

# **CLAUSE 4.6 VARIATION – HEIGHT OF BUILDINGS**

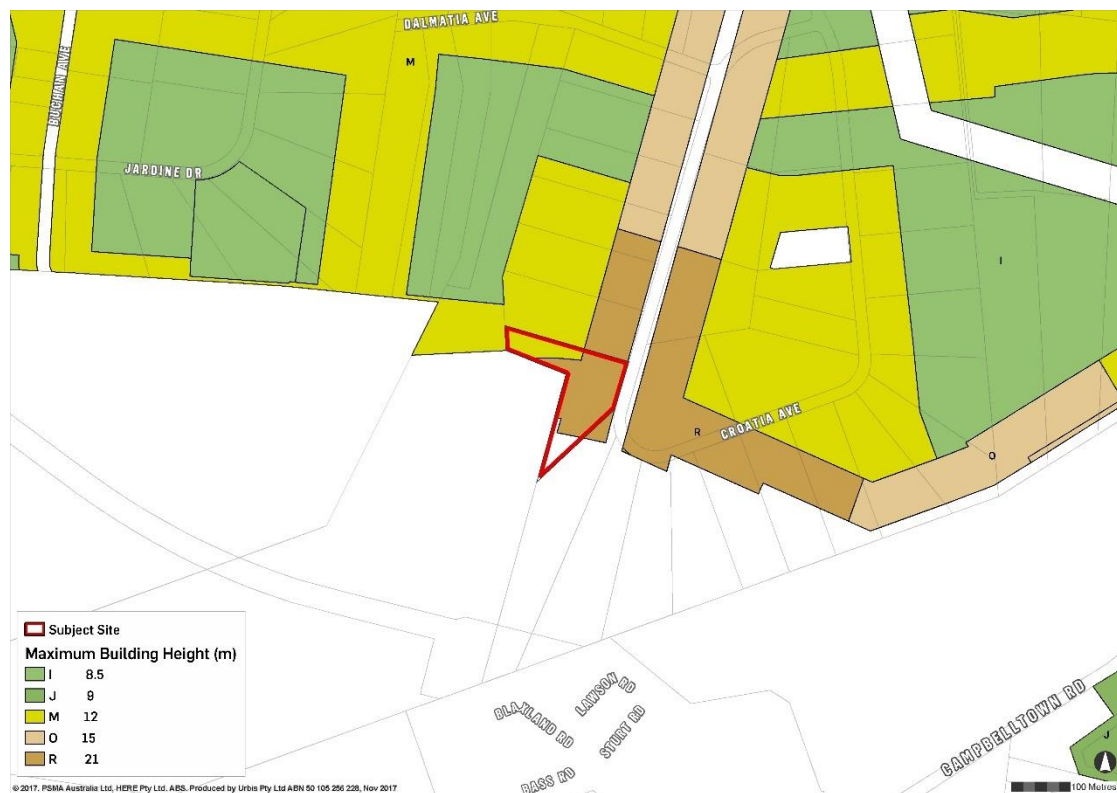
## **190 CROATIA AVENUE, EDMONDSON PARK**

### **1. INTRODUCTION**

This request seeks to vary the maximum height of building development standard prescribed for the subject site (Lot 32 in DP 1228502) under clause 4.3 of the *Liverpool Local Environmental Plan 2008 (LLEP 2008)*.

The Height of Buildings Map accompanying clause 4.3 of the LLEP 2008 sets a maximum height of building control of 21m for the site, refer **Figure 1**.

Figure 1 – Height of Building Map



Source: LLEP 2008 and Urbis

### **2. PROPOSED VARIATION**

Buildings A, B and C comply with the height of buildings development standard, with the exception of a small corner of the Building C parapet (adjacent to Costello Lane) and four lift overruns which are located behind the main parapet of the buildings.

