

Attachment C

Clause 4.6 Variation Request



ANNEXURE B

Clause 4.6 - Variation – Building Height

Revised: 14 November 2018



Clause 4.6 Variation Statement – Maximum Height (Clause 4.3)

Clause 4.3(2) of Sydney LEP 2012 relates to the maximum height requirements and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum permitted height of 12m. Building height is defined as follows:

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

The proposed building exceeds the maximum 12m height limit in relation to roof top elements of the lift overrun, fire stair, covered lounge area and planter bed walls associated with the roof top garden. A glazed balustrade located above the planter bed wall at roof top level along the Epsom Road elevation, will also exceed the building height limit. The maximum exceedance occurs at the top of the fire stair/pump room, covered lounge area and glazed balustrade at RL32.150 which is 1.7m above the maximum 12 metre height limit. The degree of non-compliance is indicated in the diagram at Figure 1. The minor nature of the non-compliance will be indiscernible from any public or private land surrounding the site and will not cause any overshadowing impacts. The non-compliant elements are not significant visual elements as they are set well back from both the southern and northern ends of the roof and therefore unlikely to be noticeable when viewed from the street. The planter boxes and glazed balustrade located toward the Epsom Road frontage may be visible from the streetscape, however these are considered necessary for safety, add value to the appearance of the building and result in improved privacy for adjacent developments.



Figure 1 Section showing height non-compliance (12m height plane shown red)

The maximum building height control is a “development standard” to which exceptions can be granted pursuant to clause 4.6 of the LEP.

The objectives and provisions of clause 4.6 are as follows:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

(4) Development consent must not be granted for development that contravenes a development standard unless:



- (a) *the consent authority is satisfied that:*
- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (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:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

When this plan was made it did not include land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Rural Small Holdings, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

(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).*

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*

- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (ca) *clause 4.3 (Height of buildings), but only in relation to land shown as being in Area 1 or Area 2 on the Height of Buildings Map.*



- (cab) clause 4.5A (Balconies on certain residential flat buildings),*
- (cb) clause 5.3A (Development below ground level in Zone RE1),*
- (cc) clause 6.10 (Heritage floor space),*
- (cd) clause 6.11 (Utilisation of certain additional floor space requires allocation of heritage floor space),*
- (cda) clause 6.11A (Temporary alternative heritage arrangements in relation to allocation of heritage floor space),*
- (ce) clause 6.17 (Sun access planes),*
- (cf) clause 6.18 (Exceptions to sun access planes),*
- (cg) clause 6.19 (Overshadowing of certain public places), except in respect of Australia Square Plaza, Chifley Square, First Government House Place and Sydney Town Hall steps,*
- (cga) clause 6.26 (AMP Circular Quay precinct),*
- (cgb) clause 6.29 (58–60 Martin Place, Sydney),*
- (cgc) clause 6.33 (230–238 Sussex Street, Sydney),*
- (cgd) clause 6.35 (45 Murray Street, Pyrmont), but only if the development is an alteration or addition to an existing building,*
- (cge) clause 6.36 (12–20 Rosebery Avenue, 22–40 Rosebery Avenue and 108 Dalmeny Avenue, Rosebery),*
- (cgf) clause 6.37 (296–298 Botany Road and 284 Wyndham Street, Alexandria),*
- (ch) Division 1 of Part 7 (Car parking ancillary to other development).*

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of Clause 4.6 is addressed later in this request.

The objectives and relevant provisions of Clause 4.3 are as follows, inter alia:

- “(a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (e) in respect of Green Square:*

- (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and
- (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

The *Height of Buildings Map* nominates a maximum height of 12m for the site. It is hereby requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum height of 13.7m for the lift overrun, fire stair, covered lounge area and the walls of the roof top garden beds.

In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.

OBJECTIVE (A)

Objective (a) refers to the height being “appropriate” for the context. It is considered that “appropriate” infers general compliance with the standard and this is achieved. It implies a relativity or compatibility to other developments and this is achieved. It does not promote “sameness” in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191:

“22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”

The proposed encroachments into the maximum building height affects only the lift overrun/fire stair, covered lounge area, garden bed walls and glazed balustrade. The remainder of the building is well below the maximum building height. The siting and scale of the proposed development has been designed to distribute building mass in a manner that best minimises impact on adjoining development by ensuring the non-compliant elements are towards the site frontage with Epsom Road. The building is three storeys as is allowed and promoted within the Sydney DCP.

