

Clause 4.6 Variation Request

Height of Buildings

Development application for hotel development
93 St Hilliers Road, Auburn

Prepared for
Good Luck Plaza (Blacktown) Pty Ltd
March 2020



1 Introduction

This Clause 4.6 Variation Request supports a development application (DA) submitted to Cumberland Council for construction of a hotel development on the land at 93 St Hilliers Road, Auburn (the site).

This report has been prepared to request a variation to the maximum height of building standard under clause 4.3 of Auburn Local Environmental Plan (LEP) 2010.

The request is being made pursuant to clause 4.6 of Auburn LEP 2010.

2 Clause 4.6 Exceptions to development standards

Clause 4.6 of the LEP enables an exception to the height standard subject to consideration of a written request from the applicant justifying the contravention. This clause as follows:

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.

3 Development standards to be varied

The development standard to be varied is clause 4.3(2A)(a) of Auburn LEP 2010, which reads as follows:

4.3 Height of buildings

[...]

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), the maximum height of office premises and hotel or motel accommodation is—

- (a) if it is within the Parramatta Road Precinct, as shown edged orange on the Height of Buildings Map—27 metres,

As shown in the Height of Buildings map at Figure 1, the site is located in the Parramatta Road Precinct, and therefore the proposed hotel development is subject to a maximum building height of 27m.

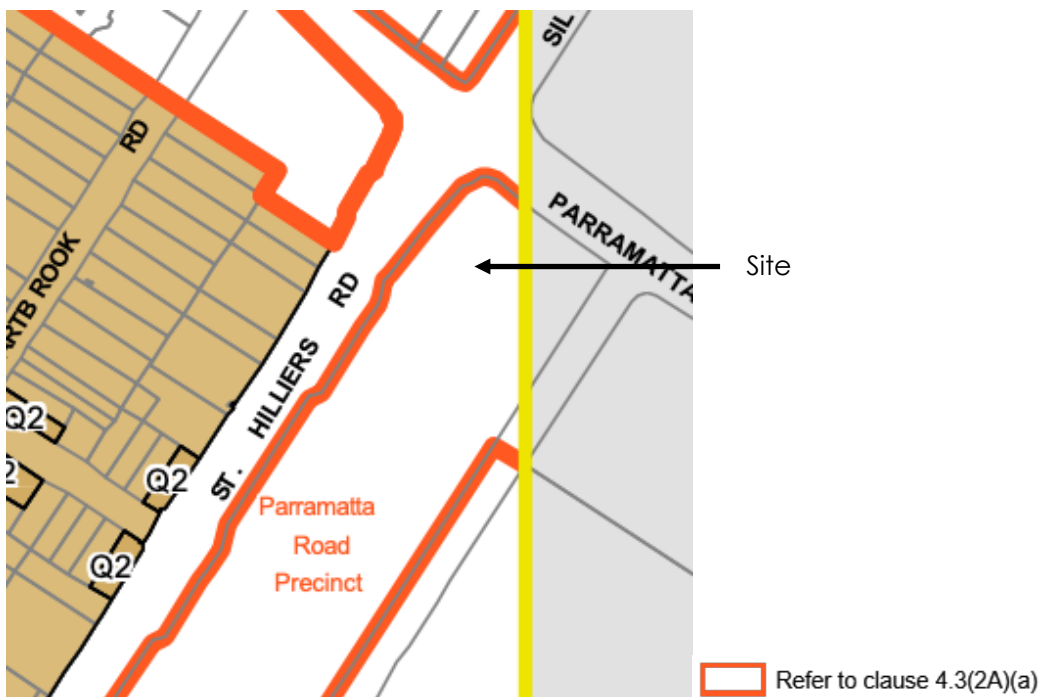


Figure 1 – Height of buildings map
Source: Auburn LEP 2010

4 Extent of variation to the development standard

The proposed maximum building height is approximately 29.96m, which is a +2.96m (or 11%) variation to the 27m standard.

As shown in the section drawing at Figure 2, the area of the breach contains roof structure, rooftop plant and some portions of habitable space. The most significant breach of 2.96m occurs at the lift overrun area in the centre of the building as shown in the section detail at Figure 3.

