



**WRITTEN REQUEST PREPARED PURSUANT TO  
CLAUSE 4.6 OF BURWOOD LOCAL  
ENVIRONMENTAL PLAN 2012 IN RELATION TO A  
VARIATION WHICH IS SOUGHT TO THE MAXIMUM  
BUILDING HEIGHT DEVELOPMENT STANDARD**

**Submitted in support of a development application  
for alterations and additions to the Whelan's  
Strathfield Hotel, creation of two retail tenancies,  
and construction of a new residential apartment  
building at Nos 27-33 Everton Road, Strathfield**

**Prepared for**

**Strathfield Hotel Pty Ltd**

**By**

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## 1. Introduction

This written request has been prepared in support of a development application (“DA”) lodged on behalf of Strathfield Hotel Pty Ltd (“the Applicant”) for mixed use development at Nos 27-29, 31, and 33 Everton Road, Strathfield (“the site”). The DA seeks development consent for alterations and additions to the heritage listed Whelan’s Strathfield Hotel (“the Hotel”), two retail tenancies, and a nine-storey residential apartment building (“the proposal”). Works associated with the proposal include a basement car park, stormwater drainage, earthworks, landscaping, vehicular and pedestrian access, and other ancillary works.

The objectives of the proposal are:-

- to redevelop a strategically positioned site into a high-quality, well designed mixed use development as envisaged by the site’s B4 (Mixed Use) zoning;
- to refurbish and upgrade existing facilities and guest accommodation at the Hotel and preserve the ongoing economic vitality and viability of the heritage listed Hotel;
- to active the street level through new retail tenancies addressing Everton Road;
- to create 58 new residential units in a high quality residential apartment building;
- to provide a development that is compatible with the amenity of the site and with the desired future character of the Strathfield Town Centre;
- to deliver a contemporary mixed use building that exhibits urban design excellence and that has acceptable environmental impacts on its immediate surroundings; and
- to achieve established aims of urban consolidation and renewal.

Pursuant to the Height of Buildings Map referred to in Clause 4.3 (‘Height of Buildings’) of the Burwood Local Environmental Plan 2012 (“the LEP”), the site is subject to a maximum building height of 30 metres. As indicated on the architectural drawings prepared by Arc Architects Pty Ltd (accompanying the DA), the maximum height of the proposed building is 32.45 metres as measured from the highest point of the residential apartment building (being the lift motor-room at roof top level) at RL 50.43 metres (AHD) and the lowest existing ground level point at RL 17.98 metres (AHD). Accordingly, the proposal contravenes Clause 4.3 of the LEP in that the maximum building height exceeds the 30 metre limit by 2.45 metres.

Clause 4.6 (‘Exceptions to development standards’) of the LEP allows development consent to be granted to a development application where a proposal contravenes a development standard, in this instance the building height development standard pursuant to Clause 4.3.

The objectives 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.”*

This written request addresses the requirements of Clause 4.6.

## 2. Relevant Development Standard

Pursuant to Clause 4.3 ('Height of buildings') of the LEP, the site is subject to a maximum building height of 30 metres.

'Building height' (or 'height of buildings') is defined in the LEP to mean:-

- "(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*  
*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."*

Measured in accordance with this definition, the proposal has a maximum building height of 32.45 metres. This is calculated as the vertical distance from the lowest existing ground level point at RL 17.98 metres (AHD) to the highest point of the residential apartment building (being the lift motor-room at roof top level) at RL 50.43 metres (AHD). Accordingly, the proposal exceeds the maximum building height development standard by 2.45 metres.

Notwithstanding, as illustrated on the accompanying architectural drawings, the parapet level of the roof top terrace does not exceed the 30 metre maximum building height. Measured to the main parapet level at RL 47.23 metres (AHD), the highest existing ground level point is RL 18.68 metres (AHD) and the lowest existing ground level point is RL 17.60 metres (AHD). In this regard, the parapet level at its highest vertical distance does not exceed 30 metres.

### 3. Exceptions to Development Standards (Clause 4.6)

The objectives of Clause 4.6 ('Exceptions to development standards') of the LEP 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."*

Clause 4.6 provides for development consent to be granted to development in circumstances where the subject development contravenes a development standard imposed by the LEP.

Clause 4.6 of the LEP states (as relevant):-

- "(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 Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Secretary 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 Secretary before granting concurrence."*

Accordingly, the provisions of Clause 4.6 can be used to vary (to the extent required) the maximum building height development standard which applies to the site.

The matters raised above are addressed below the following sections of this submission.

