

Clause 4.6 Variation Request

Building Height Development Standard – SEPP (Sydney Region Growth Centres) 2006

Camden Medical Campus

Submitted to the NSW Department of Planning and Environment
On Behalf of Gregory Hills Corporate Park Pty Ltd

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1. Introduction

This Clause 4.6 variation request accompanies a State Significant Development Application (SSDA) submitted to the NSW Department of Planning and Environment (DPE) for a staged development under Section 83B of the EP&A Act for the Camden Medical Campus (CMC).

The land that is the subject of the DA and this Clause 4.6 variation request is legally described as part of a much larger allotment legally described as Lot 8000 in Deposited Plan 1209013 and is part of the Gregory Hills Corporate Park (GHCP).

An aerial view of the site is below, showing its location within the wider GHCP.



Figure 1 Aerial plan of the site and surrounds, GHCP outlined in yellow and approximate location of site outlined in red (Source: SIX Maps)

The request for a variation relates to the height of buildings development standard in Clause 4.3(5) of Appendix 1 (Oran Park and Turner Road Precinct Plan) of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (the Precinct Plan).

The wording of Clause 4.3(5) is, in our view, somewhat ambiguous. It states that consent may be granted for a development in the B5 Business Development zone which does not exceed 15 metres if it has "frontage" to the RE2 Private Recreation zone. The term "frontage" in our view means the primary street boundary, which in the case of the site is the eastern boundary to The Heritage Way and not the RE2/riparian zone to the west. It can be said that the site "abuts" the riparian zone but does not have a "frontage" to it.

Notwithstanding this, given this clause may be open to interpretation and given the Council has specifically noted that this development standard applies in its response to the request for SEARs, this Clause 4.6 variation request has been prepared without prejudice and for abundant caution.

This request has been prepared in accordance with the Department of Planning & Environment (DP&E) Guideline Varying Development Standards: A Guide, August 2011, and has incorporated as relevant principles identifies in the following judgements:

1. *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827
3. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1')
4. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90
5. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3')
6. *Moskovich v Waverley Council* [2016] NSWLEC 1015

2. What is the environmental planning instrument (EPI) that applies to the land?

The Environmental Planning Instrument (EPI) to which this variation relates is State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP (Growth Centres) 2006).

3. What is the zoning of the land?

As can be seen in the figure below, the site is zoned B5 Business Development.

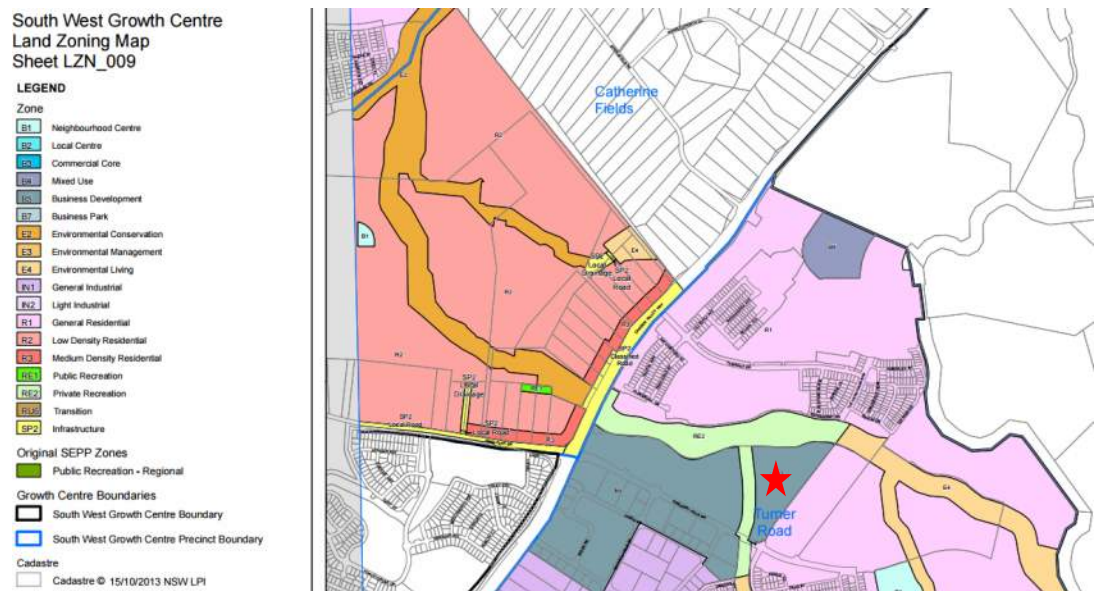


Figure 2 Zoning Map Extract, site marked by red star (Source: SEPP Growth Centres LZN_009)