The proposal is in line with the strategy for the Beaconsfield precinct. Specifically, Principle (c) which requires that *Future development should contribute to existing built form patterns*, Principle (i) to *Encourage active ground floor uses, public domain improvements and consistent tree planting along Botany and Epsom Road* and Principle (k) to *retain the current lot sizes as an important feature of this neighbourhood. Lot amalgamations are discouraged.*

The desired future character can also be gleaned from the suite of built form controls that apply under the SLEP and the DCP and from the zone objectives. In this regard, the zone objectives promote a mixture of compatible uses to support the viability of centres and in floor space terms, the proposal is significantly within the allowable maximum FSR. It should also be noted that no FSR is proposed within the non-compliant elements, all GFA is contained below the 12m height limit.

The non-compliances themselves do not result in a development which appears to be greater in height than the 3 storey maximum height of building requirements as indicated in the building height in storeys map.

To the casual observer they appear only as ancillary elements to a 3 storey building.

The proposed development is a high quality, well designed scheme consistent with the vision for a range of development types in the Beaconsfield Precinct and is permissible with in the B4 zone.

Accordingly, it is considered that the scale of the building is appropriate for the context and compatible with the desired future character of the locality and is also harmonious with existing adjoining developments. The minor height breach does not offend this appropriateness or compatibility in any noticeable way.

The non-compliance does not result in a development which has adverse physical impacts on surrounding development nor on the development potential of the surrounding sites. The non-compliance amounts to modest projections of lift shaft, roof access, planter boxes and other minor features including a front balustrade.

The lift shaft/access element is set back from the front and rear boundaries therefore rendering it being recessive from public vantage points. Whilst the balustrade and planter boxes would be visible, the main bulk of the building is below the 12m building height and these elements appear to the casual observer as minor ancillary elements, not as bulky additions which adversely raise the height of the building in an unacceptable manner.

The building has a nil-setback from the front and side boundaries, as do both neighbours. This is the established character of the street and any future development will almost certainly need to reflect this development pattern. The lift shaft element abuts the eastern boundary, this in no way limits the potential for future development of the neighbour to the east given that any redevelopment would almost certainly have a nil-setback there will be no-overlooking, loss of privacy or other adverse amenity impacts. Any development of the site to the east would not have its ability to construct to the side boundary affected by this development's minor breach in height.

The adjoining buildings are post-war, low quality light industrial/commercial in nature and are not reflective of the emerging character of the area. The Beaconsfield Precinct locality statement states that *'Future development in Beaconsfield should generally be guided by the existing fine-grain and low-scale residential developments. The area should continue to encourage and accommodate a variety of land uses, with opportunities'*. The wider context of the street contains a 6 storey contemporary residential flat building opposite, and what appears to be a modern infill commercial building with ground floor retail at No.58 Epsom Road. The development continues this mix of uses and is contained within the existing fine grain of the area. The non-compliances do not offend consistency with locality statement.

When viewed in this wider context the development itself is in harmony with the surrounding buildings. The non-compliance itself, other than balustrade and planter box fronting Epsom Road, will not be overly visible and where they are, they cannot be considered to be out of harmony with the general appearance of the streetscape. The non-compliances are not egregious or excessive and to the casual observer appear as ancillary elements to a 3 storey building, which is the height of buildings envisaged by the controls and standards applicable to the site.

In this respect the development including the height non-compliances are compatible with the adjoining development.

It is also important to note that the height non-compliances will also not result in there being any amenity impacts on adjoining residential properties, further demonstrating that the non-compliances are appropriate to the condition of the site and its surrounding context.

