

Annexure 1: Clause 4.6 Exception to Development Standards

The proposal is non-compliant with Clause 4.3 – Height of Buildings that stipulates that the height of a building is not to exceed 62.4m on the subject site (based on the time limited bonus provisions contained within the GLEP). It is noted that the proposal is predominantly compliant with the maximum building height, however a small portion of the lift and stair over-run, as evident in the submitted elevations and sections, exceeds the maximum building height requirement and as such does not comply with Clause 4.3.

The variation equates to 2.2m (3.5% at the worst affected point) of the maximum permitted control along middle of the building. It is noted that the variation cannot be seen from the street given the location of the lift core/plant area that is contained in the central portion of the building.

It is noted that the extent of variation is not overly dominant of the street, it only relates to a miniscule area of the lift and stair over-run and does not discernibly increase privacy or overshadowing impacts to adjoining properties. It is further noted that the proposal is predominantly compliant with the setback controls and is consistent with the maximum permitted FSR on the site indicating an appropriate scale of development.

Clause 4.6 of the Gosford Environmental Plan 2013 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

(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.

Each of these provisions are addressed in turn.

Clause 4.6(3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the maximum development standard are stated as:

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

(a) to establish maximum height limits for buildings,

(b) to permit building heights that encourage high quality urban form,

(c) to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,

(d) to nominate heights that will provide an appropriate transition in built form and land use intensity,

(e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,

(f) to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.

The current development proposal is consistent with the underlying intent of the control based on the following:

- The proposal will provide a high quality urban form that relates well to the context of the site in terms of the natural topography and adjoining development;
- The extent of non-compliance does not contain habitable floor space and is limited to the lift overrun and service areas and sprinkler tanks;

- The extent of variation does not discernibly increase the extent of amenity impacts in terms of loss of sunlight;
- The proposal presents a suitable scale of development relative to surrounding development and future development within the locality given the provisions of the Gosford LEP 2014.
- Due to the minor nature of the variation it will not have any adverse amenity impacts. In this regard it is noted:
 - o The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of the development.
 - o The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss or overshadowing.
 - o The proposed variation will not lead to view loss or interrupt on views to and from the site.
 - o The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal.
- The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing a residential flat building that provides good address to the street frontage, clearly identifiable entrances and complying with key planning controls applying to the proposal.
- The development proposal has been designed to comply with key planning requirements, whilst providing an attractive building that addresses the context, streetscape and sets the tone and scale for future high density development in the locality. The development provides a residential flat building that will contribute towards increasing housing stock within the Gosford LGA, especially within Gosford itself.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3). As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control.

It is understood that the concurrence of the Director-General can be assumed in the current circumstances.

Clause 4.6(5)

As addressed it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the building height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the building height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality.

Strict compliance with the prescriptive building height control is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, and is consistent with the future character envisioned for the subject area. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the proposed variation.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.