4. What are the objectives of the zone?

The objectives of the B5 zone are as follows:

- "To enable a mix of business and warehouse uses and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres.
- To provide for a wide range of employment generating development.
- To provide for a mix of ancillary uses to support the primary function of providing employment generating development.
- To maintain the economic strength of centres by limiting the retailing of food, clothing and convenience shopping.
- To provide for a range of uses, including recreational uses and function centres, that complement other permissible employment generating land uses within the zone."

5. What is the development standard being varied?

The development standard being varied is the "height of buildings" standard.

6. Under what clause is the development standard listed in the EPI?

The development standard being varied is listed under Clause 4.3(5) of the Precinct Plan. An extract is below:

"4.3 Height of buildings

(5) The consent authority may grant development consent for development on land within Zone B5 Business Development or Zone IN1 General Industrial, that does not exceed 15 metres in height above finished ground level, if the land has frontage to Badgally Road, Camden Valley Way, the Northern Road or East West Road (as shown in the Oran Park Precinct Development Control Plan or the Turner Road Precinct Development Control Plan), or to land within Zone RE1 Public Recreation or Zone RE2 Private Recreation."

As the site has a frontage to an RE2 zone (the riparian zone to the west of the site), the 15 metre height standard, measured from finished ground level, applies to the site.

7. What are the objectives of the development standard?

The objectives of the standard are set out below:

"4.3 Height of buildings

(1) The objectives of this clause are as follows:

(a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,

(b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,

(c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,

(d) to provide appropriate height controls for commercial and industrial development."

8. What is the numeric value of the development standard in the EPI?

Maximum 15 metres when measured from finished ground level.

9. What is the proposed numeric value of the development standard in the DA and the variation proposed?

As can be seen in the figure below, there are areas of the development that fall under the 15 metre height limit, but there are areas associated with the envelopes for the private hospital and hospital carpark that exceed the height standard by 11.3 metres.

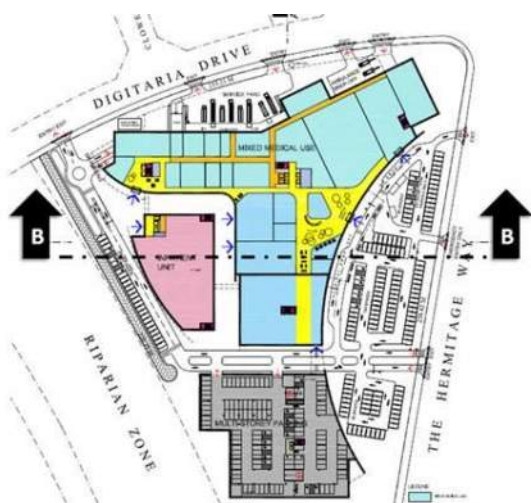
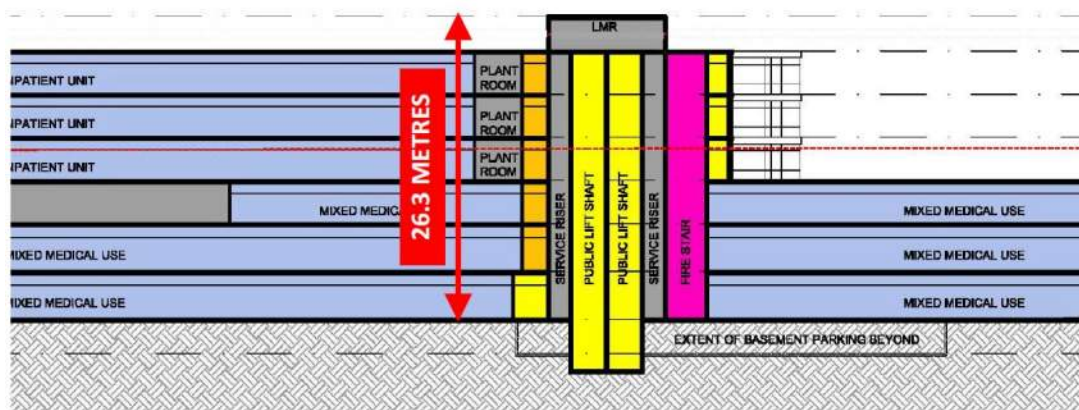


