

Memo

To: Shaylin Moodliar, Senior Development Assessment Officer

From: Ellen Robertshaw, Partner, DFP

Date: 28 July 2017

Ref: P:\PROJECTS\9249A 50 Oxford Street, Epping\Letters\9249A.12ER_Clause 4.6.docx.12ER_Clause 4.6

Re: Clause 4.6 Written Variation to Building Height Development Standard

Height of Buildings

Pursuant to Clause 4.3 of the Hornsby LEP (2013), two maximum height of building controls apply to site. As shown in **Figure 1** below, the maximum allowable height for the proposed development is 48m for that part of the site fronting Oxford Street (Lot 2 & 3 in DP 758390) and 17.5m for the allotments fronting Essex Street (Lot 13 & 14 in DP 758390).

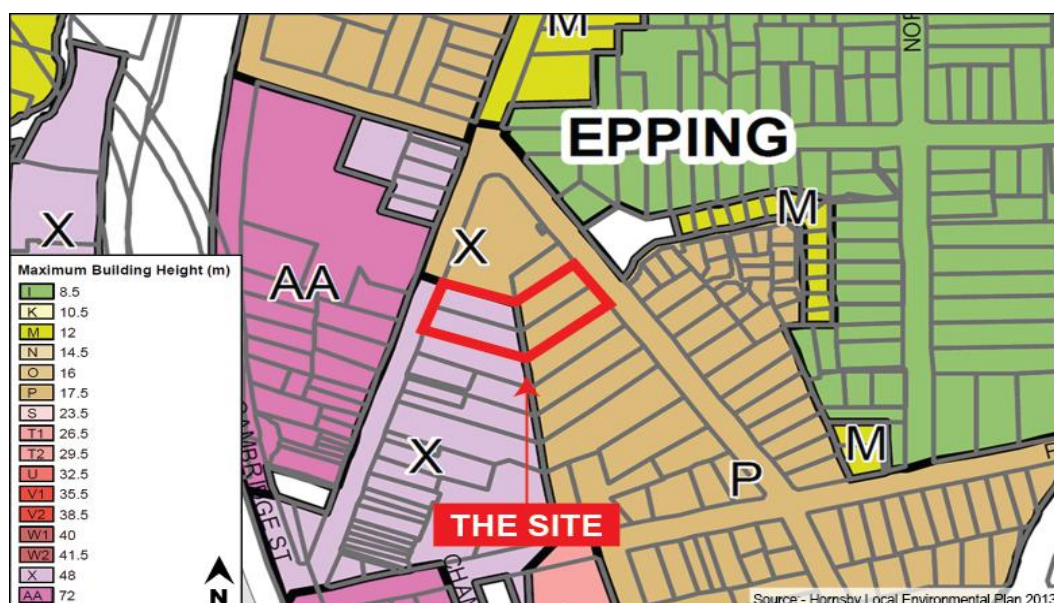


Figure 1 Height of Buildings Map Extract

As shown on Drawing No. DA11/02, components of the development proposal breach the 17.5m height limit on the Essex Street site. Those parts of the new Essex Street building which breach the 17.5m building height limit include:

- Part of the roof of Level 5 of the building;
- The stairwell access to the roof;
- Parts of the acoustic fencing/balustrade around the accessible part of the roof area;
- The lift at the rear of the building; and
- Part of the roof over the formalised seating area.

An extract of the building height plane plan DA11/02 is reproduced below at **Figure 2**.

