

Clause 4.6

Exception to Development Standard

Height Standard – Clause 4.3 of Botany Bay LEP 2013

593 – 595 GARDENERS ROAD, MASCOT

Development Application 14/129 - the approval comprised of:

- Integrated Development proposal for an eight storey mixed use development;
- Demolition of existing structures and site remediation;
- 175m² of retail floor space at ground level;
- 61 residential apartments (7 x studio, 17 x 1 bedroom and 37 x 2 bedroom) and
- 4 levels of basement car parking to accommodate 112 car spaces and bicycle parking.

Proposed Section 4.55(2) application:

- Convert Unit 209 and 309 from a studio to a one (1) bedroom unit;
- Balcony extended and awning provided to Unit 401;
- Northern façade adjustment with inclusion of blade columns;
- Lift overrun extended by 1.0m to the lift serving the communal open space on rooftop.

Submitted to Bayside Council

Prepared by Arkhaus

August 2018

Clause 4.6 Exception to development Standards Under Botany Bay LEP 2013

The applicant requests a variation to the height development standard, as prescribed in clause 4.3 of Botany Bay LEP 2013. This request is made pursuant to clause 4.6 Exceptions to Development Standards.

The following is a summary of the proposal for easy reference:

Requirement	26m
Proposed	28.42m Lift overrun only.
Is the planning control in question a development standard?	Yes
Is the non-compliance with the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	Change in Height is 8.5%

- The proposal meets the first of the Wehbe principles, being that it achieves the objectives of the standard to be varied;
- The proposal presents a reasonable variation to the numerical requirement of the standard;
- The proposal does not result in any unreasonable adverse environmental impact;
- The proposal is consistent with key BBLEP 2013 requirements;
- The built form proposed will be compatible with the existing and desired built form of the locality;
- The proposal achieves the objectives for maximum building height in Clause 4.3 of the LEP; and
- The proposal achieves the objectives of the B4 Mixed Use zone.

Introduction

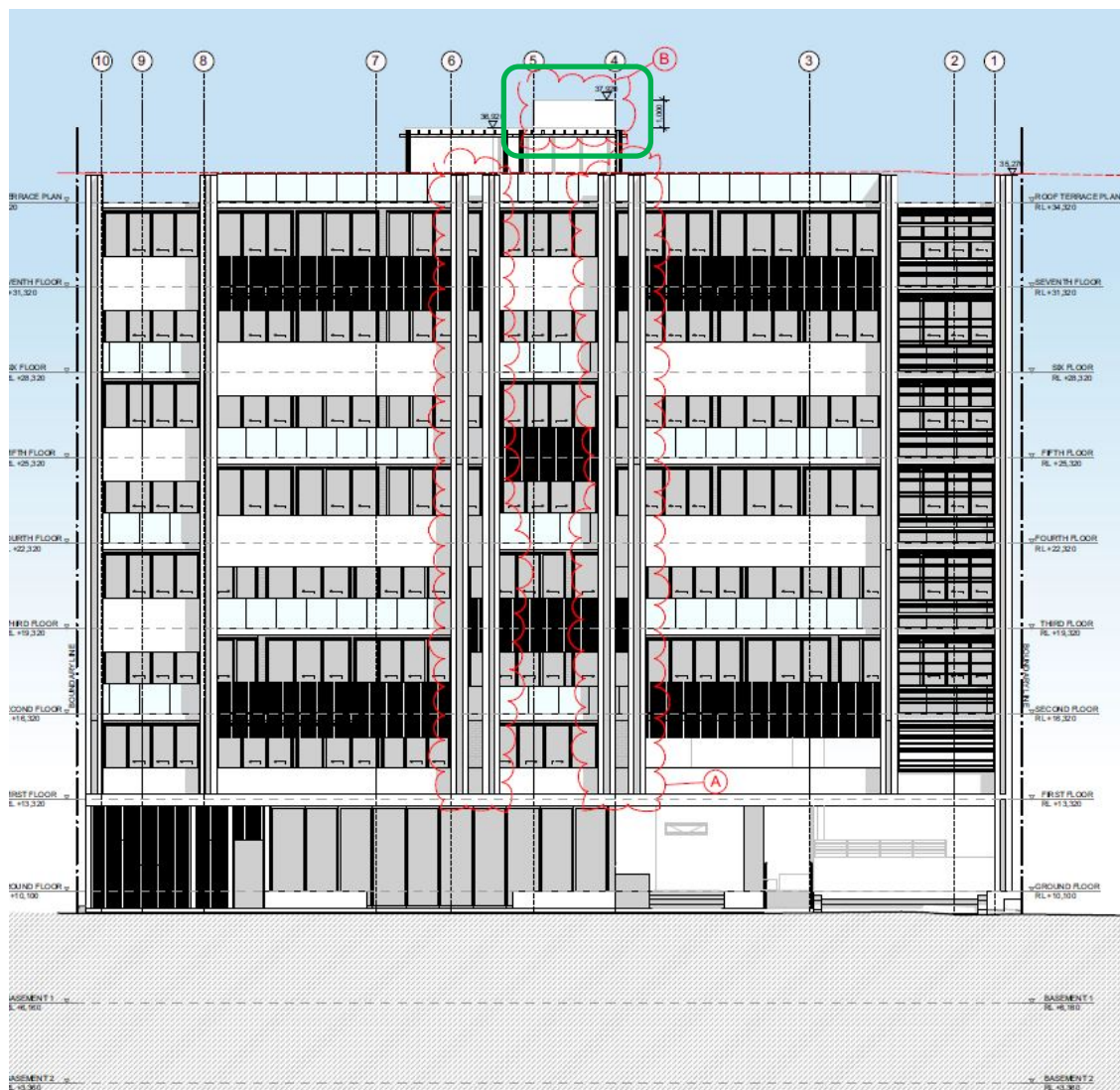
This *Clause 4.6 Exception to development standards* submission under the *Botany Bay Local Environmental Plan 2013* has been prepared to accompany the Section 4.55 (2) Modification submitted to Bayside Council for:

