

Attachment C

Clause 4.6 Variation Request

Residential Alterations and Additions

1 Woolley Street, Glebe

Clause 4.6 Request

Prepared on behalf of Weston Aluminium P/L

November 2019

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1 Introduction

This report has been prepared to supplement the Statement of Environmental Effects (SEE) for the proposed alterations and additions to a residential flat building at 1 Woolley Street, Glebe to specifically request a variation to development standards under clause 4.6 of the Sydney Local Environmental Plan 2012 (SLEP 2012). Details of the development proposal are contained within the SEE.

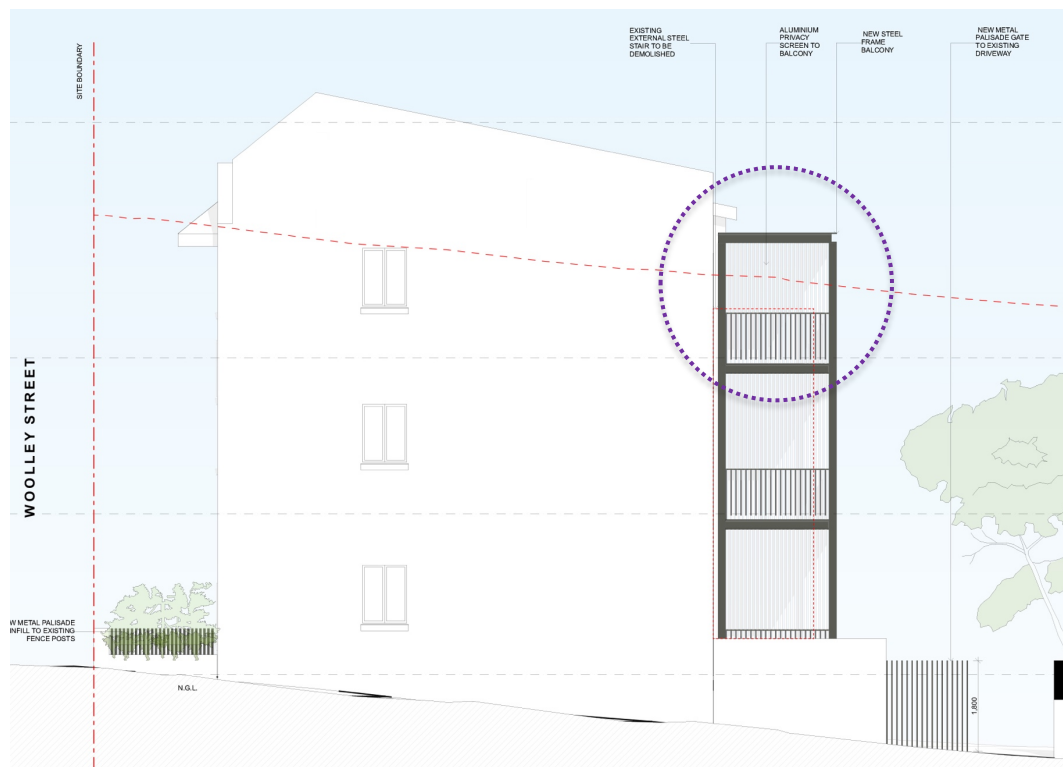
The variation being sought consists of a breach of the the maximum building height under clause 4.3 of SLEP 2012 to accommodate a roof and supports to a proposed new balcony to the upper-most level of the three storey apartment building.

1.1 PROPOSED VARIATION

The maximum height of building (HOB) standard under clause 4.3 of SLEP 2012 is 9m to which the existing buildings exceeds by some 3m at the roof apex.

The building is nominated as a 'neutral building' within the conservation area and is consistent with the height of surrounding residential and institutional buildings fronting Woolley Street but higher than terraces and dwellings to its west.

The breach to the height standard of approximately 1m occurs from the placement of a roof for the proposed new balcony to the upper level of the buildings as shown in the cross section extract below.



Extract from architectural plan DA203 showing HOB line and breach (Fuse)

2 Clause 4.6 Assessment

2.1 CASE LAW

This request has been prepared under Clause 4.6 of SLEP 2012 to justify the departure from the development standard for height of building within clause 4.3.

The request meets the objectives of clause 4.6(1),

- (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,*

and demonstrates for the purpose of clause 4.6(3):

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

Case law (*Winten V North Sydney Council*, *Wehbe V Pittwater*, *Four2five V Ashfield Council* (*Micaul Holdings v Randwick City Council*, *Moskovich v Waverley Council*)) provides guidance when considering an exception to development standards:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
 - *Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives.*
 - *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary;*
 - *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;*
 - *Has Council by its own actions, abandoned the development standard*
 - *Consistency with objectives is not a requirement to “achieve” them but to be “compatible” or “capable of existing together in harmony”;*
- Is compliance consistent with the aims of Cl 4.6?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? This does not always require that the objectives of the standard are achieved but also that it may not be achieved or would be thwarted by a complying development.

- Are there sufficient environmental planning grounds (specific to the site and particular to the circumstances of the proposed development) to justify contravening the development standard and therefore is the objection well founded?
- When a clause 4.6 variation request is being pursued, it is best to demonstrate how the proposal achieves a better outcome than a complying scheme.

