

Clause 4.6 Variation Height of Building

DA2016/0218
93 Forest Road, Hurstville
Stage 3 East Quarter

Mecone
On behalf of
Fridcorp
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1.1 Introduction

This Clause 4.6 variation accompanies D/2016/0218 for a mixed use development at 93 Forest Road, Hurstville (Stage 3 East Quarter) (the site). It seeks a variation to the height of building standard in the Hurstville Local Environmental Plan (HLEP) 2012 as amended by PP_2015_HURST_001_00 (site-specific planning proposal), which has received Gateway determination and is within the Department of Planning and Environment for finalisation. It is anticipated that this planning proposal will be finalised prior to determination of the development application.

1.2 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the HLEP 2012 enables an exception to the height standard upon consideration of a written request from the applicant justifying the contravention in the terms stated below. Clause 4.6 of the HLEP 2012 reads as follows:

Clause 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.

1.3 The Development Standard to be Varied

The development standard to be varied is the Clause 4.3 Height of Buildings in the HLEP 2012 as amended by PP_2015_HURST_001_00.

As identified on the amended HLEP 2012 Height of Buildings Map, the site is subject to maximum building heights of 30m for the north portion of the site (Buildings X1 and X2) and 65m for the southern portion of the site (Buildings F1 and F2).

1.4 Extent of Variation to the Development Standard

The proposed variations are as follows:

- Up to 600mm at the southeast corner of Building F2 (<1% variation) comprising roof slab/structure and 100mm of habitable space;
- 900mm at the lift overrun of Building X2 (3% variation);
- Parapet variations including:
 - Up to 1400mm for Building X1 parapets (4.7% variation);
 - Up to 900mm for Building X2 parapets (3% variation);
 - Up to 1900mm for Building F2 (3% variation).

The 3D diagrams below show the extent of these non-compliances.

