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# **CLAUSE 4.6 VARIATION REQUEST**

Height of Buildings

51 Rawson Street, Auburn

Prepared for  
**REDCAPE HOTEL GROUP**  
February 2021

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# 1. INTRODUCTION

This Clause 4.6 Variation Request (the Request) has been prepared on behalf of Redcape Hotel Group (the Applicant) and accompanies a Development Application (DA) which seeks consent for the construction of a mixed-use development at 51 Rawson Street, Auburn (the site), as well as the retention and restoration of the local heritage listed Keighery Hotel.

The Request seeks an exception from the height of buildings development standard prescribed for the site under clause 4.3 of *Auburn Local Environmental Plan 2010* (ALEP 2010). The variation request is made pursuant to clause 4.6 of ALEP 2010.

This report should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Urbis.

The following sections of the report include:

- **Section 2:** description of the site and its local context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard, which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the ALEP 2010.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the NSW Land and Environment Court (LEC).
- **Section 7:** summary of key findings and conclusion arising from the detailed assessment.

## 2. SITE AND SURROUNDING CONTEXT

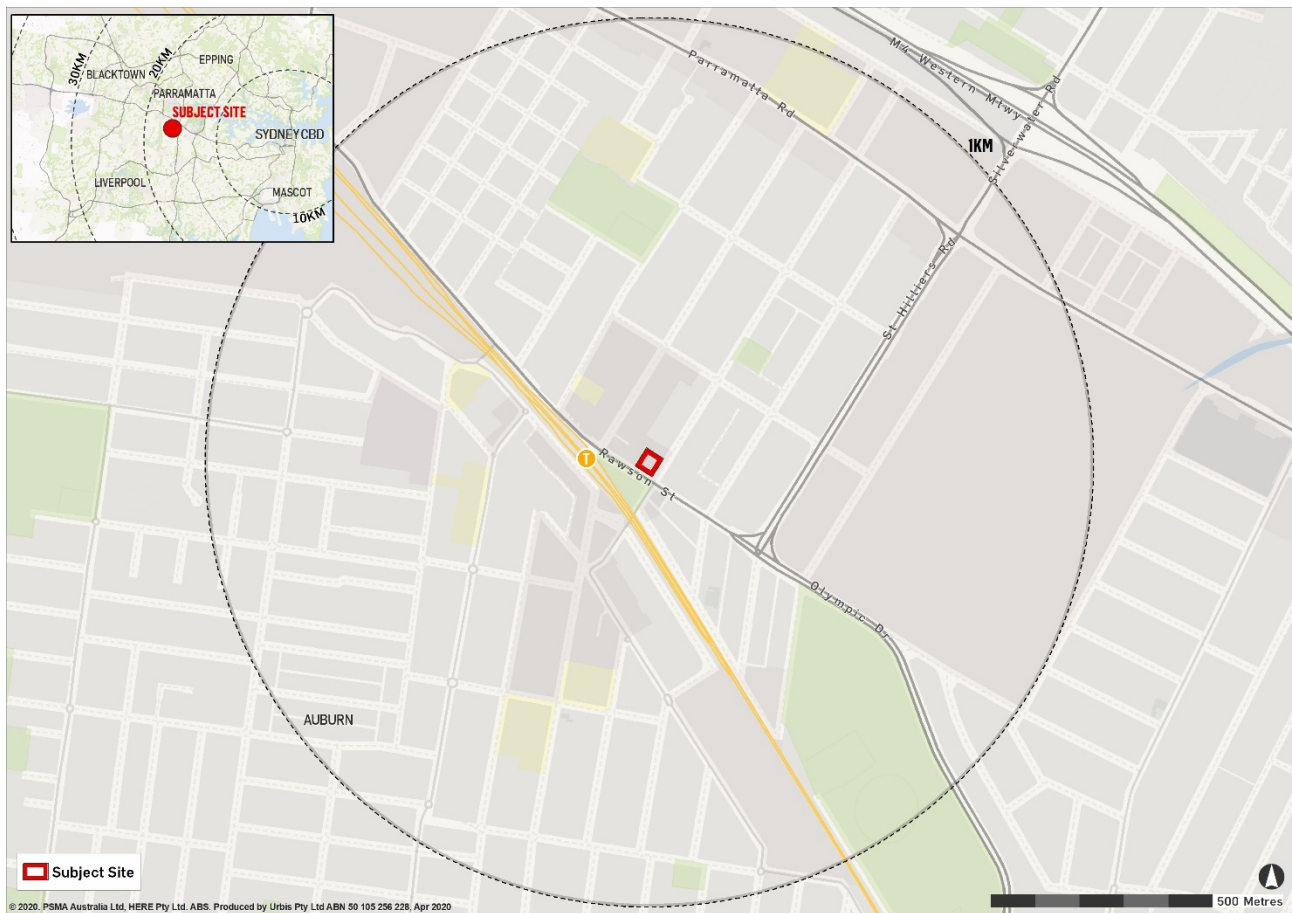
### 2.1. LOCALITY

The site is located within the suburb of Auburn in the Cumberland Local Government Area (LGA). The site represents a key landholding within the Auburn town centre located approximately 200m from the Auburn railway station and 4.5km south east of the Parramatta city centre.

The site is located within the heart of the Auburn town centre within convenient walking distance of essential services available within the centre. Auburn Shopping Village and Auburn Central are located on the opposite side of the train line within short walking distance of the site.

Recent high-rise residential development has occurred immediately to the east and north of the site, as well as throughout Auburn Town Centre. The area is well established as a high-density residential location, and trains provide efficient access to employment at Parramatta, Sydney CBD and Sydney Olympic Park.

Figure 1 Site Locality



Source: Urbis

### 2.2. THE SITE

#### 2.2.1. Site Description

The site is located at 51 Rawson St, Auburn and is legally described as Lot 1 DP978290 and Lot 1 DP655963. It has a frontage of approximately 46 metres to Rawson Street and 48 metres to Station Road.

The site benefits from proximity to Auburn Town Centre, although the railway line and station creates a physical barrier from the main area of retail activity around Queen Street and Auburn Central shopping centre.