Figure 3 Section of proposed hospital envelope showing the maximum height of the development. The second image demonstrates where the section has been cut (Source: HPI)

10. Matters to be considered under Clause 4.6

The following table provides a summary of the key matters for consideration under Clause 4.6 of the RLEP and a response as to where each is addressed in this written request:

TABLE 1: MATTERS FOR CONSIDERATION UNDER CLAUSE 4.6

Requirement/Subclause of Clause 4.6	Response/Comment
(1) The objectives of this clause are as follows: (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	It is key to note that the objectives of the clause are to provide flexibility in applying development standards in that in so doing better development outcomes ensue.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	The height standard is not expressly excluded from operation of this clause.

<p>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>This written request justifies the variation by demonstrating (a) is achieved in Section 11, and (b) is achieved in Section 12.</p>
<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p> <p>(b) the concurrence of the Director-General has been obtained.</p>	<p>This written request addresses all requirements of subclause (3).</p> <p>As set out in Section 13 of this written request, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone.</p> <p>Concurrence is assumed but is a matter to be determined by the Consent Authority.</p>
<p>(5) In deciding whether to grant concurrence, the Director-General must consider:</p> <p>(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</p> <p>(b) the public benefit of maintaining the development standard, and</p> <p>(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.</p>	<p>Potential matters of significance for State or regional environmental planning is addressed in Section 14.</p> <p>Consideration of whether there is any public benefit in maintaining the development standard is considered in 13.</p>
<p>(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if.....</p>	<p>Does not apply.</p>
<p>(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).</p>	<p>This is a matter for the Consent Authority.</p>
<p>(8) This clause does not allow development consent to be granted for development that would contravene any of the following....</p>	<p>Does not apply to the site/proposed variation.</p>

The requirement for consideration and justification of a Clause 4.6 variation necessitates an assessment of a number of criteria. It is recognised that it is not merely sufficient to demonstrate a minimisation of environmental harm to justify a Clause 4.6 variation, although

in the circumstance of this case, the absence of any environmental impact is of considerable merit.

The proposed variation from the development standard is assessed below against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and the principles outlined in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46. Whilst the principle applied to SEPP 1, we believe that it is useful to apply in the consideration of a request under Clause 4.6 of the Precinct Plan, as confirmed in *Four2Five*.

11. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the variation. Under *Four2Five*, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6(3)(a) (see below).

The five ways described in *Wehbe* are therefore appropriately considered in this context, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;

The objectives of the standard are set out in Section 7 of this report. A response to each of the objectives is provided below:

(a) to preserve the amenity of adjoining development in terms of solar access to dwellings, private open space and bulk and scale,

In the first instance, we note that the adjoining development consists of vacant land to the west and north (owned by the same landowner as the hospital site), the land to the south is the site of a proposed medical centre and the land to the east comprises low density residential dwellings. Therefore, in considering the amenity impact on surrounding development, given the land to the west, south and north is zoned B5 where residential uses are prohibited, the key area of concern in considering this objective is the residential land to the east.

HPI Architects has prepared a massing study which shows the massing of the proposed concept, with the massing of a strictly compliant building envelope which complies with the 15 metre height control in the SEPP but also, the minimum setback requirements in the Turner Road DCP. Refer below.



Figure 4 Comparative massing study and 3pm mid-winter shadow analysis for proposed concept vs compliant envelope (Source: HPI)

The following image is a cross section through the site prepared by HPI which shows the proposed development and also the "compliant" building envelope. Whilst there would be structures within the red zone fronting The Hermitage Way (as the building facades curve and therefore, the setback varies), what the below section illustrates is that despite the proposed building envelopes being above the 15 metre height plane in parts, the height will be offset by the substantial setbacks (which again, vary) to The Hermitage Way and the nearby residential uses. This figure also demonstrates that the majority of the development (approximately three quarters) sits under the 15 metre height control.

