

27 February 2018

**Clause 4.6 Variation to Development Standard**

**Property Description:** 19-25 Robey Street and 5 & 5A Elizabeth Avenue,  
Mascot

**Development:** Mixed Use Building

**Development Standard:** Height of Buildings

**Introduction**

This application seeks a variation to the building height development standard contained in clause 4.3 – Height of Buildings of the Botany Bay Local Environmental Plan 2013. The clause 4.6 variation accompanies the architectural plans prepared by DKO Architecture with the variation to the building height being confined to the upper level of the building, communal roof terrace and lift overrun.

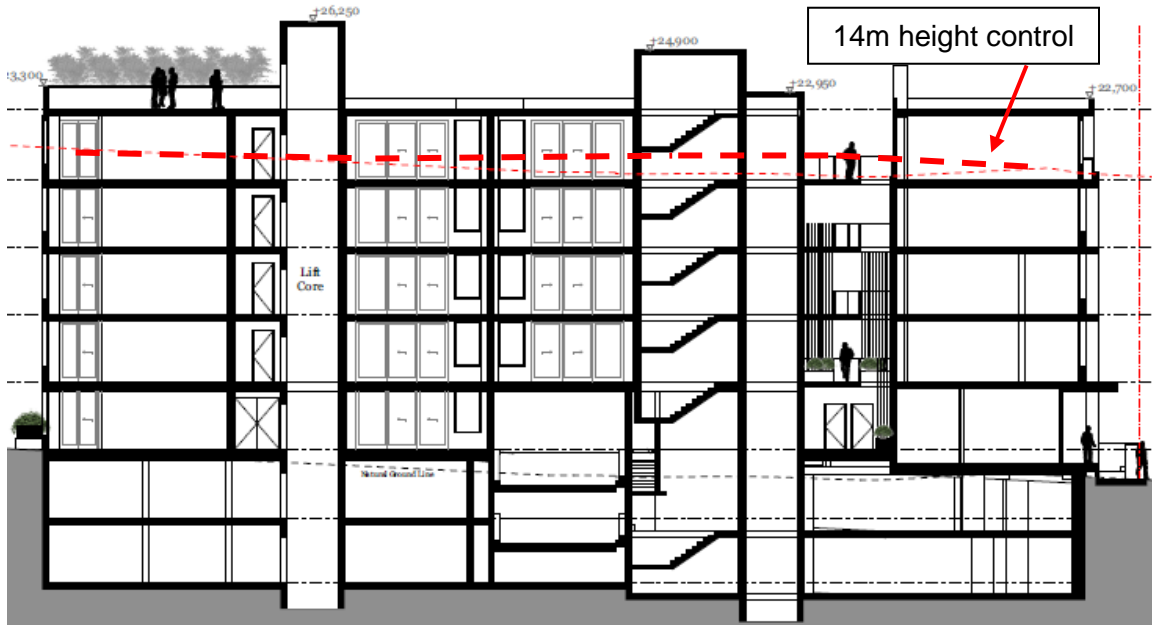
The height control contained in clause 4.3(2) of the Botany Bay LEP 2013 is 14m.

The application to vary the development standard – building height incorporates the relevant principles in the following judgements:

1. *Winten Property Group Limited v North Sydney Council*
2. *Wehbe v Pittwater Council, and*
3. *Four2Five Pty Ltd v Ashfield Council.*

The height of buildings is measured from the existing ground level to the maximum height of the development. The development proposal presents a maximum height of 17m to roof form parapet and 21m to the top of lift overrun (southern lift core) varying the building height control by 3m to the roof form and 7m to the lift overrun which provides access to the communal roof terrace.

The portion of the roof form and lift overrun exceeding the 14m height control is shown in the following section diagram:



### **What are the objectives of Clause 4.6?**

The objectives of clause 4.6 – Exceptions to development standards 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.*

The proposed variation to the 14m height development standard measured to the upper level (roof parapet) and the lift overrun is consistent with the objectives of clause 4.6 as follows:

- The ground floor levels of the development proposal are dictated by flood planning levels within the precinct.
- The upper level is consistent with approved development at 27 – 29 Robey Street being a 5 storey building ensuring the proposal is in context meeting the context and neighbourhood character design principle of SEPP 65.
- The development proposal is consistent with recent approvals in the immediate proximity of the subject site, with the 5 storey form designed to align to adjoining development. The building height to parapet is generally consistent with the adjoining development with additional height located central to the built form.

- The additional height facilitates lift access to the communal rooftop terrace recommendation by the JRPP.
- Flexibility applied to the building height development standard will allow for a better development outcome being a building that is compatible in the locality and is a suitable scale for the subject site addressing the flood level and providing accessible functional communal open space.

In my opinion the variation to the building height development standard is acceptable for the subject site allowing for flexibility to the height control noting the variation is consistent Bayside Design Review Panel advice and facilitates a 5 storey built form with a rooftop terrace. The building height at the street frontage is consistent with approved development 27 – 29 Robey Street and the additional height associated with lift overruns is located central on the subject site.

