



CLAUSE 4.6 VARIATION STATEMENT

Demolition of existing structures and construction of a six storey residential flat building over two basement levels with a communal rooftop terrace and associated landscaping.

192-196 Princes Highway, Kogarah Bay

Prepared for: BLU PRINT DESIGNS

Ref. 0432/18

DATE: 19 April 2021



Clause 4.6 variation statement – maximum height (Clause 4.3)

1. Height of Buildings standard

Clause 4.3 (2) of KLEP 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 height of 21m. Building height is defined as:

(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 relevant map [sheet HOB_007] indicates that the maximum building height permitted at the subject site is 21m.

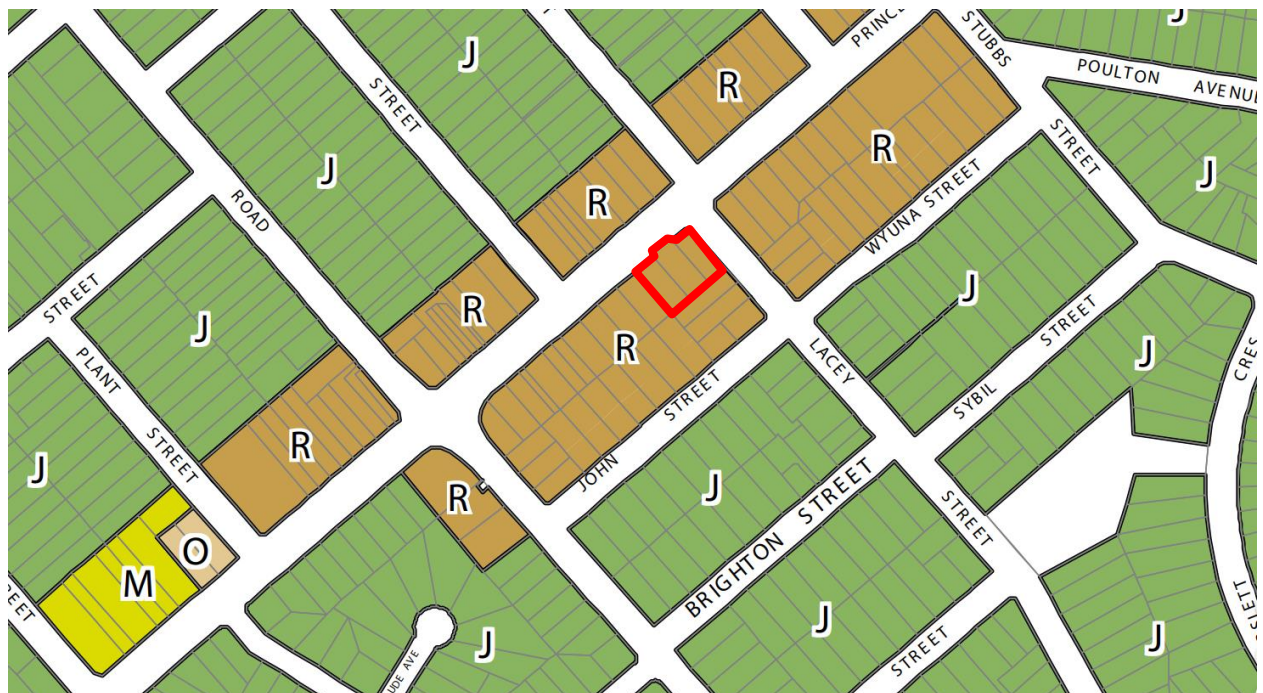


Figure 1 Extract from Height of Buildings Map [R=21m]

2. Proposed variation to height of buildings development standard

The architectural plans indicate that the proposed development has a maximum height of 22.7m to the lift overrun using ground level (existing) in accordance with the definition of height under KLEP 2012. It is noted that the proposal also contains a non-compliance to the awning of 21.5m. The proposal is therefore non-compliant with the development standard and seeks a 1.7m or 8% to the lift overrun.

This non-compliance with the building height is limited to the lift overrun and communal open space and awning to the roof terrace. Refer to **Figure 1** below.

