

Clause 4.6 Exception to Development Standard

Fairfield LEP 2013

In relation to a Development Application for a
shop top housing development at 1 Villawood
Place, Villawood
(Amended Plans)

April 2015

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

1. INTRODUCTION

This Clause 4.6 submission has been prepared to accompany the Development Application to Fairfield Council for the demolition of the existing building and the construction of an eight (8) level shop top housing development at 1 Villawood Place, Villawood.

The subject site is shown the Villawood Town Centre - Concept Structure Plan prepared in February 2008 as an eight (8) building form. The proposed development is six storeys however the lift over-run exceeds the 26m height limit in the Fairfield LEP.

This request is made on the basis that:

- a) compliance with the development standard is unreasonable and unnecessary in the circumstances of the case,
- b) that there are sufficient environmental planning grounds to justify contravening the development standard,
- c) 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
- d) it is in the public interest to allow a departure from the numerical standard in this case.

The relevant matters are set in this letter.

The objectives of Clause 4.6 in Fairfield Local Environmental Plan (LEP) 2013 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.*

In accordance with sub-clause 4.6(2), development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.

The proposal seeks to vary the development standard contained in Clause 4.3 (Height of Buildings) pursuant to the Fairfield Local Environmental Plan 2013 (FLEP 2013). The Building Height Map prescribes a building height of 26m ("T2") for the subject site as demonstrated in **Figure 1** below. The maximum height proposed is 28.84m which is an 11% variation.

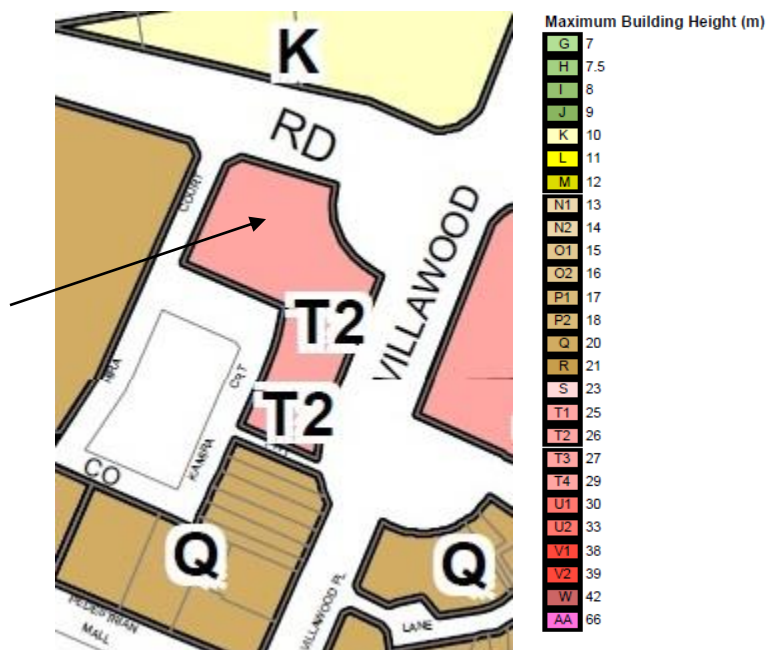


Figure 1: Height of Buildings Map from FLEP 2012 (the subject site is marked)

2. THE PROPOSAL

The proposal is for the redevelopment of the site to provide an eight (8) storey mixed use development with three (3) levels of basement parking. In technical terms the application would be for 'shop top housing' and it comprises one hundred and nineteen (1193) residential units with ground level commercial suites and a roof top common open space area.

The details of the proposal including the mix of units are set out in the Statement of Environmental Effects.

The roof top area also proposes a pergola and some planter boxes and rails. These are all to be considered under Clause 5.6 of the LEP – "Architectural Roof Features". This is dealt with more thoroughly in Section 3.3.2 of the Statement of Environmental Effects.

3. CONSISTENCY WITH THE OBJECTIVES OF THE DEVELOPMENT STANDARD (HEIGHT OF BUILDINGS)

In accordance with Clause 4.6 development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that 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.

In accordance with sub-clause 4.3(1), the objectives of this clause in relation to the height of buildings are as follows:

- a) to establish the maximum height for buildings,*
- b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- c) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

Comments supporting the proposal's consistency with each of the above objectives are addressed below:

Objective (a)

To establish the maximum height for buildings,

This is a planning outcome not an objective.

Objective (b)

To ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,

The area presently has no real established residential character. The purpose of the controls for this precinct are to stimulate new and appropriate business and create a vital new town centre near Villawood Railway Station. The success of this project requires residential density. This is well established throughout Sydney.