### **What are the objectives of the development standard?**

The objectives of the development standard are at clause 4.3(1) of the Botany Bay LEP 2013 as follows:

- (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,*
- (b) to ensure that taller buildings are appropriately located,*
- (c) to ensure that building height is consistent with the desired future character of an area,*
- (d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (e) 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.*

The proposed building meets the objectives of the building height development standard based on the following assessment:

- The proposed height is appropriate within the site context and is cohesive with surrounding approved development, noting 5 storey development approved at 27 – 29 Robey Street, Mascot.
- The proposed building height is consistent with the desired future character of the area, which includes an 8 storey serviced apartment building on the southern side of Robey Street, and the adjoining 5 storey mixed use building to the west.
- The variation to the building height will not have an unreasonable adverse impact upon the amenity of surrounding development, having regard to view loss, privacy and solar access.

- The height of the building does not result in unacceptable bulk and scale to the street, with a well-articulated building form that is consistent with the streetscape. It is noted that the parapet height presents a consistent street wall with adjoining development and the additional height due to lift overrun is located central on the site.

**Compliance with the development standard is unreasonable or unnecessary in this particular case?**

Pursuant to clause 4.6(3)(a) of the LEP the variation to the 14m building height development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because it meets the objective of the height standard even though it does not strictly comply and based on the following:

- The height of the building is directed by the flood planning level within the precinct.
- The development presents a 5 storey form to Robey Street with the upper level consistent with the height of the adjoining development at 27-29 Robey Street. The variation (upper level and lift overrun) will not be visually dominant or present uncharacteristic bulk and scale.
- The building is well articulated to Robey Street with a 3m street setback, and the built form will fit with the context and scale of development planned for the locality, including the 8 storey serviced apartment building under construction on the southern side of Robey Street, and the adjoining 5 storey mixed use building at 27-29 Robey Street.
- The variation to the height control will not result in unreasonable amenity impacts, noting Solar Access diagrams prepared by DKO Architecture which confirms that adjoining development will retain adequate levels of solar access.
- The building height is compatible with the existing and future development form of Robey Street and the Mascot Local Centre noting the following approved building heights (excerpt from Council Assessment Report).

Site	Location	Approval Body	Units	FSR	Height
62-66 Robey Street (DA 14/207)	West of the site along Robey Street	Former JRPP	146 serviced apartments	1.49:1 (12,222sqm) (max 1.5:1)	26.78 metres RL 31.250 (exceedance – 638mm - architectural roof feature; max 22m)
27-29 Robey Street (DA 15/254)	Adjoining to the west	Council meeting 7/09/2016	18 + 1 retail	FSR: 2:1 (1501.339 m <sup>2</sup> )	16.16 metres – RL 21.1m AHD (max 14m)
1 Robey Street (DA 13/223)	To the east (corner of Robey St & Botany Rd)	Council	18 + 4 retail	2.10:1	17.99 meters (max 14m)

- The building height meets the aims contained in SEPP 65 – Apartment Design Guide responding the character of development in the locality and the part of the building exceeding the height controls will not impact on solar access to the development or adjoining properties.
- The development proposal provides accessible and functional open space at the roof terrace.

**Are there sufficient environmental planning grounds to justify contravening the development standard?**

Pursuant to clause 4.6(3)(b) of the LEP the grounds for variation to the height control contained in this written request confirms that there are sufficient environmental planning grounds to support the variation to the 14 m building height development standard contained in clause 4.3(2) of the Botany Bay LEP 2013 given the variation is confined the upper level and lift overrun. The variation will have a minimal impact on the streetscape and is appropriate for the size and dimensions of the site.

The variation to the building height standard does not attempt to affect the planning outcome for the locality, rather the variation is consistent with an area undergoing transition and is consistent with Council's vision for the future character of the Mascot Precinct.

**Is the proposed Development in the public interest?**

Clause 4.6(4)(ii) of the LEP states:

*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 Secretary has been obtained.*

The proposed variation to building height is in the public interest as follows:

- The development proposal has been designed to achieve a suitable development yield in the B2 – Local Centre zone and the variation to the height control will be consistent with surrounding development. The upper level storey does not aim to provide additional yield, but rather the height is dictated by flood level of ground floor and floor to floor levels recommended by Sydney Eastern City Planning Panel.
- The additional height facilitates lift access to the communal rooftop terrace requested as part of the Sydney Eastern City Planning Panel reasons for referral.
- The development proposal is in the public interest meeting the objectives of the B2 – Local Centre zone and height standard, with the development form and scale consistent with the planning controls for Mascot Local Centre (Botany Road), and the provision of additional housing within the catchment of public transport and services.
- The portion of the building exceeding the 14m height control will not present unacceptable bulk and scale to the public domain or result in unreasonable amenity impacts.

## **Conclusion**

The development proposal has sufficient grounds to vary the 14m building height control contained in Clause 4.3 of the Botany Bay LEP 2013. The variation is confined to the upper level, communal roof terrace toward the rear of the site, and lift overrun centrally located in the roof form of the proposal.

The building has been designed to present a 5 storey form to Robey Street, with parapet height consistent with the adjoining development 27 – 29 Robey Street, and the desired planning outcome for the Mascot town centre.

The portion of the building exceeding the height control is suitable for the site context and locality and will not be visually dominant from the public domain noting support of the building height in accordance with the Bayside Design Review Panel assessment under SEPP 65 design principles.

Further, the encroachment to the 14m height will not generate unreasonable additional overshadowing or contribute to unreasonable amenity impacts to the adjoining properties.

In my opinion the application to vary the building height development standard is well founded and as addressed the proposed height meets the objectives of the building height development standard and achieves an acceptable development outcome for the subject site that is in the public interest. In accordance with the environmental planning grounds addressed in this clause 4.6 variation the building height can be supported.



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