

Justification under Clause 4.6 of Strathfield Local Environmental Plan 2012 –  
Exceptions to Development Standards.

Clause 4.3 Height of Buildings 29m

40 – 42 Loftus Crescent, Homebush

Clause 4.6 states:

*4.6 Exceptions to development standards*

*(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 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.*

*(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 E3 Environmental Management or Zone E4 Environmental Living.*

*(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.*

## Discussion

The subject site is located on the intersection of Loftus Crescent and Loftus Lane. The subject site is zoned for high density residential development with a height of 29m. This 29m height limit similarly covers the adjoining lands. The depth of the subject site and those surrounding are such that they encourage a built form which provides for two residential blocks with one fronting each of Loftus Crescent and Loftus Lane with communal open space located between.

The result is that the buildings have their ground planes affected in terms of solar access in the southern portion of the site particularly during midwinter. The subject site's north-south orientation and the 4 – 5 storey block to the north mean that the units on the communal open space on the south side of the completed building will at times be shaded. The result is that the parts of the building to the north and adjoining overshadow the southern ground plane of the subject site in mid-winter and the building itself overshadows its southern ground plane.

In order to overcome this impact, the proposal has provided for extensive areas of communal open space on roof terraces where the solar access and resident amenity is highest. The development of residential flat buildings approved in this locality provides for the communal open space on the roof level to maximise solar access, outlook and amenity for the residents. The proposal similarly provides for roof top communal open space.

The resultant building form complies with the 29m height limit (completely for the northern component but) with the exception of the lift overrun and access elements for the rooftop open space which reach a maximum height of 31.5m.

This height breach is limited to a part of the roof over the lift overrun, pergola and access stair. While this has been designed to be incorporated into an architectural roof feature consistent with the provisions of the planning instrument, this Clause 4.6 is prepared for abundant caution.

The breach to the height control could be overcome by stopping the lift on the level below and providing an unroofed access stair and providing access by stair climber only. This is considered to be an inferior solution. Where Clause 4.6 is available to provide a better planning and accessibility outcome.

I will now address each aspect of Clause 4.6 in turn for completeness:

*(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.*

The proposal seeks flexibility in the application of the standard where the breach to the building height control arises from a building, which is compatible in bulk

and scale with the surrounding buildings and the desired future character of the area particularly given its location on the public transport corridor.

The breach to the height control is set well back from the street boundary and has minimal impact upon the streetscape and presentation of the building other than to provide for a roof feature of visual interest.

A compliant building would result in an inferior, poor planning outcome in terms of providing disabled access to the roof terrace which is located to maximise the solar access, amenity and use of the communal open space. This is considered to achieve flexibility consistent with the objectives of this clause.

The proposal provides for a better outcome in making available communal open space on the upper levels of the building, which benefit from high amenity and high levels of solar access and outlook. This is considered to be a better outcome consistent with the objectives of this clause.

*(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.*

The development standard proposed to be contravened *Clause 4.3 Building Heights* is not 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.*

This submission is that written request for consideration by the consent authority. The compliance with the clause is considered unreasonable and unnecessary in the circumstance of this case as outlined in the discussion above where the proposal results in a building form of bulk and scale consistent with the desired

future character of the area and provides for a building form and roof feature of visual interest and providing the best possible outcome in terms of equitable access for all residents.

The failure to set aside the standard would in effect give rise to the inefficient and uneconomic use of the land. The contravention of the control by the amended proposal does not give rise to any environmental effect of sufficient significance, which would cause concern and it is considered that the environmental benefits of the proposal providing communal open space with solar access and amenity at the upper levels of the building which is easily accessible to all occupants is on balance an appropriate environmental outcome to justify the contravention of 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.*

The objectives of Clause 4.3 Building Heights are;

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

*(a) to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area,*

*(b) to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area,*

*(c) to achieve a diversity of small and large development options.*

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

#### **4.3A Exceptions to height of buildings (Parramatta Road Corridor)**

*Despite clause 4.3, the height of a building on land in "Area 1" identified on the Height of Buildings Map that comprises a key site shown in Column 1 of the Table to this clause and is identified as a key site on the Key Sites Map is not to exceed the maximum height shown opposite in Column 2.*

It is demonstrated that the building is appropriate to the condition of the site and its context and that it minimises any overshadowing, views, loss of privacy and visual impacts for the neighbouring properties consistent with the objectives of this clause. The proposal provides for an appropriate and compatible height, bulk and scale of development assisting the transition from high density to medium density forms as described by the plan as the desired future character. The proposal does not adjoin heritage items and the bulk and scale of the proposal is considered to be consistent with the desired character of the locality and provide an intensity of development that is commensurate with the intended land use. The proposal is of a height which is both compatible with and improves the appearance of the existing area and reflects the consolidation pattern identified in the planning instruments which leads to the optimum sustainable capacity height for the area. The proposal achieves the diversity of small and large development options and is considered that this objective is met by the proposal.

The objectives for development in this zone are;

#### *1 Objectives of zone*

- To provide for the housing needs of the community within a high density residential environment.*
- To provide a variety of housing types within a high density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development improves the provision of housing for the needs of the community by improving the amenity of the offering and increasing the vitality of the high density residential environment. The proposal provides for and improves the variety of housing types, sizes and choice.

The proposal increases the variety of housing types. The proposal increases the concentration of housing to take advantage of its access transport, services and

facilities. The proposal demonstrates a high level of residential amenity is both achieved and maintained.

The proposal is considered to meet the objectives for development in the zone.

The proposal is considered consistent with the objectives of the standard and for development in this zone as required by this subclause.

*(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.*

The contravention raises no matters of State or regional significance. It is considered that where the proposal is consistent and compatible with the neighbouring sites in terms of its bulk, scale and character and there is no public benefit in maintaining the development standard. 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 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 E3 Environmental Management or Zone E4 Environmental Living.*

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).*

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.*

The proposal is not complying development. The development standard does not arise from the regulations in connection with BASIX. The standard does not arise from Clause 5.4 or any of the other exclusions listed.

In this instance it is considered appropriate to make an exception to the Building height development standard under the provisions of Clause 4.6 for the reasons outlined in the preceding discussion.

A handwritten signature in blue ink, appearing to be 'A. Darroch', on a light yellow background.

Andrew Darroch  
23 July 2015