

2 November 2017

16362

Christopher Mackey
Bayside Council
141 Coward Street
MASCOT NSW 2020

Dear Chris,

Clause 4.6 – Request to Vary a Development Standard – Height of Buildings

This supplementary Clause 4.6 – Request to Vary a Development Standard is submitted to Bayside Council in support of DA16/165 for a mixed-use development at 19-25 Robey Street, 5, 5A and 5B Elizabeth Avenue, Mascot (as amended).

R&J Trading Epping Pty Ltd seek consent for the following development:

- Demolition of existing four (4) dwelling houses and two (2) warehouses.
- Tree removal.
- Amalgamation of seven (7) sites.
- Construction and use of a residential apartment building, comprising 54 dwellings.
- Three (3) ground floor retail tenancies totalling 170m² fronting Robey Street.
- Excavation and provision of two (2) level basement car park with access from Robey Street, providing 111 spaces.
- Landscaping.
- Extension and augmentation of physical infrastructure and utilities as required.

This request has been prepared by Ethos Urban on behalf of R&J Trading Epping Pty Ltd.

1.0 Request to Vary a Development Standard – Height of Buildings

Clause 4.6 of *Botany Bay Local Environment Plan 2013* (BLEP 2013) allows Council to grant consent for development even though the development contravenes a development standard imposed by the BLEP 2013. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

1.1 Development Standard to be Varied

This Clause 4.6 variation request seeks to justify contravention of the height of buildings development standard set out in Clause 4.3 of the BLEP 2013. Clause 4.3 provides that the maximum height of buildings in the B2 Local Centre zone is 14 metres.

The proposed development exceeds this maximum height by a maximum of 2.1 metres at the highest point as shown in **Figure 1** and **Figure 2**. The proposal seeks a 15% (16.1m) variation to building height as shown in red below.

In consultation with Council and following review of recent approvals within the immediate proximity of the subject site, the proposal must allow for an appropriate freeboard level to mitigate potential flooding impacts within the precinct.

The amended design, in order to provide an optimal site for residents and overcome the flood constraints, seeks a marginal height exceedance that will not have undue amenity impact to adjoining properties or appear unreasonable when viewed from public domain.



Figure 1 – Extent of Height Exceedance – Western Elevation
Source: Brewster Murray

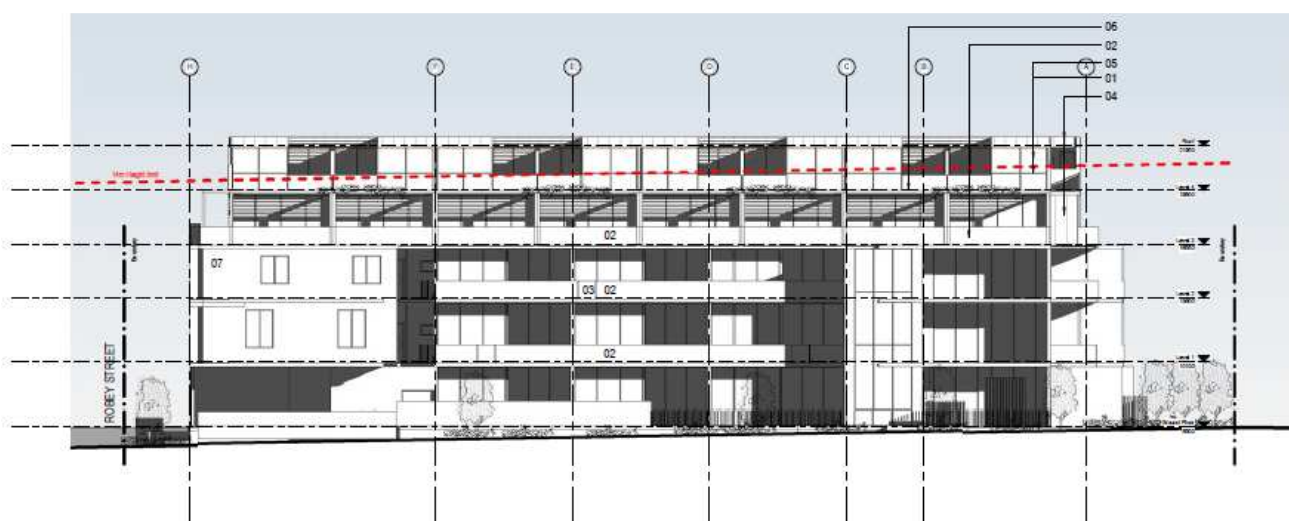


Figure 2 – Extent of Height Exceedance – Eastern Elevation
Source: Brewster Murray

1.2 Justification for Contravention of the Development Standard

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

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.

The objectives of the development standard are to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

Table 1 demonstrates that the proposed variation to the height control will still result in a development that achieves the objectives of the height of buildings development standard.

Table 1 – Assessment against the objectives of the height of buildings development standard