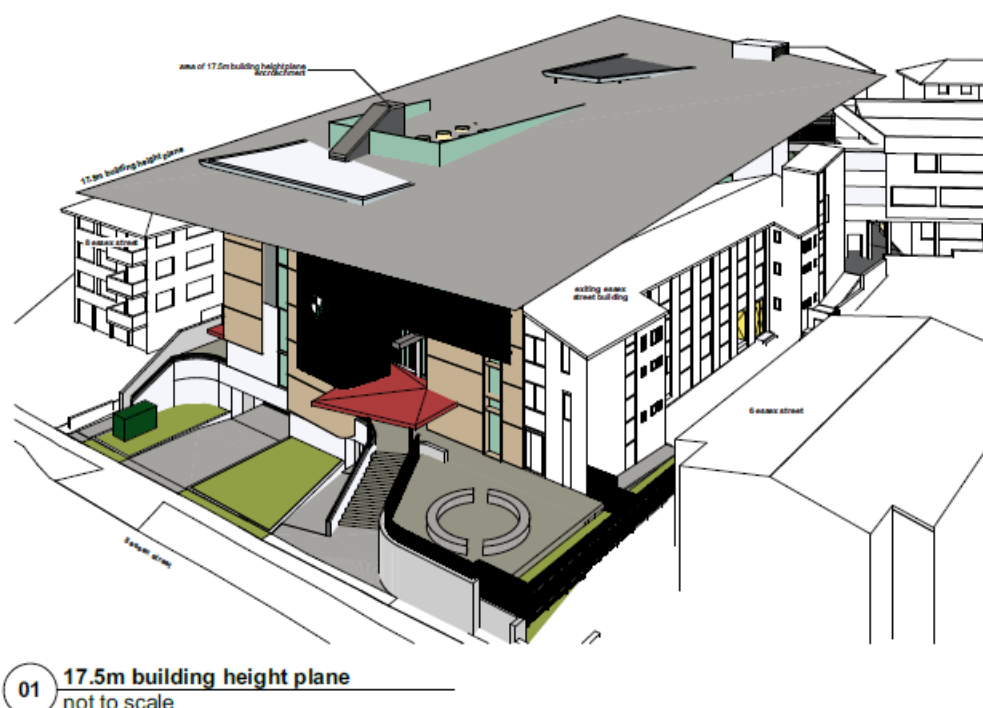


Figure 2 Extract from DA11 showing 17.5m Building Height Plane

As parts of the building will exceed the 17.5m height limit, pursuant to Clause 4.6 of Hornsby LEP 2013, an exception to this development standard in regard to building height is sought as part of this application.

Clause 4.6 - Exceptions to development standards

Clause 4.6 of Hornsby LEP 2013 allows for development which does not meet certain development standards to be considered. In accordance with subclause (2) of Clause 4.6:

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.

The building height provision is not expressly excluded and therefore Council is able to consider this application, subject to the submission of a written request as required by subclause (3). That request is required to justify the contravention of the development standard by demonstrating:

- that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- that there are sufficient environmental planning grounds to justify contravening the development standard.*

The following is the written submission in relation to the contravention of the subject proposal in terms of height.

The Oxford Street part of the site is within the UAP area of the Epping town centre. The planning controls for this part of the site and other land within the Epping town centre allow for development up to 46m and 72m in height. Therefore, the character of development to the west of the Essex Street part of the site and other land fronting Essex Street, is currently changing from one of low scale commercial development to multi storey mixed use development. For example, a height limit of 48m will allow for a mixed use development comprising a 3 storey commercial podium with a 11 storey residential tower above.

Building height is measured from the existing ground level which is defined in Hornsby LEP 2013 as follows:

ground level (existing) means the existing level of a site at any point.

As demonstrated in the section drawings on DA10/03, the topography of the site has been modified significantly from what might have been considered natural ground level. The building height (and encroachments) is measured from the current ground level. Figure 1 below is an extract from DA10/03 which demonstrates the modification to the existing ground level.



Figure 3 Extract from Drawing No. DA10/03

The encroachments noted above, are all minor and chiefly a result of the topography of the site. For example, the roof slab itself projects only to a minor extent and the variation will be barely perceptible in comparison to a compliant building.

The stairwell and balustrade to the roof top outdoor space and roof over the seating area are all deeply recessed behind the perimeter of the building and will not be readily (if at all) visible from the street. Similarly, the lift is located at the rear of the site and behind the existing Essex Street building, and will not be visible from Essex Street and only apparent from within the school site itself. These elements are important to achieve access to the roof space. These minor encroachments will enable a better planning outcome by facilitating the use of the roof space as part of the outdoor recreation area for school students and staff and makes best use of the building instead of consuming valuable land at ground level.

The shadow diagrams submitted with the DA demonstrate that the minor encroachments above the 17.5m height plane will not result in adverse impacts in terms of overshadowing on the subject or adjoining sites, or loss of privacy/overlooking. In this regard, 82% of living rooms in No. 8 Essex Street will receive at least 2 hours of sunlight between 9am and 3pm in mid winter and 70% of private open spaces will receive a minimum of 2 hours of sunlight between 9am and 3pm in mid winter.

As discussed in the SEE submitted with the DA, the proposal is capable of meeting the objectives of the R4 zone, in particular “enabling other land uses that provide facilities or services to meet the day to day needs of residents.” The minor encroachments will provide recreation space which is an important and necessary component of a school.



There is only one objective of the height of buildings clause which is to “*permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*” The proposed encroachments are appropriate having regard to the adjoining development as the encroachments are well removed from perimeter of the building minimising visual impacts and shadow impacts. The encroachments do not result in a development that is beyond the environmental capacity of the site or infrastructure (as noted elsewhere in the SEE submitted with the DA).

It has been demonstrated that the encroachment of the building height control will not result in any adverse environmental impacts and is contextually appropriate given the development occurring in the immediate vicinity of the site. Therefore, strict adherence to the development standard relating to the building height is unnecessary and unwarranted in these circumstances.

Yours faithfully

DFP PLANNING PTY LTD

A handwritten signature in black ink, appearing to read 'ER', is positioned above the printed name.

**ELLEN ROBERTSHAW
PARTNER**

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