

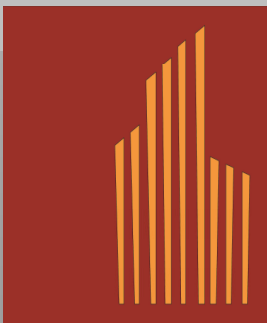
**WRITTEN REQUEST FOR EXCEPTION TO A
DEVELOPMENT STANDARD UNDER CLAUSE 4.6 –
EXCEPTIONS TO DEVELOPMENT STANDARDS HEIGHT
OF BUILDINGS DEVELOPMENT STANDARD PROPOSED
RESIDENTIAL FLAT BUILDING DEVELOPMENT**

AT

31, 33 & 37B GARFIELD STREET, WENTWORTHVILLE

**LOT 29A DP 307785; LOT 1 DP264287; Lot 2 DP 393797, LOT 6-9
DP 264286; LOT 3 DP 212307 AND LOT 1 DP212306.**

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1.0 Introduction

The following is a request to vary the applicable Height control pursuant to clause 4.6 of *Holroyd Local Environmental Plan 2013 (HLEP2013)* in respect of the proposed Residential Flat Building development at 31, 33 & 37B Garfield Road, Wentworthville.

2.0 Holroyd Local Environmental Plan 2013

2.1 Subclause 4.6(1) – Flexibility and Better Outcomes

Subclause 4.6(1) of the HLEP2013 states the objectives of the clause as follows:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.”*

Our response to these provisions is contained within this submission.

2.2 Subclause 4.6(2) – Consent may be granted

Subclause 4.6(2) provides that:

- (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 height of building development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted.

2.3 Subclause 4.6(3) – Written Request

Subclause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- “(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.”*

The proposed development does not comply with the height of buildings development standard pursuant to clause 4.3 of HLEP 2013, however, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request.

2.4 Subclause 4.6(4) – Written Request

Subclause 4.6(4) provides that 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."*

Furthermore, subclause 4.6(5) provides that 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 Applicant contends that the proposed development is a form of development that is most appropriate for this local greenfield site as due to its shape, orientation and past activities, will have minimal, if any, detrimental impacts on the surrounding local amenity or the long term development potential of surrounding lands.

As part of any consideration of this matter the Director-General can confidently accept the following considerations:

- The variation of the height development standard is a relatively minor local matter, being less than 16% variation of the height standard, which is likely to result in no environmental impacts.*
- The site is unique in its nature and shape and the increased height will ensure lesser impacts on neighbouring residential lands.*

The remainder of this written request for exception to the development standard addresses the matters required under subclauses 4.6(4) and 4.6(5) of the LEP.

2.5 The Nature of the Variation

Clause 4.3 of HLEP 2013 sets out the building height limit as follows:

- (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](#).*

The building height map indicates that the height limit for the subject site is 15 and 18 metres

The LEP defines 'height' as follows:

building height (or height of building) means the vertical distance between ground level (existing) and 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 proposed development has a maximum height of 20.8 metres which exceeds the maximum permissible height limit by 2.8 metres.

2.6 The Objectives of the Development Standard

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

- (a) to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,*
- (b) to ensure development is consistent with the landform,*
- (c) to provide appropriate scales and intensities of development through height controls.*

The subject design seeks to provide a building form which is generally compatible with the approved and proposed building forms for development of lands in this locality. The basis for the current design and reasoning for exceeding the height control is addressed in detail as part of the SEPP65 assessment at **Appendix D** of the SEE. The general basis for the height non-compliance is :

- The area of height non-compliance with in the site is located adjacent to the Highway and well removed from any neighbouring residential property.
- the area of height non-compliance relates to a site footprint of less than 4% of the site.
- the design and positioning of the proposed buildings on the site is unlikely to result in any significant impacts on neighbouring lands with regard to overshadowing, privacy and visual impact.

2.7 The Objectives of the Zone

The land use table of the Holroyd LEP 2013 states the objectives of the R4 High Density Residential Zone as follows:

- *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 subject proposal is consistent with the objectives for the zone as it provides for a mix in housing type at a high density yield and is in a location which is walking distance to public transport.

2.8 The Grounds of the Objection

The proposed variation to the development standard has been considered in light of the abovementioned objectives and potential environmental impacts and strict compliance is considered to be unreasonable and unnecessary for the following reasons:

1. The development design has attempted to reduce height and scale and bulk of the building form adjacent neighbouring residentially zoned lands, including identified heritage items, in order to reduce bulk/scale, overlooking and overlooking issues for the neighbouring properties;
2. Consolidation of the additional height towards the Cumberland Highway (western) frontage is considered a more desirable outcome from an amenity viewpoint;
3. The additional height along the Highway frontage ensures an acceptable level of site presence with the building form providing prominent site identification;
4. There is unlikely to be any adverse visual or acoustic privacy impacts;
5. There will be no adverse overshadowing impacts on surrounding premises.
6. The proposal will not result in the loss of any views from adjoining properties due to the sites relative isolation;
7. The proposal is considered to demonstrate good urban design, is not excessive in terms of bulk and scale and provides a positive contribution to the streetscape; and
8. The non-compliance is relatively minor and does not involve the construction of a whole additional floor. The proposed non-compliance is 2.8m in height and applicable to less than

4% of the site area. The desired future character for the areas is for 5 storey residential flat buildings and the proposal will be predominantly compatible with this character. The breach in the height limit will not be discernible as there is no current or future adjoining residential development to judge it against. The development will be read as a 5 storey residential flat building adjoining the neighbouring properties.

2.9 Director-General's Considerations

As indicated above, subclause 4.6(5) of the HLEP2013 also requires the Director-General, in deciding whether to grant concurrence, to consider the following:

“(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,”

The breach of height limit is not a matter of state or regional significance.

“(b) the public benefit of maintaining the development standard,”

There is a public benefit in allowing the development to proceed. If the development was required to comply with the height limit an additional storey would have to be removed from the area of contention and this would be replaced elsewhere in the development which may create greater bulk adjoining other residential land. The subject building design promotes a neighbour friendly building form which would not create the same bulk/scale issues that may result from a building form which complied with the development standard.

“(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.”

Deleting a floor would not assist in providing housing choice or housing affordability but would most likely result in a building form which has greater impacts on neighbouring amenity.

3.0 Conclusion and Recommendations

The proposed residential flat building development has been assessed against the relevant statutory provisions of clause 4.6 of Holroyd LEP 2013 and this submission provides justification that compliance with the height of building development standard is unreasonable or unnecessary in the circumstances of the case.

The non-compliance is due to ensuring that the bulk and scale of the building form is minimised adjoining neighbouring residential lands and that the site has a prominent and distinctive building presence along the Cumberland Highway frontage. A 6-7 storey residential flat building is the nature of development that would be anticipated in a location with a 18 metre height limit on an undulating site. To require strict compliance with the 18 metre height limit would require the removal of a

storey over the development and this would be added to the remaining portion of the development to achieve a feasible unit return on the land.

Given the sites unique positioning and past land use history and the topography of the land, the additional 2.8 metres of height fronting the Cumberland Highway is unlikely to result in any adverse overshadowing or privacy impacts.

Accordingly, the justification within this written request is considered to be well founded.

Universal Property Group
October 2014