

AUBURN LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 submission has been prepared to accompany the Statement of Environmental Effects submitted to Auburn Council for the demolition of the existing structures and erection of a mixed-use development comprising a mixed use development with 3 levels of basement parking, 2-3 levels of retail and commercial space and 2 residential towers at 41 Auburn Road, Auburn.

The proposal seeks a variation to the development standard contained within clause 4.3 of the Auburn LEP 2012 - maximum height of 49m.

The proposed maximum height of 50.6m represents a minor variation of 1.6m from the numerical height standard in the LEP, as shown in the section diagram below:

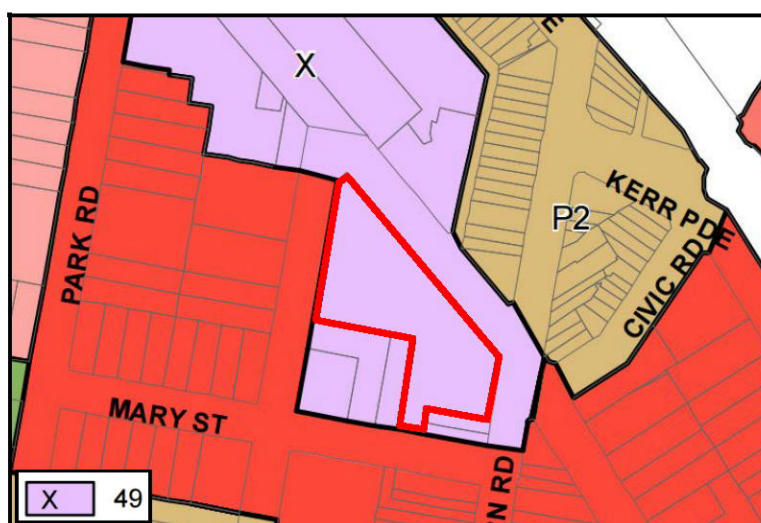


Figure 32: Building Height

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 Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposed variation is reasonable and necessary as the proposed lift overrun is an essential component of the development which provides access to all levels of the development that is associated with a compliant FSR.
- The lift overrun is a minor component of the overall height and is recessed from the perimeter of the built form and is limited to only 1 of the 2 towers on the site.
- The additional height would not be responsible for any additional view, shadow or visual bulk impacts beyond a building with a compliant height given its recessed nature and its limited extent of built form.



Figure 33: Section showing minor extent of height breach

The above factors demonstrate that the LEP height standard is unreasonable and unnecessary in this instance.

The following assessment addresses each of the relevant criteria under Clause 4.6:

1. Consistency with the objectives of the height standard in the LEP

Clause 4.3 Height:

The objectives of this clause are as follows:

- a) *to establish a maximum height of buildings to enable appropriate development density to be achieved, and*

Assessment: The proposed height allows for an appropriate development density which is compliant with the 5:1 FSR standard as the proposal has an FSR of 4.97:1. The additional height is limited to the lift overrun which is recessed from the perimeter of the residential towers. It is considered that the minimal nature of the height variation would not be evident from the public domain at the street levels surrounding the subject site. It is also noted that the height variation is limited to only 1 of the towers as the other tower is significantly below the height standard.

- b) *to ensure that the height of buildings is compatible with the character of the locality.*

Assessment: The height of the buildings associated with the residential towers is consistent with the height control which ensures that the height of the primary built form is consistent with the desired future character. The proposed residential towers will sit comfortably in the town centre context of Auburn which already includes established towers to the north across Queen Street. The height map for Auburn also shows that the proposal will be consistent with the desired future character as it intends that low density buildings to the east, south and west will also be redeveloped with significantly higher heights and densities.

2. Consistency with the objectives of the B4 Mixed Use Zone

Objectives of zone:

- *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 high density residential development.*
- *To encourage appropriate businesses that contribute to economic growth.*
- *To achieve an accessible, attractive and safe public domain.*

Assessment: The proposed variation would not generate any inconsistency with the zone objectives as the objectives are satisfied by the provision of a mixed use development which complies with the FSR and includes permissible uses. The proposal will provide for a desirable urban outcome for the Auburn Town Centre through the replacement of the outdated shops and facilities on the subject site with a modern and attractive mixed commercial and residential development. The two residential towers have a high design quality due to the sensitive siting and extent of articulation. The height variation is limited to a minor and essential component of a single tower which provides for accessibility to all levels.

Consistency with State and Regional planning policies

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*. The proposed height allows for achievement of the building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the Auburn Town Centre. The proposed height is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional densities near transport and established services.

3. The variation allows for a better planning outcome

Assessment: The variation allows for a better planning outcome as it enables a development with a compliant FSR to be fully accessible. The provision of accessibility to all levels is clearly a better planning outcome. Given that there are no adverse streetscape, visual bulk, heritage or amenity consequences of the variation, it is confirmed that the variation represents a better planning outcome.

4. There are sufficient environmental grounds to permit the variation

Assessment: The non-compliant component of the proposed building height is not responsible for any adverse shadow, privacy or view impacts. No FSR is contained in the lift overrun area which demonstrates that all commercial and residential accommodation is provided within the height limit. It is also reiterated that the proposed variation is limited to only 1 of the 2 residential towers whilst the variation would also not compromise the development capacity of surrounding properties. The recessed and limited nature of the built form ensures that the non-compliant component would be indiscernible and would not generate any unreasonable visual bulk, shadow or streetscape impacts. Therefore, there are sufficient environmental grounds to permit the variation.

5. The variation is in the public interest

Assessment: Demonstration that the proposed variation does not raise any inconsistency with the zone or height objectives determines that the proposal remains in the public interest under the criteria under Clause 4.6. Overall, the replacement of outdated shops with a high quality mixed use development represents a desirable outcome for the Auburn Town Centre which is clearly in the public interest.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded to Council in support of the development proposal at 41 Auburn Road, Auburn and is requested to be looked upon favourably by Council.