The non-compliant elements will have no adverse impact on the reasonable access to daylight for all buildings and the public domain. The highest elements are set back from the south facing Epsom Road frontage therefore any significant shadow cast to Epsom Road will be from the compliant 12m part. The

non-compliant balustrade is proposed to be clear glazed so will have limited solar impact and the plants within the planter cannot, in themselves, be considered to affect the reasonable daylight level to Epsom Road.

There will be no adverse impact on solar access to any residential properties surrounding the development as a result of the height breaches.

Therefore this objective is achieved notwithstanding non-compliance with the standard.

OBJECTIVE (B)

In terms of height transition in heritage areas, the proposed height non-compliance does not contribute towards any impact on the adjoining properties on the northern side of Chester Lane. These properties front onto Hansard Street that already has major development of a scale greater than that proposed. The non-compliant elements of the building will not be visible from Hansard Street. There is no impact from overshadowing onto properties within the conservation area.

The residential building to the south is a six storey residential flat building. The residential buildings to the north are single storey historic dwellings.

The suite of planning controls for this particular part of Epsom Road envisage a three storey building (as contained within the building height in storeys map.). The development proposes a three storey building fronting Epsom Road.

The non-compliant elements do not read, to the casual observer, as an additional storey which would be out of keeping with the desired future scale or character. The non-compliant element will not be overly visible from the public domain, where they may be visible they appear as ancillary elements to a three storey building.

The lift structure on the roof, balustrade and planter do not result in any addition to the visual bulk, scale or massing of the building. The front of the site, opposite the 6 storey flat building, contains the main 3 storey part of the building, this then steps down to predominantly two storey, with a half width 3 storey element, which is setback from the rear boundary.

The bulk of the building is maintained below the 12m height limit. The scale of the building is therefore entirely compatible with the scale of surrounding residential buildings which range from 1 to 6 storeys.

The non-compliant elements are positioned towards the front of the site and complement the transition from 6 storey to single storey. The LEP height limit in place for the 6 storey building is 22m, this height limit then steps up to 44m and 55m on sites on the north side of Hansard Road. The 12m height limit surrounding Epsom road is therefore somewhat of an anomaly and the non-compliances, being a maximum of 1.7m above the height limit assist in providing a more gradual transition in height than would be possible from a compliant scheme.

Given that a height limit of 44m is applicable on a site on the north of Hansard Road, immediately adjacent to the heritage conservation area, it cannot be said that a minor height breach at the application site will be inappropriate. The non-compliant elements are located away from the conservation area and towards Epsom Road and the 6 storey residential flat building.

The non-compliances allow for an appropriate height transition between new development and the heritage conservation area to the rear.

Therefore this objective is achieved notwithstanding non-compliance with the standard.

OBJECTIVE (C):

In terms of the sharing of views, it is not considered that there are any particular views across the property and therefore the height of the building will not result in any more or less view loss compared with a compliant building. There are no significant views from adjoining properties as a result of the topography of the area.

The non-compliant elements will have no adverse impact on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion.

There are no important views to, from or surrounding the site, the non-compliant elements therefore do not result in any impact on views.

Therefore this objective is achieved notwithstanding non-compliance with the standard.

OBJECTIVE (D):

The site is to the south of Green Square Town Centre and is not within that town centre. However, In terms of height transition from Green Square Town Centre to adjoining areas it is noted that there are significantly higher buildings on the southern side of Epsom Road already in place. The 12 metre height limit for this site is at the lower end of the height scales that have been provided across the precinct and the minor variation will not be a noticeable variation. The more critical consideration in this case is the number of storeys which has clearly been adhered to.

The non-compliances themselves do not result in a development which appears to be greater in height than the 3 storey maximum height of building requirements as indicated in the building height in storeys map.

To the casual observer they appear only as ancillary elements to a 3 storey building.

OBJECTIVE (E):

The subject site is not contained within Green Square and the objective is not relevant to the consideration

Nonetheless, in terms of Green Square and ensuring the amenity of the public domain, the minor height variation has no significant impact upon any issue affecting public amenity. There is no significant increase to overshadowing of public spaces or view loss as a result of the development.

The proposed development is therefore consistent with the objectives for maximum height, despite the numeric non-compliance.

