

Annexure 1: Revised Clause 4.6 Variation Request

As shown on the section extract below the proposal marginally exceeds the building height control of 32m. The departure equates to 600mm or 1.8% of the control and relates to the parapet element and lift overrun areas of the proposal with all habitable areas below the building height.



The relevant provisions of Clause 4.6 of the LEP are addressed below in order to permit Council to vary the LEP requirement in these unique circumstances.

Clause 4.6(3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved. The objectives of the height of buildings development standard are stated as:

- (1) *The objectives of this clause are as follows:*
 - a) *To establish a maximum height of building to enable appropriate development density to be achieved, and*
 - b) *To ensure that the height of buildings is compatible with the character of the locality.*

The current development proposal is consistent with the above objectives and is considered to be appropriate on environmental planning grounds based on the following:

- The development proposal is consistent with the intent of the height control with the primary portion of the height non-compliance limited to a parapet and lift overrun meaning that all habitable floor space is below the height limit.
- The proposed building incorporates a high-quality design with articulated façades to its street frontages with a mixture of quality external finishes and materials. The proposal will contribute positively to the streetscape and visual amenity of the area.
- The proposal has been increased in height to respond to flooding inundation (lifting the height of the ground floor).
- Due to the minor nature of the variation it will not have any adverse amenity impacts as compared to a compliant building height. In this regard it is noted:
 - The variation will be visually unnoticeable given its recessed location and will have no adverse impact on the physical bulk, height or scale of the development as viewed from the street.
 - The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss or overshadowing.
 - The proposed variation will not lead to view loss or interrupt on views to and from the site.
 - The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal.
- The proposal has been designed to comply with the maximum permitted FSR on the site and also complies with key controls pertaining to setbacks, and car parking which indicates an appropriate scale of development on the site;
- The proposal will not obstruct existing view corridors;

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances particularly having regard to the flooding affectation and the improved outcome of adopting the rooftop common open space.

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

As addressed the proposed development is in the public interest, as it remains consistent with the objectives of the height control.

In addition, the proposal is consistent with the objectives of the zone, being:

- 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.

The proposal ensures that the mixed-use nature of the zone is retained with the proposal aiming to be consistent with the upscaling of the built form within the immediate locality and delivers a mixed-use development in proximity to public transport and expands the delivery of housing.

It is understood that the concurrence of the Director-General can be assumed in the current circumstances.

Clause 4.6(5)

As addressed it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the height control does not raise any matter of significance for State or regional environmental planning given the highly unique site attributes that are not replicated in any meaningful way elsewhere Lidcombe Town Centre; and
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal given that the proposal is responding to its prominence on a key corner. The departure from the height control is acceptable in the circumstances given the underlying objectives are achieved and it will not set an undesirable precedent for future development within the locality.

Strict compliance with the prescriptive height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality in the context of the current planning controls, which is characterised by residential and mixed-use development of comparable height and character. The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The proposal responds to site constraints and opportunities such as the raising of the ground floor level due to flooding inundation. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.