The area is unique in that it is quite isolated and incorporates large car parking areas, nearby industrial land and a large vacant site immediately to the west.

This locality is almost an island precinct completely ripe for new development and the establishment of an entirely new character from what exists. The LEP control and the Structure Plan give an indication that eight (8) storey buildings do represent the desired character for the area, however the lift over-run breaches the height in this instance.

It is noted that a former approval was issued on this site for an eight storey building and this proposal is an improvement to this previous design. Compliance with the number of storeys in the Structure Plan establishes character and the lift over-run breach does not detract from the attainment of this objective.

Objective (c)

To minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

The unique location of this site means that there is minimal impact on other properties. The area is generally flat and no significant views will be interrupted. Solar access is well demonstrated to comply and the lift tower only casts a shadow on the roof top. The site has two (2) street frontages with a car park on the western side. Additional height on this site will not cause any new impact on adjoining properties and the lift-tower is generally not visible from around the site.

As detailed in the SEPP 65 Design Verification Statement prepared by Tony Owen Partners submitted in support of this application, the site performs solidly in terms of current urban design standards and amenity requirements.

The proposal responds well to the local urban context and the envisaged future character of the locality. This proposed building is totally within the 26m height limit and the breach is limited to the lift over-run only. Minor breaches by architectural roof features are permissible.

In order to assess the compatibility of the proposal relative to its surroundings, reliance is placed on the Land Environment Court Planning Principle of 'compatibility with context' in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191. To test whether a proposal is compatible with its context, the following two questions can be asked:

1) Are the proposal's physical impacts on surrounding development acceptable? (The physical impacts include constraints on the development potential of surrounding sites).

The site is zoned for B2 for higher density commercial and residential development with a current maximum height of 26m. The proposed development provides ground floor retail/ commercial uses which will enhance the future character of a significant corner with Villawood Place and Villawood Road. The orientation and floor plan layout of the proposed development is responsive to the site's unique shape and multiple frontages.

This development meets the requirements of SEPP 65 and the RFDC in terms of solar access, natural ventilation, building separation, visual privacy and acoustic amenity. The architectural design features support the redevelopment of the surrounding sites and do not constrain their redevelopment potential.

The architectural design features support the redevelopment of the surrounding sites and do not constrain their redevelopment potential. The site to the south remains viable although smaller than this development site.

The physical impacts on surrounding development arising from the height breach are acceptable.

2) Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The buildings around are generally lower scale retail buildings. This building is one of the early applications which seek to deliver building outcomes in line with Council's intention for the area. This proposal is compatible with nearby uses.

In a context of revitalization, harmony must be understood within a context of vision and desired character and must never be anchored back to what is being left behind. Establishing a new vision for a local centre is not achieved by linking back to the character of yester-year unless there is some heritage reason to do so. This is not the case here.

As discussed in the Statement of Environmental Effects, the proposal will be attractive when viewed from all areas of the public domain and will not affect significant views to or from any heritage items.

Eight (8) storeys is a medium scale building which is appropriate for the development of this new centre. This proposal will also enable the activation of ground level uses which will result in significant benefit to the area and adjoining premises.

4. CONSISTENCY WITH THE OBJECTIVES OF THE ZONE

The site is zoned B2 – Local Centre. The B2 zone objectives are as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for shop top housing that supports local business activity.*
- *To ensure that mixed use developments include an active street frontage by locating business, retail and community uses at ground level.*

The proposed development provides the potential for a mix of land uses which are compatible with the surrounding context, including non-residential uses on the ground floor. The proposed development accommodates land uses which are compatible with the objectives of the zone and provide facilities, services and

employment opportunities for future local residents. The opportunity for these uses act as a key driver to encourage urban renewal in a locality which is serviced by public transport. Additional residential density only enhances the viability of these future business uses.

The site is extremely accessible and also close to well established employment lands in the vicinity. The overall design seeks to activate three sides of the building as far as practicable with ground level commercial suites.

The proposal is consistent with the zone objectives.

