

5.0 Request to Vary a Development Standard

Clause 4.6 of the Lane Cove LEP 2009 permits Council to grant consent for development even though the development contravenes a development standard imposed by the plan. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

5.1 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the maximum building height development standard set out in clause 4.3 of the Lane Cove LEP 2009. Clause 4.3 provides a maximum building height control of 25 metres across the Site.

As described in the SEE and illustrated on the Architectural Drawings prepared by Stanisic Architects provided in **Appendix A** and in accordance with the definition of 'building height'¹ in the Lane Cove LEP 2009, the height of the proposed development will exceed the maximum building height of 25m by up to 1m for a minor portion of the roof form and lift overruns, to a maximum height of 26 metres at the tallest point (being the north-west corner). The majority of the proposed building complies with the maximum building height development standard.

The 25m height plane that applies to the site, along with the elements of the proposed development that exceed this plane, is presented in **Figure 19**, demonstrating that the majority of the development is compliant.

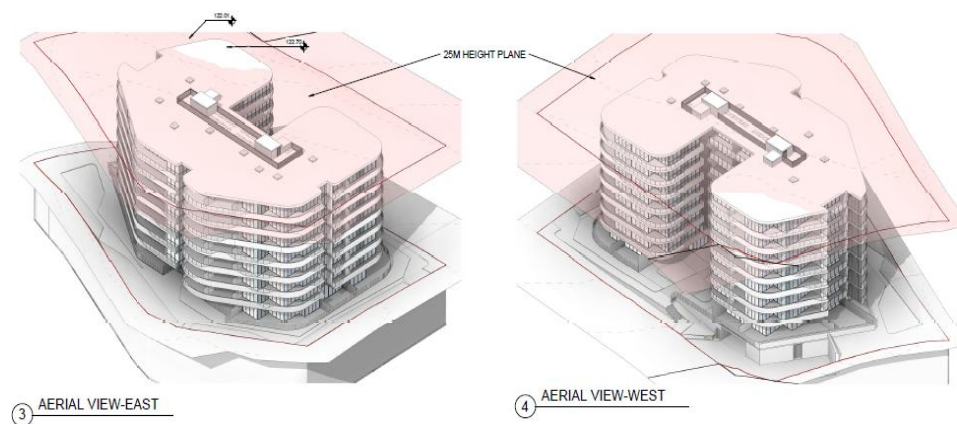


Figure 19 – Elements of the proposed development shown protruding through the 25m height plane
Source: Stanisic Architects

¹ Height is defined in the Lane Cove LEP 2009 as: **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.



Figure 20 – Elevation Northwest (Taylors Lane) (red dashed line indicating maximum height limit)
Source: Stanisic Architects



Figure 21 – Western Elevation
Source: Stanisic Architects

5.2 Justification for Contravention of the Development Standard

5.2.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 (see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 at [61] and [62]).

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or 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 would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the first method, that “the objectives of the standard are achieved notwithstanding non-compliance with the standard”.

The objectives of the development standard are:

- to minimise any overshadowing, loss of privacy and visual impacts of development on neighbouring properties, particularly where zones meet, and
- to maximise sunlight for the public domain, and
- to relate development to topography.

Consistency with the Objectives of the Development Standard

Table 6 demonstrates that the proposed variation to the maximum building height control will still result in a development which achieves the objectives of the development standard.

Table 6 – Assessment against the objectives of the maximum building height development standard

