

Written Request to vary
Camden Local Environmental Plan 2010
Clause 4.6 Exceptions to Development
Standards
Lot 11 DP 1145448, Nos 12-18 Dunn Road,
Smeaton Grange

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1. Introduction

1.1 BACKGROUND

This report has been prepared to support a variation to the development standards of Clause 4.3 of *Camden Local Environmental Plan 2010* (CLEP 2010), in respect of building height. The submission should be read in conjunction with the Statement of Environmental Effects (SoEE) prepared by this firm, as amended.

The proposed building proposes a height greater than that provided by Clause 4.3 and in this regard the height of the building is 13.2277m; whilst the Height of Buildings Map provides for buildings at 11m or an increase of 2.2277m on one section of the building. As such a variation is sought under 'Clause 4.6 – Exceptions to development standards' under CLEP 2010 (refer to HOB_017 extract below at **Figure 1**).

FIGURE 1 – HEIGHTS OF BUILDING MAP



1.2 THE SUBJECT LAND

The land the subject of this objection is known as Lot 11 in DP 1145448, Nos 12-18 Dunn Road, Smeaton Grange.

1.3 ZONING

The site falls within the IN1 – General Industrial zone under Camden Local Environmental Plan 2010.

2 Provisions of Clause 4.6 – Exceptions to Development Standards

In this regard clause 4.6 allows Council to use its discretion for buildings that do not comply with certain development standards contained with an LEP and is essentially the same as a SEPP 1 objection to the ‘development standard’.

2.1 CLAUSE 4.6(1) - OBJECTIVES

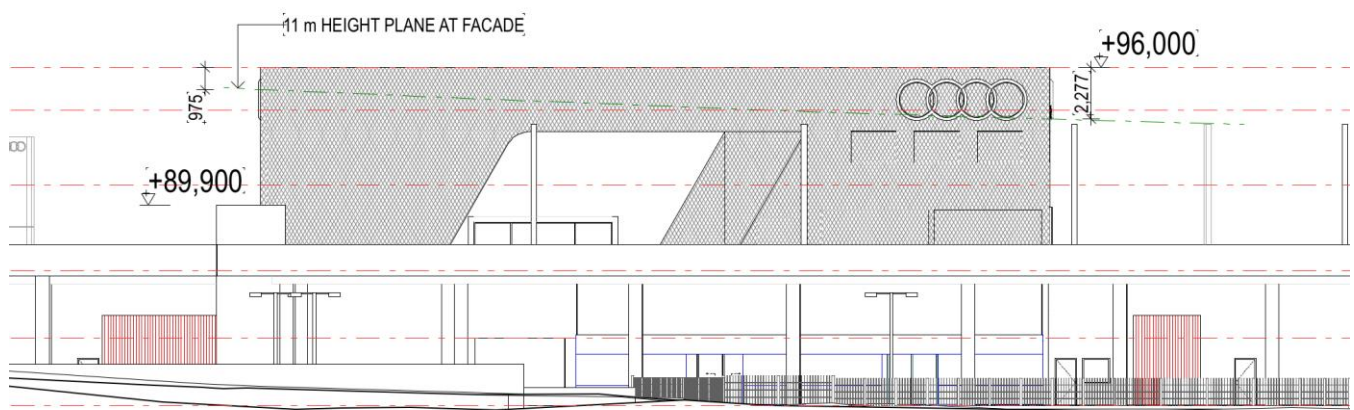
The objectives of clause 4.6(1) are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Subclause 2 essentially provides for Council to grant development consent for a development that would contravene a development standard. Subclause 3 has the same requirements as a SEPP 1 objection in that a written request must be received objecting to the particular development standard.

The proposed variation to Clause 4.3 is considered to be consistent with the objectives of the exception clause. In this regard, given the specific circumstances of the site a better and more appropriate outcome for the proposed building is achieved by allowing flexibility to the development standard, in this particular circumstance, particularly as the increase in height is the ridgeline of the building (2.2277m – **Figure 2**) on the eastern elevation.

