

## **SUBMISSION REQUESTING A VARIATION TO A DEVELOPMENT STANDARD FOR BUILDING HEIGHT CONTROL FOR RESIDENTIAL FLAT BUILDINGS AT 12 – 14 BIRNIE AVENUE, LIDCOMBE**

This request is made pursuant to the provisions of *Clause 4.6 Auburn Local Environmental Plan 2015* to vary the development standard in relation to building height control for proposed residential flat building at 12 – 14 Birnie Avenue, Lidcombe (**subject site**).

This request is made having regard to:

1. The provisions of *Clause 4.6 Auburn Local Environmental Plan 2010*; and
2. Varying development standards: A Guide (August 2011) prepared by the Department of Planning and Infrastructure.

The Guide “contains details of the information applicants are required to submit to the council to assist council assess development applications and associated applications to vary a standard.” The following addresses the information detailed in the Guide.

### **1. BACKGROUND**

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The subject site is located within the Carter Street Precinct, an industrial area that was rezoned by the State Government in 2015 to provide up to 5,500 new dwellings, a new village centre, school and public open space.

This request accompanies a development application that has been lodged with Parramatta Council for demolition of existing buildings on the subject site and construction of two (2) residential flat buildings with associated landscaping and underground car parking.

The subject site was formally within the Auburn local government area and so any development application must be assessed under the controls of Auburn LEP 2010 until the planning controls are consolidated with the new City of Parramatta planning controls.

Clause 4.3(2) of Auburn LEP 2010, in conjunction with the Height of Buildings Map, requires the height of buildings on the subject site not to exceed 72 metres. The proposed maximum height of buildings proposed in the development application for the subject site is 90 metres.

### **2. JUSTIFICATION FOR CLAUSE 4.6 REQUEST**

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The objectives of Clause 4.6 of Auburn LEP 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 imposes four (4) preconditions on Council in exercising the power to vary a development standard and grant consent to the proposed development.

The first precondition requires Council to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with Council finding that

the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i).

The second requires Council to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with Council finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i).

The third precondition requires Council to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).

The fourth requires Council to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).

The preconditions are addressed as follows:

## **2.1 Is the development standard unreasonable or unnecessary in the circumstances of the case?**

Yes. Strict compliance with the building height standard for the subject site is considered unreasonable or unnecessary in the circumstances of this case because strict adherence to the standard will not result in a development that is anymore consistent with the desired future character of the locality or have a more appropriate relationship to its surroundings.

Land and Environment Court cases dealing with applications to vary development standards resulted in the Court setting out a 'five part test' for consent authorities to consider when assessing an application to vary a standard and to determine whether the objection to the development standard is well founded and compliance is unreasonable or unnecessary. The following table provides an assessment of the matters in the 'five part test'.

<b>FIVE PART TEST</b>	<b>COMMENTS</b>
1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.	<p>The State Government has undertaken a review of the master plan and existing planning controls for the Carter Street Precinct. This review has been on public exhibition and changes to the existing planning controls are considered to be imminent. These changes include raising the building height limit on the subject site from 70 metres to 90 metres.</p> <p>Section 2.4 of this submission provides details on how the proposed development achieves the objectives of the building height standard notwithstanding non-compliance with the standard.</p>
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.	N/A

<p>3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</p>	<p>If compliance with the 70m building height limit was required, the appropriate development density identified for the subject site could not be achieved while also trying to keep the development suitably aligned with more recent and proposed development along Carter Street. This has been the driving principle behind the Department of Planning, Industry and Environment's decision to amend the maximum building height control standard applying to the subject site.</p>
<p>4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable</p>	<p>N/A</p>
<p>5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.</p>	<p>N/A</p>

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

Yes. There are sufficient environmental planning grounds to justify contravening the lot size development standard.

Assessment of the proposed development has concluded the following:

- There will be no detrimental impacts on both the natural and built environments;
- There will be no detrimental social or economic impacts;
- Site is suitable for the proposed development; and
- It is in the public interest.