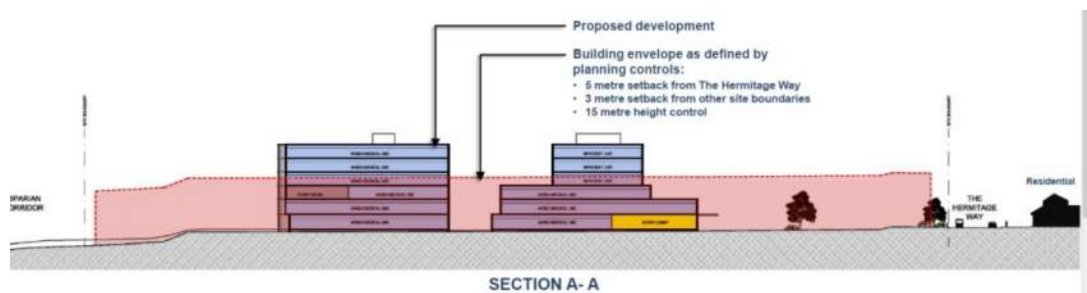


Figure 5 Section A-A through site showing "compliant" envelope in red shading (Source: HPI)

What the above shows is that whilst there are parts of the development that are in excess of the 15 metre height standard, the variation is considered acceptable for the following reasons:

- The non-compliant parts of the envelopes are sufficiently setback so as to not result in any adverse visual impact when viewed from the street but also the residential dwellings to the east. The relevant setbacks are below:
 - The multi-storey carpark which breaches the 15 metre height standard in its entirety is setback 7 metres from the southern boundary, between 18.8 and 54 metres from the eastern boundary and between 7 and 22 metres from the western site boundary;
 - The detached building to the west of the main hospital building will be setback at least 19.5 metres from the western site boundary; and
 - The non-compliant elements of the main hospital building will be setback between 6.5 metres to a maximum of 71 metres from the eastern site boundary. The 6.5 metre setback only relates to the furthest extent of the north-eastern wing. The curve in the façade of the non-compliant parts of the building provide an opportunity

to significantly increase the setback to the maximum of 71 metres at the core and 60 metres when measured from the southern wing.

- A 15 metre height compliant building that is setback only 5 metres from the street (The Hermitage Way), and 3 metres from all other boundaries is considered to result in a worse outcome from a visual amenity and impact perspective compared to the proposed development which has a taller component at the core that has a substantially greater setback, a greater opportunity for perimeter landscaping and a vertical "step" and horizontal "curve in the façade, to alleviate visual massing.
- The mid-winter shadow impact of the proposed envelopes compared to the shadow impact of a strictly compliant development results in less overshadowing, therefore resulting in a better planning outcome in this respect. Refer to the shadow analysis below which demonstrates this at 3pm. As can be seen in the 9am and 12 noon shadow analysis prepared by HPI and accompanying the SSDA, there is no overshadowing impact by the proposal to the adjacent residential areas at these times.



Figure 6 Mid-winter shadow analysis comparison between proposed development and compliant envelope at 3pm - additional shadow cast by compliant envelope in red (Source: HPI)

- Given the substantial setback of the envelopes, there is no potential for any adverse overlooking or adverse overshadowing of the private open space of the adjacent residential dwellings to the east and south-east.
- Whilst approval is only sought for a concept, the indicative perspectives that have been prepared by HPI clearly show that the intention for the future design is for a high quality, and substantially articulated built form. Refer below for the context perspective which demonstrates how the increased and varied setbacks to The Hermitage Way, notwithstanding the height variations for the upper levels of the development, assist in mitigating bulk and scale.



Figure 7 Indicative Context Perspective (Source: HPI)

This again is considered to result in a much better aesthetic and visual amenity outcome for the adjacent residents than a boxy light industrial/bulky goods development that is 15 metres high, and setback only 5 metres from The Hermitage Way and 3 metres from all other boundaries.

For the reasons set out above, we consider that the proposed development, notwithstanding the variation, results in a better planning outcome in terms of meeting this particular objective of the standard.

(b) to provide for a range of residential building heights in appropriate locations that provide a high quality urban form,

This objective is not relevant to the proposal.

(c) to facilitate higher density neighbourhood and town centres while minimising impacts on adjacent residential areas,

This objective is not directly relevant to the proposal as the site is not located in a neighbourhood or town centre. However, we note that the impacts on the adjacent residential area to the east have been minimised, as set out in the discussion above given the additional height is well setback from the eastern boundary. The impact is less than a proposal that strictly complies with the height and setback controls as explained previously. Further, we note that the height of the development has resulted from the functional needs of the future private hospital and is a very specific outcome to this particular type of development. For this reason, we contend that the height variation to the proposed hospital will not impact on the ability to facilitate higher density development in neighbourhood and town centres.

