

4.5 CLAUSE 4.6 EXCEPTION REQUEST

4.5.1 Introduction

This request has been prepared under Clause 4.6 of ALEP 2010 to justify the contravention of the floor space ratio and 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."*

Case law provides guidance 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?*

This request addresses these matters.

4.5.2 What is the nature of the contravention of a standard

The site is subject to Clause 5.6 *Floor space ratio* where the Floor Space Ratio Map indicates category Z for the land that represents an FSR of 5:1. The FSR of the proposal is 5.2:1 as a result of relocating the massing from the street widening to create a corner element comprising an additional storey while providing additional floor area to derive an acceptable form.

The site is also subject to clause 4.3 *Height of buildings* where the Building Height Maps indicates category U1 for the land, or a maximum height of building above existing ground level of 32 metres.

The building height of the proposed building exceeds the maximum height of 32 m in the order of 9–13% at the building corner to accommodate the massing relocated from the street widening. The building corner at the intersection of Railway and Marks Streets is 35m to the parapet from existing ground level and 36m to the top of the roof garden wall. The lift overrun at approximately 39m also exceeds the height standard if Clause 5.6 *Architectural roof features* is not applied.

4.5.3 Is the planning control a development standard?

The planning controls in Clauses 4.3 and 4.4 relating to maximum floor space ratio and building height are development standards under the definition within the *Environmental Planning and Assessment Act 1979* that defines development standards specifically as including height, as follows (*EP&A Act, Part 1 Section 4. Definitions*)

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including,

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

4.5.4 What is the purpose/object of the standard?

The objectives of the height of building development standard under clause 4.3 are:

(a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and

(b) to ensure that the height of buildings is compatible with the character of the locality.

The objectives of the floor space ratio development standard under clause 4.4 are:

(a) to establish a maximum floor space ratio to enable appropriate development density to be achieved, and

(b) to ensure that development intensity reflects its locality.

The proposed variance to the FSR and height controls is consistent with the objectives of the development standards as the proposed development represents a high quality urban form that that will be consistent with the desired future character of the area as reflected in the height and densities within the planning framework.

They mostly result from site characteristics and street corner context as well as the need to relocate permitted and additional massing to allow for the widening of the rear lane and provide suitable basement access to future adjoining developments in accordance with the planning provisions.

The additional height and FSR are composed into a suitable building element to provide appropriate emphasis to the corner of Railway and Mark Streets and in keeping with its location in the Lidcombe Centre.

In addition, the variance requested is minor in nature and has a limited effect on the achievement of appropriate transition in built form and land use intensity.

4.5.5 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.*

When the development is tested against the underlying objectives of the standard, compliance would be inconsistent with the aims of the clause because the proposed FSR and height is in response to the characteristics of the site and its contextual location as well as the need to secure a public benefit from the widening of the rear lane.

Accordingly, non-compliance is appropriate, acceptable and consistent with the characteristics of the site and its highly accessible location as well as the expectation of a planning framework for Lidcombe centre in general and the precinct in particular.

The minor exceedances proposed will not result in a major adverse impacts having regard to the additional resultant shadowing shown on DA401 in the appendices.

The plans demonstrate how the extra shadowing from additional height on the corner element will fall mostly onto the building roof from midday through the afternoon. Therefore, it will have no additional impact from shadows on the existing residences or future development on Marsden Street. In the morning hours, the shadow towards Taylor Street is long as a result of topography (but falling short of the Lidcombe Bowling Club open space) and should have a limited effect because of this. Any additional shadowing would be particularly compensated by the shift of the southern most building edge northerly to allow for the creation of the lane.

The proposed development is therefore a case where flexibility in the application of the development standards is justified in order to address a key planning implementation issue of the adequacy of the rear lane width for the locality while meeting the planning objectives of the controls.

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

Strict compliance with Clauses 4.3 and 4.4 of the ALEP 2010 is considered unreasonable and unnecessary in the circumstances of the case as it would impede achieving the public benefit of enabling the widening of the rear lane for safe access to adjoining properties while the exceedances are minor in nature with limited adverse impacts.

The non-compliance relates largely to the corner element of the building with the remainder of the building being generally below the building height limit.

4.5.7 Is the request well founded?

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

- The development is appropriate in this location and provides for an appropriate response to its corner location and planning provisions that encourage its emphasis.
- Strict compliance with the floor space area and height controls in the circumstance would result in an unresolved precinct access issue and a consequent diminished urban form outcome.
- Strict compliance would also discourage the use of the roof space for a communal garden enjoying year round solar access.
- The proposed development is consistent with the underlying objectives of the development standards whereby the scale and form of the building is consistent with the intended redevelopment potential of the land as well as all other urban form development controls and represents a high quality urban outcome.
- The scale of the proposal, notwithstanding the non-compliance, is consistent with the desired future character of the locality.
- The proposed variations do not add significantly to the overall impacts from building height particular from the lift core as it is centrally located and not readily visible and is incorporated into the roof feature associated with the roof top garden.
- Consequently, the non-compliance does not result in any significant adverse environmental impacts on the amenity of the surrounding area in general.

4.5.8 Conclusion

Having regard to the above, it is concluded that the proposed non-compliance with the floor space ratio and height of building standards do not undermine or frustrate their underlying objectives. The non-compliances do not give rise to any significant adverse environmental impacts but provides for an enhanced urban outcome for the precinct. Compliance with the standards would result in a diminished urban form.

It is therefore considered that strict compliance with the floor space and height of building development standards is unreasonable and unnecessary in the circumstances of the case and that the requested exception to the standards should be supported by the consent authority.

4.6 SEPP NO. 55 – REMEDIATION OF LAND

As the past and current use of the site includes light industrial activity and a service station, State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) applies to the proposal requiring consideration of whether the land is contaminated and, if it is contaminated, whether it can be made suitable for the proposed purpose.