- Unit 209 and 309 converted from a studio to a one (1) bedroom unit;
- Balcony extended and awning provided to Unit 401;
- Northern façade adjustment with inclusion of blade columns;
- Lift overrun extended by 1.0m to the lift serving communal open space located on the rooftop.

The proposal is detailed in Architectural Plans prepared by Arkhaus dated August 2018.

The proposed development has a maximum height of 26m. The previous Development Application was approved with the lift and stair access to the communal open space on the roof top, exceeding the maximum height limit by 1.42m (RL 36.92).

As shown in Figure 1, the proposed Sec4.55 application seeks to extend the lift overrun by 1.0m (RL37.92). The lift overrun will exceed the height by 2.42m (8.5%). The lift serves the rooftop communal open space.



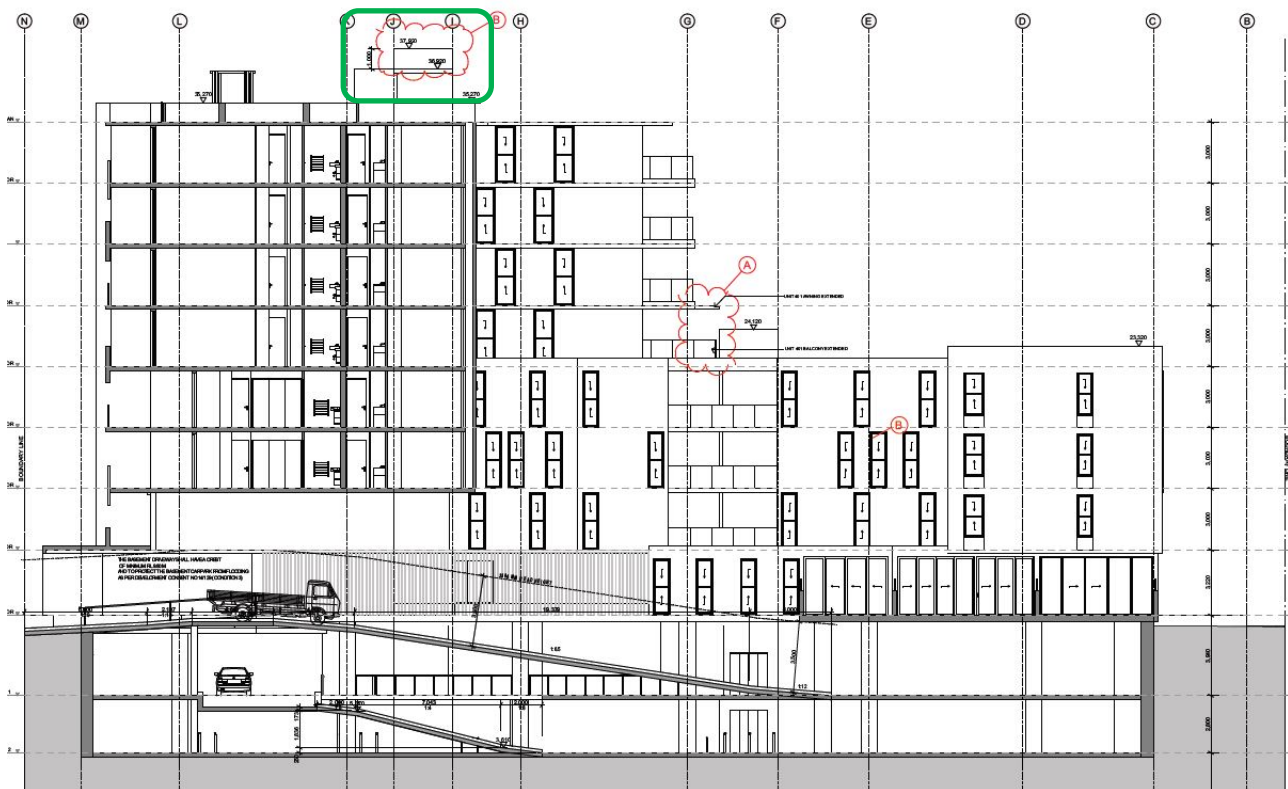


Figure 2: Section with the lift overrun extended by 1.0m highlighted green.

This submission contends that strict compliance with the maximum height is unreasonable and/or unnecessary in the circumstances of the case, that the variation sought can be supported and that the *Clause 4.6 Exception to development standards* should be upheld.

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.

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – clause 4.6(3)(a)

We submit that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case on the grounds that:

- The overall height of the previously approved Development Application:
 - The approved DA had a minor non-compliance with the LEP control in relation to the stair access and lift n. The residential portion of the building is compliant with the maximum height control of 26 metres;
 - The DA was approved with the lift and stair access exceeding the height control by a maximum of 1.42m (RL 36.92);
- The overall height of the proposed Section 4.55 Modification:
 - The lift overrun extended by 1.0m to the northern lift core serving the communal open space on the rooftop exceeding the height limit (see Figure 1 and 2 above).
 - The lift overrun as in the approved DA is insufficient. The lift will require a 1.0m overrun for the construction and operation of the lift.
- Non-compliant component:
 - Include the development's communal open space located on the roof and enable equitable access to that communal open space (lift); and
 - Are not inconsistent with:
 - Objectives of the development standard and applicable land use zone (see response to Question 4); or
 - Approval is already provided to the non-compliant height component being the stair access and lift;
 - Are not visible from public domain, ensuring built form outcome consistent with streetscape character; and
 - Do not result in any adverse external amenity impacts in regard to loss of view, overshadowing or privacy to neighbouring properties, beyond that of a compliant building.
- In the case of:
 - The rooftop communal open space: enforcing the development standard would deny the communal open space located on the roof to future residents of the development;

- The lift overrun: enforcing the development standard would preclude equitable access to the rooftop communal open space without tangible improvement in amenity to neighbouring dwellings.

Given the approved development's compatibility with the existing and desired future character, and previous approval for the non-compliant height component of the stair access and lift, it is considered that there is no public benefit in maintaining the development standard.

It is therefore submitted that strict compliance with the standard is unreasonable and unnecessary in the particular circumstances of the case and that there are circumstances particular to the subject site which confirms the reasonable nature of the variation in this instance.