Figure 2 Site Aerial



Source: Urbis

## 2.2.2. Existing Development

The site currently comprises a two-storey brick building to the south and surface car park to the north, with access via Station Road.

## 2.2.3. Surrounding Context

Development in the surrounding area can be described as follows:

- **To the north** of the site is Sahibi Super Market. Further north at 6-8 Station Road is a recently built 12 storey mixed use development comprising 52 residential units and a ground floor commercial tenancy.
- **To the east** directly adjacent to Station Road is seven storey mixed development with ground floor commercial tenancies. Further east along Rawson Street are medium density residential flat building developments including a 10 storey mixed use development with ground floor commercial tenancies on the corner of Dartbrook Road.
- **To the south** directly adjacent to Rawson Street is Auburn Memorial Park. Further south beyond the railway line is the commercial centre of Auburn which includes essential services such as banks, supermarkets, and retail tenancies.
- **To the west** along Rawson street are two storey shop top housing style developments which back onto the Auburn Soccer Sportsclub. Further west opposite Northumberland Road an 11 storey mixed use development currently under construction containing ground floor retail and a club facility (Auburn Soccer Club), and 81 residential units above.

Sydney Adventist school and Auburn Seventh-day Adventist Church is located west of the site adjacent to the Auburn soccer sports club development. North west of the site a day care centre fronting Northumberland Road.

### 3. THE PROPOSAL

The proposal comprises the construction of a mixed-use development at 51 Rawson Street, Auburn, as well as the retention and restoration of the local heritage listed Keighery Hotel. Specifically, consent is sought for:

- Excavation for and construction of a 4-level basement car park with access from Station Street, comprising 142 car parking spaces, of which 107 are allocated to the proposed residential units, and 35 are allocated to the existing hotel and ground floor retail tenancies.
- Construction of a part 14-15 storey mixed use building containing 96 units comprising 26 x 1 bedroom, 53 x 2 bedroom, and 17 x 3 bedroom.
- Provision of a ground floor east west through site laneway activated by retail tenancies with opportunities for alfresco dining.
- Alterations and additions to the existing Keighery Hotel including demolition of the existing open-air gaming room area to make way for the construction of the new basement car park. Once the basement car park is complete, a new refurbished open-air gaming room will be constructed above. The development will be undertaken in stages to enable the continued operation of the Keighery Hotel.