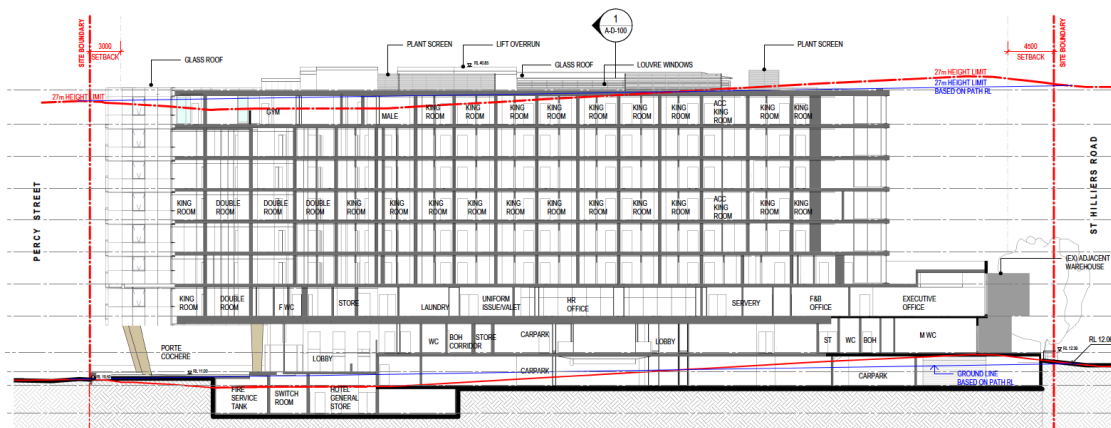


Figure 2 – Long Section
Source: Jackson Teece

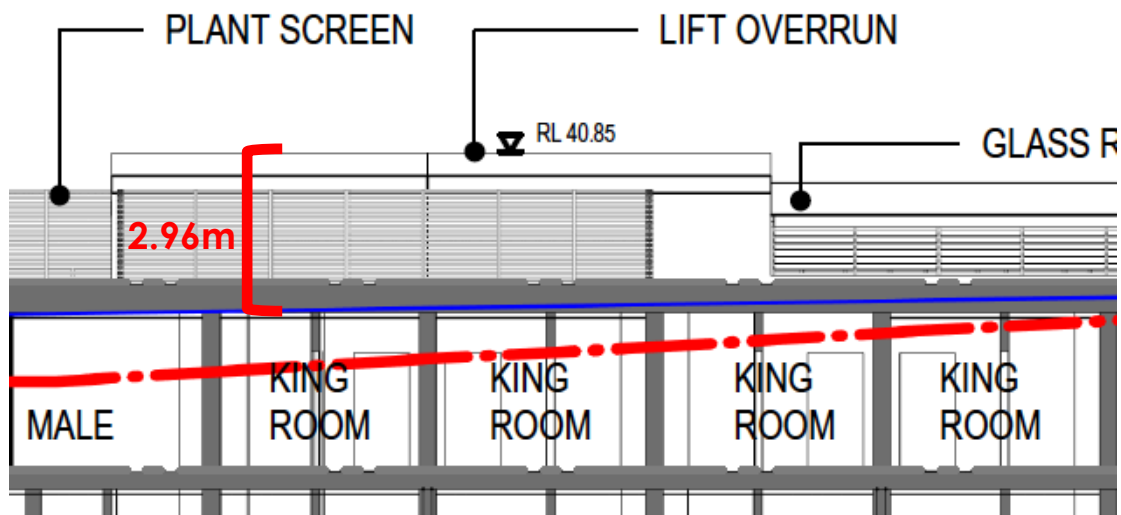


Figure 3 – Cross Section Detail
Source: Jackson Teece

Note: The identified 11% height variation assumes an existing ground level derived by extrapolating a line across the site between the surrounding footpaths. This extrapolated line and associated height plane are shown solid blue on the drawings, while the level of the existing slab and associated height plane are shown dashed red.

The extrapolation approach is preferred and is consistent with the Commissioner's reasoning in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. At [41],

the Commissioner agrees that the footpath, rather than the ground of the existing basement, is the appropriate level “because the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished”.

The approach was confirmed by the Commissioners in *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189. At [286], the Commissioners agree with the *Bettar* approach because it “reflects the relationship of the proposed development to the overall topography that includes the site”.

It is inappropriate to nominate the excavated ground level as the existing ground level because the existing slab is below the surrounding public domain and therefore does not relate closely to the surrounding topography.

