

5.0 Request to Vary a Development Standard

Clause 4.6 of Hornsby LEP 2013 (HLEP) allows Council to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

5.1 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the height of buildings development standard set out in clause 4.3 of the HLEP. Clause 4.3 provides the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Building Map. The height shown on the Height of Buildings Map for the Site is 48m.

The proposed development has an overall height of 54.1m exceeding the maximum height control by 6.1m (11% variation).



Figure 24 Section showing extent of height variation

Source: Turner

5.2 Justification for Contravention of the Development Standard

5.2.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 (see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 at [61] and [62]).

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
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.
5. The zoning of the particular 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 or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the first method – that the objectives of the standard are achieved notwithstanding non-compliance with the standard.

The objective of the height of buildings development standard is:

- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The proposed development is considered appropriate for the Site constraints, given its town centre location and scale of development that is under construction and approved on directly adjoining sites. The building, at a height of 16 storeys, provides a suitable transitional height from the Stage 1 approval on the Goodman site (30 storeys) down to the constructed development at 2-4 Chester Street (15 storeys) as shown in **Figure 25** and **Figure 26**.

The proposed development seeks to maximise the development potential of the Site, providing seniors accommodation in a highly accessible location. The proposal is consistent with the District Plan which seeks to provide a range of housing and affordable housing in strategic centres such as Epping, capitalising on their high level of accessibility to both public transport and also services.

The environmental assessment contained within Chapter 4 of this report has demonstrated that the proposed development can be accommodated within the infrastructure capacity of the locality. The existing Site services can be augmented to service the development and the proposal is not expected to generate any adverse traffic impacts on the local road network. The proposed development will also increase patronage of local public transport and services thereby increasing its viability.



