

# **AMENDED** CLAUSE 4.6

129-131 MEMORIAL AVE, LIVERPOOL

DEMOLITION OF EXISTING STRUCTURES AND  
CONSTRUCTION OF RESIDENTIAL FLAT BUILDING  
WITH IN-FILL AFFORDABLE HOUSING

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SUBMITTED TO  
LIVERPOOL CITY COUNCIL

PREPARED FOR  
ISHRAT KATHIA

PREPARED BY



**GHAZI AL ALI**  
**ARCHITECT**  
PTY LTD

Unit 2, Level 2, 14 Railway Parade, BURWOOD NSW 2134  
T: 02 9744 7035 E: office@ghazia.com ACN: 67 167 131 848

## Amended Clause 4.6 Variation to Development Standards

### Exception for Height

#### Introduction

This report accompanies the subject Development Application (DA) for a proposed in-fill affordable housing, in the form of a residential flat building, in accordance with State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH). The subject site is located at 129-131 Memorial Avenue, Liverpool, having a site area of 1532.98 m<sup>2</sup>. The Development Application is proposed to demolish the existing structures on site, and to construct a five (5) storey residential flat building development comprising thirty (30) dwellings, seventeen (17) of which are to be dedicated as affordable housing, with one basement level of car parking for thirty-two (32) vehicles.

The proposal seeks exception pursuant to Clause 4.6 of the Liverpool Local Environmental Plan 2008 (LLEP 2008) to the development standard contained within which relates to height.

The variation should be considered in the context that the SEPP ARH overrides the Liverpool LEP 2008 and therefore an assessment of the Clause 4.6 variations must be considered in the context of the objectives and criteria outlined in the SEPP ARH. This is particularly the case as the SEPP has its own approach to assessing the character and suitability of a development.

#### Exception Sought

An exception is sought under Clause 4.6 of the LLEP 2008 for the height variation indicated in below table.

Clause	Control	Proposed	Variation
4.3 Height of Building	15 m	16.78m (Lift) 15.98m (Roof Slab)	1.78 m (11.86%) 0.98 m (6.53%)

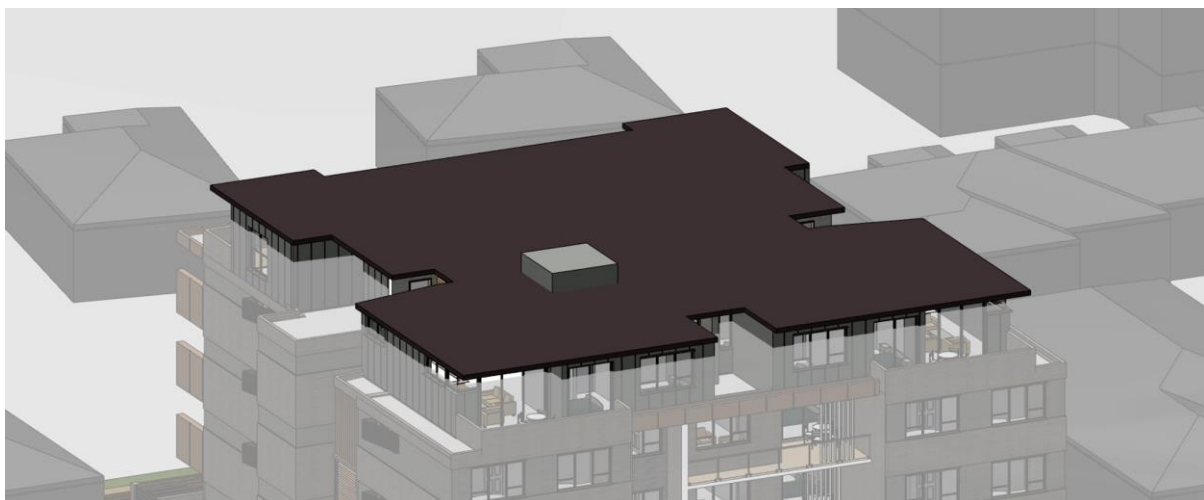


Figure 1: 3D axonometric showing breach of 15m max building height plane.

**Exception consideration**

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under an LEP. Subclause 4.6(3) (a) and 4.6(3) (b) state that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that the strict compliance with the development standard is unreasonable and unnecessary.

