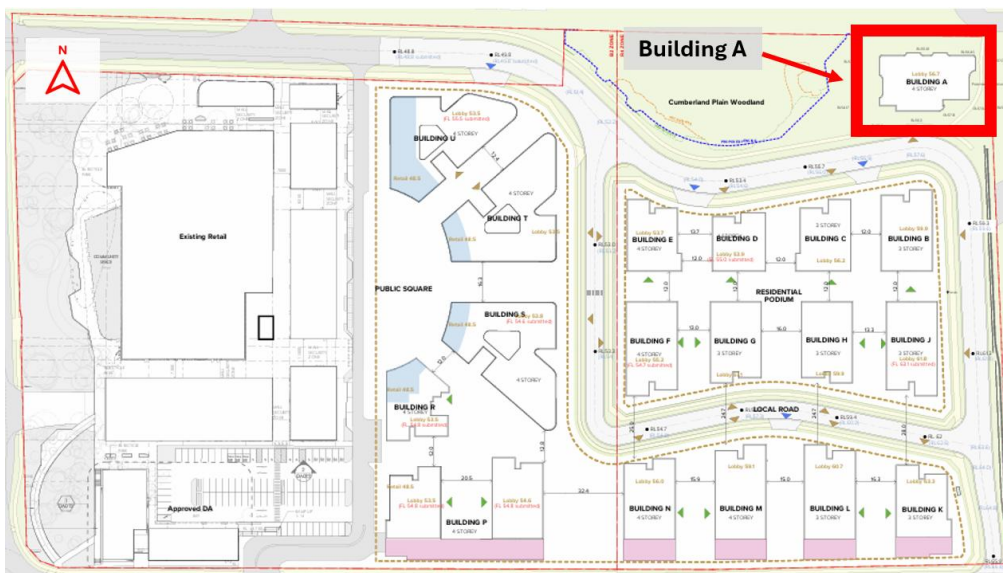


Figure 9: Previous design option illustrating Building A in red (Source: Turner)

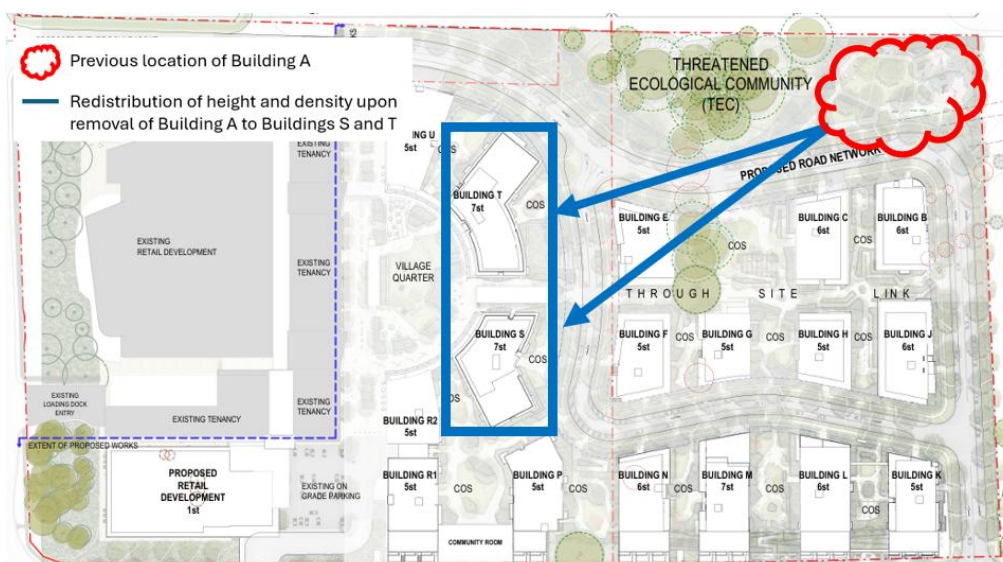


Figure 10: Proposed site plan (Source: Group GSA)



Figure 11: Landscape plan of community park which has replaced Building A (Source: Site Image)

This height variation is limited to Buildings S and T within the Village Quarter of the development. All other buildings within the development comply with the applicable height controls., as shown in Figure 12 and 13:

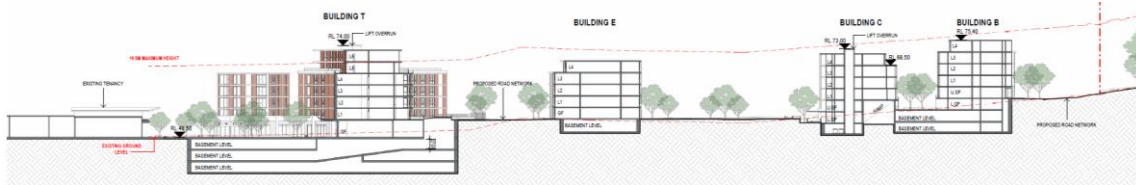


Figure 12: Proposed cross section (Source: Group GSA)



Figure 13: Proposed cross section (Source: Group GSA)

The potential impacts of the proposed exceedance in Buildings S and T will be mitigated by their central location in the site and the stepping of the upper storeys, minimising their visual significance. The proposed height exceedance will not be readily visible from the public domain and will not noticeably add to the perceived bulk or scale of the development.

On this basis, the proposal is considered to deliver affordable housing in accordance with the objectives of Chapter 2, Part 2, Division 1 of the Housing SEPP, whilst ensuring that an appropriate urban design outcome for the site.

5.1.4 Wehbe Test 4: The development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing

from the standard and hence compliance with the standard is unnecessary and unreasonable

N/A

5.1.5 Wehbe Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

N/A

5.2 Clause 4.6(3)(b) – Environmental Planning Grounds to Justify Contravening the Development Standard

The development, including the height of building non-compliances, will provide for a high-quality mixed-use building that provides much needed residential accommodation, including affordable housing, and employment generating uses in the area.

There are sound planning grounds and significant benefits to justify contravening the height of building development standards of which are outlined in the following sections.

5.2.1 The need to comply with Section 18

Section 1.3(a) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) provides that it is an objective of the Act to:

to promote the social and economic welfare of the community and a better environment by the proper ... development ... of the State's resources ...

Section 1.3(c) of the EP&A Act provides that it is an objective of the Act to:

to promote the orderly and economic use and development of land

The objectives of the E1 Local Centre zone are as follows:

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To provide retail facilities for the local community commensurate with the centre's role in the local and regional retail hierarchy.*
- *To create opportunities to improve the public domain and encourage the integration of centres with public transport and pedestrian networks.*

- *To promote development that is of a size and scale that is appropriate to meet local needs and does not adversely affect the amenity or character of the surrounding residential neighbourhood.*

The proposed development is consistent with the objectives of the E1 zone, noting that:

- It will deliver a new Village Quarter which will act as an extension of the existing Caddens Shopping Centre.
- It will increase commercial floorspace on site and contribute to the intended role of Caddens as a local centre through the creation of additional businesses and job opportunities.
- Increase the range of businesses and services available to people who live in and visit the area.
- Increase the supply and diversity of housing available in the local area, including affordable housing, contributing to dwelling targets at the national, state and local levels.
- The proposal delivers a development that is of an appropriate size and scale for the site, delivering a high-quality urban design outcome. This is discussed in further detail below.

5.2.2 Improved Urban Design outcomes

Section 1.3(g) of the EP&A Act provides that it is an objective of the Act to:

to promote good design and amenity of the built environment ...

The proposed development has been designed in accordance with the planned capacity for the site, which is essential for the economic development of the Caddens area. The development of the site will significantly contribute to the progression of Caddens towards its desired future character and its ability to meet the housing targets prescribed by the National Housing Accord (discussed further in the EIS).

In summary, the proposed height variation is considered acceptable in regard to its urban design and responsiveness to the topography and local context for the following reasons:

- The majority of the development complies with the 19.5m height plane.
- The areas of non-compliance (above the 19.5m height plane) are concentrated towards the central portion of the site, minimising privacy, overshadowing and visual impacts of the exceedance on residential properties to the south of O'Connell Street.
- The exceedance in height allows for redistribution of density across the site, in direct response to the removal of Building A from the northeast portion of the site as requested by Penrith City Council during initial consultation with the Council. Subsequently, Council have outlined merit in redistributing the height /density to buildings around the public square to facilitate greater variation in heights and lower heights around site boundaries. This is shown in the figure below.
- The exceedance in height contributes to the built form of Buildings S and T, that will act as a gateway as the site transitions from the retail/ mixed use component to the residential component. This approach would positively contribute to wayfinding and would strengthen the plaza's role in connecting the retail to the residential components.

