

Attachment B

Clause 4.6 Variation Request

CLAUSE 4.6 TO CLAUSE 4.3 OF SYDNEY LEP 2012
EXCEPTIONS TO DEVELOPMENT STANDARDS – **HEIGHT VARIATION**

*Alterations and additions to the residential flat building including upper floor addition of 2
residential units*

27 QUEEN STREET, CHIPPENDALE

SUBMITTED TO
CITY OF SYDNEY

PREPARED BY
ABC PLANNING PTY LTD

SYDNEY LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for alterations and additions to the existing residential flat building to create a 2 with recessed 3rd and 4th storey residential flat building with 2 additional residential units at 27 Queen Street, Chippendale.

Clause 4.6 of the Sydney LEP 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*.

Clause 4.6 Exceptions to development standards

- (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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within clause 4.3 of the Sydney LEP 2012 - maximum height of 12m, demonstrated on the LEP map in Figure 1 below.

The proposed maximum height of 13.84m represents a variation of 1.84m (15%) from the numerical height standard in the LEP.



Figure 1: Building Height Map

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Assessment: It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The height variation is highly recessed from the front, sides and rear of the existing built form below ensuring that the height variation will not be visible when viewed from the Queen Street and Regent Street streetscape.



Figure 2: Northern elevation showing height variation in yellow

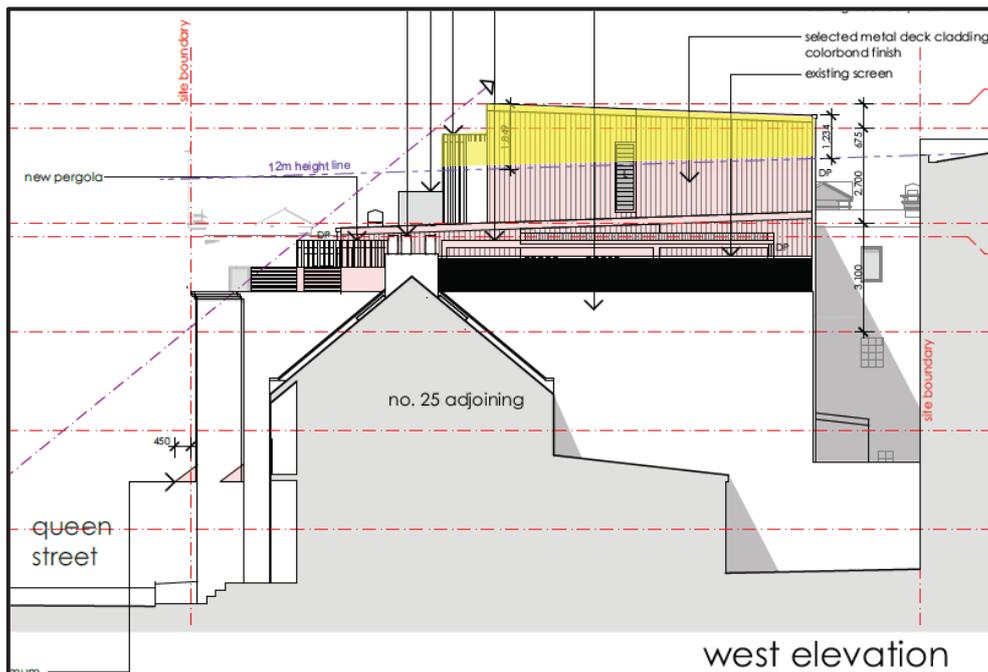


Figure 3: Western elevation showing height variation in yellow

- When viewed from a distance, only a small portion of the addition will be visible and the built form will appear as 3-storeys which is consistent with DCP storey control for the subject site. This is evident from the photomontages below:



Figure 4: Photomontages showing the minor section of the addition that will be visible from a distance on Queen Street and Regent Street

- The height variation will not be out of context with the varying scales of buildings within the immediate vicinity and wider locality. As shown on the aerial photo below, the properties adjoining the subject site have varying heights from 2-storeys to 4-storeys which demonstrates that the proposed height variation will sit comfortably in this mixed context.



Figure 5: Height in storeys of the surrounding built-form context

- The height variation will not be responsible for any unreasonable bulk or scale impacts, noting that the proposal has a compliant FSR and the recessed addition results in an articulated built form.
- The recessed nature of the upper floor addition ensures that there is a respectful transition to the adjoining heritage terraces and that the height variation will not generate any detrimental impacts on their heritage significance.
- It is considered that the height variation will not generate any additional amenity impacts to surrounding neighbours beyond that of a compliant built form, in regard to overshadowing, privacy or view loss impacts.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the height standard in the LEP	
Objectives	Assessment
<p>4.3(a) to ensure the height of development is appropriate to the condition of the site and its context</p>	<p>It is considered that the proposed height variation is a result of the existing condition of the site which contains an existing built form that has a basement which protrudes above street level by approximately 1m – 2m from east down to west.</p> <p>The extent that the basement protrudes above street level is more than the variation of the proposed addition above the 12m height limit.</p> <p>Nevertheless, the proposed additional height sits comfortably in the surrounding context that is characterised by a mix of building heights, which includes numerous perimeter</p>

