



# CLAUSE 4.6 VARIATION REPORT BUILDING HEIGHT

146-154 O'RIORDAN  
STREET,  
MASCOT

21 December 2018

Amended 25.9.19  
Amended 13.3.20

## 1.0 INTRODUCTION

- 1.1 This amended Clause 4.6 variation report accompanies a Development Application submitted to Bayside Council for approval. This report supports the proposed variation to the Height development standard in the B5 Business Development zone pursuant to Clause 4.3 of the Botany Bay LEP 2012.
- 1.2 The subject site is zoned B5 Business Development under the Botany Bay LEP 2012
- 1.3 Clause 4.3 of the LEP relates to height. The accompanying map specifies a maximum height of 22 metres.
- 1.4 As amended , the proposed heights for the buildings are provided below:

Building	Lower Roof	Roof	Parapet	Lift Overrun
A	NA	21.94m – 22.99m (west) 22.5m – 23m (east)	23.1m – 23.6m (west) NA (east)	23.39m (west) 24.18m (east)
B	15.1m	20.87m – 21.55m	NA	22.37m (north) 22.35m (south)
C	14.16m (north) 14.1m (south)	22.3m	23.22m	24.2m
D	13.93m -14.1m (east) 14.35m – 14.99m (west)	22.6m	22.83m – 23.98m	24.04m (east) 24.03m (west)
variation	Complies	0.3m to 1m	0.83m to 1.98m	350mm to 2.18m

- 1.5 The accompanying architectural drawings illustrate the heights of the buildings and include the 22m height line, indicating the minor areas the will exceed the LEP height control.
- 1.6 The application seeks a variation to the maximum height control by up to 2.18 metres for the lift overrun on the western side of Building D. The minor additional increases to the height from the submitted DA relate to a response to the flooding assessment of the site and the required ground floor level.s
- 1.7 As shown in the table above the parapet and lift overrun features in part exceed the control. These variations are reasonable as the parapet is a design feature to provide visual interest and the lift overruns have been positioned to be setback from the building edge to minimise visual impacts.
- 1.8 In addition, the northern end of Buildings B, C and D have been stepped down well below the maximum height to transition towards the heritage listed Mascot Park to the north and to minimise bulk and scale for the residential properties to the east.
- 1.9 A Planning Proposal has also been lodged to increase the height of part of the site along O’Riordan Street to 44 metres. Following consideration of the Planning Proposal it is intended that a subsequent DA will be lodged to add additional height to Buildings A & B. The height to the rear of the site is to remain at 22 metres with the minor variations under this DA to be assessed using Clause 4.6.

- 1.10 Clause 4.6 allows for the contravention of a development standard with approval of the consent authority.
- 1.11 The proposed variation to the Height control is assessed with consideration to the principles established by the Land and Environment Court in *Whebe V Pittwater Council* [2007] NSW LEC 82 and the principles established in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46. The report is also drafted in consideration of the findings in *Moskovich v Waverley Council* [2016] NSWLEC 1015 and *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7.
- 1.12 This Clause 4.6 variation report has been prepared by LJB Urban Planning and accompanies the development application.
- 1.13 The report is structured to address the requirements of Clause 4.6 using the following headings:
- Is the development consistent with objectives of the zone?
  - Is the development consistent with the objectives of the standard?
  - Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case?
  - Are there sufficient environmental planning grounds to justify the contravention of the development standard?