- Importantly, the proposal complies with the Apartment Design Guidelines (ADG), as over 82% of the proposed development achieves solar access. This exceeds the 70% minimum requirement set by the ADG criteria.
- Earthy colours and natural finishes have been incorporated throughout the design, while the top two storeys have been visually unified in design to reduce the perceived height exceedance and minimise any visual impact from the ground level.
- There are no additional privacy concerns as a result of the non-complaint height.

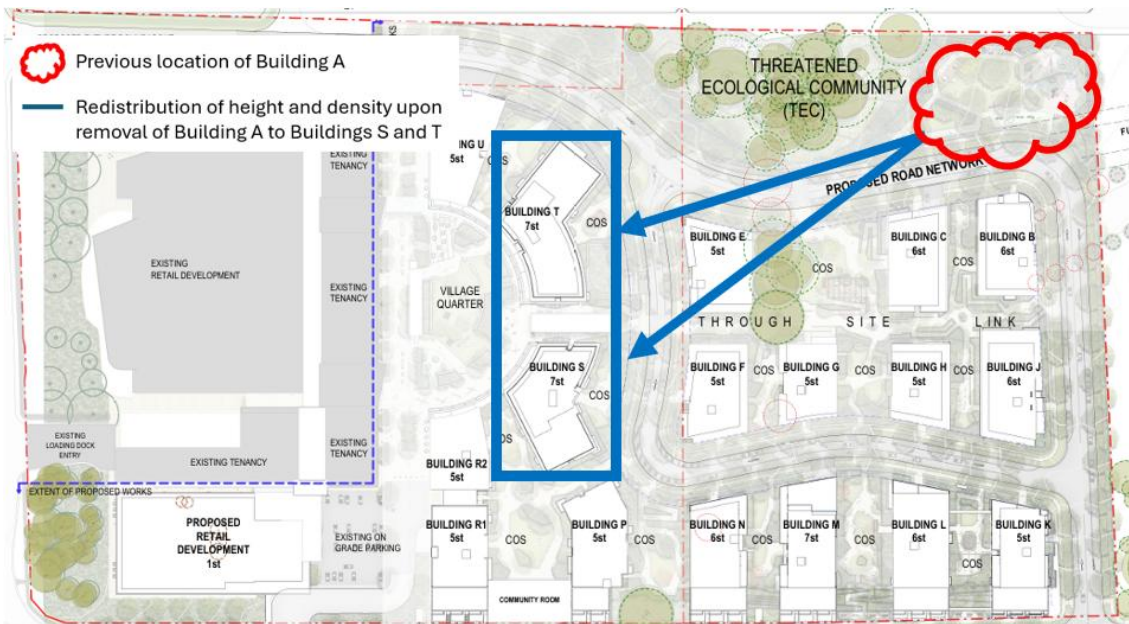


Figure 14: Proposed site plan with redistribution of height (Source: Group GSA)

5.2.3 Environmental Impacts

Intensity of development

The proposal complies with the applicable height of buildings controls, with the exception of Buildings S and T. Furthermore, it complies with the applicable density controls applying to the site under the Penrith Development Control Plan.

Given the minor nature of the height exceedance it will not materially intensify the redevelopment of the site.

Topography

The existing topography of the site is a key feature that guides the proposed design. The site experiences a steep rise of 14m in ground level towards O'Connell Street that runs along the southern boundary of the site. This results in a variable height plane across the site area.

In response to this, the design of the built form tapers off in height from 6-7 storeys in the central portion of the site towards the site boundaries. In particular, a two storey interface with O'Connell Street in the south is achieved. This approach delivers a respectful relationship with the surrounding context (refer to below figure).

Given the proposed height exceedance is located centrally within the site, it will not be readily visible from the public domain and will not noticeably add to the perceived bulk or scale of the development.

Overall, the proposed development is considered necessary to appropriately respond to the topography of the site, achieving a high-quality design and built form outcome.