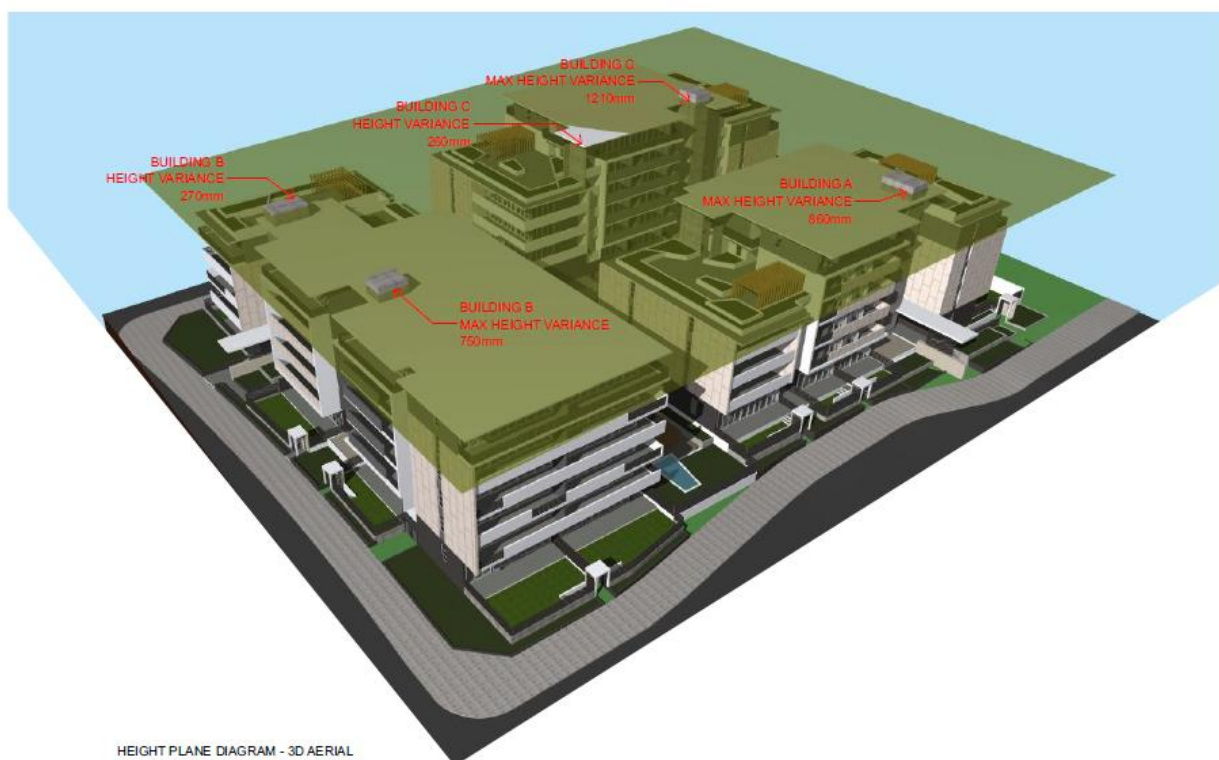
A Height Plane Diagram has been prepared by Mosca Pserras Architects which clearly articulates the specific parts of the buildings which vary from the development standard. **Figure 2** overleaf shows the points of variation to the maximum 21m height of buildings development standard measured in accordance with the LLEP 2008 definition:

**building height (or height of building)** means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Figure 2 – LLEP 2008 Height Plane (21m) – 3D Aerial View



Source: Mosca Pserras Architects

The summary table below (**Table 1**) details the proposed maximum height of each of the proposed buildings against LLEP 2008 development standard. The table shows the extent of the variations in numeric and percentage terms. It is relevant to note that the majority of the proposed built form sits below the maximum height of buildings development standard, as shown within **Figure 2**.

Table 1 – Proposed Building Heights and Variations (LLEP 2008)

Building	LEP Control (m)	Maximum Height (m)	Maximum Variance (m and %)
Building A	21m	21.86m	0.86 (4.0%)
Building B	21m	21.75m	0.75 (3.5%)
Building C	21m	22.21m	1.21 (5.7%)

### 3. NSW LAND AND ENVIRONMENT COURT CASE LAW (TESTS)

The case law that has been considered in the preparation of this clause 4.6 variation are as follows:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v. Ashfield Council* [2015] NSWCA 248 ('Four2five No 3')

### 4. ASSESSMENT OF CLAUSE 4.6 VARIATION

#### 4.1. Consistency with Objectives of Height Control

Clause 4.3 of the LLEP 2008 outlines objectives for the height of buildings development standard. These objectives are outlined in **Table 2**. This table demonstrates that the proposal with the variation is consistent with the objectives of this development standard.