Objectives of the zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The objectives of the Zone B4 Mixed Use are as follows:

- *“To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure uses support the viability of centres.*

The proposed hotel development meets the objectives of the zone. The zone objectives are not offended in any way by the minor height variation. Each objective is addressed in detail as follows

- *To provide a mixture of compatible land uses*

Comment: A hotel is a use permitted with consent within the B4 zone. It is therefore compatible with the existing and emerging mix of uses in the area. The minor non-compliances do not contradict this *objective*. Rather, they allow for a hotel with an improved service offering to be provided with no demonstrable adverse impact on amenity or design.

Therefore this objective is achieved notwithstanding non-compliance with the standard.

- *To integrate suitable business, office, residential and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

Comment: The location is well served by multiple bus routes and within walking distance of Green Square station. The height non-compliances will not affect the hotel's location within an area with good transport links or its ability to encourage walking and cycling. The non-compliances are unrelated to this objective.

Therefore this objective is achieved notwithstanding non-compliance with the standard.

- *To ensure uses support viability of centres*

Comment: The site is not within a centre, but is located within close proximity of the Green Square Town Centre. A hotel within the immediate vicinity of a centre will support the viability of that centre by enabling a wider range of visitors to stay in the area which may not otherwise have been the case.

The non-compliant elements do not in themselves stop the hotel from supporting the viability of neighbouring centres. Rather, by allowing for access to a roof top terrace and pool area they enable a hotel to be developed which provides better amenity for guests and therefore more likely to attract a larger number of users. Who in turn, are likely to make use of those centres.

Having regard to the above, the objectives of the zone are achieved notwithstanding non-compliance with the standard.

Clause 4.6(3)(a) Compliance with the clause is unreasonable or unnecessary

Returning to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

However, in *Four2Five v Ashfield Council [2015] NSWLEC 90* the Land and Environment Court said that whether something was 'unreasonable or unnecessary' is now addressed specifically in clause 4.6(4)(a)(ii), with separate attention required to the question of whether compliance is unreasonable or unnecessary.

Accordingly, while the objectives of the standard are achieved despite non-compliance with the standard, this request goes further. It seeks to demonstrate that requiring strict adherence to the standard would be 'unreasonable or unnecessary' for reasons that are additional to mere consistency with the development standard.

The building overall is compatible with the streetscape and the desired future character of the neighbourhood and Beaconsfield locality and insistence on strict compliance would result in a suboptimal planning outcome as it would require the removal of the upper floor of the development, which is compliant with the height limit except for the exceedance to allow for the lift overrun/stairwell, covered lounge area and planter boxes and glazed balustrade.

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

- *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- *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;*
- *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

The objectives of the standards and how the development achieves those objectives, notwithstanding non-compliance with the standard, have been addressed above.

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is both unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. It has been demonstrated that the objectives of the clause can be complied with notwithstanding non-compliance. Strict compliance with the clause is therefore unnecessary and it would be unreasonable were they to be strictly applied in this instance taking into account the specifics of the minor breaches of height.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of clause 4.6(3) are satisfied.

Clause 4.6(3)(b) Sufficient Environmental Planning Grounds

There are sufficient environmental planning grounds to justify contravening the development standard.

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, the assessment of this numerical non-compliance is guided by the recent decision of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015]

NSWLEC 90 whereby Justice Pain ratified the decision of Commissioner Pearson. Further guidance is gleaned from the decision in *Moskovich v Waverley Council* [2016] NSWLEC 1015.

The non-compliance with the height of buildings development standard is at its greatest at the lift shaft which is 1.7m above the height limit. The lift shaft is set back 5m from the frontage with Epsom Road. The non-compliance with the height of buildings development standard is due to the 12m height limit not taking into account roof-top access. The breach to the height limit is minor, but to require strict numerical compliance would result in either access to the roof not being possible or the removal of the uppermost level to allow for an outdoor amenity space to be provided, this would be a suboptimum planning outcome given:

- The high level of compliance that the development achieves, including an FSR of 1.29:1 which is significantly lower than the maximum of 1.5:1.
- No GFA is located above the 12m height limit, all GFA and therefore measurable FSR is maintained within the 12m limit.
- The non-compliant elements do not create an unreasonable impact on any adjoining properties and do not harm to ability of any neighbouring site to be developed.
- To the casual observer, the proposal would appear compliant with the intended height and form of development on site. The non-compliant elements do not appear to add extra bulk or an additional storey and the casual observer would view them only as standard ancillary elements to a 3 storey building.

