

**CLAUSE 4.6
APPLICATION TO VARY
A DEVELOPMENT
STANDARD:
Height of Building**

Proposed new Shop-top Housing Development at

**No. 2-6 Bold Street &
Nos. 80-82 Cowper Street
Granville**

Prepared for:
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PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2011
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Designer Home Constructions
 c/-Idraft Architects Pty Ltd

SITE ADDRESS: Nos. 2-6 Bold Street & Nos. 80-82 Cowper Street Granville

PROPOSAL: Proposed new Shop-top Housing Development

1. (i) Name of the applicable planning instrument which specifies the development standard:
 Parramatta Local Environmental Plan 2011

(ii) The land is zoned: B4 Mixed Use

(iii) The relevant zone objectives are, inter alia:

- 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.
- To encourage development that contributes to an active, vibrant and sustainable neighbourhood.
- To create opportunities to improve the public domain and pedestrian links.

2. Specify the nature of Development Standard sought to be varied and details of variation:

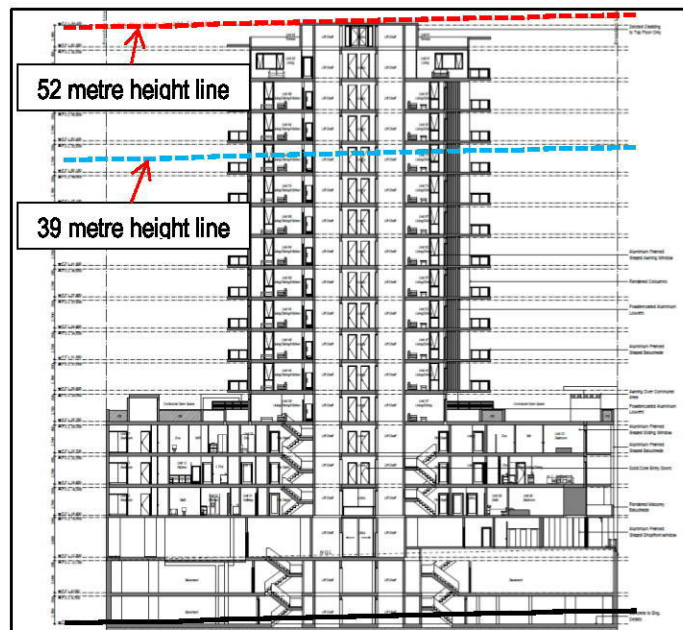
Clause 4.3 Height of Buildings in the Parramatta LEP 2011 states, inter alia:

- (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.
- (2A) Despite sub clause (2), any development on land identified with a thick blue line and labelled "Area 1" on the Height of Buildings Map is not to exceed the height determined in accordance with the Table to this clause.

Site area	Maximum height
> 2,100 ≤ 3,200 square metres	39 metres
> 3,200 square metres	52 metres

The Height of Buildings map labels the sites as Y1 which prescribes a maximum building height of 52 metres. The individual allotments are labelled Area 1 on the Height of Buildings Map and therefore the site size control of clause 4.3 (2A) is triggered. The combined site size is 2,204m², and therefore a maximum height of 39 metres is prescribed.

The proposal is to provide a building compliant with the maximum 52 metre height limit (see Figure 1 on the following page) on a slightly smaller site. The building would therefore be a taller, more slender residential tower, however would be compliant with the Floor Space Ratio (FSR) stipulated for the site. This was considered an appropriate design response for a particularly exposed site where unusually, the building will be visible from all sides. The future building will be more visible because it has roads on two sides and the railway on the third side.



Source: Idraft Architects

Figure 1: Location of 39m and 52m height limits

The proposal's maximum height of 52.0m is 13.0 metres or 33.3% greater than the 39 metre height limit for the combined lot size. As outlined in this application, the additional height above the amalgamated site's height limit of 39 metres is not likely to affect the amenity of nearby residential development, does not affect the development potential of nearby sites and is considered an appropriate architectural response on a very exposed site.

A squatter, shorter building would have resulted in a larger floorplate which was considered less likely to provide appropriate amenity, access to sunlight and natural ventilation, than the slender tower proposed. Additionally, if two towers were instead proposed for the site, the separation distances would be inadequate and approximately one quarter of the dwellings would be likely to have reduced amenity through overlooking, loss of privacy and increased overshadowing. Instead the proposal provides a higher level of amenity for the future residents.