FIGURE 2 – HEIGHTS OF BUILDING



2.2 REQUIREMENTS OF EXCEPTION UNDER CLAUSE 4.6

Clause 4.6(2) & (3) of CLEP 2010 states:

- (2) *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) *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.*

This report seeks to demonstrate that compliance with Clause 4.3 of CLEP 2010 is both unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance. It would be noted that the majority of the building height is compliant, but the eastern elevation of the roof slightly exceeds the height requirement, noting the fall of the land. Clause 5.6 of the LEP allows roof features to exceed the height and is addressed below.

2.3 REQUIREMENTS OF CONSENT AUTHORITY UNDER CLAUSE 4.6

Clause 4.6(4) & (8) of CLEP 2010 states:

- (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 Director-General has been obtained.*

It is considered that the public interest is better served as a consequence of the variation of the development standard of CLEP 2010 given the encroachment of 2.2277m, due of the fall the land from the corner of Camden Valley Way and Anderson Road intersection. Clearly the public interest is providing industrial employment opportunities.

In the accompanying SoEE it is demonstrated that the proposal is consistent with the objectives of the IN1 – General Industrial zone.

- (8) *This clause does not allow 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) *clauses 6.1, 6.2 and 6.3.*

The proposed building will not contravene a development standard for complying development. Further the proposed building will not contravene any of the above clauses of CLEP 2010.

2.4 IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD?

The EP&A Act defines development standards as:

"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, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.*

We are of the opinion that the provisions of Clause 4.3 is a *development standard* as defined by the EP&A Act, being a standard fixed in respect of *the bulk, scale and height of a building, being standard (c)*.

3 Details of Development Standard to have exception from

3.1 CLAUSE 4.3

Clause 4.3 Building Height is a development standard which may only be varied if a development application is accompanied by a written request that adequately addresses the required matters in Clause 4.6(3), in respect of building height.

Clause 4.3(2) Building Height states:

- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The height requirement of Clause 4.3 is not a prohibition, but merely a height that a building is not to exceed, unless there are circumstances whereby the building cannot comply. It would be noted that the height of the building is 13.2277m on the eastern elevation. The building is a purpose built design for the Audi brand, as detailed in the report prepared by this firm. A reduced height reduces the floor levels within the building and is non-compliant with the Audi brand.

The basis of this report is to demonstrate that the above height requirement is unreasonable considering the specific circumstances of this case. Therefore is not appropriate given the minimal adverse environmental impacts including amenity impacts on neighbouring industrial properties resulting from the proposed building.

This Clause also needs to be considered in relation to Clause 5.6, which refers to architectural roof features, although not particularly relevant for industrial buildings. This clause only applies where a building exceeds the height requirement of clause 4.3. It would be noted that the building exceeds the 11m height requirement and therefore the provisions of this clause applies.

- (1) The objectives of this clause are as follows:
 - (a) to permit variations to maximum building height standards for roof features of visual interest,
 - (b) to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height.
- (2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.
- (3) Development consent must not be granted to any such development unless the consent authority is satisfied that:
 - (a) the architectural roof feature:
 - (i) comprises a decorative element on the uppermost portion of a building, and
 - (ii) is not an advertising structure, and
 - (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and
 - (iv) will cause minimal overshadowing, and
 - (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

It should be noted that the 13.2277m height is compliant with the objectives. As such, from adjoining properties or from a distance, the exceedance in height is minor and would not be detected given the roof expanse of the building, which has a minimal footprint when compared to the overall site.

4 Objectives of Development Standards

4.1 CLAUSE 4.3

- (a) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality.*

If development is to be encouraged in Camden in industrial areas, buildings that exceed the height requirement, but comply with other controls, need to be flexible. This is even more essential given the fact that Smeaton Grange is not fully developed and that buildings such as warehousing and logistic operations do need taller buildings. In this particular case, the Audi brand is worldwide and upon seeing the building, it is known as Audi even without signage.