#### **4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case and are there sufficient planning grounds to justify contravening the standard?**

##### **4.1 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

Compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this DA for the following reasons:-

- The non-compliance with the maximum building height development standard results from the provision of plant and access structures (being the lift motor-room) that provide resident access to the communal roof top terrace. The terrace comprises a generous communal open space which provides high amenity for future residents of the residential apartment building. The purpose of the terrace is to provide residents with a range of amenity uses, including general socialising, quiet reflection, and veggie garden plantings. The terrace is uninhibited by overshadowing and exceeds the 50% minimum direct sunlight requirements of the Apartment Design Guide (AGD).
- The proposed development is within Strathfield Town Centre and thus, pursuant to the site's B4 (Mixed Use) Zoning and relevant development standards, the site is an appropriate location for a building marginally higher than that permitted by the control.
- Notwithstanding the variation which is sought, the proposed nine-storey building is compatible with the desired future character of the area (as envisaged by the 30 metre building height standard which will generally facilitate a nine-storey building);
- The proposal is consistent with the desired future character and objectives of the Strathfield Town Centre as established in the LEP and Burwood DCP 2013;
- The lift motor-room is setback from the rear boundary (Cowdery Lane), the front setback (to Everton Road), and the side boundaries (east and west elevations);
- By virtue of its positioning with the centre of the roof top terrace, the lift motor-room will not result in any additional shadows cast by the building and will not be generally visible from the public domain (i.e. from Everton Road or Cowdery Lane);
- The lift motor-room does not impact on the heritage significance or context setting of the Whelan's Strathfield Hotel in that it is generally not visible from the Hotel; and
- As described below, the objectives of the maximum building height development standard are achieved notwithstanding minor non-compliance with that standard.

It is submitted that compliance with the maximum building height development standard is therefore unreasonable and unnecessary given the circumstances of the site and the proposal.

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

The contravention of the maximum building height development standard is justified on environmental planning grounds specific to this development for the reasons set out above and in the accompanying Statement of Environmental Effects. The non-compliance with the maximum building height control does not result in any significant additional detrimental impact on the urban form of the site or the amenity of adjoining properties.

The marginal non-compliance with the maximum building height development standard (2.45 metres) results from the provision of plant and access structures (being the lift motor-room) that provide resident access to the communal roof top terrace. The terrace comprises a generous communal open space which provides high amenity for future residents of the residential apartment building. The purpose of the terrace is to provide residents with a range of amenity functions and uses; these include general socialising, quiet reflection, and veggie garden plantings. The roof top terrace is uninhibited by overshadowing and exceeds the 50% minimum direct sunlight requirements of the Apartment Design Guide (AGD).

As illustrated on the accompanying architectural drawings, the parapet level of the roof top terrace does not exceed the 30 metre maximum building height. Measured to the main parapet level at RL 47.23 metres (AHD), the highest existing ground level point is RL 18.68 metres (AHD) and the lowest existing ground level point is RL 17.60 metres (AHD). Accordingly, the parapet level at its highest vertical distance does not exceed 30 metres.

Notwithstanding the marginal non-compliance with the maximum building height control, the proposal is consistent with the objectives and requirements of relevant planning instruments and controls and will not result in significant adverse environmental impacts. The inherent characteristics of the site and heritage listed Hotel (including its size, configuration, and use) make the proposal eminently suitable and justifiable on statutory planning grounds.

There is an absence of significant environmental harm associated with the non-compliance of the proposal with the maximum building height development standard.

#### **4.3 Has this written requested adequately addressed the matters required to be demonstrated by sub-clause (3)?**

It is considered that the proposed development adequately addresses the matters set out in Clause 4.6(3) as required by Clause 4.6(4)(a)(i).

## 5. Is the development in the public interest?

Clause 4.6(4)(a)(ii) specifies that a development will be in the public interest if it is consistent with the objectives of the particular development standard and with the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the development will be in the public interest for the following reasons.

### 5.1 Consistency with the objectives of the standards

The objectives of LEP Clause 4.3 ('Height of buildings') are as follows:-

- “(a) to establish the maximum height of buildings to encourage medium density development in specified areas and maintain Burwood’s low density character in other areas,*
- (b) to control the potentially adverse impacts of building height on adjoining areas.”*

In relation to Objective (a), the proposal, including the nine-storey residential apartment building, is contextually appropriate for the site in the context of the B4 Zone and its location within the Strathfield Town Centre. The nine-storey building is compatible with the desired future character of the Town Centre as envisaged by the 30 metre building height standard which generally facilitates development nine-storeys in height. In the circumstances of the proposal, the additional height is intrinsically linked to improved building amenity (i.e. achieving compliant ceiling height for the habitable rooms of the residential apartments and providing a communal roof top terrace with high amenity value). The form of urban development proposed and the height of the building satisfy the intent and purpose of the high density B4 Zone, notwithstanding the minor non-compliant height at roof top level.