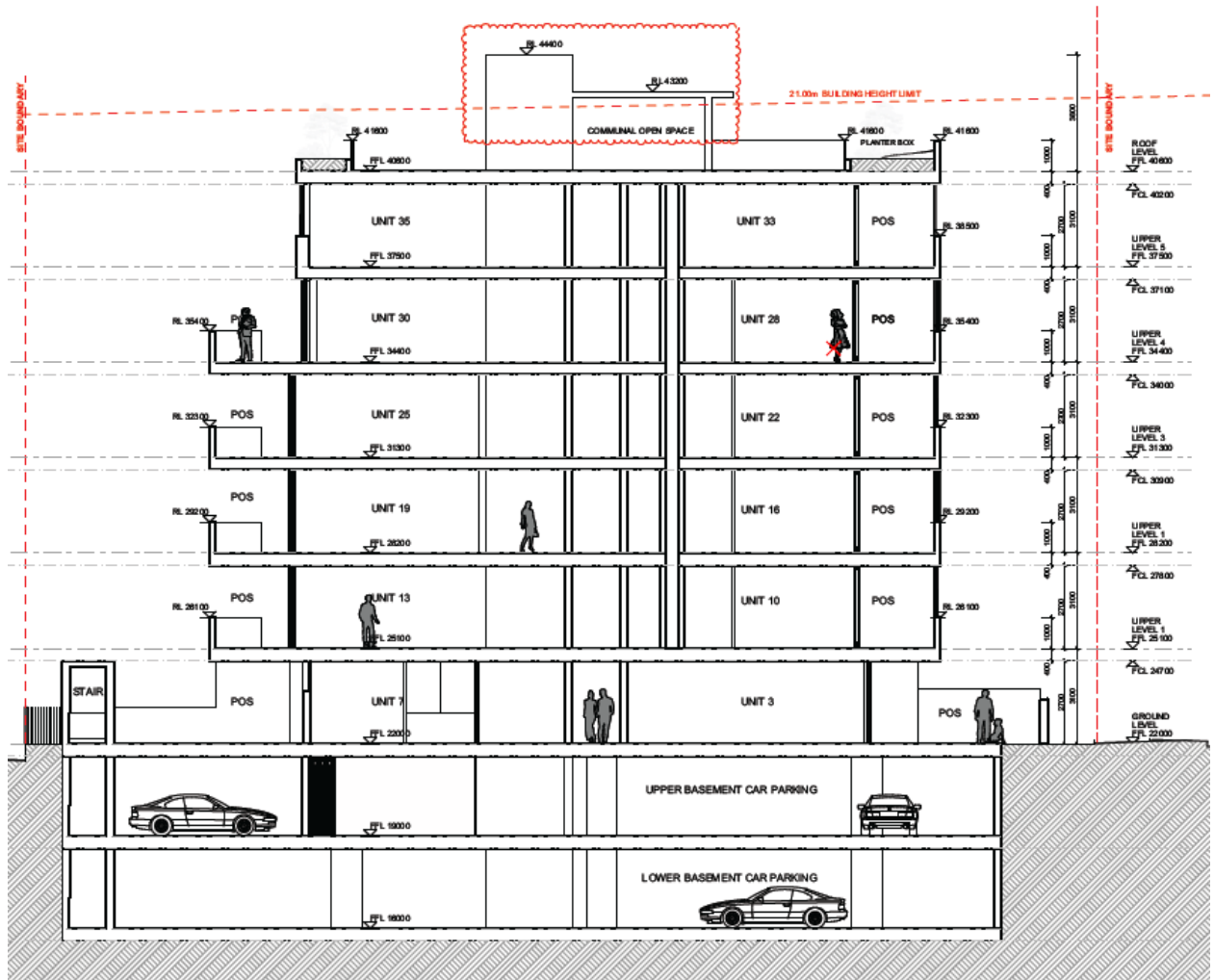


Figure 2 Section illustrating maximum height non-compliance

3. Clause 4.6 to KLEP 2012

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 Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning 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 Planning 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 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 or Zone E3 Environmental Management.

(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.*

The development standards in Clause 4.3 are not “expressly excluded” from the operation of Clause 4.6.