3. State the objective of the standard to be varied as it relates specifically to the subject site and proposal:

The relevant objectives of Height of Buildings development standard Clause 4.3(1) in the Parramatta LEP 2011 contains are, inter alia:

- (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to require the height of future buildings to have regard to heritage sites and their settings, ... and
- (f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.

4. Explain how the proposal, notwithstanding the non-compliance with the development standard, will achieve the objective of the development standard.

The relevant objectives of the development standard are discussed in relation to the proposal's height on the following pages:

Objective (a): to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan.

Response: The proposal's height is consistent with the Y1 area nominated on the Height of Buildings Map (see Figure 2). The maximum heights for Y1 land recognise this as an area in transition, by prescribing heights which are greatly in excess of the existing one, two and three storey buildings and the existing, fragmented, small allotments.



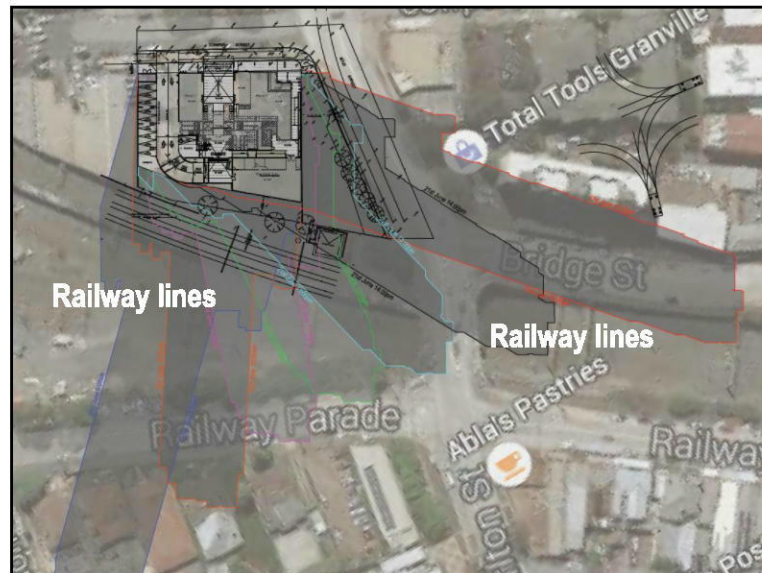
Source: Parramatta LEP 2011

Figure 2: Maximum Building Heights in the vicinity of the site

The difference between the proposed consolidated allotment of 2,204m² with a height limit of 39 metres, and the lot size required for the taller height limit of 52 metres in the zone is 996m² of site area. The difference in site area is approximately equivalent to Nos. 86-90 Cowper Street, to the west. If these two lots were included it would not result in a substantially different tower to the proposal. This is because the neighbouring lots have shallower depths, compared to the subject site. The reduced depths would limit any taller structures near the railway line due to the minimum setbacks required to the infrastructure.

Objective (b): to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

Response: In this location, the proposed additional height will not disrupt views, as reflected by the maximum height limits in Y1. Due to the distances to nearby residential areas along Cowper Street or on the southern side of the railway line, the proposal is unlikely to affect privacy of residents. Figure 3 (on the following page) demonstrates the proposal will have minimal overshadowing impacts on 21 June as shadows from 10:00am until 2:00pm will generally fall only on the roadways or the railway lines. We conclude the additional height has no significant impacts on the amenity of nearby residents.