In relation to Objective (b), the proposal will not result in any adverse or unreasonable amenity impacts in relation to overshadowing, overlooking, obstruction of light or air, obstruction of views, or any other such impacts on adjoining properties or land uses. The residential apartment building is orientated towards the front and rear boundaries in order to minimise privacy concerns. The building addresses the established built form of adjoining uses and the setbacks of the approved development the east (being the mixed use development at Nos 19-25 Everton Road; this ensures that suitable visual privacy is afforded to residents of the proposed apartments and also future residents of the approved building.

The marginal non-compliance with the 30 metre building height standard is associated with the lift motor-room at roof top level. The lift motor-room is setback from the building facades and would not generally result in any additional shadows cast by the building. By virtue of its location with the centre of the roof top terrace, the lift motor-room will not result in any additional shadows cast by the building and will not be visible from the public domain (i.e. from Everton Road or Cowdery Lane).

It is considered that the development is consistent with the objectives of the standards.



## 5.2 Consistency with the objectives of the zone

The site is within Zone B4 (Mixed Use) under Burwood LEP. The objectives of the zone are:-

- *“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.”*

Notwithstanding the minor non-compliance with the maximum building height development standard, the proposal is entirely consistent with the objectives of the B4 Zone in that:-

- it will provide a mixture of compatible land uses (being business premises, retail premises, hotel accommodation, and private residential accommodation); and
- the proposal integrates the proposed new uses (being the retail tenancies and residential apartment building) within the existing listed heritage Hotel and in a highly accessible location given its proximity to Strathfield railway station (this will maximise public transport patronage and encourage, walking and cycling).

The proposal is entirely consistent with the objectives of the B4 (Mixed Use) Zone.

## 5.3 Public interest

The public interest is best served by the orderly and economic use of land for purposes which are permissible and which, in their design, configuration and operation, satisfy the intent of the development standards and controls set out in the Burwood LEP and DCP.

The proposal will result in positive social and economic outcomes in that:-

- it will transform the under-utilised site for mixed use purposes with associated benefits (for instance proximity to employment, services, and public transport;
- it will enhance customer experience and improve the ongoing functionality, vitality, and economic viability of the established Hotel business;
- the apartment stock in the locality will be augmented by the new residential apartments, thereby providing opportunities for population increase in a location close to transport, facilities and services;
- the refurbishment of the Hotel and new retail units will better activate the Strathfield Town Centre and increase the demand for goods and services;
- future residents will enjoy easy walking distance of the railway station and regular bus services, thereby contributing to public transport and a reduction in car dependency;
- the population of the locality will be increased, thereby creating additional demand for goods and services which will existing local businesses;

- it will generate positive economic spin-off effects and employment opportunities during marketing, construction, fit-out, and refurbishment of the Hotel, the guest accommodation, the new retail units, and the residential apartment building; and
- it exhibits high quality architectural design with generous levels of amenity for future residents of the apartments and also residents in existing and approved development.

The existing Whelan's Strathfield Hotel is strategically well-located close to established public transport links (in particular the Strathfield railway station) and to a wide range of facilities and services, including education establishments, shops, and employment opportunities. These attributes make it highly suitable for urban consolidation and the proposed mixed use development, the wider public benefits of which are promoted through the planning system.

The proposal is in the public interest.

## **6. Conclusion**

Compliance with the maximum building height development standard in Clause 4.3 of Burwood Local Environmental Plan 2012 is both unreasonable and unnecessary in the circumstances of the proposal for mixed use development at the Whelan's Strathfield Hotel.

The non-compliance with the maximum building height development standard results from the provision of the lift motor-room that facilitates resident access to the communal roof top terrace. This terrace comprises a generous communal open space which provides amenity for residents. The terrace functions for a range of uses, including general socialising, quiet reflection, and veggie garden plantings. It is uninhibited by overshadowing and exceeds the 50% minimum direct sunlight requirements of the ADG.

There are sufficient environmental planning grounds to justify the minor non-compliant component of the proposed building, and the proposal is in the public interest because it is consistent with the objectives of the building height development standard, the B4 (Mixed Use) Zone, and generally the provisions and development objectives of the Burwood LEP.

In terms of consistency with the objectives of Clause 4.3, it is considered that strict adherence to the building height development standard to this particular development is not warranted and relaxing the standard would result in a better form of development that achieves high levels of amenity of future residents of the building and adjoining properties.

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