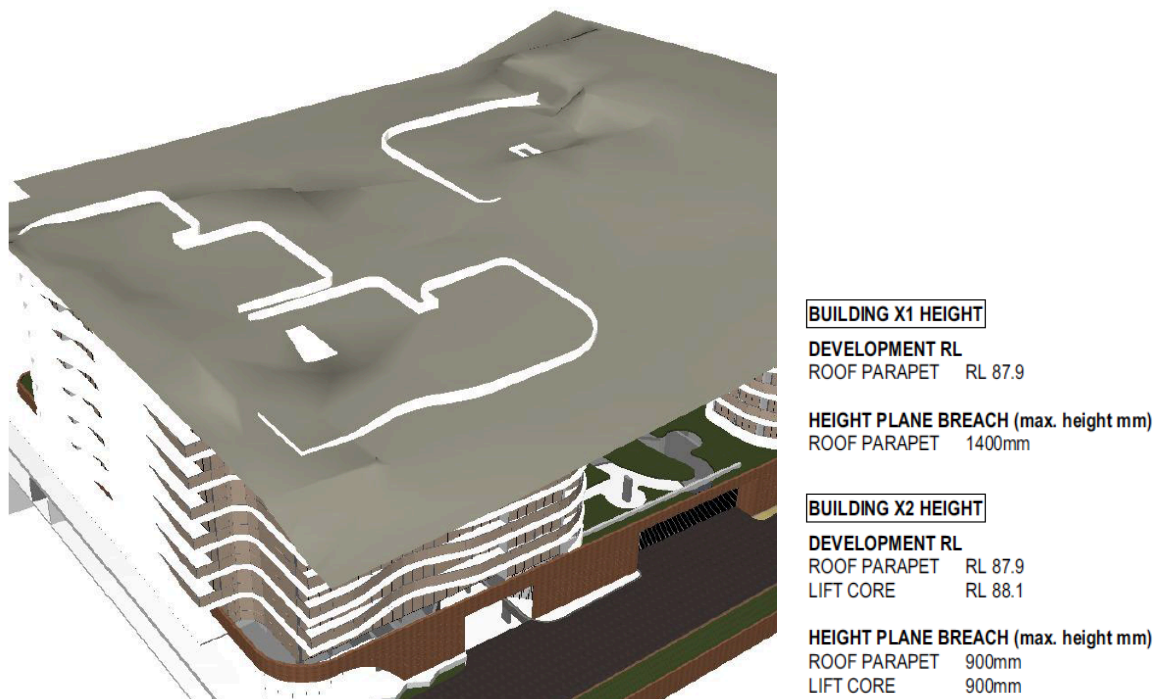


Figure 2: Building X1 and X2 Variations
Source: DKO

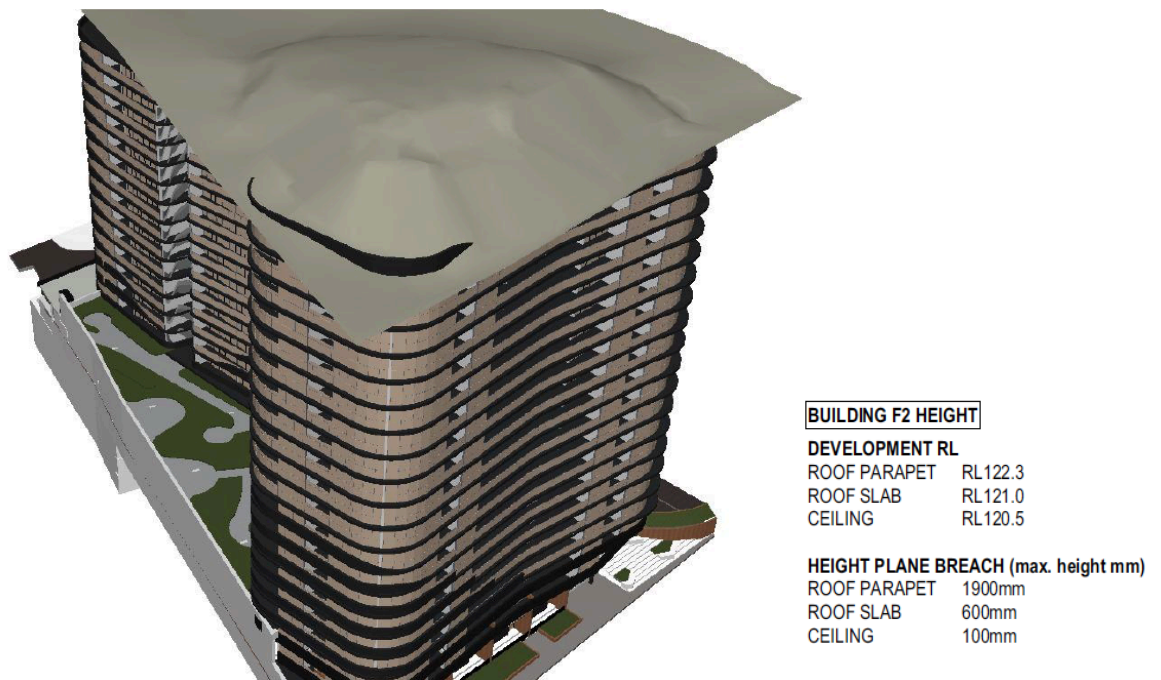


Figure 3: Building F2 variations
Source: DKO

Figure 4 below shows the areas of the proposed (non-parapet) variations. These areas of non-compliance amount to only 48sqm out of the total building footprint of 5100sqm (i.e. <1% of the footprint).