Approval of the proposed development with an increase in building height will not impact on the proposals ability to;

- achieve an appropriate balance between development and management of the environment that will be ecologically sustainable, socially equitable and economically viable;
- minimise adverse impacts of development;
- protect and enhance the amenity of residents;
- protect and enhance the natural environment and scenic quality of the locality; and
- meet the housing requirement for the precinct.

### **2.3 Is the proposed development consistent with zone objectives?**

The subject site is zoned *R4 High Density Residential*. The objectives of the R4 zone are:

- *To provide for the housing needs of the community within a high-density residential environment.*
- *To provide a variety of housing types within a high-density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.*
- *To encourage high-density residential development in close proximity to bus service nodes and railway stations.*

In assessing a development's consistency with zone objectives, Commissioner Brown in *Antoniades Architects Pty Ltd v Canada Bay City Council* [2014] NSWLEC 1019, took the following approach:

*The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.*

With this in mind, the proposed development is considered to be consistent with the relevant R4 zone objectives and in the public interest because the proposed development will:

- provide for the housing needs of the community within the high-density residential environment that is proposed for the Carter Street Precinct. The propose development will contribute to the high density residential environment with two (2) 27-storey residential towers and with appropriate communal open space areas and suitable landscaping;
- provide a mix of residential apartments ranging in size from 1-bedroom to 3-bedrooms in a high density residential environment; and
- provide high density residential development that:
  - is within 800 metres of the Sydney Olympic Park train station;
  - has convenient access to the M4 Motorway; and
  - is in close proximity to a station on the proposed Parramatta Light Rail (Stage 2).

## 2.4 Is the proposed development consistent with the objectives of the Building Height development standard?

The objectives of the building height development standard 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 State Government has undertaken a review of the master plan and existing planning controls for the Carter Street Precinct. This review has been on public exhibition and changes to the existing planning controls are considered to be imminent. These changes include raising the building height limit on the subject site from 70 metres to 90 metres.

The primary reason for a change in maximum building height limit for the subject site is to enable any proposed development on the subject site to achieve the appropriate development density identified for the site while ensuring the height of the building is compatible with the character of the locality. The result will be slightly taller buildings that are more slender and set back so they align more with recent and proposed development along Carter Street.

The proposed increased in building height will

- have no detrimental environmental impacts (as detailed in the Statement of Environmental Effects);
- not detrimentally impact the amenity and character of locality; and
- not impact the density of development because the overall buildings have a FSR that complies with the FSR development control standard.

It is also proposed to insert a new clause in *Part 6 - Additional local provisions of Auburn LEP 2010* requiring certain development, such as the proposed development on the subject site, to exhibit design excellence.

The following table provides as brief assessment of how the proposed development addresses matters for consideration noted in the Carter Street Precinct Planning Report prepared by NSW Department of Planning, Industry and Environment (formerly NSW Department of Planning and Environment).

MATTERS FOR CONSIDERATION	COMMENT
A high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.	Following a pre-DA review of the proposal, the Parramatta Design Excellence Advisory Panel (DEAP) commended the applicant and their architects for the consideration given to the proposal in relation to site planning and urban form, provision of communal open space, deep soil, ventilation and unit mix.

The form and external appearance of the development will improve the quality and amenity of the public domain	The DEAP provided strong support for the design of the towers, with their stepped plan profiles and slots for natural light and ventilation in the common areas.
Impacts on any view corridors	The proposed development has been realigned to protect the view corridor along Carter Street. This has been acknowledged in Council's record of the pre-DA meeting

### 3. CONCLUSION

Clause 4.6 of *Auburn Local Environmental Plan 2010* aims to provide an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes by allowing flexibility in particular circumstances. The proposed development warrants favourable consideration under this clause because it has been demonstrated that:

- The development standard is unreasonable and unnecessary in the circumstances of the subject case;
- The State Government has proposed to amend the maximum building height for the subject site to 90m and the making of the amended LEP is considered to be imminent;
- there are sufficient environmental planning grounds to justify contravening the development standard; and
- The proposed development will be in the public interest because the objectives of the standard and the objectives of the zone are achieved despite non-compliance with the maximum FSR standard.

In conclusion, the request is well founded and granting consent to this request is consistent with the requirements of Clause 4.6 of *Auburn Local Environmental Plan 2010*.



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