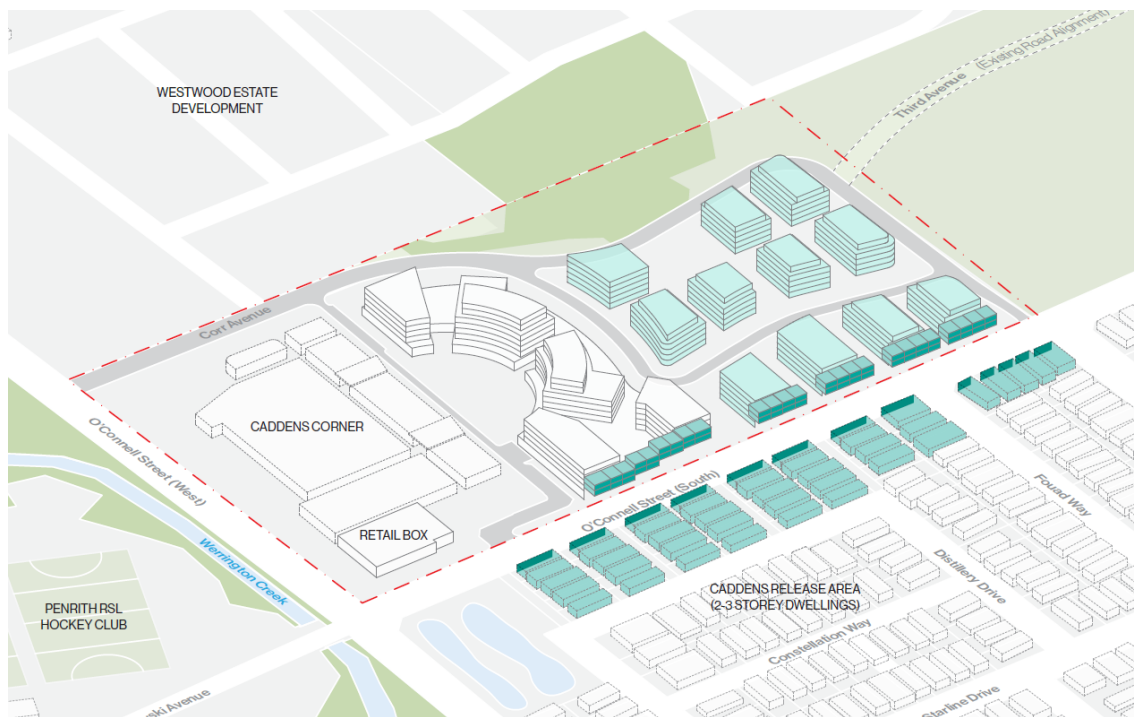


Figure 15: O'Connell Street design interface (Source: Group GSA)

Overshadowing

As illustrated within the Architectural Design Report (Appendix 9 of the SSDA Package), Group GSA have undertaken a shadow impact analysis confirms that:

- There is no additional impact to the living areas of neighbouring properties due to the proposed building height.
- The areas of communal open space (COS), including the Village Green and Forest Park Edge which adjoin Building S and T, are compliant with the ADG requirement that 50% of COS areas receive a minimum of 2 hours of direct sunlight in mid-winter.
- The Village Quarter will receive ample solar access during midwinter, ensuring a well-lit and comfortable public space even in the cooler months.
- There is no overshadowing of the TEC from the proposed height exceedance.



1 COS OVERSHADOWING - 11AM
 Figure 16: Overshadowing analysis midwinter
 (Source: Group GSA)



2 COS OVERSHADOWING - 1PM
 Figure 17: Overshadowing analysis midwinter
 (Source: Group GSA)

Privacy

The units on level 6 of Buildings S and T have been setback and orientate to ensure they do not overlook adjoining residential properties. Furthermore, compliant ADG setbacks are provided for these levels.

6 Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has demonstrated that:

- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

The height variation from 19.5m to 25.5m is justified for the following reasons:

- Strict compliance with the 19.5m height limit pursuant to Section 18 of the Housing SEPP would require a reduction in building height and GFA floor space for both Buildings S and T. This would result in:
 - A loss of residential yield, including affordable housing;
 - A more compact or vertically compressed built form; or
 - Increased excavation to lower building levels, adding construction cost and complexity.
- The areas of non-compliance (above the 19.5m height plane) are concentrated towards the centre of the site, minimising privacy, overshadowing and visual impacts of the exceedance on residential properties outside of the proposal.
- The proposal is consistent with the future character of the area, noting the variation is minor and relative to the surrounding built form will remain consistent with the desired future character of the locality.
- The proposed development achieves the objectives of the E1 zone and Chapter 2, Part 2, Division 1, Section 15A of the Housing SEPP, despite the non-compliance.
- The height increase does not restrict the ability for the proposed development from providing a high-quality urban design outcome that is considerate of adjoining land uses and built form as:
 - It incorporates substantial articulation and a reduction of height towards site edges that responds to the lower density developments to the south.
 - It is a largely complaint development that achieves a high standard of residential amenity.

Overall, and for the reasons set out above, the proposed development represents a superior outcome for the site that is justified. Therefore, it is appropriate that the development standard be varied as proposed.