(d) to provide appropriate height controls for commercial and industrial development.

The subject development is not commercial nor industrial and the land is not zoned for such uses.

In addition to the above, it can be said that the underlying intent of the 15 metre height standard specifically relevant to the RE2 zone, is to ensure that the height of buildings do not adversely impact on the use of the private recreation zone. In response to this, we note that the massing of the development, notwithstanding the variation, has been arranged so as to minimise impacts, particularly in terms of visual impact and overshadowing. As set out earlier in this report, the substantially increased setbacks beyond what is envisaged in the DCP, and the "stepped" nature of the built form, allows for a better outcome for the adjacent RE2 zone than a compliant development, 15 metres high and setback only 3 metres from the riparian zone. The future design of the development also allows for significant activation to, and passive surveillance of, the riparian zone and there is a great opportunity provided for functional public access to the riparian zone to be provided. Activation of the riparian zone is a key part of a long terms strategy for the riparian zone.

For the reasons set out above, the objectives of the standard are satisfied and in our view, are better satisfied than a strictly compliant development.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

We do not rely on this reason.

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;

A development application was recommended for approval by Camden Council and approved by the Sydney West Joint Regional Planning Panel at 49 – 59 Rodeo Road, Gregory Hills on 11 May 2015 for the construction of a four (4) storey private hospital. The development was approved with a height of 20.65 metres.

Whilst not acknowledged in the assessment report, the site is under similar circumstances to the Rodeo Road site in that it also abuts the RE2 zone. Refer to the figure below:

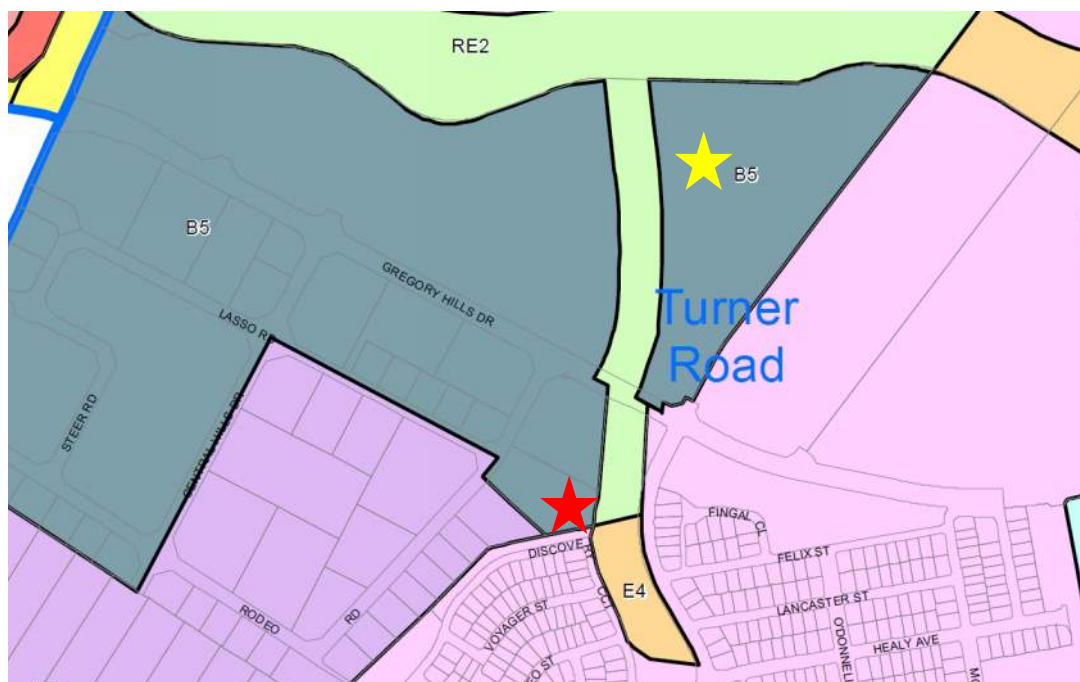


Figure 8 SEPP (Growth Centres) Zoning Map Extract - site of Rodeo Rd Hospital Development marked by red star, subject site marked by yellow star (Source: SEPP (Growth Centres))

On the basis of the above, the 15 metre height standard under Clause 4.3(5) of the Precinct Plan should have applied to this site, but was not acknowledged as applying in the assessment report. It may have been due to the fact that the Rodeo Road site does not have a direct frontage to the RE2 zone, which would also be the case for the subject site, but we would have assumed that this would have at least been addressed or acknowledged in the assessment report. Council has certainly acknowledged that for the subject site, the 15 metre height applies (refer to Council's response to the request for SEARs).