**LLEP 2008 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 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.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

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(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard,  
or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

(ca) clause 6.4, 6.5, 6.6, 7.22, 7.23, 7.24, 7.25, 7.26, 7.26A, 7.27, 7.28, 7.29 or 7.30.

**Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?**

Since the State Policy sets in place relevant criteria to assess the suitability of in-fill affordable housing development and consequently there is significantly less emphasis on the criteria applying to the development in the LLEP 2008.

Recent court decisions on Clause 4.6 variations weight on assessing the objectives of the development standard and the zone objectives applicable to the subject site. These need to be modulated against the fact that the SEPP ARH specifically anticipate this form of development in the particular zone.

In this proposal, applying the maximum height standard of the development is unreasonable and unnecessary. The following demonstrates that how the proposed development has coincided with planning standards and controls:

**1. Response to Design Excellence Panel Comments**

As per the meeting minutes of Liverpool Design Excellence Panel Meeting held on 16 March 2017, in response to the DEP's comments, the floor to floor height has been increased from 3000mm to 3050mm for all levels above ground. This amendment has been made in the Architectural Plans Issue D Drawings dated 02/05/2017. The 3050mm floor to floor height has been remained the same in the latest Architectural Plans Issue H Drawings dated 01/09/2017. This amendment would enhance the natural ventilation and daylight access in each floor to achieve the objectives and design criteria under ADG 4C.

**2. Response to Council Officer Comments**

As per Liverpool Council Senior Development Planner Boris Santana's comments, the head height clearance at the lowest point in the driveway access ramp has been increased from 2207mm to 2304mm. This amendment would ensure sufficient clearance to allow a diverse range of vehicles to access into the proposed basement.

**3. Outperformance in development controls**

The proposed residential flat building is of good amenity, and comply with the required development controls as described in the aforementioned DCP table, additionally; it outperforms in the rear setback development controls. The rear setback ranges from 6.3m – 10.41m for balconies and 8.8m – 12.5m for glass lines.

#### 4. Stormwater requirement for practicality

As per the stormwater engineering requirement, it necessitates an uplift of 300mm for the ground floor level to ensure the OSD tank can be practically operated. Therefore the main proportion of the variation in the roof slab (300mm out of 400mm) is due to the necessity of addressing the stormwater level.

#### 5. Contribution to the streetscape

The proposed development is respond to and sensitively relate to the broader transitional context in the locality, and complements the established scale and character of the streetscape of Memorial Avenue. The highest point of the lift overrun is hardly visible from the street, it does not impair the natural qualities of the existing local settings. As viewed from the street, the proposed building is presented as a five-storey residential flat building with reasonable setbacks and articulation. Well-articulated façade and good landscaping design enable the vegetation to soften the visual impact of the proposed residential flat building. There is no adverse urban design impact to the neighbourhood. The proposal is considered contributing to the streetscape of Memorial Avenue, and to establish a well-designed development in the precinct.

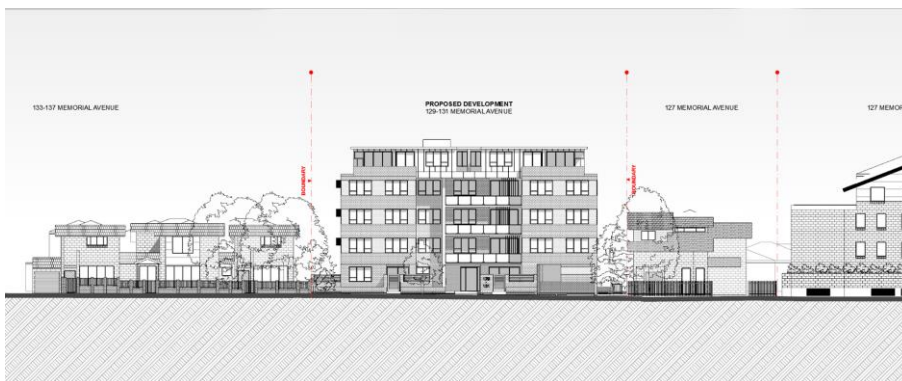


Figure 2. Streetscape of 129-131 Memorial Ave, Liverpool

#### 6. Topography resultant variation

The LLEP 2008 maximum height control that applies to the Site is 15m. The Proposal will be a five (5) storey development that will achieve a maximum height of 16.78m in the location at the north-eastern side of the site. Moreover, according to the geo-technical report the site surface is relatively flat, but the elevation ranges between 15m and 16 m AHD according to the NSW Land and Property information's SIXMAPS, which also led to an increase in the building height specifically in the north-eastern part of the building as shown in Figure (14).