Architectural and landscape plans depicting the proposal are provided Appendix B to the SEE.

Figure 3 Photomontage – From Station Street Looking North East



Source: Integrated Design Group



## 4. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard proposed to be varied, and the extent to which the proposal seeks to contravene the standard. A detailed justification is provided in **Section 6** of the report.

### 4.1. DEVELOPMENT STANDARD

This request seeks to vary the maximum 38m building height standard prescribed within clause 4.3 of the ALEP 2010 and the associated Height of Buildings Map (refer **Figure 4**).

The objectives of clause 4.3(1) of the ALEP 2010 are:

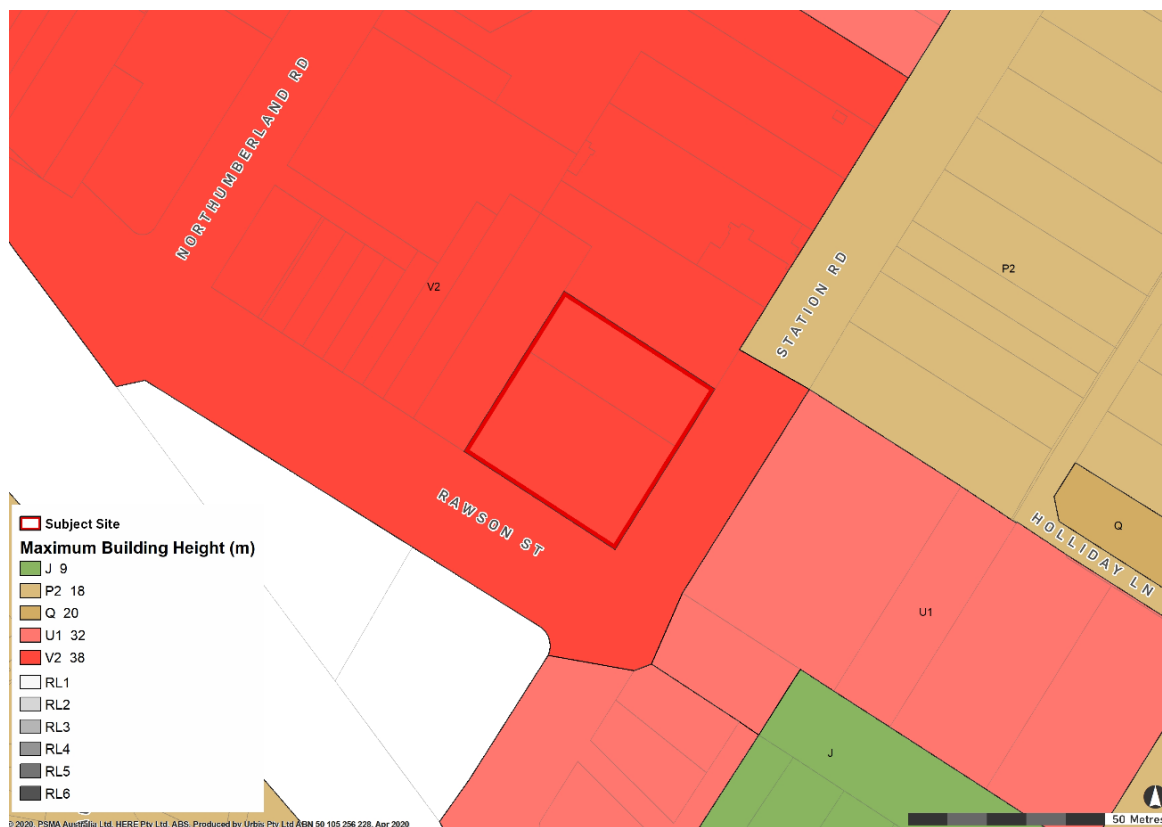
- (a) *to establish a maximum height of buildings to enable appropriate development density to be achieved, and*
- (b) *to ensure that the height of buildings is compatible with the character of the locality.*

The ALEP 2010 Dictionary Definition defines building height as follows:

**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 4 Maximum Height of Buildings Map







## 4.3. PROPOSED VARIATION TO MAXIMUM HEIGHT OF BUILDING CONTROL

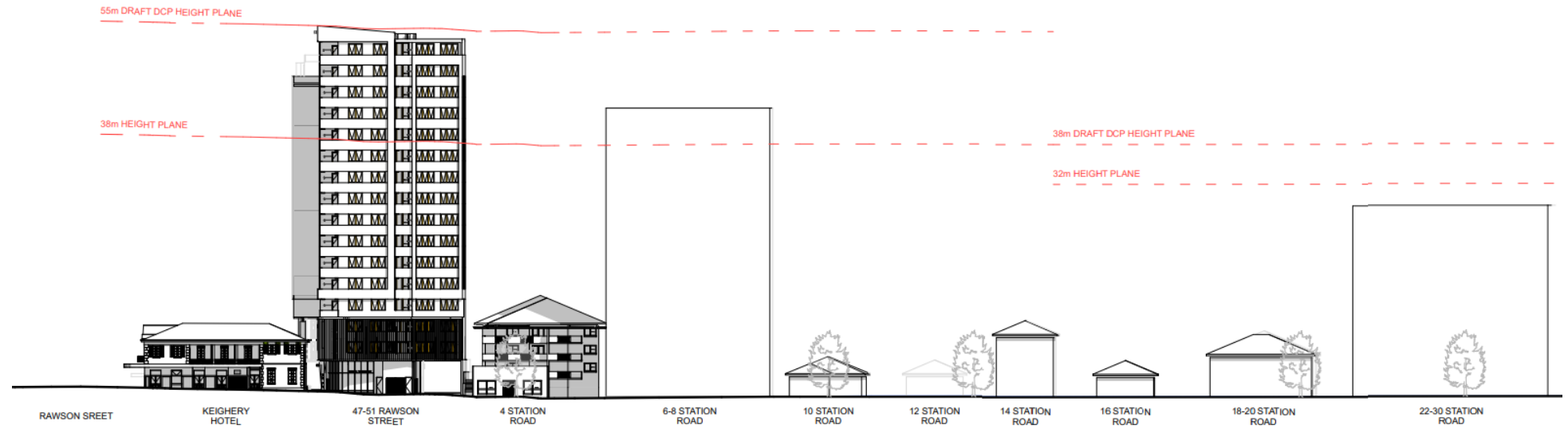
The maximum height of building proposed is 55m measured from existing ground floor level (RL. 21.7) to building parapet (RL. 76.7).

Streetscape elevation displaying both the existing ALEP 2010 maximum height of buildings control, and the draft CLEP controls are provided in **Figure 6** (Station Road – Eastern Elevation) and **Figure 7** (Rawson Street - Southern Elevation).

In summary:

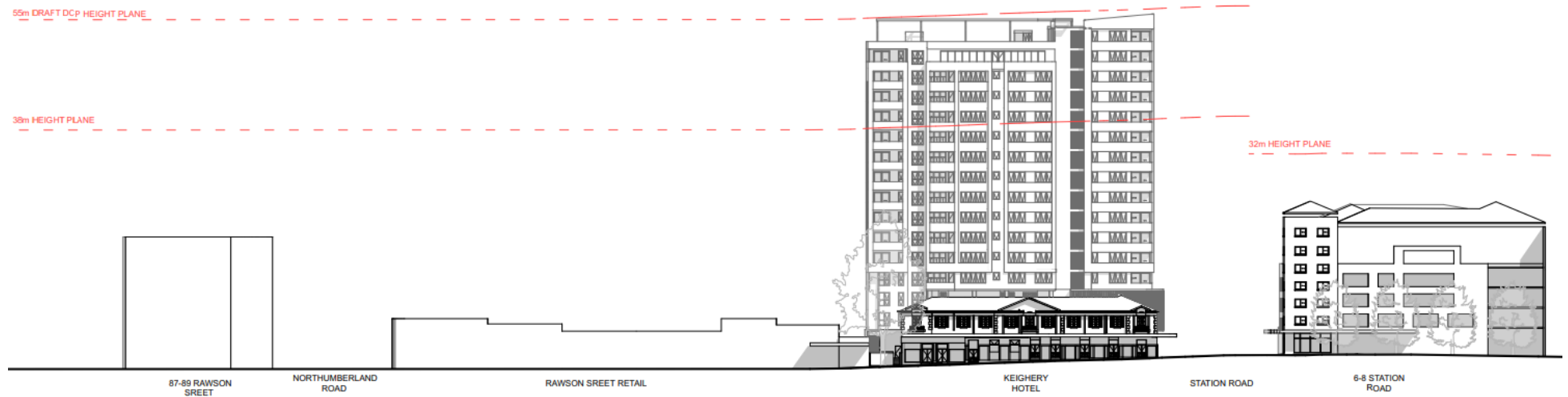
- **ALEP 2010** (38m): The proposal results in an exceedance of 17m (44.7%) to the development standard.
- **Draft CLEP** (55m): The proposal complies with the standard.