5. CONSISTENCY WITH THE AIMS OF THE LEP

In accordance with Clause 1.2(2), the aims of the FLEF 2013 are as follows:

- a) to ensure that appropriate housing opportunities are provided for all existing and future residents and that those housing opportunities accommodate different lifestyles, incomes and cultures,*
- b) to ensure that the economic, employment and educational needs of the existing and future community are appropriately planned for,*
- c) to ensure that the recreational and social needs of the existing and future community are appropriately planned for,*
- d) to ensure that development is properly integrated with, or assists in improving, Fairfield's public services, infrastructure and amenities,*
- e) to ensure the proper management of productive agricultural land and prevent the fragmentation of agricultural holdings,*
- f) to conserve the environmental heritage of Fairfield,*
- g) to protect and manage areas of remnant bushland, natural watercourses and threatened species.*

Residential units are the appropriate housing type in this location. Greater densities are now well understood to significantly stimulate new business and community transformation. This is evidenced in inner-city areas which are now thriving communities with young families and improving infrastructure. Local business is significantly stimulated and new business is attracted to the area.

Social needs will also be stimulated via access to transport and local business. This enables 'accidental encounters' to take place and is also how social isolation is alleviated. This level of density will assist in this regard.

This proposal seeks to enhance the efficiency of one of the most important pieces of infrastructure – heavy rail. The development will also allow for the augmentation of other services as required. This brings with it great community benefit and prosperity.

It is considered that the proposed development is compatible with the clear vision

of Council for increased building height in this area. This proposal simply seeks a minor variation for the lift overruns to what Council allows in its LEP.

6. ADDITIONAL CONSIDERATIONS

6.1 The variation allows for a better planning outcome

The proposed development provides a built form which enhances the transitioning character of the locality to provide a mix of land uses which service the needs of the community and provide a distinct building presentation. It is hard to suggest the proposed variation to the building height control allows for a *better* planning outcome, however in this case the taller lift towers are as a result of the need to provide access to the roof-top open space area. This will allow for a better outcome in terms of residential amenity.

Further, it will positively contribute to the Council's policies with regard to providing:

- a strong eight-storey building form to a significant street corner;
- a greater level of new housing within proximity to rail transport;
- an accessible development which contributes to the housing needs of the community;
- a balanced mix of land uses which are integrated with the public domain which provides for multiple street activation;
- a greater density of housing which will assist in alleviated Sydney's affordability issues;
- additional population on the site within the same building footprint;
- a greater level of population to help stimulate business start-ups in the area and also attract new service providers and businesses to the area;
- an attractive, well designed building which has very little impact on any adjoining lands.

6.2 There are sufficient environmental grounds to permit the variation

The development demonstrates sufficient planning and environmental grounds to permit the variation, as demonstrated above. In this case there are no environmental reasons why this proposal should not be approved. The site already has a large building and this proposal simply adds height within a similar footprint.

In addition to this, the following factors should be considered: -

- The State Government is aggressively encouraging density around railway stations in order to provide much needed housing. It is their clear desire to keep increasing density on individual sites until amenity or impact becomes

an impediment.

- The proposed bulk and scale is generally compatible with the future desired character of land near a station.
- The number of levels comply with the Villawood Structure Plan envelope.
- The proposed development is compatible with the light industrial land uses to the east without detracting from the major commercial centres in the area; and
- The departure from the maximum building height will not result in any unacceptable adverse amenity impacts such as overshadowing, privacy impacts or any significant view loss to the public domain or surrounding properties above that which is otherwise permissible under the existing controls.

6.3 The variation is in the public interest

As outlined in the Planning Report attached the Development Application, the proposed development supports the desired future character of this transitioning locality and provides a mix of land uses which support the development of this precinct.

The development activates the public domain and new residents above commercial suites which will provide direct benefit to the local community and local business.

The proposed development is consistent with the objectives of the building height standard and the objectives for the B2 zone in which the development is proposed.

The breach of height by a lift core will have no negative impact on the public interest. Indeed it is in the public interest to have residential units with well located, extensive open space areas. This roof courtyard is of significant size and provides a high level of amenity particularly during the cooler months of the year.

7. CONCLUSION

The development will be compatible with the surrounding land uses and desired future character of the area and will not have unreasonable adverse impacts on surrounding properties.

The proposed building will enhance the public domain and uphold the objectives of building height controls in FLEP 2013.

Sydney Councils are being reconditioned as to how they must think about height near railway stations. This DA clearly demonstrates the merits of this site and this opportunity can easily be taken.

The top of the main roof form is within the 26m height and it is only the lift over-runs

that breach the height limit. This allows for a roof top terrace to be added to the development.

Strict compliance would necessitate the need to remove a level off the building which would only serve to reduce the number of dwellings on a viable site near transport. Furthermore it would mean a building smaller than the Structure Plan envisaged.

For this reason strict compliance with the development standard is unreasonable and unnecessary and the use of Clause 4.6 of FLEP 2013 is available to Council in this instance.

The merits of the overall building and the site are commended to Council for consideration of this request.