Nonetheless, the building height non-compliance of the LLEP height standard will be considered insignificant and to have no adverse impact on overshadowing neighbouring properties as well as the amenity of the proposed residential flat building. Additionally, the height will remain consistent with the desired future character of the area.

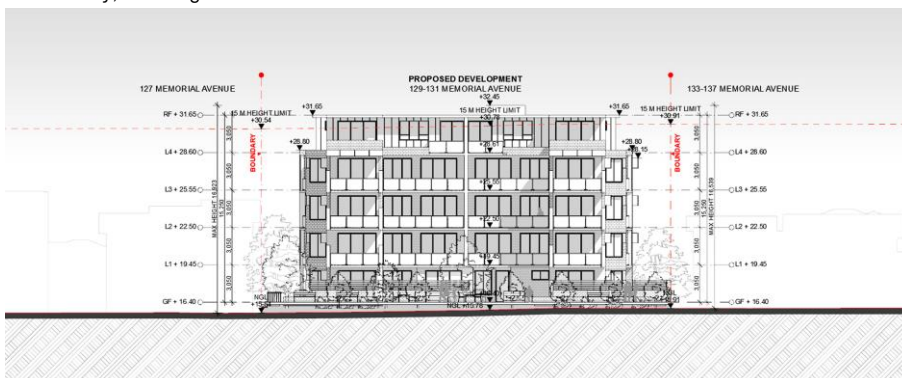


Figure 3: North Elevation of 129-131 Memorial Avenue, Liverpool

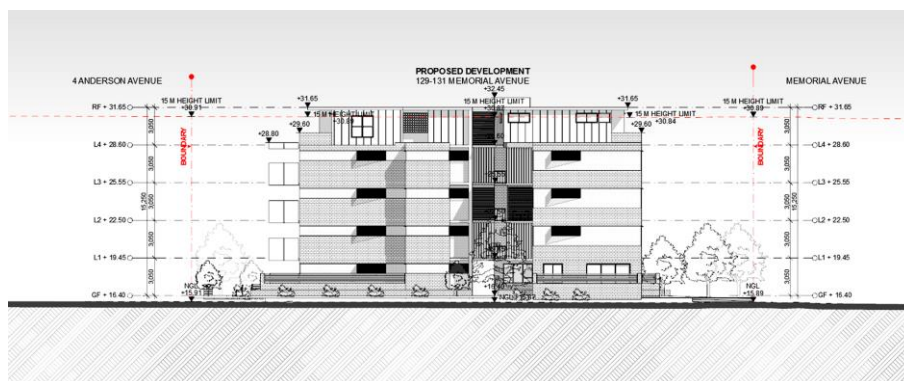


Figure 4: West Elevation of 129-131 Memorial Avenue, Liverpool

**Are there sufficient environmental planning grounds to justify contravening the development standard? Is it consistent with the objectives of Clause 4.3 height standard?**

The table below demonstrates how the proposed development satisfies the objectives of clause 4.3 of the LLEP 2008, although the numerical non-compliance with height standard exists.

Objective of Clause 4.3	Proposed/Comments	Satisfaction
(a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved,	The proposal exceeds the maximum height limit in which buildings can be designed and floor space can be achieved. The proposal exceeds the maximum height standard, through the application of the FSR bonus under the SEPP ARH. The SEPP anticipates the FSR bonus will be applied and make the building envelope either go up or go out. In this instance, the additional floor space is within the fifth floor. It is considered that strict compliance with the height standard would not be consistent with the objectives of the SEPP ARH, which includes the following: "(b) To facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.	Yes
(b) to permit building heights that encourage high quality urban form,	The overall built form, including the height, encourages quality built form through bulk and scale, as well as amenity.	Yes
(c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,	The building height non-compliance with height standard will have minimal overshadowing impact on adjoining properties. Additionally, future residents of the proposed development will receive sufficient amount of sunlight, and the proposed development achieves the required amenity levels.	Yes
(d) to nominate heights that will provide an appropriate transition in built form and land use intensity	The Site is located within a significant R4 zone area, which has uniform floor space ratio and built height controls. Issues of transition in built form and land use are therefore not directly relevant. The proposed building will exist within an acceptable range of variation of built forms in the R4 zone.	Yes