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 the consent authority 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).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 22.7m which equates to a numerical variation of 1.7m and a percentage variation of 8%, noting that the maximum height relates to the proposed lift overrun.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

Of relevance 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).”*

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]):

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
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;*
5. *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.*

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 16), Preston CJ makes reference to Wehbe and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:



- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))



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. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*



The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum building height:

1. The height breach is at its greatest for the lift overrun located at the centre of the site (RL 44.4). The extent of variation sought is 1.7m which will provide equitable access to the communal open space located on the roof top. The proposed lift overrun is located centrally within the site and is setback 17m from Princes Highway and 17.3m from Lacey Street. The proposed awning is an open lightweight structure, provides a non-compliant height of 21.5m and is setback 11.7m to Princes Highway and 17.3m to Lacey Street. This ensures that the lift overrun and awning will be obscured from the public domain, will be visually recessive and not jarring to the casual observer.
2. Insistence on compliance with the height will require deletion of the lift overrun which will not permit equitable access to the communal open space for people with disability and it is therefore considered to be unreasonable.
3. The proposed variation allows for equitable access to the roof top terrace and provides a high level of amenity to the occupants without adversely impacting the amenity of the neighbouring properties. The proposed awning will encourage usage throughout the year through the provision of weather protection. This will in turn encourage casual surveillance onto Princes Highway and Lacey Street and activate the roof top. Surrounding the subject site, Nos. 1-3 John Street, 5-9 John Street and 198-200 Princes Highway all had Clause 4.6 variations supported for non-complaint building heights relating to lift overruns and communal open spaces on their respective rooftops. This sets a different context to that of developments that are strictly compliant with the height of buildings development standards. This is also reflected in Pre-DA comments from Council.
4. The proposed height variation will not result in any additional GFA above the height of buildings development standard. The proposed elements that breach the height of buildings development standard are centrally located and will not increase the perceivable visual bulk or alter the character or amenity of adjoining properties, noting the context of other height of buildings variations in the immediate context.
5. As mentioned, the height breach is limited to the proposed lift overrun and awning. This non-compliant element is located centrally within the site with the remainder of the building compliant with the height of building development standard. The proposal will appear as height compliant building when viewed from the public domain at ground level.
6. The subject site is located on Princes Highway which is a classified road and under the control of the RMS. Given the extent of traffic generated along this road, the provision of a communal open space in the form of a roof top terrace (as opposed to the ground level) that is accessed via a



height variation (lift overrun) is considered to be a superior planning outcome. The proposed roof top terrace will not be directly impacted by aural and visual intrusions created from traffic along Princes Highway.

7. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - a. The height breach creates no significant additional overshadowing to adjoining properties when considering the extent of overshadowing against the backdrop of the applicable planning controls. That is, the height breach is centrally located on the site and flanked by built form that complies with the height of buildings development standard. The elements of the building that breach the height limit would have insignificant or nil additional impacts on the overshadowing of adjoining properties (refer to Figure 3 below);
 - b. The height breach does not result in any significant additional privacy impacts given the trafficable portion of the rooftop communal open space is below the height limit with only the awning and lift overrun breaching. Therefore the extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building. The loss of privacy caused by the non-compliant elements would be insignificant or nil; and
 - c. The height breach does not result in any significant additional view loss. The proposed development will not result in any material loss of views or outlook when compared to a building with a compliant height. The extent of view loss caused by the non-compliant element would be insignificant or nil
8. The proposed development meets the objectives of the development standard and meets the objectives of the R3 Medium Density Residential zone (as further detailed in Section 7 below);
9. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses and the use of a rooftop for communal open space due to the constraints of locating it at ground level (1.3(c));
 - b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context. In this regard, the variation is centrally located and will not be readily apparent to the casual observer (1.3(g)).