<ul style="list-style-type: none"> To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner 	<p>The proposal is consistent with the transitioning nature of Mascot and through careful amalgamation of several existing lots will represent the type of development sought for the Precinct. The proposal is representative of a number of recent approvals along Robey Street and will result in an orderly mixed-use development that is consistent with streetscape.</p>
<ul style="list-style-type: none"> To ensure that taller buildings are appropriately located 	<p>The proposed building has been carefully designed around the existing site constraints whilst fulfilling the development potential of the site as intended by its B2 Local Centre zoning. In accordance with this, the proposed development will deliver an outcome that is appropriate for the site and is compatible with the character of the Mascot precinct.</p> <p>The proposal is not considered to be a particularly tall building, being 16.1 metres (5 storeys) however the proposed height is considered to be acceptable in the context of Robey Street and High Street.</p> <p>Further, the proposed setback at the upper floors results in a reduction in bulk and scale and minimises visual impact when viewed from the public domain. The redesign has provided increase side setbacks and increased upper storey setbacks to further reduce the perception of the building and reduce the visual appearance at the upper storeys.</p>
<ul style="list-style-type: none"> To ensure that building height is consistent with the desired future character of an area 	<p>As the exceedance is relatively minor and largely arises due to the need to overcome flood constraints within the precinct, it is considered appropriate as it does not result in any additional yield with the fifth storey being the upper bedrooms of the lower level units. Therefore, the exceedance will have no impact on the infrastructure capacity of the locality.</p> <p>The site is located within an area undergoing transformation and transition and accords with Council's vision and future character for the Mascot Precinct. The proposal is consistent with this vision.</p>
<ul style="list-style-type: none"> To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development 	<p>The proposal, as demonstrated within the Architectural Drawings, has been carefully designed to minimise the potential for disruption of view, loss of privacy and loss of solar access through recessed upper levels and appropriate landscape treatments.</p> <p>A detailed shadow analysis undertaken confirms that due to its location with dual frontages the proposed development (during the winter solstice) does not result in any adverse additional overshadowing of adjoining properties, open space area or public areas.</p> <p>The proposed building height will not result in any significant adverse impacts on the amenity of the neighbouring buildings in terms of overshadowing, privacy, outlook and amenity. The buildings are</p>

	appropriately sited, observing setbacks and building separation to ensure the privacy of adjoining properties is maintained.
<ul style="list-style-type: none"> To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities 	In designing a built form outcome, the design has recognised key views to and from the site from the public domain and John Curtin Reserve; and is considered an appropriate height that modulates the skyline, adding visual interest and variety.

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

There are considered to be sufficient environmental planning grounds to justify contravening the development standards, which are detailed as follows:

- The exceedance of the building height control will have a minimal impact on the streetscape;
- The impact on visual privacy and solar access of neighbouring developments will be minimal;
- The building is appropriate for the size and dimensions of the site;
- The building incorporates design consistent with the principles of residential amenity contained within the Apartment Design Guide;
- The site is located within an area undergoing transformation and transition and is compliant with Council's vision for the future character of the Mascot precinct;
- The proposal, as redesigned, has reduced the overall building footprint and provided increased setbacks and communal open space to provide an optimal environment for residents. Further, the provision of a through site link between Elizabeth Lane and John Curtin Reserve allows for greater pedestrian permeability to open spaces for residents of Mascot. These measures to improve the overall appearance and function of the site are considered to offset the marginal height exceedance.
- The proposed development is consistent with the objectives of the height control as highlighted in **Table 1** above; and
- The overall proposed development will not result in any adverse impacts on the surrounding area.

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

The proposed development is consistent with the objectives of the zone and development standard, as demonstrated in **Section 1.2.1**. It is considered that the overall development is in the public interest as it will contribute to increased provision of housing in the area as well as increase activation of the Mascot area. As the non-compliance with the height of building control is minor, it is considered that it will have minimal impact on the overall public benefit delivered as part of the development.

1.3 **Other Matters for Consideration**

Clause 4.6(5) of the Botany Bay LEP requires the following additional matters to be considered.

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

The proposed exceedance of the height of building control will not raise any matter of significance for State or regional planning.

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

Maintaining the development standard would not result in any public benefit in this situation. The minor exceedance of the height control will not increase the yield of the development or result in any negative environmental impacts

and if the applicable height of building control were to be maintained, it would limit the site from achieving its full development potential and inhibit the orderly and economic use of the land.

1.3.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposed variation will facilitate the orderly and economic development of a site identified for high density residential development that will contribute to the supply of housing in the Botany Bay LGA and achieve the strategic objectives of *A Plan for Growing Sydney* and the Botany Bay LEP 2013.

1.4 Summary

This section demonstrates Council can be satisfied that:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the exceedance is minor in nature and compliance would not materially alter the design of the development, and
- That there are sufficient environmental planning grounds to justify contravening the development standard as the building responds to Council's intention for development in the Mascot precinct, delivers additional housing within the Botany Bay LGA, provides an appropriate design response to the site and will maintain the level of amenity for surrounding and future residents.
- The proposed building height variation is considered appropriate to the locality and again will be consistent with recent approvals (No. 27-29 Robey Street - Height 18.4m to lift overrun and No.1 Robey Street – Height 17.99m to lift overrun).
- The building is designed to have three storeys built closer to the street frontages with the two upper levels setback further to appear visually subordinate when viewed from Robey Street. The upper levels will provide a stepped building as desired by the DCP and a height of 16.1m. The apartments will provide additional residential accommodation within a highly sort after location due to its proximity to public transport, places of employment and recreation.
- The proposed height variation is due to the application of a 700mm freeboard to control the site's flooding however despite this required flooding mitigation measure, the proposal maintains the storey capacity for the subject site.
- Further, the proposal has increased the floor to ceiling heights to 3.3 metres at Ground Floor to ensure improved functionality of the commercial space to allow for the appropriate activation of Robey Street.
- As detailed within the amended architectural drawings prepared by Brewster Murray, the proposal has now amended to ensure the Level 1 ceiling heights are 3.3 metres. The increase in ceiling height does not result in an overall increase in building height from that previous scheme.

It is therefore requested that Council grant development consent for the proposed development even though it contravenes the height of building development standard in the Botany Bay LEP 2013.

We trust Council has enough information to complete their assessment. Should you have any queries about this matter, please do not hesitate to contact me on 9956 6962 or ahalligan@ethosurban.com.

Yours faithfully,



Angus Halligan
Principal
Planning