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**Is it consistent with the objectives for development within the zone?**

The objectives of the R4 – High Density Residential zone are:

1. To provide for the housing needs of the community within a high density residential environment.
2. To provide a variety of housing types within a high density residential environment.
3. To enable other land uses that provide facilities or services to meet the day to day needs of residents.
4. To provide for a high concentration of housing with good access to transport, services and facilities.
5. To minimise the fragmentation of land that would prevent the achievement of high density residential development.

The proposal meets all of the R4 zone objectives, objective number three is irrelevant to the proposed development. The proposed development will provide housing for the community, including affordable housing for low to middle income earners. The proposed height of 16.78m results in a building form and scale that remains in keeping with the “high density” environment. The minor variation of height is not considered significant that the building is therefore out of character. The proposal will provide a mixture of 1, 2 and 3 bedroom units, both affordable rental housing and otherwise, in a high density residential environment. The State Policy has been created to ensure diversity in housing stock that meets the needs of a community by providing appropriate development for affordable housing within a high density residential environment.

Furthermore, the proposed 32 dwellings within the development are located on Memorial Avenue road which is planned to be a classified road as per RMS future plan, and contains sufficient public transport for the future residents, as well as within close proximity to other services and facilities. The Site is within walking distance of a large employment generating district including hospitals, schools. The Site is also located within approximately 2 km from the edge of the Liverpool City Centre. In addition to the local buses, the site is located approximately 1.4 km from Liverpool Train Station. The Site, therefore, has excellent access to employment, shopping, public transport and other amenities.

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

The proposed development is in line with public interest as follows:

1. The proposed development contributes to additional housing supply in R4 – High Density Residential zone contributing to housing choice and affordability.
2. The thoughtfully-designed and well-articulated built form of the proposed development is of good input into the redevelopment of the locality.
3. The development proposal includes landscape works bringing positive contribution to the setting of the building and improving the presentation of the proposed dwelling house to Memorial Avenue, Liverpool.

**Table 1. Shadow Impact Analysis of Amended Proposal**

Shadow 9am Winter Solstice	Shadow 12pm Winter Solstice	Shadow 3pm Winter Solstice

### Conclusion

The Development Application for a proposed in-fill affordable housing, in the form a Residential Flat Building at 129-131 Memorial Avenue, Liverpool. An exception is sought, pursuant to Clause 4.6 of Liverpool Local Environmental Plan 2008 to the maximum permissible height prescribed by Clause 4.3 of the of Liverpool Local Environmental Plan 2008.

The proposed maximum variation to the development standard is 1.78m (11.86% of 15m height limit) for the lift overrun and 980mm (6.53% of 15m height limit) for the roof slab. It is acknowledged that the lift overrun, located in the centre core of the building, does not generate adverse environmental impacts and is hardly visible from the street. As for the height breach in roof slab, which represents the totality of the building bulk, is an accumulative outcome from the DEP required floor to floor height, achieving the basement head height subject to council requirement, and stormwater technical requirement to raise the building by 300mm, which purpose is to achieve sufficient interval level for OSD tank and sufficient fall for council stormwater pipe. The rest of the non-compliance is a reasonable outcome when considering the natural topography of the subject site. The above assessment finds that the amended variation will not result in unreasonable environmental impacts, and will continue to ensure the neighbouring properties receiving sufficient sunlight access (see shadow impact analysis in Table 1) in accordance with ADG and Council requirement. Consequently, strict compliance with height standard is unnecessary and unreasonable.

With the variation of height, the proposed development is capable to provide high level of amenity in terms of sufficient setback, good direct sunlight, and contributing to the streetscape as well as consistency with relevant objectives of both the height standard and the R4 High Density Residential zone. Therefore the exception sought is in line with public interest.

For the above reasons, this Clause 4.6 has presented the justification for the building height variation and the height variation is worthy council's support.