Figure 6 Station Road Streetscape (East)



Source: Integrated Design Group

Figure 7 Rawson Street Elevation (South)



Source: Integrated Design Group

## 5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of ALEP 2010 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of ALEP 2010 are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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 Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this Request in accordance with the Department of *Planning Circular PS 18–003 Variations to development standards*, dated 21 February 2018. This circular is a notice under section 64(1) of the *Environmental Planning and Assessment Regulation 2000* and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This Request demonstrates that compliance with the maximum building height prescribed for the site in clause 4.3 of ALEP 2010 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the maximum height of buildings development standard be varied.



## 6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standard relating to the maximum building height in accordance with clause 4.3 of ALEP 2010.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of the report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the ALEP 2010.

### 6.1. KEY QUESTIONS

#### Is the Planning Control a Development Standard?

The height of buildings prescribed by clause 4.3 of ALEP 2010 is a development standard capable of being varied under clause 4.6(2) of ALEP 2010.

#### Is the Development Standard Excluded from the Operation of Clause 4.6?

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of ALEP 2010.

### 6.2. CONSIDERATION

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

Historically, the most common way to establish whether a development standard was ‘unreasonable or unnecessary’ was by satisfying the first method set out in *Wehbe v Pittwater Council [2007] NSWLEC 827*. This method requires the objectives of the standard be achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [16]-[17]*. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [34]* the Chief Judge held that “*establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary*”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council [2007] NSWLEC 827*. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]*).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (the first method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43])***

The objectives of the height of building development standard in clause 4.3 are detailed in the table below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 1 Assessment of consistency with clause 4.3 objectives

Clause 4.3 Objectives	Assessment
<p>(a) <i>to establish a maximum height of buildings to enable appropriate development density to be achieved, and</i></p> <p>(b) <i>to ensure that the height of buildings is compatible with the character of the locality.</i></p>	<p>The site is located with the Auburn town centre, which is undergoing a period of transition in terms of heights in line with the draft CLEP controls.</p> <p>As demonstrated in <b>Figure 4</b> the site is part of a precinct to the north of the Auburn Railways Station, which is proposed for additional building heights by the draft CLEP. Specifically, the draft CLEP seeks to increase the maximum height of building control from 38m to 55m in the immediate vicinity of the site. This includes land within the same block as the site including 2-4 Station Road located directly to the north of the site, buildings fronting Rawson Road to the west, and the Auburn Sports Club fronting Northumberland Road to the west.</p> <p>The proposal seeks a height of 55m which complies with the draft CLEP control applicable to the site.</p> <p>Council have noted that the primary focus of the strategy and proposed planning controls is to better align built form controls to enable a broader range of building design options to be realised within the town centre. The Proposal is entirely consistent with this objective in that it seeks to deliver a built form that complies with the draft control and has been the subject of the Cumberland Design Excellence Panel process.</p> <p>In addition, the proposal complies with the maximum floor space ratio control of 5:1 applicable to the site, ensuring that an appropriate density is achieved in line with the objectives of the development standards.</p>

This assessment demonstrates that the proposed development is both consistent with (as required by clause 4.6(4)(a)(ii)) and will achieve (as required by clause 4.6(3)(a)) the objectives of the height of building development standard, notwithstanding the non-compliance with the development standard.

- ***The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable (the third method in Wehbe v Pittwater Council [2007] NSWLEC 827 [42]-[43] as applied in Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 at [24])***

The underlying object or purpose of clause 4.3 would be undermined if compliance was required with the development standard.