| Objective | Proposal |
|---|---|
| a) <i>to minimise any overshadowing, loss of privacy and visual impacts of development on neighbouring properties, particularly where zones meet, and</i> | <p>The nature of the surrounding development has informed the proposed building design. The site forms an interface between land zoned for R4 High Density Residential and Land zoned R3 Medium Density Residential. The western boundary is the single instance of a direct frontage to another development. Notwithstanding this, the proposed development incorporates design elements to mitigate any impact on neighbouring amenity.</p> <p>Overshadowing In terms of overshadowing, shadow studies conducted by Stanasic Architects confirm the shadow cast by the proposed building largely falls on Longueville Road and the Gore Hill Freeway (refer to Figure 16 to Figure 18). A small portion of the shadow cast at 9am during the winter solstice extends across part of the adjoining building to the west. As demonstrated in the shadow diagram, the shadow is free from the adjoining site by 12pm.</p> <p>Privacy and Visual Impact In terms of privacy and visual impact, the proposal is setback 9m from the western boundary and a minimum of 7.5m from street boundaries, which is compliant under the Lane Cove DCP 2009 and ADG separation distances, ensuring adequate separation to ameliorate any potential privacy or visual impacts. In addition, peripheral landscaping softens the interface with surrounding development. In this way, the proposal is sympathetic to surrounding development. The additional height constituting the minor height non-compliance does not result in any additional visual impact, as the development is still perceived as 8 storeys overall a consistent built form, and the lift</p> |

| Objective | Proposal |
|---|---|
| | overruns cannot be viewed from ground level. |
| b) <i>to maximise sunlight for the public domain, and</i> | The proposal is not inconsistent with this objective, as the proposal does not overshadow any significant areas of public domain. Overshadowing as a result of the proposal will largely occur on Longueville Road, Pacific Highway and Gore Hill Freeway. |
| c) <i>to relate development to topography.</i> | The proposed building has been designed to address the Site's topographical constraint in that the gradient slopes steeply to the north/northwest along the section of the minor height non-compliance. As such, it is considered this is the most appropriate location for the basement entrance. In order to facilitate a basement entrance with an appropriate clearance height, the proposal has been built up, resulting in a minor height variation in the north western corner of the building. In this way, the development appropriately relates to the existing topography. |

Site Topographical Constraints

The principal reason for the variation to the maximum building height breach is to facilitate lift overruns and respond to the Site's steep topographical constraint in the north-western corner of the development. This portion of the Site has been built up to facilitate the most appropriate location for vehicle access to the basement and therefore results in a minor exceedance of the height limit. This topographical constraint is specific to the site, and in order to facilitate a basement entrance with an appropriate clearance height, the proposal has been built up, resulting in the minor height variation in the north western corner of the building.

5.2.2 Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

In our opinion, there are sufficient environmental planning grounds to justify contravening the maximum height development standard in Clause 4.3 of the Lane Cove LEP 2009. Those grounds and the basis for them are set out below.

Site Topographical Constraints

This is discussed in the section above.

Basement Vehicular Entry Location

The proposed basement entry location is to be located in the proposed location along Taylors Lane as no access is attainable from Pacific Highway or Longueville Road, and is the most logical location from a traffic management perspective and from a streetscape presentation perspective (Burley Street is not recommended given it is the primary frontage of the development and would require additional, unnecessary excavation, which would interrupt the streetscape presentation of ground floor units in this location).

Lift Overrun Components Not Visible

As outlined earlier in this report, the proposed lift overruns, which result in a minor height breach, are not visible from adjacent development or the public domain at ground level. The breach does not create any additional overshadowing or view impacts and therefore, the breach associated with these components does not result in any adverse environmental impacts.

5.2.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

Clause 4.6(4)(a)(ii) of the Lane Cove LEP 2009 provides that:

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

(a) *the consent authority is satisfied that:*

...

(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...*

(our emphasis **bold**)

The consent authority must not grant development consent for development that contravenes a development standard unless it is satisfied that it is 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.

Consistency with the R4 High Density Residential zone objectives

To provide for the housing needs of the community within a high density residential environment.

The proposed development seeks to respond to residential market conditions by providing new residential apartments in a location where there is high demand. The existing vacant land represents a significant underutilisation of the land given the development controls that apply to the Site and its locational attributes within close proximity to transport corridors and local services. The proposal comprises 95 apartments and will accord with the density envisioned for the R4 zone.

To provide a variety of housing types within a high density residential environment.

