



Mixed Use / Residential  
395-397 Princes Highway Rockdale  
Updated Clause 4.6 Request

Prepared on behalf of Rockdale One Pty Ltd

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*The Statement of Environmental Effects dated June 2017 for the proposed Mixed Use Development at 395-397 Princes Highway Rockdale is updated by the replacement of the following section outlining the request for a variation to a development standard under clause 4.6 of Rockdale LEP 2011.*

## **4.4 CLAUSE 4.6 EXCEPTION REQUEST**

This request has been prepared under Clause 4.6 of Rockdale Local Environmental Plan 2011 (RLEP) to justify the contravention of the height of building 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.”*

As discussed below, the height of the proposed building exceeds the building height control under RLEP 2011 in the order of 1%.

This request addresses the matters provided by case law that provides a number of questions when considering an exception to a development standards as follows:

- Is the planning control in question a development standard?*
- What is the underlying object or purpose of the standard?*
- Is compliance with the development standard consistent with the aims of Clause 4.6?*
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the objection well founded?*

### **4.4.1 What is the nature of the contravention of a standard**

The Height of Building Map indicates the land being within Area A for which clause 4.3 (2A) applies as follows.

- (2A) Despite subclause (2), the height of a building may exceed the maximum height shown for the land on the Height of Buildings Map by an additional:*
  - (a) 12 metres—if the building is in Area A identified on the Height of Buildings Map and on a lot having an area of at least 1,500 square metres.*

These provisions are subject to clause 6.14 Design excellence provisions under subclause (2) (b) as follows.

- (2) This clause applies to the following development:*
  - (b) development that is the subject of a development application that relies on clause 4.3 (2A) (a), (f), (g), (h) or (i).*

Subclause (3) provides that development consent must not be granted to development unless:

- (a) *an architectural design competition that is consistent with the Design Excellence Guidelines has been held in relation to the development, and*
- (b) *the consent authority considers that the development exhibits design excellence.*

Rockdale Council confirmed under subclause (4) that an architectural design competition would not be unreasonable or unnecessary in the circumstances and as a consequence, such as competition was undertaken as described in this Statement.

Accordingly, Clause 4.3 (2A) applies since the land has an area of 1,696 m<sup>2</sup> and the design excellence provisions of clause 6.14 have been satisfied. Therefore, the maximum building height control applying to the site under RLEP 2011 is 34 m.

The non-compliance relates largely to the lift overrun and small sections of the building parapet above what is an undulating site where a minimum freeboard level is required for the ground floor to avoid the potential for flooding.

The overall building height of 34.14m (RL 34.43m to the top of the lift overrun and screen) exceeds the 34m maximum building height under RLEP 2011 by 0.43 m, representing a variation of 1 % above the development standard.

The development proposal has undergone a review under the design excellence process and has responded to site conditions while the exceedance is minor in nature with limited adverse impacts.

However, an exception to the Height of Building development standard under clause 4.6 is therefore required to be requested to implement the design excellence scheme.

#### **4.4.2 Restrictions on Consent Authority**

Clause 4.6 (8) (ca) restricts a consent authority in granting development consent in which the subject height of building (HOB) development standard is contravened “*unless it is for a demonstrable public benefit, such as the provision of pedestrian links*”.

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following: ....*

- (ca) *clause 4.3 (2A), 4.4 (2A), (2B), (2C) or (2D), unless it is for a demonstrable public benefit, such as the provision of pedestrian links,*

The setbacks proposed in the development to the highway and laneway are being made available for unfettered public use and access and, in the strict legal sense required of this provision, is a demonstrable public benefit little different to the “provision of a public link”.

While it is accepted that most developments have street setbacks, they remain for private use and the enjoyment of the owner/s. In the case of the subject development, the setback is publicly accessible and represents an effective extension of the public domain within the public road.

In addition, a demonstrable public benefit is also being provided by the widening of the laneway to 6m and dedication free of cost to Council that benefits not only future residents and visitors to the site but the use of adjoining landowners and the general public.

The restrictions to site development arising from making available areas for public use limits the ability to respond to other site requirements such as the flooding level without the need vary the building height.

Accordingly, it is considered that the consent authority can be satisfied that it may lawfully consider the merits of the request for the variation to the HOB standard to accommodate the building as proposed as it results in a “demonstrable public benefit” for the purposes of clause 4.6 (8) (ca) including:

- the effective expansion of the public domain through the unfettered public use, access and enjoyment of the required building setback to the Highway for a range of activities, as well as the setback provided to the laneway for the parking of bicycles by the public; and
- the widening of the adjoining laneway, a public road, and dedication free of cost to Bayside Council which will benefit future residents, visitors, adjoining landowners, and the general public.