In addition, the proposed streetscape when viewed from various locations will not be affected by this encroachment. What is achieved by permitting an increase in height is a building that requires 'volume' inside the building that has a certain 'ambience' and a feel of luxury.

In our opinion, the best planning practice should recognise this requirement and respond to the opportunity by going beyond basic numerical compliance checking, and consider broader logistic requirements for warehousing.

This opportunity is better served, in our view, by the proposed height of the building, which support its location at this very important intersection and yet at the same time does not unreasonably interfere with existing view corridors than one constructing a building of slightly lesser height and noting that there are similar buildings, which would be higher when viewed from the street, due to the elevation of the lands.

Having regard to the above, we consider that the approach taken serves the objects of the Act of promoting the orderly and economic use of land.

It has been demonstrated that the proposed building has been designed to take into consideration its surroundings and "fit in" with the industrial nature of the area. Therefore restricting the building to 11m high is unreasonable and unnecessary (objective 1(a)).

- (b) *to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

The proposed development is located in an industrial area, which is dominated by large warehouse and logistic operations and buildings of various footprints. As such the proposed development will not have an impact of those matters contained in objective 1(b).

- (c) *to minimise the adverse impact of development on heritage conservation areas and heritage items*

Not applicable.

It is not considered that a variation to the development standard in these circumstances would act as a general planning change more appropriately dealt with under *Part 3* of the *Environmental Planning & Assessment Act 1979*.

5 Justification for Non-Compliance with the Development Standards

5.1 IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(A))?

Compliance with the development standard under Clause 4.3 is both unreasonable and unnecessary in this case given that the circumstances of the proposed building to allow for the proposed height.

The potential site development is in keeping with the form of development that will occur in the immediate area having regard to the industrial zone applicable to the site and the adjoining sites.

The proposed development is considered reasonable for the following reasons:

- The proposed building has been carefully designed to minimise adverse amenity impacts on adjoining properties. Careful site responsive design has ensured that the technical non-compliance with the height proposed does not give rise to significant amenity impacts for the immediate adjoining industrial development;
- As discussed above, the proposed building is consistent with the objectives of Clause 4.3 of CLEP 2010; and

On this basis, the opportunity is available to consider variations through the proposed building's location within an industrial area to comply with clause 4.3.

5.2 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD (CLAUSE 4.6(3)(B))?

There are considered to be sufficient environmental planning grounds to justify contravening the building height standard. These are as follows:

- The design of the proposed building is generally consistent with applicable planning controls contained CLEP 2010 and CDCP 2011.
- The proposed building has been designed to minimise amenity impacts such as overshadowing, visual privacy and bulk and scale on the adjoining industrial properties.

6 Conclusion

It has been demonstrated above, that the development is one that satisfies the objectives of clause 4.3 and in particular subclauses 1(a) and (b) and that Council can use its discretion under clause 4.6 to vary the height requirement.

It is also relevant that, as a general principle, the highest and best economic use of land which has been identified as appropriate for the development, will conversely act to preserve the character of the area.

Having regard to the above we consider that the approach taken serves the objects of the Act of promoting the orderly and economic use of land.

It is not considered that a variation to the development standard in these circumstances would act as a general planning change more appropriately dealt with under *Part 3* of the *Environmental Planning & Assessment Act 1979*.

It is considered that this case represents an individual circumstance in which Clause 4.6 was intended to be available to set aside compliance with unreasonable or unnecessary development standards.

It is considered that the minor variation to the development standard contained in Clause 4.3 of CLEP 2010 should be supported, because it is consistent with Clause 4.6, the objects of the EPA Act, the relevant aims and objectives of CLEP 2010 and the industrial zone and would appear to create a negligible impact on the natural environment and the industrial character of the area.

Michael Brown

A handwritten signature in dark ink, appearing to read 'M Brown', with a stylized, flowing script.

Director Michael Brown Planning Strategies Pty Ltd