	<p>warehouse buildings which are equal to, or taller in height, bulk and scale that the proposal.</p> <p>The height variation associated with the proposed addition has been sensitively positioned in a central location with generous setbacks of 6.24m from the Queen Street boundary and 24.5m from the Regent Street boundary, ameliorating streetscape impacts of the proposal and maintaining the scale and massing of the existing street elevation.</p> <p>The recessed nature of the proposed upper levels ensures that the additions are not visible from the Regent Street frontage and therefore have no detrimental effect on the heritage values of the listed terraces or diminish the streetscape presentation. This is demonstrated on the photomontages above (Figure 4).</p> <p>Overall, it viewed that these factors confirm that the height is appropriate to the site and its context.</p>
<p><i>4.3(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas</i></p>	<p>The proposed height sits comfortably alongside the two sets of heritage terraces adjoining the property to the east and west. Given the significant difference in built form between the envisaged envelope for the site and the heritage listed items, it is considered difficult and unreasonable for the development to achieve an entirely smooth height transfer to the listed 2-storey terraces.</p> <p>The proposal includes significantly recessed upper floors which facilitate the height transition when viewed from the street, as the proposed street frontage reads as compliant with the 12m height limit and the non-compliant roof form is generally concealed.</p> <p>Furthermore, as noted in the Character Statement for the locality, the area is characterised by contrasting and irregular built forms. The visual catchment surrounding the subject site exemplifies this varied context, as demonstrated in the accompanying streetscape elevation which shows a large perimeter warehouse building (12-16 Chippen Street) sits directly behind the 2-storey listed terraces.</p>
<p><i>4.3(c) to promote the sharing views</i></p>	<p>The proposed height will not be responsible for any adverse view or loss of outlook impacts from any residential or commercial office buildings in the vicinity of the subject site.</p>
<p><i>4.3(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas</i></p>	<p>The subject site is not located in Central Sydney or Green Square Town Centre.</p>
<p><i>4.3(e) in respect of Green Square: (i) to ensure the amenity of the public domain by</i></p>	<p>The subject site is not located in Green Square.</p>

<p><i>restricting taller buildings to only a part of the site, and (ii) to ensure that the built form contributes to the physical definition of the street network and public spaces</i></p>	
Consistency with the objectives of the B4 Mixed Use Zone	
<p>Objectives</p>	<p>Assessment</p>
<ul style="list-style-type: none"> • <i>To provide a mixture of compatible land uses.</i> • <i>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.</i> • <i>To ensure uses support the viability of centres.</i> 	<p>The proposed height variation does not generate any inconsistency with the B4 Mixed Use zone objectives.</p> <p>The proposed residential addition has been well integrated into the existing built form on the site to ensure that the presentation of the existing built form in the streetscape is largely unchanged.</p> <p>The provision of additional residential accommodation on a site that is close to shops, employment and public transport options is considered to support the viability of the area.</p> <p>The close proximity of the site to Central Station and the CBD will encourage the occupants of the proposed units to use alternative methods of transport including public transport, walking and cycling.</p> <p>The combination of these aspects ensures that the proposed height variation does not hinder the proposal's ability in satisfying the zone objectives of the Mixed Use zone.</p>

Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the building height development standard, which include:

- It is considered that the proposed height variation is a result of the existing condition of the site which contains an existing built form that has a basement which protrudes above street level by approximately 1m – 2m from east down to west. The extent that the basement protrudes above street level is more than the variation of the proposed addition above the 12m height limit.
- The height variation allows for an addition with a smaller footprint which promotes greater access to light, ventilation and access to outdoor private open space.
- The recessed nature of the height variation ensures that it will not be visible from the public domain and will therefore not be responsible for any unreasonable streetscape impacts.
- The recessed nature of the height variation also ensures that it will not negatively impact upon the heritage significance of the

- The height variation is able to be accommodated on the site whilst complying with the FSR standard for the site, thereby ensuring that the height variation is not responsible for any greater bulk or scale impacts anticipated for the site.
- The height variation allows for an orderly and economic use of the site which increases housing in a location that is close to employment, leisure opportunities and public transport. It is considered that the reduction of height would not result in any benefit to the streetscape or to the amenity of surrounding areas, but would compromise the amenity of the residential units.
- The recessed nature of the height variation associated with the roof of the upper level addition ensures that the height variation will not be responsible for any unreasonable overshadowing or privacy impacts to neighbouring properties.
- The height variation will not obstruct any significant views but will facilitate access to expansive district viewed from the upper level units.
- The height variation has been well integrated into the overall design of the proposal and the sloping roof and contrasting materiality of the upper level addition from the existing levels below means that it presents as a roof form above the existing built form. Therefore the overall built form appears as 2-storeys with a roof form above on the eastern and western elevation and 3-storeys with a roof form above on the northern elevation.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.

Other Matters for Consideration

4(a)(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

Assessment: The above assessment demonstrates that the proposed height satisfies the objectives of the height standard and the B4 Mixed Use zone

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the height variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed height allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

The proposed height is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 27 Queen Street, Chippendale and is requested to be looked upon favourably by the consent authority.