The project architect, Fuse, also suggests that *“the high quality architectural outcome afforded by the design excellence competition should not be discounted as a valuable and a demonstrable public benefit.”*

#### **4.4.3 Is the planning control a development standard?**

The planning control in Clause 4.3 relating to maximum building height is a development standard under the definition within the Environmental Planning and Assessment Act 1979 defines development standards, specifically as including height, as follows (*EP&A Act, Part 1 Section 4. Definitions*):

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*

#### **4.4.4 What is the purpose/object of the standard?**

The objectives of the HOB development standard are as follows:

- (a) *to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*

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

In addition, the HOB development standard has been adopted to implement the planning objectives of the applicable the B4 Mixed Use zone objectives:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

**4.4.5 Is compliance with the development standard consistent with the requirements of Clause 4.6?**

The aims of Clause 4.6 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.*

As demonstrated in this Statement, the proposed development will facilitate development resulting from a design excellence competition that is consistent with the zone objectives in allowing suitable mixed use development “*in accessible locations so as to maximise public transport patronage and encourage walking and cycling*”.

The zone objectives anticipate development of an intensity as proposed to best utilise its close proximity to public transport infrastructure and general services and facilities, in a form generally reflected by the proposed urban form derived from design excellence process. Accordingly, the resultant minor variation is for the purpose of implementing the zone objectives and is not incompatible with them.

The proposed variance to the height control is also consistent with the objectives of the development standard as the proposed development represents a high quality urban form that has been subjected to a design excellence process and will be consistent with the desired visual character of the future planning outcome for the area.

The proposed building height will not undermine the achievement and maintenance of a satisfactory sky exposure and daylight to surrounding buildings and the public domain while no identified key areas are within the area that could be affected.

Accordingly, when the development is tested against the underlying objectives of the zone and development standard, compliance would be inconsistent with the aims of Clause 4.6 because the proposed height is appropriate, acceptable and consistent with the characteristics of the site and the expectation of a development outcomes for the zone and site as confirmed by the design excellence process.

The proposed minor exceedance in height will not result in any adverse impacts. It will provide for a high quality development with a density anticipated in the planning controls

that is appropriate in a highly accessible location and has a negligible effect on the achievement of appropriate transition in built form and land use intensity.

The proposed development is therefore a case where flexibility in the application of the development standard is justified in order to address a key design consideration while meeting the planning objectives of the zone and the development standard.

**4.4.6 *Is Compliance with the Development Standard unreasonable or unnecessary in the circumstances of the case?***

Strict compliance with Clause 4.3 of the RLEP 2011 is considered unreasonable and unnecessary in the circumstances of the case especially as the development proposal has undergone a review under the design excellence process and has responded to site conditions.

The non-compliance relates largely to small sections of the building parapet as well as the lift overrun, above what is an undulating site where a minimum freeboard level is required for the ground floor to avoid the potential for flooding. It relates to a small element of the overall building with the remainder of the building being below the 34m building height limit.

Accordingly, the exceedance of the height standard of 1% at its highest point is minor in nature, required to address a site condition and will have no identifiable adverse impacts.

**4.4.7 *Is the request well founded?***

The request is considered to be well founded for the following reasons.

- The development is appropriate in this location given its proximity to town centre services and mass public transport, is consistent with the objectives of the zone, and provides for an appropriate scaled development form as confirmed by the design excellence process.
- Strict compliance with the height control in the circumstance of the flood affected sloping site would result in a diminished urban form outcome.
- The proposed development is consistent with the underlying objectives of the maximum height of building standard whereby the scale and form of the building is consistent with the intended redevelopment potential of the land and represents a high quality urban form.
- The scale of the proposal, notwithstanding a non-compliance of 1% at its highest point, is consistent with the desired future character of the locality.
- The proposed variation does not add significantly to the overall building height and given that the lift core is centrally located in the building and at ground level and incorporated into the roof feature, this element will not be readily visible.
- Consequently, the non-compliance does not result in any significant adverse environmental impacts on the amenity of the surrounding area in general.



#### **4.4.8 Conclusion**

Having regard to the above, it is concluded that the proposed non-compliance with the height of building standard does not undermine or frustrate its underlying objectives. The non-compliance does not give rise to any significant adverse environmental impacts but provides for an enhanced development outcome confirmed by the Design Competition Jury. Compliance with the standard would result in a diminished urban form.

It is therefore considered that strict compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravening the development standard and the requested exception to the standard should be supported by the consent authority.

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