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10. The variation to the height of buildings development standard will give better effect to the aims of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65)*. In particular:
 - a. Approval of the proposed variation will allow for a variation of building height and scale across the locality which is commonly accepted urban design approach instead of buildings with consistent height; and
 - b. Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly its location next to the Princes Highway and requirement to provide equitable access to the communal open space rooftop. Insistence on compliance with the height control will result in the removal of lift and stair accessibility to the communal rooftop terrace, which is a disproportionate outcome given the impacts of the proposal. The additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed in such a way to ensure the additional height is not visually jarring from the public domain.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), (Clause 4.6(4)(a)(i))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (Clause 4.6(4)(a)(ii))

Height of Buildings Objectives

The objectives and relevant provisions of Clause 4.3 of KLEP 2012 are as follows:

- (a) to establish the maximum height for buildings,*
- (b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas,*
- (c) to provide appropriate scale and intensity of development through height controls.*

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) – “to establish the maximum height of buildings”

This objective articulates the ultimate function of the height of buildings development standard. The maximum height for buildings on land within the former Kogarah Local Government Area is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 21m and the maximum height of the proposal is 22.7m. The development standard provides for a six storey form across the site, which the proposed development complies. A small non-compliance is created by the proposed lift overrun and awning which provides access and weather protection to the communal rooftop terrace.

The proposal contravenes the standard, which has prompted the preparation of this written variation request. Despite the nature and scale of development proposed by this Development Application, Clause 4.3 achieves the objective of establishing a maximum building height for the site, using the Height of Buildings Map as a mechanism to do so. This



written request identifies the extent of variation proposed and explains why the variation is acceptable in the circumstances.

For these reasons the proposed height is consistent with Objective (a).

Objective (b) – “to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas”

This objective envisages that building heights must be controlled to minimise the impact to the amenity of neighbouring properties.

In relation to solar access, the elements above the 21m height limit create no significant additional overshadowing to adjoining properties when considering the extent of overshadowing against the backdrop of applicable planning controls. That is, the height breach of the lift overrun and awning is located centrally within the site and will not cast significant shadows onto the neighbouring properties between 9am and 3pm in midwinter. IN fact, the height variation will only begin to cast shadows at 2pm to 1 Lacey Street which will then fall over John Street at 3pm. The shadow diagrams indicate that proposed non-compliance will create overshadowing over the subject site and is relatively minor.

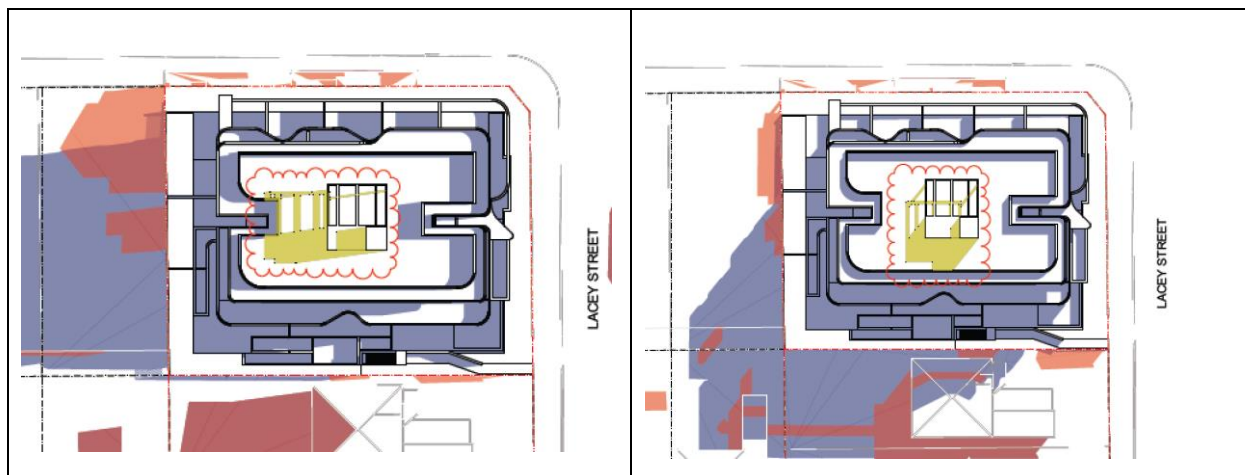




Figure 3 Shadow diagrams detailing the extent of the non-compliance at 9am, 12noon, 2pm and 3pm

In terms of visual impact, the proposed height variation is limited to the lift overrun and awning located centrally within the site. The lift element is setback 17m from the Princes Highway, 17.3m from Lacey Street and 23.9m and 15m from the side and rear boundaries respectively. The considerable setback of these roof top elements and predominant building bulk which is compliant with the height development standard ensure that the height breach will be obscured when viewed from the public domain. To the casual observer on Princes Highway or Lacey Street, the non-complaint elements will not be visually jarring or obtrusive.