Table 2 – Assessment of Consistency with Development Standard Objectives

Objective	Comment
<i>To establish the maximum height limit in which buildings can be designed and floor space can be achieved.</i>	<p>The maximum heights in the LLEP 2008 are appropriate for new buildings in this urban release area and reflect the Future Character Statement for Edmondson Park in the LDCP, which states (amongst other things);</p> <p><i>“Taller buildings are encouraged to frame Croatia Avenue and the Maxwells Creek Urban Park. Buildings are predominantly between 3 - 6 storeys and massed towards the public realm.”</i></p> <p>The proposed variation is minor in nature and the development adopts a height, bulk and scale that reflects the desired future character for the site and area more generally.</p>
<i>To permit building heights that encourage high quality urban form.</i>	<p>The proposed buildings have been designed, positioned and oriented so that they make a positive contribution to the future streetscape character and achieve a high standard of residential amenity.</p> <p>The areas of non-compliance are sited behind the main parapets and are not readily visible from the public domain and will not detract from the overall design of the development. The</p>

Objective	Comment
	elements that breach the height standard do not erode the ability to achieve high quality built form on the site.
<i>To ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight.</i>	The extent of overshadowing attributed by the additional building height beyond the shadow cast by a complying height is negligible.
<i>To nominate heights that will provide an appropriate transition in built form and land use intensity.</i>	<p>The built form of the proposal is consistent with the desired future character for this area of Edmondson Park. The development provides an appropriate height transition between the Edmondson Park Town Centre and the surrounding lower density residential areas.</p> <p>The extent of variation sought is insignificant.</p>

## 4.2. Consistency with Objectives of R1 Zone

The majority of the site is zoned R1 General Residential, with small portions of the site also zoned as follows:

- RE1 Public Recreation: heavily vegetated band within the southern portion of the site.
- SP2 – Infrastructure (Local Road): frontage to Croatia Avenue, which is to be dedicated to Council for road widening.
- B4 Mixed Use (zoned pursuant to the SEPP SSP): southern tip of the site.

The proposed residential flat buildings (and therefore height encroachments) will be located within the portion of the site zoned R1 General Residential.

The LLEP 2008 includes the following objectives for the R1 Zone:

- *“To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.*
- *To facilitate development of social and community infrastructure to meet the needs of future residents.”*

The proposal is consistent with the objectives of the R1 Zone as follows:

- A mix of one, two and three bedroom apartments is proposed consistent with the LDCP 2008 for Edmondson Park and this will in part meet the demand for housing in this urban release area.
- The site is highly accessible and proximate to Edmondson Park railway station. The development will be supported by future employment generating land uses to be delivered in the Town Centre. The site is highly suitable for supporting the proposed development density.

#### **4.3. Unreasonable or Unnecessary**

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

- The proposal is consistent with the objectives of the development standard as provided in clause 4.3 of the LLEP 2008.
- Based on the development area of the site (7,759,25sqm), the proposal is fully compliance with the maximum 1.5:1 floor space ratio (FSR) development standard that applies to the site. Therefore, the height variation does not seek to provide any additional density or gross floor area (GFA).
- The proposed height variation allows for equitable access to the communal rooftop open space.
- The predominant building height does not exceed 21m, with the lift overruns and small corner of the Building C parapet being very minor exceptions.
- The visual impact associated with the additional height is negligible. The lift overruns are sited behind the main parapet and will not be readily visible from the public domain.
- The potential environmental impacts of the variation have been documented and detailed in the accompanying Statement of Environmental Effects.

Taking into account the above, the particular circumstances of this application it is neither, reasonable or necessary to require compliance with the height of building standard.

#### **4.4. Sufficient Environmental Planning Grounds**

The proposed non-compliance is a direct result of the proposed lift overruns which provide equitable access to the communal open space on the roof of the buildings. These isolated areas of height breaches will give rise to no additional environmental impacts.

#### **4.5. Any Matter of Significance**

The non-compliance will not raise any matter of State or regional significance.

#### **4.6. Public Benefit**

The driver of the variation is supporting the public interest. Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.

## **5. CONCLUSION**

The height of the proposal results in a minor exceedance in building height limit by 0.75m to 1.21m of the 21m height standard.

Strict compliance with the height development standard is both unreasonable and unnecessary in the circumstances of the case for the following reasons:

- The proposal is consistent with the objectives of the building height standard.
- The key reason for seeking flexibility with the building height standard is to enable lift access to the communal roof spaces, with predominant height of the building 21m in accordance with the height standard.
- The maximum FSR is not exceeded by the proposed development.
- There are no unreasonable environmental impacts from the negligible variation.

Based on the reasons outlined above, it is concluded that the request is well founded and that the particular circumstances of the case warrant flexibility in the application of the development standard.