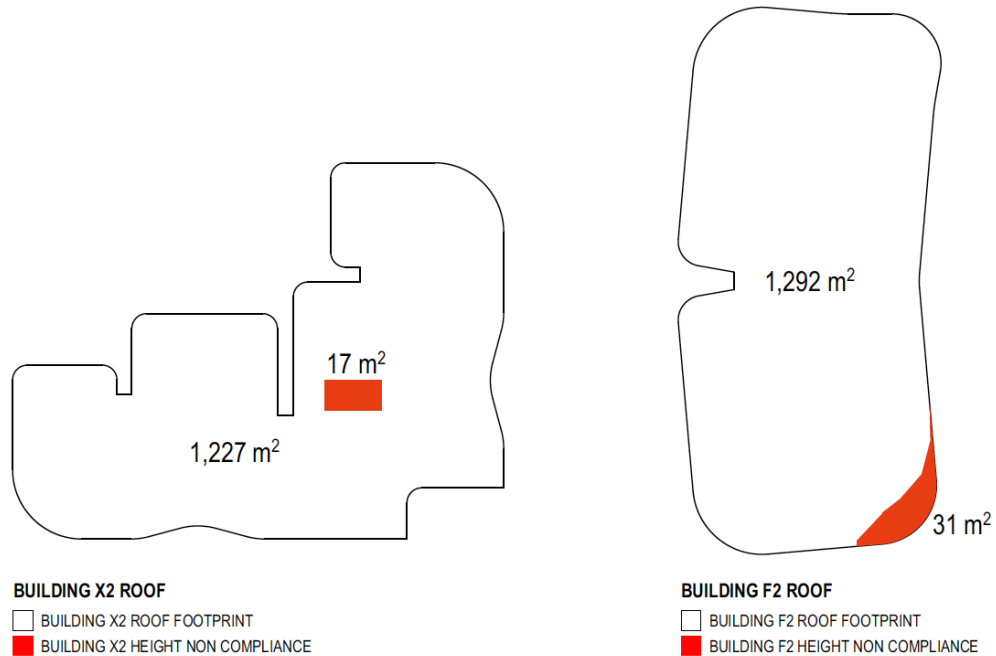


Figure 4: Areas of non-compliance
Source: DKO

1.5 Objective of the Standard

The relevant objectives of the Clause 4.3 Height of buildings are as follows:

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

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes,

(c) to minimise the adverse impact of development on heritage items,

(d) to nominate heights that will provide a transition in built form and land use intensity,

(e) to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre,

(f) to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation,

(g) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.

1.6 Objectives of the Zone

The objectives of the B4 Mixed Use zone are as follows:

- *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.*
- *To allow for residential development in the Hurstville City Centre while maintaining active retail, business or other non-residential uses at street level.*

1.7 Assessment

Clause 4.6(3)(a) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case

Compliance with the height standard is unreasonable and unnecessary given the following circumstances of this case:

- the proposed non-parapet variations exceed the 65m control by <1% and the 30m control by 3%, which are considered very minor variations;
- the proposed parapet variations exceed the 65m control by a maximum of 4.7% and the 30m control by a maximum of 3%, which are also considered minor variations;
- the non-parapet variations are limited to an extremely small area (i.e. <1% of the total building footprint);
- the parapet variations are carefully designed architectural features and contribute to the aesthetics and overall design quality of the building;
- the lift overrun variation would be largely unseen from the public domain due to its location towards the middle of the building and the presence of the surrounding parapets;

- the existing ground level at the southeast corner of the site is highly irregular, constraining the development's ability to achieve a regular built form while strictly complying with the 65m control in this portion of the site;
- the proposed development, despite the non-compliance, is consistent with the objectives of the height standard and B4 Mixed Use zone (see further discussion below);
- the proposed development has overall environmental planning merit as demonstrated in the submitted SEE;
- the variation does not cause any other non-compliances in relation to density, built form or environmental impacts;
- the variation of the height standard does not raise any matter of State or regional planning significance; and
- there is no notable public benefit in maintaining the standard, while there is significant public benefit in exceeding the standard as explained below.

Clause 4.6(3)(b) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The Land and Environment Court in its recent decisions in *Four2Five vs Ashfield Council* has ruled that a clause 4.6 variation must do **more than** demonstrate that the development meets the objectives of the development standard and the zone. The clause 4.6 objection must **also** demonstrate some other environmental planning grounds that justify contravening the development standard, preferably some that are specific to the site, although that is not essential according to the Court of Appeal decision in *Four2Five vs Ashfield Council*.

In accordance with the above, sufficient environmental planning grounds for the variations to the height standard are provided below:

- the lift overrun variation would be largely unseen from the public domain due to its location towards the middle of the building and the presence of the surrounding parapets;
- the parapet variations are carefully designed architectural features and contribute to the aesthetics and overall design quality of the development, as opposed to a complying built form, which would result in a poorer visual outcome as the building would abruptly finish without a 'top' component;
- the variations would have negligible adverse impacts in terms of visual impacts, view impacts and overshadowing; and
- the existing ground level at the southeast corner of the site is highly irregular, constraining the development's ability to achieve a regular building form while strictly complying with the 65m height control in this portion of the site.

Given the above, there are sufficient environmental planning grounds to justify the variations to the development standard. The variations will contribute to the design quality of the building and will not negligible adverse impacts.