2. Sufficient environmental planning grounds to justify contravening the development standard – clause 4.6(3)(b)

There are sufficient environmental planning grounds to justify contravening the development standard on the grounds that the components of the proposed development exceeding the maximum permissible height:

- Will not result in greater bulk and scale, loss of views or visual or acoustic privacy impacts than would a compliant development;
- Will not be visible from the public domain and therefore will not result in the development appearing inconsistent with existing streetscape character.

There are also no internal amenity grounds that would determine that the additional height should not be granted. This is demonstrated by the compliant degree of communal open space, private open space, natural ventilation, solar access, apartment sizes, layouts and separation distances.

The combination of the internal and external factors demonstrates that there are sufficient environmental grounds to permit the height variation in this instance.

3. Adequately addressed the matters required to be demonstrative by subclause (3) – clause 4.6(4)(a)(i)

Please see submission in relation to clause 4.6(3)(a)(i) and (ii) above.

4. 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 - clause 4.6(4)(a)(ii)

The proposed height variation is considered to be justified on the following basis:

BBLEP 2013 Height Objectives

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

(a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner

Assessment: Notwithstanding non-compliance with the development standard, the proposed development remains consistent with the desired future character of the area derived from:

- The intent of the development standard is to enable a lift overrun to the lift so that it can function appropriately and to provide equitable access to the rooftop communal open space;
- Given the transitional nature of the area from industrial to mixed use, the approved design provides an appropriate building form. The non-compliance relates only to the lift overrun.
- The height of the approved mixed use building is reflective of the desired future character established by the LEP controls. The approved developments predominantly compliant building form enables the adjacent sites to develop in accordance with the planning controls.
- Ensuring the approved built form maintains and is consistent with the streetscape character.

(b) to ensure that taller buildings are appropriately located,

Assessment:

- As above and the building is predominantly compliant with the height control. The non-compliance relates to the lift overrun and does not change the character and overall form of the building. The height of the building is consistent with what is envisaged by the controls.

(c) to ensure that building height is consistent with the desired future character of an area,

Assessment: As discussed above, the building form is appropriate and will achieve the desired future character of the area.

(d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

Assessment: Elements of the proposed development exceeding the maximum permissible height:

- Will have minor visual impact from neighbouring dwellings and will not be perceived from the public domain;
- Will not disrupt any significant views from the public domain or neighbouring property due to its location on the roof; and
- Will not result in additional overshadowing impacts due the lift overrun being extended by 1.0m.

(e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.

Assessment: Elements of the proposed development exceeding the maximum permissible height are unlikely to be perceived from adjoining roads, adjoining mixed use developments or public places such as parks and community facilities and therefore will not adversely affect the streetscape.

The approved building will significantly improve the streetscape and the appropriately articulated façade, generous lobby entry, retail interface and landscape treatment will ensure the scale is appropriate for the surrounding streetscape.

The lift overrun will not be readily visible from Gardeners Road due to its setback and location on the roof plan.

The above assessment demonstrates that the variation does not raise any inconsistency with the objectives of the height standard.

Consistency with the Objectives of the Zone B4 Mixed Use

Zone B4 Mixed Use

1 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.*

Assessment: The approved development provides for mixed uses in a highly accessible location consistent with the objectives of the zone. The variation with the extension of the lift overrun by 1.0m does not raise any inconsistency with the objectives of the zoning.

The approved retail tenancy at ground level along Gardeners Road is compatible and consistent with the zone objectives. These uses will improve natural surveillance and increase activity along the streetscape.

The approved mixed use building achieves the intent of the B4 zone through the provision of retail at street level and residential above to support the retail use.

Conclusion

The above assessment has demonstrated that strict compliance with the height control is unreasonable and unnecessary in the circumstances and that there would be no public benefit in maintaining the development standard in this instance.

Noting that the development was approved with a non-compliance to the stair access and lift to the open communal space located on the rooftop, it has been demonstrated that the proposed height meets the objectives, given the positive streetscape outcome and consistency with the established pattern of development.

For reasons mentioned herein, this clause 4.6 variation is forwarded to Council in support of the variation to the height associated with the lift overrun to the approved development at 593 – 595 Gardeners Road, Mascot and is requested to be looked upon favourably by Council.

ARKHAUS

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