Figure 25 Images showing transition in Building Height

Source: Turner

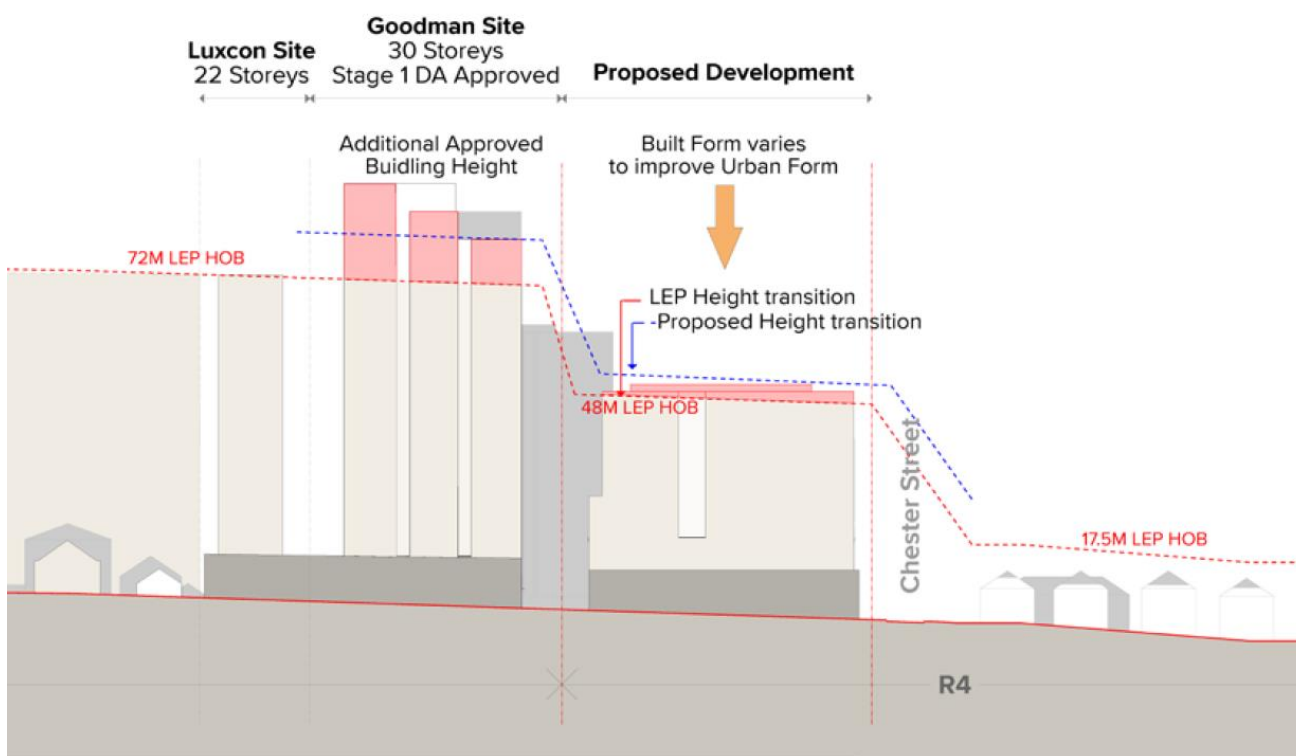


Figure 26 Section showing transitional building heights along western side of Oxford Street

Source: Turner

5.2.2 Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the HLEP requires the departure from the development standard to be justified by demonstrating:

that there are sufficient environmental planning grounds to justify contravening the development standard.

There are considered to be sufficient environmental planning grounds to justify contravention of the Building Height development standard in this specific instance.

In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that Site. There are particular elements that contribute to the development’s variation to the Building Height standard and these are detailed below.

Ground 1: Site Specific Design Constraints

The proposed additional height is as a result of the combination of the following design constraints:

- Compliance with the ADG floor to ceiling heights;
- The natural slop of the land and a need to increase the ground floor level height in order to achieve universal access into the main entrance of the building from the public domain; and
- The need to provide rooftop amenities such that a variety of spaces which achieve varying levels of solar access are provided.

These design issues are discussed in more detail below.

Floor to ceiling heights

The maximum height limit of 48m is based on the provision of a 15 storey residential building as prescribed by Table 3.4.5(a) of the Hornsby DCP. Assuming 4m for the ground floor level and 3m for the plant equipment, this leaves approximately 2.7m for the remaining floors of the development.

In order to comply with the 2.7m floor to ceiling design criteria contained in the ADG, Turner is proposing 3.1m floor to floor heights for the majority of the Independent living unit levels and 3.2m for the RACF levels. Consequently, the proposed residential levels of the building slightly exceed the maximum building height. This variation is considered acceptable as the variation will provide a higher level of amenity to the future occupants of the building.

The slope of the site and universal access

As recommended by the Design Excellence Advisory Panel, the ground level of the building has been raised in height so as to achieve universal access into the main entrance of the building this has resulted in the overall height of the building increasing by 500mm. Providing universal access into the building is considered to be a superior design outcome on this site, particularly given the proposed seniors living use.

Provision of solar access to amenities

A further site constraint that has influenced the design is its orientation and the density of development surrounding the site. Due to the requirement to place the building in the north-eastern corner of the site, the proposed ground level open space is positioned at the rear of the dwelling. Whilst it has been designed to be of high quality and will comprise an important facility for the development it will receive limited solar access in winter due to its location and the density of development on the site and surrounding the site.

Uniting is therefore proposing to place additional open space and communal facilities on the rooftop where they will receive a high level of solar access and will provide an increased level of amenity for residents of the development.

Ground 2: No unacceptable environmental impacts

The environmental assessment has demonstrated that notwithstanding the additional height, the proposed development does not generate any unacceptable environmental impacts by way of traffic generation or overshadowing given the emerging high density environment. The proposed development is able to also achieve a high level of amenity in respect of privacy between the proposed building and adjoining developments.

The proposed additional storey comprising rooftop amenity is setback further than the remainder of the building, and it not visible when viewed from a human scale at the ground floor, as illustrated within the photomontage at **Figure 27**.

The solar analysis prepared by Turner (**Appendix E**) shows that in a complying building envelope scenario, 91 out of 105 apartments facing north east will maintain 2 or more hours of sunlight on June 21. Turner has then undertaken the same analysis for the proposed envelope which demonstrates that 91 of the 105 apartments will maintain 2 or more hours of sunlight in the proposed scenario. This demonstrates that the additional height does not generate any adverse overshadowing impacts on 41 Oxford Street.



