

# **Attachment C**

<p><b>Clause 4.6 Variation Request – Height of Buildings</b></p>
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#### Clause 4.6 – Exceptions to Development Standards

The proposal seeks to vary Clause 4.3 Building Height of the LEP.

(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.*

**Comment:** The proposal seeks flexibility in application of the standard where the breach of maximum building height is only very minor in nature. The maximum height of the proposed development at 24.3 metres (lift overrun measured to the ground level existing immediately below) represents an 10.5% variation to the development standard. The remainder of the building is compliant with the maximum prescribed building height.

The design provides an appropriate allowance for both structure and minimum floor to ceiling heights to be achieved. A degree of flexibility is however sought in the circumstances as the building height breach is limited to the lift overrun, fire stairs and pergola, which is setback from the building's parapet. This will not be visible from the public domain, is not visually intrusive, will not impact upon views from any adjoining property, and will not cause any additional overshadowing to any adjoining property. The proposed minor breach to the building height represents a better design outcome, with a communal open space located upon the roof capable of achieving direct northern sun, greatly enhancing the amenity of future residents.

(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.*

**Comment:** The development standard to be contravened Clause 4.3(2) Height of Buildings. The prescribed maximum building height is 22 metres.

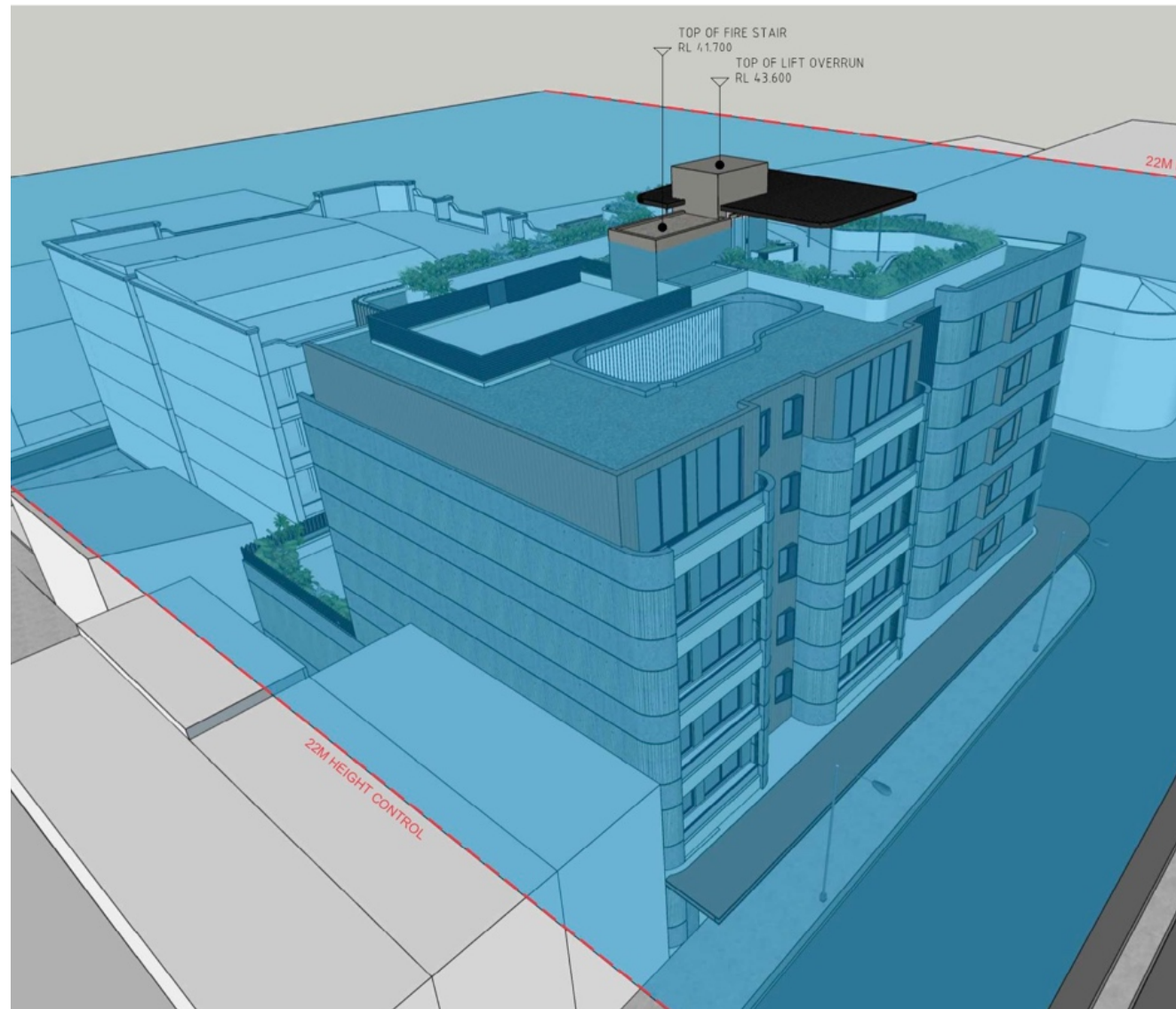
(3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (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.*