Clause 4.6(4)(a)(ii) - Is the proposed development 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 the court case *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Commissioner Pearson stipulates that the consent authority is to be satisfied the proposed development will be in the public interest because it is consistent with:

- a) *the objectives of the particular standard, and*
- b) *the objectives for development within the zone in which the development is proposed to be carried out.*

The objectives of the development standard and the zone are addressed below under the relevant headings.

The objectives of the particular standard

The particular development standard is Clause 4.3 Height of Buildings of the HELP 2012. The relevant objectives are addressed below.

Objective:

- a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality*

Response:

The proposed variations are minor (up to 3% for the non-parapet variations and up to 4.7% for the parapet variations) and cover an extremely small area of the building footprint. As such, there will be no noticeable impacts on the development's overall bulk and scale, and the development will be compatible with the desired future character of the locality as expressed in the site-specific planning proposal (currently with the Department of Planning and Environment for implementation). An abrupt finish to the building (without the parapet) would result in a poor urban design outcome, and the proposed parapet compliments the overall design of the development.

Objective:

- b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development and to public areas and public domain, including parks, streets and lanes*

Response:

The proposed variations are minor (up to 3% for the non-parapet variations and up to 4.7% for the parapet variations) and cover an extremely small area of the building footprint. As such, there will be no disruption of views, loss of privacy or loss of solar access.

Objective:

- c) *to minimise the adverse impact of development on heritage items*

Response:

The development does not adversely impact any heritage item.

Objective:

- d) *to nominate heights that will provide a transition in built form and land use intensity*

Response:

As discussed, the proposed variations are minor and cover an extremely small area of the building footprint. As such, there will be no noticeable impacts on the desired transition in built form.

Objective:

- e) *to establish maximum building heights that achieve appropriate urban form consistent with the major centre status of the Hurstville City Centre*

Response:

The development provides for a high quality and carefully considered built form that will contribute significantly to the major centre status of the Hurstville City Centre. The proposed variations to the limit do not impede the attainment of this objective.

Objective:

- f) *to facilitate an appropriate transition between the existing character of areas or localities that are not undergoing, and are not likely to undergo, a substantial transformation*

Response:

As discussed, the extremely minor nature of the variations will have no noticeable impact on any desired transition in built form.

Objective:

- g) *to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain.*

Response:

The proposed variations to the height limit will have no adverse environmental impacts in terms of visual impacts, privacy or overshadowing.

The objectives for development within the zone in which the development is proposed to be carried out

The site falls within the B4 Mixed Use zone. The relevant objectives are addressed below.

Objective:

- *To provide a mixture of compatible uses.*

Response:

The development will provide for a compatible mix of residential and commercial uses, and the proposed variations will not impede the attainment of this objective.

Objective:

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximize public transport patronage and encourage walking and cycling.*

Response:

The development will provide for retail and residential uses in an accessible location, and the proposed variations will not impede the attainment of this objective.

Objective:

- *To allow for residential development in the Hurstville City Centre while maintain active retail, business or other non-residential uses at street level.*

Response:

The development will provide for residential development plus active uses at street level, and the proposed variation will not impede the attainment of this objective.

As discussed above, the proposal is considered in the public interest in that it is consistent with the objectives of the development standard and the B4 Mixed Use zone. Furthermore, there is no significant benefit in maintaining the height standard.

1.8 Any matters of significance for State or regional environmental planning

The variations from the height standard by the lift overrun, roof slab and parapets do not raise any matter of State or regional planning significance.

1.9 Conclusion to variation to height standard

This written request for an exception to the height standard under clause 4.6 of the HLEP 2012 for the lift overrun, roof slab and parapets. It justifies the variation from the height standard in the terms required under clause 4.6 of the LEP and, in particular, demonstrates that the proposal provides a significantly better planning outcome with no significant adverse environmental impacts. Therefore, the variation is considered justified in that:

- compliance with the height standard is unreasonable and unnecessary;
- there are sufficient environmental planning grounds for the variation;
- the variation does not cause any other non-compliances in relation to density, built form or environmental impacts;
- it is in the public interest in being consistent with the objectives of the height standard and zone; and
- there are no matters of State or regional planning significance and no notable public benefits in maintaining the height standard in this case.