## 2.0 CLAUSE 4.6 VARIATION REPORT

### Is the Development consistent with the objectives of the zone?

- 2.1 Yes. The zoning of the land is B5 Business Development.
- 2.2 The proposed development maintains compliance with the objectives of the zoned B5 Business Development zone.
- 2.3 The objective of the B5 zone:
- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres*
- 2.4 The development satisfies the objectives in the following ways:
- The proposed hotel and serviced apartment uses will provide an appropriate mix of uses, consistent with the objective of the zone. In addition, the desired future character for the Mascot Business Development Precinct, within the DCP, identifies this as a preferred use within this zone.
  - The accommodation will support the nearby business functions associated with the airport as well as surrounding businesses.
  - The Pullman Hotel and Holiday Inn are located opposite the site on the western side of O’Riordan Street and are also on land zoned B5 Business Development. The proposed uses are suitable and appropriate given the proximity to both Sydney Airport and Mascot Railway Station.
  - The proposed neighbourhood shops and commercial tenancies will suitably activate O’Riordan Street and increase pedestrian activity along the eastern side.
  - The proposed uses can operate without adverse effects on the current adjoining commercial, hotel, residential, industrial and open space uses, as outlined in the accompanying SEE.
- 2.5 The site is located within Mascot and identified in the DCP as being within the Mascot Business Development Precinct. The subject site is consistent with the desired future character of the precinct and will provide an appropriate mix of business uses that will contribute to the vitality of the nearby Mascot Station Town Centre and encourage the use of public transport.
- 2.6 It is therefore considered that the development, notwithstanding the variation to the development standard, achieves the objectives of the B5 Business Development zone.

### Is the Development Consistent with the Objectives of the Standard?

- 2.7 The proposed development will achieve compliance with the objectives of the development standard under Clause 4.3 of the Botany Bay LEP 2012. A detailed assessment against the objectives, relating to height, is provided below:
- (a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,**
- 2.8 As demonstrated within this report the scale of the development is highly compatible with existing developments along O’Riordan Street, and this is evident in PTW Architects perspective below:



- 2.9 The heights along O'Riordan Street to the west and south are significantly higher at 44 metres. The highly articulated and modulated building form ensure that the minor exceedance does not result in excessive bulk and scale and provides a cohesive design.
- 2.10 The layout and positioning of the four new buildings is appropriate, with Building A and B suitably activating O'Riordan Street and the landscaping along the majority of the front, rear and side setbacks will soften the building form when viewed from Mascot Park to the north and less dense residential properties to the east. The following site plan prepared by PTW Architects demonstrates this:





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

- 2.11 The stepping down of Building B, C and D at the western end to heights of between 13.93m and 14.99m will reduce the scale presented to the adjoining Mascot Park and eastern residential properties. The following perspective prepared by PTW Architects illustrates this:



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

- 2.12 The proposed uses are compatible with the desired future character of the precinct and the minor height variation should be supported as the development is significantly lower than developments to the west and south and will transition appropriately with adjoining land uses without significant impacts.
- 2.13 The site is positioned within the Mascot Business Development Precinct which is identified as characterised by airport related commercial development as well as motels and serviced apartments. The development will satisfy the objectives and controls for this precinct in the following way:
- Will encourage public transport usage due to proximity to airport, Mascot Station and bus services;
  - Will improve the appearance of O’Riordan Street, which services as a gateway through the precinct, all buildings have been architecturally designed and modulated that the minor non-compliance with height will not be high discernible and will not cause any adverse overshadowing to adjoining properties; and
  - The proposed buildings and uses are in an optimal position to service the needs of the surrounding locality.
- 2.14 The proposed development will achieve the desired future character and the minor height variations are acceptable in this instance.

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

- 2.15 The accompanying shadow diagrams demonstrate that the setback of the buildings and additional height will maintain in excess of 2 hours of sunlight for the residential properties to the east.
- 2.16 The setback will be suitably landscaped to soften building form and the proposed setbacks will comply with the DCP to ensure adequate separation.
- 2.17 The minor variations are generally limited to the parapet heights and the lift overruns. The lift overruns are centrally located and will not be visible from the public domain.
- (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.**
- 2.18 The proposed building form will be appropriate for the O’Riordan Street gateway location at the intersection with Botany Road. The minor variations will not be noticeable in the skyline given their minor non-compliance and location on the site. The building forms are appropriately spaced and the minor height variation will have no additional impact on adjoining properties and the heritage listed Mascot Park to the north.
- 2.19 The proposed FSR of 2.11:1 is significantly lower than the LEP maximum of 3:1. The scale is still significantly lower and the verticality of the building forms, including the minor non-compliance, is a better planning outcome as it enables greater site landscaping that will integrate more holistically with the design.
- 2.20 Overall, the development will not adversely affect the streetscape, skyline or landscape.

**Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

- 2.21 The proposed variation to the height control is assessed with consideration to the principles established by the Land and Environment Court in *Whebe v Pittwater Council* [2007] NSW LEC 82. His Honour Preston CJ set out 5 ways of establishing that compliance with the standard is unreasonable or unnecessary. The 5 parameters were further tested in *Four2Five Pty Ltd v Ashfield Council* NSWLEC 90 where Justice Pain found that meeting the objectives of the standard was not sufficient to demonstrate that compliance was unreasonable or unnecessary.
- 2.22 Each of the 5 ways will be addressed in detail below:
- (a) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard. In this instance one must determine the objectives of the standard and if not expressly stated in the LEP what are the inferred objectives?**
- 2.23 Yes, the proposal meets the objectives of the standard as demonstrated above.

**(b) The underlying objective or purpose is not relevant to the development;**

2.24 The underlying objectives for height are still relevant.

***(c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;***

2.25 The underlying objective or purpose of the height control would be thwarted if compliance was required. This assessment is made on the basis of the minimal affects produced by the proposed development:

- The subject site is located within the Mascot Business Development Precinct with sites along the western side of O'Riordan Street and to the south of the site having an LEP Maximum of 44 metres. The minor non-compliances with the 22m height control are reasonable given the highly articulated building forms, setbacks and landscaping throughout the development. The development will provide appropriate built form for the O'Riordan Street Gateway and the heights are reasonable given the scale of existing development in the precinct.
- Compliance with the 22-metre height control is unreasonable as the proposed FSR of 2.11:1 is significantly lower than the LEP maximum of 3:1. A compliant height scheme is likely to have greater impact on adjoining sites with reduced setbacks and less landscaping. The development will achieve appropriate building form for the gateway site.
- The accompanying architectural drawings and perspectives illustrate a cohesive design that will not adversely affect adjoining properties by way of overshadowing, privacy, scale and view loss. The stepping down of the northern ends of Buildings B, C and D will ensure the scale transitions towards Mascot Park in the north and residential properties to the east.
- The underlying objective or purpose of the Height control would be thwarted if compliance was required as Council's desired future character is to ensure that buildings are appropriately designed to contribute positively to the visual amenity of the gateway function of the area.

2.26 The underlying objectives of providing increased height in this locality and providing a sensitive response notwithstanding the permitted height control would be thwarted if compliance was required.

***(d) The development standard has been virtually abandoned or destroyed by Council's own actions.***

2.27 Council has not abandoned the height controls, however, the height limits along O'Riordan Street for this site are inconsistent with the 44m height control along the western side and for all properties to the south. Additional height along O'Riordan Street can be justified with an appropriate transition towards the less dense properties to the east.

2.28 The minor non-compliance will not be highly discernible given the scale of building form along O'Riordan Street.

***(e) The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable and unnecessary.***

2.29 The zoning of the land B5 Business Development use is appropriate.



## **Are there sufficient environmental planning grounds to justify contravening the development standard?**

2.30 There are sufficient environmental planning grounds to justify the variation as follows: The flexible application of the control will achieve a better outcome on this site for the following reasons:

- The proposed building layout and relationship with the adjoining sites along O’Riordan Street will achieve the desired future character for this gateway and the layout of the new buildings combined with landscaping, setbacks and stepped down building form will ensure an appropriate transition with the heritage listed Mascot Park to the north and residential properties to the east;
- The minor non-compliance with height will not unreasonably affect adjoining properties which will continue to receive compliant solar access levels with setbacks and landscaping maintaining adequate privacy;
- The setbacks at northern end of Buildings B, C and D will reduce the scale and provide appropriate transition for adjoining sites;
- The architecturally designed buildings are highly modulated and articulated to provide visually pleasing buildings that will achieve Council’s visual amenity objective for the Mascot Business Development Precinct; and
- The development has a significantly lower FSR and the verticality of the built form provides for a more appropriate building layout across the site with improved amenity for adjoining properties to the east.

2.31 Based on the above, there are sufficient planning grounds to justify the variation.



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