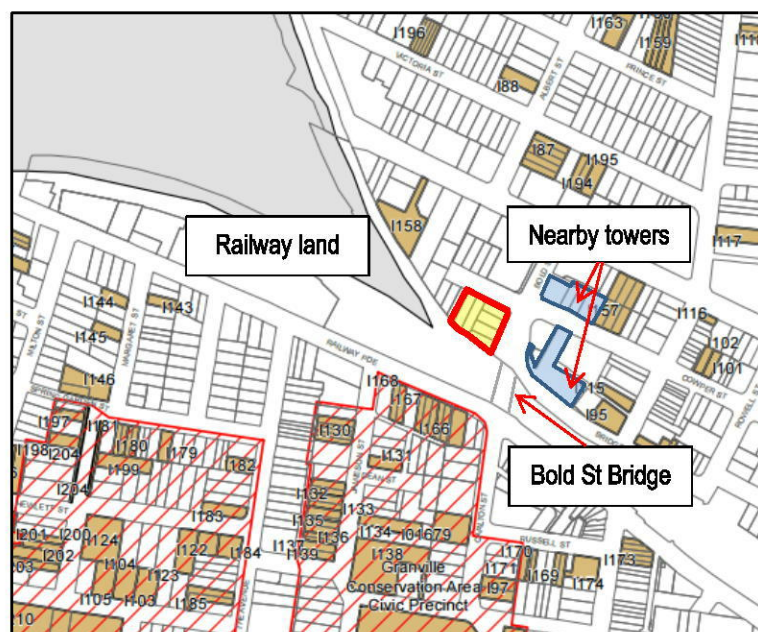


Source: Idraft Architects

Figure 3: Overshadowing of Roadways and Railway lines

Objective (c): to require the height of future buildings to have regard to heritage sites and their settings,

Response: In our opinion the proposed additional height will not affect the heritage setting of the nearby items or conservation areas. The subject site is separated from nearby heritage items and the Heritage Conservation Areas. The item to the north-west (I158) is a substation and to the east is a two storey furniture store building known as 'The Barn' (I157). There are numerous buildings between the items and the subject, including two tower buildings which will obscure views of the site (see Figure 4). The Bold Street Bridge and railway lines separate the site from the heritage conservation areas to the south-west of the site.



Source: Parramatta LEP 2011

 Subject Site

Figure 4: Heritage in the Vicinity

Objective (f): *to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.*

Response: The proposed additional height permits a more slender footprint to the residential tower, which in our opinion will provide a higher level of amenity for the future residents. The tower form's narrow footprint minimises overshadowing of nearby residential areas by providing a briefer period of overshadowing. The form also allows better access to light and ventilation to the proposed units in the residential component, and sky exposure and daylight as stipulated. Privacy is also improved with large setbacks to existing developments and greater than the minimum setbacks to boundaries in terms of future development. As the tower element will be visible from all sides, the sculptural and decorative elements proposed provide an elegant solution on an exposed site. No side will present as an unfinished or "rear" of the building.

5. Consistency with Objectives of Clause 4.6

It is noted that the objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and the vicinity.

The objectives contained Clause 4.6(1) are as follows, inter alia:

Objective (a): to provide an appropriate degree of flexibility in applying certain development standards to particular development,

Objective (b): to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

This variation seeks flexibility in the application of the height development standard to the proposal. In our opinion the proposal's height is appropriate in the setting of the site and its location bounded by two roads and major rail lines. The railway lands create a significant separation from dwellings further to the south and the Bold Street road reserve of variable width to the east creates a significant setback from buildings on Railway Parade. The building is potentially a gateway or landmark building to the Granville Town Centre as the location is prominent and will be visible from the public domain.

It is acknowledged that, although the height maps permit buildings of 52 metres high, Clause 4.3(2A) provides additional limits dependent on allotment size. Although the combined allotment would be smaller than the clause requirements for the 52 metre height, in this location, the additional height is considered appropriate, particularly as it is unlikely to cause amenity impacts to nearby residents. As well, consolidation with additional sites to the west would be likely to result in a similar tower form as proposed, due to the relatively shallow site depths of those lots and the requirements for setbacks to the railway. The applicants have approached the owner of the neighbouring lots without success. Therefore there is no opportunity to increase the lot size by further consolidation.

As indicated, the height provides the elegant proportions of the selected architectural style with the approach considered preferable to a lower, wider residential tower. The additional height of the proposal is not likely to result in significant amenity impacts such as loss of privacy or overshadowing to nearby residents, or detrimental effects on the streetscape or the area's character. The building generally complies with the other key envelope controls and the height non-compliance is not driven by excessive bulk. In fact, the proposal is compliant with the floor space ratio for the site, being 4.2:1, where a maximum 4.5:1 is stipulated.

Flexibility in these circumstances allows a better outcome by allowing the building to introduce an architectural integrity and built form that is anticipated by the Council's envelope controls. The form and scale proposed is appropriate in the area. Accordingly in our opinion, the proposal is consistent with the objectives of Clause 4.6 of the Parramatta LEP 2011 and that the variation to building height is appropriate in this instance.

6. Justification of Variation to Development Standard

Clause 4.6(3) of the LEP requires a written request when seeking to vary a development standard, along with justification of the contravention. The clause is stated, inter alia:

- (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.