**Comment:** This submission is a written request for consideration by the consent authority.

Compliance with the standard is considered unreasonable and unnecessary in the circumstance of this case given the very minor nature of the breach proposed. Contravention of the development standard by the proposal does not give rise to any adverse environmental impact and enables equitable access to be provided throughout the development. A degree of flexibility is however sought in the circumstances as the building height breach is limited to the lift overrun, fire stairs and pergola, which is setback from the building's parapet. This will not be visible from the public domain, is not visually intrusive, will not impact upon views from any adjoining property, and will not cause any additional overshadowing to any adjoining property.

An adequate area of communal open space is required to enhance residential amenity and to provide opportunities for landscaping within the urban environment. To satisfy this objective, the Design Criteria at Objective 3D-1 of the ADG suggests that communal open space should have a minimum area equal to 25% of the site area, and that developments should achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter).



**FIGURE 11**

Image demonstrating extent of the proposal's non-compliance with the maximum prescribed building height.

The area provided at the Level 1 podium is incapable of receiving adequate sunlight when reinforcing the street wall composition of Layton Street, and given the presence of the existing serviced apartment building to the immediate north of the consolidated remaining site area. The provision of a communal open space upon the roof therefore provides exceptional amenity to the residents by providing an alternative area of communal open space receiving full sun at mid winter.

It is noted that Development Application D/2016/642 was approved by Council on 12 December 2016 for a similar built form including the 'demolition of existing structures and construction of a 6 storey mixed-use building with 21 residential apartments, 2 ground floor commercial tenancies, basement carpark and landscaping' upon Nos. 140 – 144 Parramatta Road, permitting a contravention to the development standard for provision of communal open space upon the roof on the following grounds:

- The proposed development is consistent with the objectives of the B4 – Mixed Use zone and the building height standard.
- The elements of the building which breach the height standard are confined to the lift over-run and stairwell both of which are small in scale and centrally located on the roof away from the Parramatta Road and Layton Street frontages.
- The stairs and lifts are necessary to provide equitable access to the rooftop communal open space.

- The elements of the building that breach the building height standard do not unreasonably impact on the amenity of adjoining properties.
- The development complies with the maximum 6 storey height limit for the site prescribed in the Sydney DCP 2012.
- The building height is considered compatible and consistent with the desired future character for the Camperdown area.
- The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposed development is no greater in height than the approved development and has a consistent upper roof level at RL39.00.

As demonstrated upon **Figure 11**, the items of the development that contravene the development standard are minimal and compliance with this standard is considered to be unreasonable and unnecessary in the circumstances as a better planning outcome is achieved, with a built form 6 storeys in height, consistent with the intent of the height standard as reinforced by the DCP.

- (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.

**Comment:** The objectives of the building height control are as follows:

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

The site is zoned B4 Mixed Use. The objectives of the zone 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.

Each of the relevant stated objectives of the building height standard are satisfied by the proposed development. The lift overrun, fire stairs and pergola will not be visible from Parramatta Road or Layton Street, nor likely from any adjacent property. The minor nature of the variation to the prescribed maximum building height limit will not cause any disruption to views, cause any loss of privacy, and will not diminish solar access to any adjoining property.

A better planning outcome is achieved by providing these additional areas of communal open space in full sunlight atop the building.

- (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.*

**Comment:** The contravention raises no matters of State or regional significance. It is considered that as the proposal is consistent with the desired future character of development in the precinct, there is no public benefit in maintaining the development standard given the very minor nature of the variation proposed. No other matters are required to be taken into consideration by the Director-General.

- (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.*

**Comment:** The proposal is not for contravention of a subdivision control.

- (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).*

**Comment:** The consent authority will keep a record of the determination.

- (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),*