While approval of the variation in similar circumstances may not amount to an "abandonment" of the standard, it indicates that the consent authority recognises particular circumstances that warrant variation of the standard.

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.

The zoning of the land is appropriate for the site. We do not rely on this reason.

In addition to demonstration that Wehbe way "1" is satisfied, strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons:

- The additional storeys above the height standard equate to the provision of at least 180 additional hospital beds (indicatively) which is considered to be a direct benefit back to the community. This relates to the two (2) full storeys above the 15 metre height plane (Levels 4 and 5). Level 3 marginally projects above the 15 metre height

plane and comprises 90 additional beds (indicatively). Strict compliance would require all of the beds on Levels 3 to 5 to be deleted from the proposed hospital which will greatly assist in meeting the increasing demands for hospital beds in the region.

- Currently, the additional height allows for the built form to be well articulated and to provide a significant amount of area within the ground floor plane for parking, loading and landscaping. Strict compliance would result in a significant amount of parking being converted to basement parking and a loss of on-site landscaping, which is a poor outcome from a cost and natural environment perspective.
- In the case of *Moskovich v Waverley Council*, the LEC accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. In a similar scenario, as discussed under the response to the objectives of the standard, the proposed development which seeks to vary the height standard, achieves a better response to the objectives of the standard and specifically, objective (1)(a) which relates to the amenity of adjoining areas. To summarise the earlier discussion, the proposed variation enables the operational needs of the hospital to be met whilst also achieving significantly greater setbacks to all boundaries than what is envisaged by a 15-metre-high complying development setback in accordance with the minimum guidelines in the corresponding DCP. The development therefore effectively seeks to "relocate" building mass from the setback zones (that would be permitted under the DCP) to the non-compliant height elements of the development, to not only meet the operational needs of the hospital but to reduce external impacts. Notwithstanding the height variation, in our view, a better planning and architectural outcome is achieved in terms of mid-winter overshadowing and visual bulk and scale than a complying development.
- Strict compliance is considered to be unreasonable and unnecessary given all the points made above, and in the context of the discussion from HPI in the design statement which emphasises the importance of vertical zoning for a hospital, particularly of this scale, for operational reasons. To summarise, vertical relationships between departments and zones within the hospital minimise distances required to be travelled and enable a better segregation of public and service areas.

On the basis of the above, compliance with the standard is considered to be unnecessary and would be unreasonable.

12. Sufficient environmental planning grounds to justify the contravention

The particular circumstances of this case distinguishes it from others for the following key reasons:

- The additional height proposed under the variation will deliver medical services and a total of up to 270 additional beds (including Level 3 which marginally projects above the 15 metre height plane), which will deliver a social planning benefit back to the community. Strategic documents prepared by the South Western Sydney Local Health District (SWSLHD) (such as the SWSLHD Strategic & Healthcare Services Plan - Strategic Priorities in Health Care Delivery to 2021 and SWSLHD Strategic & Healthcare Services and Corporate Plan) clearly identify that there is insufficient infrastructure to meet the current and future demands for health care in the region. They also emphasise the critical role private hospitals play in promoting and preserving the health of the community, and also play an important role in reducing demand on public hospitals. With Camden projected to have the highest annual population growth of any NSW LGA between 2011 and 2031¹, the provision of additional private hospital beds on a site which is of a size that can accommodate the beds combined with a

¹ Camden Medical Campus Concept Plan Report August 2015 (Health Projects International)

better planning outcome than envisaged under the controls, demonstrates sufficient planning grounds to justify the contravention;

- The height variation allows for the practical operations of the hospital to be achieved whilst offsetting the impact of this variation through more generous setbacks to all boundaries than anticipated under the relevant planning controls. The ability to achieve this is largely attributed to the substantial size and dimensions of the site, which is a circumstances unique to this particular site in the surrounding catchment;
- The increased setbacks, particularly to The Hermitage Way frontage, reduces the extent of building bulk and directly opposite the low density residential to the east. This will in turn improve visual amenity and solar access compared to a compliant development, which is a key objective of the development standard in question (objective (1)(a)); and
- As demonstrated in the EIS for this SSDA, the proposed variation will not result in any environmental harm as a result of the proposal. In fact, the proposal is considered to result in a better planning and architectural outcome than a strictly (SEPP and DCP) compliant development, particularly in terms of visual amenity and overshadowing.