The following sections will outline why, in our opinion, compliance with the development standard is unreasonable and unnecessary and will set out the planning justification for the variation.

6.1 Clause 4.6, section 3(a) Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

As noted above, the LEP requires the applicant to provide justification that strict compliance with the height requirement is unnecessary and unreasonable in the circumstances of the case. In a recent Class 1 decision in the Land & Environment Court, *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, Preston CJ agreed with Micaul's submissions (at [34] & [37]) that, inter alia:

'establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary'.

In *Wehbe v Pittwater Council* (2007) NSWLEC 827, Preston CJ established five potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary. The Court's decision in *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90 has altered the application of the five tests, requiring more than one of those five grounds to be made out.

It is our opinion that the proposal satisfies three of the five tests established in *Wehbe* and for that reason; the development standard can be considered unreasonable and unnecessary in this instance. The relevant tests, Tests 1, 3 and 4 will now be considered.

Test 1 – The objectives of the standard are achieved notwithstanding non-compliance with the standard

As indicated, this request seeks to vary the application of Clause 4.3 to the subject development. It is our opinion that the objectives of the height of building development standard are satisfied, notwithstanding the non-compliance. This has been addressed in Section 4 of this report.

Having regard to these considerations, the area of non-compliance is not likely to impact the amenity of neighbouring residents. If the proposal was to comply with the height limit, it would compromise the design and architectural integrity of the proposal. A compliant building height would not be less visible than the proposed residential tower within the streetscape. On that basis, the proposal is consistent with the objectives. Since the proposal is consistent with the objectives of the standard, notwithstanding the non-compliance, in our opinion Test 1 is satisfied.

Test 3 - The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

In our opinion the underlying objective of the development standard is to present a building that is contextually compatible with the height and character of the locality whilst ensuring the amenity of adjoining properties is retained.

When viewed from the street, the extent of non-compliance would not be readily noticeable, due to the substantial podium proposed. Compliance with the height standard would result in a wider building with reduced amenity for residents by increasing distances from lift cores, increasing dwelling depths and reducing access to daylight and natural ventilation. The valuable asset of attractively landscaped roof-top and podium-top common garden areas would be lost to the future residents.

In our opinion the underlying purpose outlined above would not be achieved if strict compliance with the building height was required, and therefore Test 3 is satisfied.

Test 4 – The development standard has been virtually abandoned by Council’s own actions in granting consents departing from the standard:

It is noted, the proposal is consistent with other Clause 4.6 variations approved in the vicinity. At a Council meeting on 11 May 2015 (DA/683/2014), a Mixed Use Development at Nos. 65-71 Cowper Street Granville, diagonally opposite the subject site, was approved with a variation in height of 38%, or 8.05 metres (see A on Figure 5). The land is the same zoning as the subject site, B4 Mixed Use, however the land size is smaller than the subject site at approximately 1850m², compared to 2204m² for the subject site. The reason given for the approval of the Clause 4.6 Variation under the Parramatta LEP 2011 was as follows, inter alia:

The departure to the height is a result of maximising the FSR for the site which was increased under PLEP 2011. However, as the subject site is unlikely to be amalgamated with the site to the north (service station) and east (The Barn which is a heritage listed site), it cannot benefit from the potential maximum height of 52 metres. As such, it would be unreasonable to restrict a development to a maximum height of 21 metres due to its inability to consolidate with adjoining sites. A planning proposal is currently being reviewed by Council with regards to future development on the sites to the east. The planning proposal envisages a significant uplift in height and FSR for these sites. In the event that the planning proposal is adopted, the proposed height of the subject development at 29.05 metres would be consistent with the form and bulk for developments within this locality.

Similarly, at a JRPP meeting in October 2015, DA/738/2014 for a Mixed Use Development for Nos. 10-42 East Street Granville was approved with variations in height of up to 22.91% (see B in Figure 5 on the following page). The site area is greater than 3,200m² and therefore the maximum building height is 52 metres. One of the buildings was approved with a height of 63.91 metres. Other buildings on the site were approved with variations of 9.29% and 12.45%. The justification for the approved height variation approval was, inter alia:

The proposed height variations to Block A, B and C provide a transition from the approved 19 storey mixed use development to the eastern end of East Street. The architectural roof features that are provided further increase the actual building height, however are recessed and not visible from the street level.