The proposed development will introduce a high quality, well designed hotel building which is compatible with the desired future character of the area. As has been demonstrated there is no adverse effect on neighbouring amenity as a result of the non-compliances. Accordingly, despite non-compliance with the height control, the proposal provides a high amenity development.

Therefore, the proposal meets objective 1(b) of clause 4.6 in that allowing flexibility in the particular circumstances of this development will achieve “a better outcome for and from development” and is considered to be the best planning outcome for the site and surrounding properties given the site constraints.

Finally, the merits of the proposal on “environmental planning grounds” need to be balanced with the burden that strict compliance places on the site and whether strict compliance would result in a better or neutral outcome.

Insisting on strict compliance for the building in this instance would result in either the roof level not being accessible or the top storey being removed to accommodate the proposed outdoor amenity space. Neither is a desirable planning outcome. The success of a hotel is based on its level and quality of service provision, this includes amenities such as terraces, pools, gyms and other such facilities. The non-compliances directly allow an enhanced service provision from the hotel.

Outdoor amenity space is an important amenity aspect not just for residential dwellings but also short-stay locations such as hotels. Where no harm is demonstrated, as is the case of this development, a better planning outcome will be for the provision of outdoor space where possible.

There would no perceivable benefits to the amenity of neighbours or the streetscape if a fully compliant scheme was enforced. However, there would be significant impact on the function, viability, ambition and service provision of the hotel. The hotel would be burdened with a worse planning outcome.

A reduction in building height would have no tangible benefit and would require alternate site planning that would be less than optimal in meeting the positive planning outcomes identified above. The avoidance of this suboptimal outcome is, in itself, a sufficient environmental planning grounds to justify contravening the

development standard, given the impacts of the proposed development would be materially the same as a complaint development

The proposal will not undermine or dismiss the relevance of the building height control. Nor will the proposed built form set an undesirable precedent for the Beaconsfield locality which comprises of an eclectic mix of building typologies and heights ranging from 1-6 storeys, and is zoned to have up to 55m in the immediate vicinity north of Hansard Road.

To require strict compliance would therefore result in an unreasonable burden on future occupiers of the development with no demonstrable built form or amenity benefits. Furthermore it would thwart and preclude the redevelopment of the land to a reasonable standard, and not allow the site to reach its full development potential.

The proposal results in a high quality hotel development which is suited to the site, is consistent with the character of the locality and will not have any significant adverse impact on the amenity of adjoining properties in terms of privacy, solar access, views and bulk and scale.

In addition, the justification provided throughout this statement in support of the non-compliant components are to be used as support to demonstrate that there are sufficient environmental planning grounds to justify contravening the standard.

The proposed height encroachment will enable the orderly and economic redevelopment of the subject site in accordance with the intentions of the *Environmental Planning and Assessment Act, 1979*. There is no planning purpose to be served by limiting the height strictly to the maximum height allowable given the absence of amenity related impacts from the non-compliant elements.

In short, we consider that there are sufficient environmental planning grounds to justify the applicant's proposed variation to the height standard.

Conclusion

This written request has been prepared in relation to the proposed variation to the height of buildings development standard contained in SLEP 2012.

Despite the non-compliance with the height standard, the proposed height and subsequent form are compatible with the emerging character of the Beaconsfield area as anticipated by the planning controls under SLEP, SDCP and ADG.

It is important to note that the building height variation is not a by-product of non-compliant development density as the proposed development complies with the FSR development standard for the site. Rather the non-compliance arises from the desire to provide increased amenity to the occupants of the building without adversely impacting the amenity of adjoining properties or the character of the heritage conservation area.

The request explains that, with the proposed variation, the development satisfies the objectives of the standard and the objectives of Zone B4. It further explains why it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard. In addition, this request demonstrates that there are sufficient site specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.