The above points are environmental planning grounds that warrant the exceedance, which are not "generic", but rather, specific to the site and circumstances of the development.

13. Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The objectives of the standard have been addressed in Section 11 and are demonstrated to be satisfied.

The objectives of the B5 zone are addressed below.

TABLE 3: B5 ZONE OBJECTIVES FROM SEPP

Objective	Response
• To enable a mix of business and warehouse uses and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres.	The proposal is a permissible use which requires a large floor area and that will generate employment and economic activity and provide a critical medical facility for the wider community.
• To provide for a wide range of employment generating development.	<p>The proposal will provide a wide range of critical private hospital and other medical services, with an estimated employment generation of approximately 800 direct jobs upon completion.</p> <p>The proposed development will result in the following employment generation:</p> <ul style="list-style-type: none"> ▪ Operational: As stated above 800 direct jobs will be provided upon completion. In addition to this it is anticipated that 2,400 indirect jobs will be generated throughout operation. ▪ Construction: 400 jobs are anticipated to be generated throughout construction, as per employment estimates from CYRE.
• To provide for a mix of ancillary uses to support the primary function of providing employment generating development.	There will be ancillary uses within the campus that will support the employment generation within the medical campus.

<ul style="list-style-type: none"> • To maintain the economic strength of centres by limiting the retailing of food, clothing and convenience shopping. 	Any retail component of the proposal will be limited to ancillary uses such as a newsagency, small food shops etc, that are typically found within hospitals to primarily service staff and visitors.
<ul style="list-style-type: none"> • To provide for a range of uses, including recreational uses and function centres, that complement other permissible employment generating land uses within the zone. 	The proposed medical campus will provide for a range of medical related uses including the private hospital that will complement other permissible uses within the surrounding B5 zone. Particularly, we note that there is a proposed medical centre to the south of the site and a "health hub" development proposed to the west (and within the GHCP) that will act as complementary uses to the proposal.

The objectives of the zone, as demonstrated above, as well as the objectives for the standard have been adequately satisfied, where relevant. Therefore, the variation to the height of buildings standard is in the public interest.

14. Matters of state or regional significance (cl. 4.6(5)(a))

There is no identified outcome which would be prejudicial to planning matters of State or Regional significance that would result as a consequence of varying the development standard as proposed by this application.

Indeed, the purpose of the proposed variation is to provide a positive balance between a higher provision of hospital beds and a better architectural and design outcome for the site, noting that the additional beds will assist in meeting the increasing demands for hospital services within the region.

15. The public benefit of maintaining the standard (cl. 4.6(5)(b))

Pursuant to case law of *Ex Gratia P/L v Dungog Council (NSWLEC 148)*, the question that needs to be answered is "whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development".

There is no public benefit in maintaining strict compliance with the development standard given that there are no unreasonable impacts that will result from the variation to the maximum height of buildings standard.

In fact, strict compliance would result in either of the following outcomes:

- A loss of up to 270 hospital "beds" and therefore, less of a public benefit given the increasing demand for hospital services in the region; or
- A complete redesign which would see the on-grade parking transferred to basement parking, resulting in a greater impact to the natural environment and cost. The additional cost would in turn affect the viability of the development and a likely reduction in "beds". There would also likely be a loss of articulation in the design of the building with parts of the ground floor plane that are currently available for parking and landscaping "filled in" to accommodate for a loss of height.


Neither of the above is considered to be a good planning outcome or within the public interest.

We therefore conclude that the benefits of the proposal outweigh any disadvantage and as such the proposal will be in the public's interest.

16. Is the variation well founded?

This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the Precinct Plan, that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;

- 
- There are sufficient environmental planning grounds to justify the contravention and results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
 - The development meets the objectives of the development standard and where relevant, the objectives of the B5 zone, notwithstanding the variation;
 - The proposed development is in the public interest and there is no public benefit in maintaining the standard; and
 - The contravention does not raise any matter of State or Regional significance.

The variation is therefore considered appropriate in the circumstances of the case.