Figure 27 Photomontage of the proposed development (View from corner of Oxford and Chester Streets)

Source: Turner

Ground 2: Improved Urban Design Outcome

The provision of additional height on the Site is considered to provide a better urban design outcome as the proposed building will result in more varied building heights within the block bound by Chester Street, Oxford Street and Cambridge Street. It also provides a better transition within the tower forms located within that block, providing a better step down from the Goodman Tower adjacent.

The proposed development is uniquely located at the gateway to the Epping Town Centre and is able to act as a landmark building and accommodate additional height.

Although the proposal exceeds the maximum building height limit, the proposal remains largely consistent with the DCP height control of 15 storeys, being that the proposal comprises all residential accommodation within 15 storeys. The proposed 16th storey comprises only communal open space and amenity. Due to the lack of solar access received within the ground floor communal open space, the rooftop communal open space is provided to ensure residents have access to private open space that receives adequate solar access.

5.2.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard and the objectives for development within the zone

The proposed development is consistent with the objectives of the development standard, as demonstrated in section 5.2.1. The proposal is consistent with the objectives of the zone, as outlined in **Table 122**.

Table 12 Analysis of Proposal's Consistency with the Objectives of the R4 Zone

Objective of R4 High Density Zone	Proposal
To provide for the housing needs of the community within a high density residential environment.	As outlined in the environmental assessment in Section 4 of this report, there is a high demand for seniors housing in the Epping Town Centre. Urbis has undertaken an analysis and expects that there will be a shortfall of approximately 570 dwellings at 2031 if new ILUs are not delivered before then.
To provide a variety of housing types within a high density residential environment	The proposal seeks approval for seniors accommodation in the form of Independent Living Units, Assisted Living Apartments, Care apartments and a residential aged care facility, thereby increasing the range of seniors accommodation provided in the Epping Town Centre.
To enable other land uses that provide facilities or services to meet the day to day needs of residents	The proposed development includes ancillary facilities which are proposed to serve the day to day needs of the residents, including a café, hairdresser, communal facilities and a gym.

The proposal is also in the public interest in that it will:

- Provide seniors housing in an accessible location, providing a significant supply of housing that is in strong demand in the Epping Area;
- Will provide opportunities for people to age in place through the provision of independent and high care forms of accommodation;
- Will provide opportunities for seniors to interact and improve their social wellbeing; and
- Is a high quality architecturally designed building which will contribute to the appearance of the Epping Town Centre acting as a gateway landmark.

5.3 Other Matters for Consideration

Clause 4.6(5) of the HLEP requires the following additional matters to be considered.

5.3.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed development and contravention of the development standard do not raise any matters of significance for the State or regional environmental planning.

5.3.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There would be more to lose than gain if the development was required to comply with the maximum building height standard. A reduction in height by one storey to comply with the development standard would reduce the number of dwellings proposed down to approximately 86 apartments, meaning that the proposal would provide 10 fewer ILUs if it were made to comply with the maximum height control. The rooftop amenity level would also most likely need to be deleted or reduced to comply. There would be a significant loss of seniors accommodation thereby increasing the shortfall of seniors accommodation expected to occur in 2021 and a loss of amenity for future occupants of the building.

Urbis estimate that currently, there is an existing underlying deficit of approximately 323 ILUs, which is expected to be partially met by the development of some 205 new ILUs (adjusted to reflect potential market share based on their location and potential catchment draw relative to the subject Site). Assuming the base case provision rate, this will result in a cumulative deficit of around 118 ILUs by 2021.

5.3.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

There are no other matters that are required to be taken into consideration by the Director General before granting concurrence.

5.4 Summary

This section demonstrates Council can be satisfied that:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because the proposed development remains consistent with the stated height objectives in that it remains appropriate for the Site constraints, development potential and infrastructure capacity of the locality, and
- That there are sufficient environmental planning grounds to justify contravening the development standard as the proposed height variation maintains a suitable height transition, acts as a gateway building for the town centre, does not generate any unacceptable overshadowing or traffic generation impacts; and
- The proposal will provide a significant amount of seniors housing within the town centre, a form of accommodation which is in high demand.

In light of these public benefits, the proposal is in the public interest. It is therefore requested that Council grant development consent for the proposed development even though it contravenes the Height of Buildings development standard in HLEP 2013.