5 Assessment

It is noted that in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge observed in his judgement at [39] that 4.6(4) of the Standard Instrument does not require the consent authority to be satisfied directly that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds; rather, the consent authority must only be indirectly be satisfied that the applicant's written request has adequately addressed these matters.

Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the height standard is considered unreasonable and unnecessary given the following circumstances of this case:

- The proposed development, despite the non-compliance, is consistent with the objectives of the B6 Enterprise Corridor zone (refer to further discussion below).
- The proposed development, despite the non-compliance, is consistent with the objectives of the height of buildings standard (refer to further discussion below).
- The variation would result in no notable adverse environmental impacts that could otherwise be avoided through a compliant form (refer to environmental planning grounds discussion below).
- The variation results in better planning outcome, providing significant benefits in terms of visual amenity and environmental sustainability (refer to further discussion below).

Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental grounds to justify contravening the height of building standard, as discussed below:

- The proposal provides for a relatively compact building footprint with larger-than-required front setbacks and significant deep soils zones supporting numerous existing mature trees. A larger setback-compliant footprint may reduce or eliminate the need for height variations but may also result in additional demolition and tree removal. It is considered that

the proposed footprint results in a better planning outcome, providing significant benefits in terms of visual amenity, environmental sustainability and stormwater management through its large setbacks with retained mature trees.

- Further to the above point, the proposal's FSR of 2.36:1 is well below the maximum allowable of 3:1. The proposal opts for a compact, slightly taller form over a shorter, broader form. The preferred form allows for a high quality landmark building at a prominent intersection and, as noted above, allows for large setbacks and tree retention.
- The variation would result in no significant overshadowing impacts. Given the variation's small size, any additional shadow would be minor. Also, there is no sensitive immediately surrounding development; the site is bound on three sides by roads, and the adjoining development to the south is industrial in nature.
- The variation would result in no significant visual impacts, being minor in scale and integrated with the overall building. The variation would not result in any irregular or conspicuous vertical extensions.
- The proposed hotel including the height variation would not detract from the significance of the State heritage item diagonally opposite the intersection (Electricity Substation No 167), as confirmed in the Statement of Heritage Impact by WolfPeak submitted with the DA.
- Overall, it is evident that the proposed development would not result in any significant environmental impacts that could be avoided through a compliant form.

Clause 4.6(4)(a)(ii) - Is the proposed development 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?

Consistency with development standard objectives

The particular development standard is clause 4.3 of Auburn LEP 2010. The relevant objectives are addressed in the table below.

Objective	Consistency
(a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and	<p>The proposal, despite the variation, provides for an appropriate development density. The bulk and scale of the building accord with its corner location at a prominent intersection.</p> <p>It is also important to note that the proposed FSR is well below the LEP's maximum (2.36:1 proposed vs. 3:1 maximum).</p>
(b) to ensure that the height of buildings is compatible with the character of the locality.	<p>The proposal, despite the height variation, is compatible with the character of the locality. The proposal is positioned along an enterprise corridor at the corner of a major intersection. The hotel's sculpted 8-storey form is appropriate at this prominent location. Also, the proposal sits directly opposite from a 7-storey commercial building of similar scale.</p>

Consistency with B6 Enterprise Corridor zone objectives

The proposed development's consistency with the B6 Enterprise Corridor zone objectives is outlined in the table below.

Objective	Consistency
To promote businesses along main roads and to encourage a mix of compatible uses.	The proposal contributes to the mix of compatible uses along Parramatta Road.
To provide a range of employment uses (including business, office, retail and light industrial uses).	The proposal provides for an employment-generating use along Parramatta Road.
To maintain the economic strength of centres by limiting retailing activity.	The proposal features only minor ancillary retail that will not detract from the strength of nearby centres.

6 Matters of significance for State or regional environmental planning

The variations to the height standard do not raise any matter of State or regional planning significance.

7 Conclusion

This written request justifies the proposed height variation in the terms required under clause 4.6 of Auburn LEP 2010 and demonstrates that the proposal . In summary, the variation is justified in that:

- Compliance with the height standard is unreasonable and unnecessary.
- There are sufficient environmental planning grounds for the contravention.
- The proposal is in the public interest because it is consistent with the objectives of the height of buildings standard and the objectives of zone B6 Enterprise Corridor.
- There are no matters of State or regional planning significance and no notable public benefits in maintaining the height standard in this case.