A compliant scheme would not be consistent with the emerging landform of the surrounding properties within the same block as the site proposed by the draft CLEP (refer **Figure 4**), which will allow development with a 55 metre building height. Therefore, a compliant scheme within the parameters of a 38 metre building height would read as an anomaly and inconsistency with the emerging landform of the locality.

Notwithstanding the non-compliance with the building height control, development on the subject lot is consistent with the scale and intensity of the future character of the Auburn Town Centre in that it complies with the draft CLEP building height control. It is reasonable to assume that adjoining land can be developed in accordance with the new controls. Therefore, a compliant scheme on the subject lot would present as an inconsistency with the scale and intensity of the emerging future character of the town centre.

- ***The burden placed on the community (by requiring strict compliance with the standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).***

Strict compliance with the building height development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community.

In the specific circumstances of the development, the Draft CLEP seeks to amend the height of building standard applicable to the subject site, and therefore is a statutory matter for consideration in the assessment of the DA. Relevant to the subject lot, the draft planning instrument increases the building height development standard to 55 metres (under clause 4.3). The proposed building height of 55 metres utilises the new height of building control of clause 4.3 of the Draft CLEP.

Through the drafting, public exhibition, and finalisation of the planning proposal, the Draft CLEP to increase the height of building development standard was maintained.

The proposal is consistent with the objectives and intended outcomes of the planning proposal in that:

- It assists in meeting community expectations to renew and revitalise the Auburn town centre;
- It utilises flexible planning controls to facilitate renewal and economic development of the town centre; and
- It contributes to increasing the provision of a vibrant mixed-use development,

Development on the subject site, as proposed, is consistent with the new statutory planning controls that will apply to the site.

## **6.2.2. Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard**

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering whether there are sufficient environmental planning grounds to justify a variation from the development standard. Preston J observed:

*“...in order for there to be ‘sufficient’ environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*

*...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”*

Justice Preston is warning consent authorities and applicants against requiring or expounding ‘beneficial effects’ from other aspects of a proposal to balance out the contravention of a specific standard. He is saying this is not necessary, it is enough to consider the contravention relative to the objectives that the standard seeks to achieve. All other aspects of the proposal should be considered as if the contravention was not proposed.

There is an absence of environmental harm arising from the contravention and sufficient environmental planning grounds to justify contravening the building height development standard for the following reasons:

- The proposed development achieves a superior planning outcome compared to a ‘compliant’ scheme and better achieves the objectives of the height standard.
- The variation does not diminish the development potential of adjacent land for the reason that the proposal has been designed to be compliant with the draft planning controls that will apply.
- While there are visual and overshadowing impacts anticipated to adjoining land as a consequence of the proposal, it is considered that these impacts are reasonable in the context of the existing and proposed controls applying to the site and the wider Auburn Town Centre.

- The proposal complies with the maximum permitted FSR control that applies to the subject lot (5:1), demonstrating that, notwithstanding the non-compliance with the building height control, it is highly consistent with what could be reasonably expect in terms of site layout design and land use intensity of the site. The variation to the height of building control does not result in any additional floor area or intensity of development within the site compared to what is currently envisaged for the site.

Given the high level of compliance with other key design guidelines, high quality design of the overall proposal the variation to the development standard is supportable from environmental planning grounds.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance with the height of building development standard in this instance.

### **6.2.3. Clause 4.6(4)(a)(i) – Has the written request the matters in sub-clause (3)?**

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including a detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

### **6.2.4. Clause 4.6(4)(a)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone in which the development is proposed to be carried out?**

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the building height development standard is demonstrated in **Table 1** above. The proposal is also consistent with the land use objectives that apply to the site under the ALEP 2010. The subject lot is zoned B4 (Mixed Use). The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 2** below.

Table 2 Assessment of compliance with land use zone objectives

<b>B4 (Mixed Use) Objective</b>	<b>Response</b>
• <i>To provide a mixture of compatible land uses.</i>	The proposal integrates a mixture of compatible land uses including residential accommodation, ground floor retail uses, and retains the existing pub use. These uses are compatible given their complementary functions and are typical of development within the B4 (Mixed Use) Zone.
• <i>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.</i>	The site is a highly accessible location within Auburn town centre. The proposal will maximise public transport patronage and encourage walking and cycling to the site, and the provision of bicycle parking within secure locations within the development.