2.2 IS THE PLANNING CONTROLS A DEVELOPMENT STANDARD?

The planning control in Clauses 4.3 relating to maximum building height is a development standard under the definition within the *Environmental Planning and Assessment Act 1979* as follows (*EP&A Act, Part 1 Section 4. Definitions*)

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including,

(c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work*

2.3 ASSESSMENT AGAINST THE PURPOSE/OBJECT OF THE STANDARD

2.3.1 Height of Building

The relevant objectives of the height of building development standard are:

- (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,*

The objectives of the height of building control are considered to be satisfied as the height of the upper level balcony roof and supports:

- generally fits within the scale and form of the existing building and does not increase its overall height;
- maintains simplicity of the balcony structure in juxtaposition to the building which would be diminished without the upper roof and enclosures;
- are appropriate to the condition of the site and context as it is to the rear of the building and provides improved resident amenity through greater weather protection;

- maintains an appropriate height transition with nearby heritage buildings and buildings in the heritage conservation area as assessed in the accompanying Statement of Heritage Impact (SHI). Page 25 of the SHI in response to 3.9.8 (3) of Sydney DCP 2012 for alteration and additions to a “neutral building” in “respecting the original building in terms of bulk, form, scale and height”:

“b) A majority of the bulk and form of the main structure is maintained. The addition of full- length balconies to the rear façade, as proposed, is appropriate and sympathetic to the original building and conservation area.”;

- does not significantly impede on the sharing of views enjoyed predominantly from the adjoining Wooley Street apartments and rear of Bridge Road dwellings as well as the adjoining park as shown below.



Above: Photo from Wooley St of potential viewing windows south of the site in relationship to the proposed balcony roof and structure.

Below: Photo from St James Park to the north of the site



2.4 IS COMPLIANCE CONSISTENT WITH THE REQUIREMENTS OF CL 4.6?

The aims of Clause 4.6 are:

- (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.*

Flexibility in applying the height standard to the balcony roof and supports to the upper-most level is appropriate in the circumstance as:

- it would not be inconsistent with the aims of the clause when the proposed height is tested against the underlying objectives of the standards; and
- the height of the existing building is 3m above the height limit at its highest point (consistent with adjoining buildings on Woolley St) which will not be increased quantifiably or by perception.

The proposed exception to the development standard will result in a better planning and design outcome than would otherwise be achieved from compliance as :

- it will create a better form of building than if the upper balcony roof was omitted as this would result in a disjointed shape that detracted from the simple shape inherent in the design of the existing building as discussed in the SHI;
- an improved amenity will be provided to the two upper storey residences through the provision of weather protection to the proposed balconies from sun and rain than would not be able to be otherwise provided; and
- there is an absence of significant adverse impacts arising from the inclusion of the upper level balcony roof and supports to the proposed additions.

2.5 IS COMPLIANCE UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES?

Strict compliance with height standard cl.4.3 of SLEP 2012 is considered unreasonable and unnecessary in the circumstances of the case as it would impede a more considered design response to the need for improved amenity to the upper storey residences especially given that the existing building is significantly higher than the building height standard.

Further, strict compliance with the standard in this circumstance would tend to defeat the stated objective of ensuring “*the height of development is appropriate to the condition of the site and its context*” and lead to a diminished planning and design outcome.

2.6 ARE THERE SUFFICIENT GROUNDS TO JUSTIFY CONTRAVENTION?

As discussed above, the exception to the building height standard for the roof and supports to the proposed upper level balcony is justified on two main grounds:

- it will create a better form of building than if the upper balcony roof was omitted as this would result in a disjointed shape at the rear that detracted from the simple shape inherent in the design of the existing building as discussed in the SHI; and
- amenity of the two upper storey residences would be significantly enhanced through the provision of weather protection to the balcony from sun and rain.

The provision of balconies to the building to provide a more contemporary level of amenity to residents is a proper planning intention that helps to compensate the small size of the apartments. The inclusion of a roof to the upper-most level balconies allows that intention to be properly fulfilled.

It will result in a development that is consistent with the objectives of the relevant R1 zone in that it:

- provides for the contemporary housing needs of the community;
- it assist to maintain a variety of housing types and densities; and
- maintains the existing land use pattern of predominantly residential uses.

Accordingly, there are sufficient grounds to justify the contravention of the height of building standard as proposed.

2.7 IS THE REQUEST WELL FOUNDED?

This request under clause 4.6 of SLEP 2012 to permit the inclusion of a roof and supports to the upper-most balcony is considered to be well founded for the following reasons.

- The proposed development will remain consistent with the objectives, nature and intent of SLEP 2012 including clause 4.3, 4.6 and 5.10.
- It will lead to a better planning outcome as a result of improved resident amenity and a more reasoned building form supportive of its original style and overall appearance when viewed within its context.
- It will not in itself result in significant adverse impacts in terms of visual effect, overshadowing and the like and is consistent in the treatment of a 'neutral building' and have limited impact on the heritage conservation area .

- Strict compliance with the height of building standard in the circumstance would result in an unnecessary design limitation and consequently, a diminished planning outcome.
- The variation is minor in nature and does not increase the height of the building which is significantly higher than the height standard, nor alter its perceived height.
- The proposed development is wholly consistent with the underlying objectives of the development standards which might be diminished by strict compliance.

2.8 CONCLUSION

The proposed exceptions to the development standards contained in Sydney LEP 2012 Clause 4.3 Height of Buildings for the provision of a balcony roof and supports for the upper level balconies will result in a better planning and design outcome as set out in this request.

The exception will not undermine or frustrate the underlying objectives to the standard and will not result in development inconsistent with the locality. The development as designed will remain consistent objectives of the respective zone.

It is therefore considered that strict compliance with the height of building standards is unreasonable and unnecessary in the circumstance and that there are sufficient environmental planning grounds to justify contravening the development standard as proposed.

It is further considered that this written request has adequately addressed the matters required to be demonstrated in establishing the above and that the proposed development will be in the public interest.