The proposal comprises a residential development on the Site that will increase housing choice with a mix of one, two and three bedroom apartments. The proposal comprises:

- 37 one bedroom apartments;
- 44 two bedroom apartments; and
- 14 three bedroom apartments.

The proposed development is consistent with the envisaged future surrounding built form and will directly increase housing diversity within the area compared to the current site situation, in a high density residential setting.

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

The proposal is not inconsistent with this objective. The proposal's delivery of new residential apartments will ensure a greater opportunity for other compatible land uses to be provided.

To provide for a high concentration of housing with good access to transport, services and facilities.

The Site's locational attributes include its proximity to existing transport infrastructure and services. The proposed development will be serviced by the Lane Cove Local Centre to the west (500m) and Artarmon Railway Station to the east (1km). In addition, the Site has direct access the bus network operating along Pacific Highway and Longueville Road.

To ensure that the existing amenity of residences in the neighbourhood is respected.

As demonstrated throughout this report, the proposed development has been designed to respect the existing amenity of residences in the neighbourhood by ensuring the development:

- Does not result in significant adverse overshadowing impacts;
- Does not result in significant adverse traffic impacts;
- Does not result in significant adverse acoustic impacts;
- Does not result in significant adverse privacy impacts; and
- Does not result in significant adverse visual impacts.

To avoid the isolation of sites resulting from site amalgamation.

The proposal will not isolate any allotments of land.

To ensure that landscaping is maintained and enhanced as a major element in the residential environment.

The proposed development provides a built form and scale that is sympathetic to the existing landscape character of the area. Together, the building and landscape scheme operate as an integrated and sustainable system, which will form a major element in the locality's residential environment. Generous deep soil and landscaping has been provided, well beyond the level required under planning controls. 39% of the site is communal open space with 25% retained as deep soil, and the retention of a number of existing mature trees. The use of Australian natives further enhances the natural aesthetic of the landscape scheme.

The proposed development has been assessed against the objectives for the R4 – High Density Residential zone below. Despite the proposed variation to the maximum building height development standard, the proposal is considered to be in the public interest as it satisfies the objectives of the zone and the objectives of the development standard.

5.2.4 Overall public interest

The proposal is considered to be in the public interest overall for the following reasons:

- Residential flat buildings are a specifically permissible use which are consistent with the character of the area;
- The proposal has been designed to minimise all environmental impacts; and
- The proposed development will improve the amenity and outlook of this site given the design quality of the development and the substantial landscaping proposal.

5.3 Other Matters for Consideration

Under clause 4.6(5) of the Lane Cove LEP 2009, in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (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 Secretary before granting concurrence.*

These matters are addressed in detail below.

5.3.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the maximum building height development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, A Plan for Growing Sydney in that it:

- provides accommodation to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;
- does not affect any heritage assets.

5.3.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

As demonstrated above, there is no public benefit in maintaining the development standard in terms of State and regional planning objectives. As noted in the preceding sections, the additional height ensures the consistent presentation of the built form, is the result of steeply sloping topography in one corner of the allotment, and the proposed variation will not give rise to any adverse environmental impacts.

The site is unique in that it is constrained by four road frontages, and is an irregularly shaped parcel of land, with steep sloping topography in one section. It is not considered that there would be any public benefit for the height of the existing building to be reduced, particularly where key planning issues deriving from height, such as privacy and overshadowing, have been resolved through architectural design.

5.3.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

The proposed variation will facilitate the orderly and economic redevelopment of the Site for the purposes of a dwelling house, contribute to accommodation choice in the Lane Cove LGA and the achievement of the strategic objectives of A Plan for Growing Sydney.

5.4 Summary

There are no other matters for consideration. The relevant consent authority and Secretary can therefore be satisfied that:

- compliance with the development standard is unreasonable and unnecessary in the circumstances of the case; and
- there are sufficient environmental planning grounds to justify the proposed variation to the development standard.

It is therefore requested that Council grant development consent for the proposed development notwithstanding the contravention of the building height development standard imposed by the Lane Cove LEP 2009.