<b>B4 (Mixed Use) Objective</b>	<b>Response</b>
<ul style="list-style-type: none"> <li>• <i>To encourage high density residential development.</i></li> </ul>	The proposal is highly consistent with this objective in that it proposes a residential building comprising 96 units ranging from one bedroom to three bedrooms.
<ul style="list-style-type: none"> <li>• <i>To encourage appropriate businesses that contribute to economic growth.</i></li> </ul>	Many and varied employment opportunities (direct and indirect jobs) will be generated during marketing, construction, fit-out, and operation of the development.
<ul style="list-style-type: none"> <li>• <i>To achieve an accessible, attractive and safe public domain.</i></li> </ul>	In line with DCP requirements, the proposal seeks to construct a ground floor east west through site laneway activated by retail tenancies with opportunities for alfresco dining. A CPTED assessment accompanies the proposal which confirms that the development is satisfactory in this regard.

Overall, it is considered that the strict maintenance of the height of building development standard in this instance is not in the public interest as:

- The proposal achieves, and is consistent with, the objectives of the development standard as provided in clause 4.3 of the LEP, as outlined in **Section 6.2.1** of this variation request.
- The proposal is consistent with the objectives of the B4 Mixed Use Zone, as outlined above.
- The proposal achieves a superior planning outcome compared to a 'compliant' scheme and better achieves the objectives of the relevant development standard.
- Compliance with the building height standard is an unnecessary hindrance to the ability of the proposal to deliver a vibrant mixed-use development and establish an urban landmark for the town centre.

Accordingly, it is considered that, notwithstanding the proposed variation to the building height development standard, the proposed development is in the public interest.

### **6.2.5. Clause 4.6(5) – Concurrence of the Planning Secretary**

Concurrence of the Secretary to the variation can be assumed in accordance with Department of Planning Circular PS 18–003 '*Variations to development standards*', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by the Sydney Central City Planning Panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the building height standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) – is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the building height standard and the land use zone objectives despite the technical non-compliance.



It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case including:

Overall, it is considered that the strict maintenance of the height of building development standard in this instance is not in the public interest for the reasons detailed above in **Section 6.2** of this report. There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the Request prior to granting concurrence, should it be required.

## 7. CONCLUSION

For the reasons set out in this written request, strict compliance with the maximum height of building contained within clause 4.3 of ALEP 2010 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

In this regard, it is reasonable and appropriate to vary the height of building development standard to the extent proposed. In summary:

- The proposal satisfies the objectives of the height of building development standard, notwithstanding the numerical non-compliance. To require compliance with the height of building development standard on this site would unnecessarily and inappropriately hinder the capacity for the proposal to deliver a vibrant mixed-use development. The proposed variation to the height of building development standard will result in a development that is compatible with the future desired character of the site and locality sought by the Draft Cumberland LEP.
- The proposal is consistent with the scale and intensity of development envisaged by Cumberland City Council. The proposal complies with the draft controls for the Auburn town centre, which are due to be gazetted imminently. The proposal will contribute to the emerging character of the Auburn Town centre.
- The application of clause 4.6 to vary the development standard is not numerically limited. The consent authority has broad discretion under clause 4.6(2) and clause 4.6(4)(a)(i) of ALEP 2010 to determine variations of any numeric value above a development standard with the concurrence of the Secretary. This is confirmed in the published planning system circular PS 17-006 *'Variations to development standards'*.
- In addition, no provision of clause 4.6(8) restricts the variation sought in this application. The consent authority can therefore be satisfied that this variation request can be lawfully approved pursuant to clause 4.6 of ALEP 2010.

Based on the reasons outlined above and the contents contained throughout this Clause 4.6 Request, it is considered that maintaining strict compliance with the height of building development standard would be unreasonable and unnecessary, and therefore would not be in the public interest. Accordingly, it is concluded that this clause 4.6 request is well founded and that the particular circumstances of the case warrant flexibility in the application of the height of building development standard as it applies to the site.

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