The proposed buildings do not contribute to any additional privacy issues. The proposal does not result in any unacceptable over shadowing to surrounding residential development by virtue of the orientation of the site. The overshadowing impacts are largely restricted to the adjoining railway corridor to the south and the car park beyond.

The proposed buildings are designed to set a positive precedent for the tone and scale of comparable future developments within the Granville Town Centre.

A Mixed Use development at Nos. 2-8 River Road West, Parramatta, was approved with a height variation of 23.7%.



Source: Bing Maps

Figure 5: Nearby larger scale developments

In each of the above cases, the context, location and reduced amenity impacts appeared to form part of the considerations for approval to the variations in height.

Additionally, the lack of opportunity to amalgamate with adjacent sites was a consideration in the assessment of Nos. 65-71 Cowper Street Granville. As noted, a similar situation exists for the subject sites whereby further consolidation can only take place to the west, and approaches by our client have not met with success.

In our opinion the development standard has been virtually abandoned by Council's own actions in granting consents departing from the standard for similar developments, and therefore Test 4 is satisfied

Strict compliance with the standard would unreasonably and unnecessarily compromise the design of a well-proportioned building on an exposed and highly visible site. In our view, compliance with the height control is unreasonable for this unusual site and the proposal exhibits sufficient planning reasons to vary the development standard.

6.2. Clause 4.6, section 3(b) There are sufficient environmental planning grounds to justify contravening the development standard

The proposal is permissible in the zone and is consistent with the relevant objectives of both the zone and the height development standard. The proposal is of a high quality design, which responds well to the site constraints, and is consistent with the desired future character of the locality. The proposal does not result in any unacceptable overshadowing of residential dwellings due to the orientation and location, being adjacent to a railway corridor to the south. The additional height is located centrally within the site and therefore the impacts are reduced.

As noted previously, Clause 4.3(2A) of Council's LEP prescribes a maximum height of up to 52 metres for a building, depending on the lot size. On these consolidated lots, the height limit is 39 metres, however in our opinion the site can easily accommodate the maximum height permitted in the Y1 zone. The proposal has a height of approximately 51 metres, rising to a maximum 52 metres at the eastern side of the rooftop communal rooms, lifts and stairs.

7. Clause 4.6(4) Requirements

Clause 4.6(4) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The applicant submits that the consent authority can and should be satisfied of each of these requirements of Clause 4.6(4)(a)(i), for all of the reasons set out in this request, and also having regard to the characteristics of the locality and the unique nature of the subject site.

In consideration of Clause 4.6(4)(a)(ii), with respect to development within the B4 Mixed Use Zone being consistent with the Zone objectives, our assessment is, inter alia:

Objective To provide a mixture of compatible land uses.

Response: The proposal provides a retail component, residential dwellings and facilities for enhanced residential amenity such as roof decks, landscaping and common areas, a gymnasium and onsite parking, including visitor and disabled parking.

Objective 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.

Response: The proposal provides retail and residential living on a site within walking distance to existing Granville and Parramatta Road shops and businesses. The location provides easy access to the railway station and the Parramatta Road buses. As the site is in a relatively level location, cycling would be a popular alternative to car transport.

Objective To encourage development that contributes to an active, vibrant and sustainable neighbourhood.

Response: The proposal is an attractive building in an area undergoing change. The residential and retail component will activate an area in a convenient location which is currently under-utilised by the existing light industrial and commercial uses. The new building will provide a link to the existing residential development and desired future development in the area.

Objective To create opportunities to improve the public domain and pedestrian links

Response: The site is ideally located to provide an enhanced pedestrian experience for future residents of the subject site and those nearby with additional landscaping proposed to the road reserve area to the east, and the retail uses at street level

As indicated, it is our opinion that the proposal is in the public interest. The proposal has been assessed in accordance with Tests 1, 3 and 4 as outlined in Wehbe, and Clause 4.6(4)(a)(ii) where an assessment of the proposal is required against both the objectives of the height of building development standard and the B4 Mixed Use Zone. Consideration of the development standard and the zone objectives have been set out in this application. For all the above reasons, it is our opinion that the variation for an increased building height which is compliant within the objectives of Y1 building height zone and the B4 Mixed Use Zone is appropriate given the circumstances of the site's location and its surroundings. Compliance with the numerical provisions is in our opinion unreasonable and unnecessary. The proposal is consistent with the intent of Clause 4.6 and the application is well-founded. Therefore the proposal is in the public interest and should be supported.