With regards to privacy, the elements above the 21m height standard are limited to the lift overrun and awning which provide equitable access and weather protection to the roof top communal open space. The trafficable area of the roof top terrace is below the height limit and has been setback 10.7m from the southern (rear) boundary and 8.9m from the western (side) boundary. The proposed roof top terrace also includes planter boxes and vegetation which will provide an additional visual privacy buffer to ensure the amenity of adjoining properties will be maintained.

As such, as the built form predominant built form is compliant with the relevant building controls set by the KLEP 2012, KDCP 2013 and ADG. This ensures that despite the 1.7m height breach created by the lift overrun and roof top elements, the proposal is consistent with Objective (b).



Objective (c) – “to provide appropriate scale and intensity of development through height controls”

This objective seeks to ensure development provides a suitable scale and intensity within the R3 zone. The 21m height of buildings control effectively anticipates a six storey building can be constructed on the site. The proposed development provides a six storey building and is only in breach of the height limit due to the proposed lift overrun and awning to the roof top communal open space. As such, the six storey appearance will result in a built form which is reasonably anticipated and compliant with the 21m height of buildings development standard. The proposal therefore represents the desired future character of the locality.

The proposed lift overrun and awning is located centrally within the site and will be obscured when viewed from the public domain. To the casual observer on Princes Highway and Lacey Street, the proposed development will read as a height compliant building that is consistent with the future character of the locality. The proposed height and form is considered to be compatible with other recently developed properties, including Nos. 1-3 and 5-9 John Street and 198-200 Princes Highway which had Clause 4.6 Variations supported for non-compliant building heights relating to lifts and communal open spaces.

The burden on insisting on strict compliance would result in the removal of the lift overrun and subsequent loss of the rooftop communal open space. This will significantly impact the amenity and liveability of the proposed development and is considered a disproportionate outcome given the minimal impact to scale and intensity resulting from the height variation.

Therefore the proposal will be entirely compatible with the streetscape and represents the desired future character of the locality. It will certainly not be visually “jarring” in the streetscape or as viewed from any surrounding properties. On balance, the proposal is considered to achieve a planning purpose of providing a high quality residential flat building, in a suitable locality in close proximity to services and transport, and replacing three buildings that are nearing the end of their economic life. These benefits are in the absence of any significant additional adverse streetscape or amenity impacts.

The proposal is therefore consistent with objective (c), despite the minor height breach.

Objectives of the Zone

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone R3 are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

The proposed development will provide for the housing needs of the community. The height variation will provide access to the communal open space which will improve the amenity for future occupants of the building within the medium density environment.

- *To provide a variety of housing types within a medium density residential environment.*

The proposed development will provide 6 x 1 bedroom, 22 x 2 bedroom and 8 x 3 bedroom apartments within an accessible location as required within the medium density zone. The provision of rooftop communal open space will provide increased amenity for the proposed occupants.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

This objective is not relevant to the proposal.

The proposed development, including those parts of the building that breach the height of buildings development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.



8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

The issue of the concurrence of the Secretary of the Department of Planning and Environment is dealt with by Planning Circular PS 20-002 'Variations to development standards', dated 5 May 2020. This circular is a notice under 64(1) of the Environmental Planning and Assessment Regulation 2000. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The circular provides for assumed concurrence.

Concurrence cannot be assumed for a request for a variation to a numerical standard by more than 10 per cent if the function is to be exercised by a delegate of the consent authority. This restriction does not apply to decisions made by local planning panels, who exercise consent authority functions on behalf of councils but are not legally delegates of the council. As such, it is anticipated that the development application will be determined by the local planning panel.

The Secretary can be assumed to have given concurrence to the variation.

9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. The public benefit of maintaining the development standard (Clause 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building height exceeds the maximum permitted on the site by 1.7m (8%), the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. Conclusion

This written request has been prepared in relation to the proposed variation to the 21m height of buildings development standard contained in Clause 4.3 of KLEP 2012.

Having regard to all of the above, it is our opinion that compliance with the maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

