



Attachment 2: Amended Clause 4.6 – Height





CLAUSE 4.6 VARIATION STATEMENT

Proposed seven storey mixed use development comprising ground floor retail uses (supermarket and specialty retail uses), 122 room hotel with ancillary food and drink premises, and basement parking for 207 vehicles.

277 The Grand Parade
Ramsgate Beach

Prepared for: *Bronxx Pty Ltd*

REF: M220002

DATE: 6 October 2023





CLAUSE 4.6 VARIATION STATEMENT – MAXIMUM HEIGHT OF BUILDINGS (CLAUSE 4.3)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Bayside Local Environmental Plan (BLEP) 2021 to accompany an application for demolition of existing buildings and structures and the construction of a six (6) storey mixed-use development, including car parking and associated earthworks and landscaping at No. 277 The Grand Parade, Ramsgate Beach.

2. MAXIMUM HEIGHT OF BUILDING

Clause 4.3(2) of *Bayside Local Environmental Plan 2021* relates to the maximum building height requirements and refers to the *Height of Buildings Map*. Building height is defined as:

“building height (or height of building) means, in relation to the height of a building in metres, the vertical distance from ground level (existing) 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”.

The relevant LEP map below identifies the subject site as having a maximum height of **20.5m**. Whilst the LEP does not articulate a height in storeys, it would be expected that some form of six storey development could be achieved within this height limit.

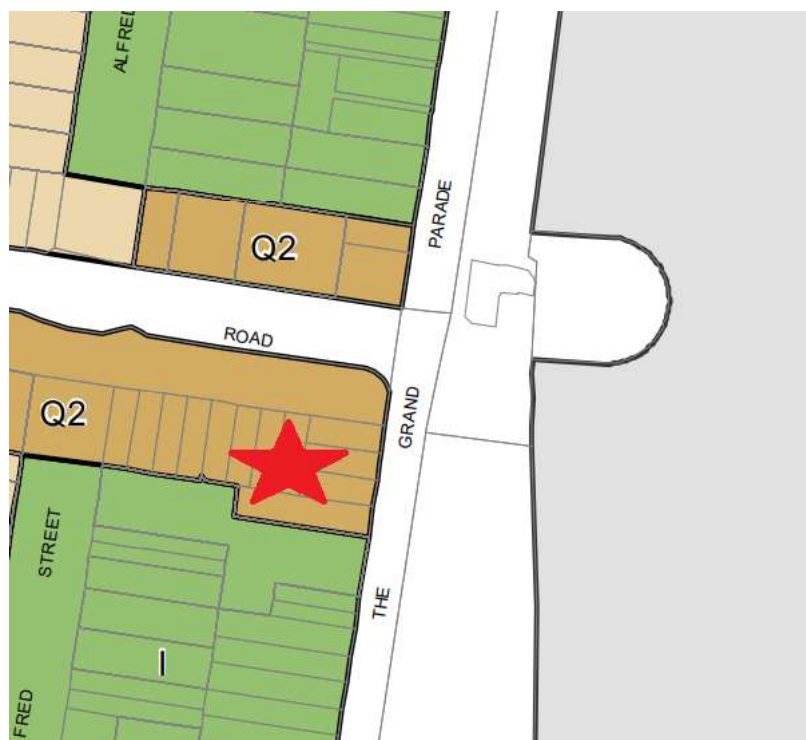


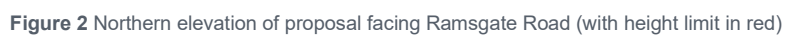
Figure 1 Bayside LEP 2021 – Height of Buildings map (site marked with a star).

3. PROPOSED VARIATION

As indicated in the elevation included in **Figures 2 and 3** below, the proposed lift overrun in western side of the building will attain a height of 23.64m and exceed the maximum building height. The height breach is a maximum of



Extracts from the architectural drawings showing the extent of non-compliance can be seen at **Figures 2 & 3** below.



4. CLAUSE 4.6 TO BAYSIDE LOCAL ENVIRONMENTAL PLAN 2021

The objectives and provisions of clause 4.6 are as follows:

(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 Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(ba) clause 4.3(2A), unless it is for a demonstrable public benefit,

(bb) clause 4.3(2B)(b),

(bc) clause 4.3A,

(bd) clause 4.4(2A), (2B), (2C), (2D), (2E), (2F) or (2G), unless it is for a demonstrable public benefit,

(be) clause 4.4(2H),

(bf) clause 4.4A, unless it is for a demonstrable public benefit,

(c) clause 5.4,

(caa) clause 5.5,

(ca) clause 7.1 or 7.2.

It is noted that Clause 4.3 is not 'expressly excluded' from the operation of Clause 4.6

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) and (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of 'an appropriate degree of flexibility' in applying the development standard, and is therefore consistent with the objective.

1(a). In this regard, the extent of discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in subclause 4.6(6).

Objective 1(b) of Clause 4.6 is addressed later in this request.

As described in Section 3 of this written request, the proposal has a maximum building height of 23.64m and exceed the maximum building height. The height breach is a maximum of 3.14m. This results in a variation to the development standard of 15.31%. Apart from the lift overrun, the remainder of the proposed building's roof form (being at RL 22.91m) exceeds the 20.5m height limit by 2.41m (a variation to the development standard of 11.75%).

5. THAT 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 sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard”.

The judgement goes on to state that:

“The rationale is that the development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable and unreasonable (no purpose would be served)”.

Preston CJ in the Judgement then expressed the view that there are 5 different ways in which an objection may well be founded and that approval of the objection may be consistent with the aims of the Policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

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

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary”.

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard will be in the public interest because it is considered 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. Clause 4.6(4)(a)(ii) is addressed in Section 7 below.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

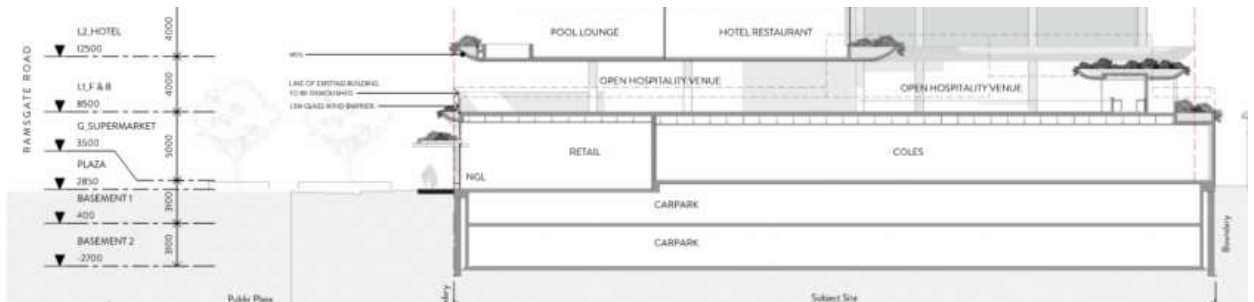
*“The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient to “justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply provide the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [3].”*

The assessment of this numerical non-compliance is also guided by recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 whereby Pain J ratified the decision of Commissioner Pearson and in *Moskovich v Waverley Council* [2016] NSWLEC 1015.

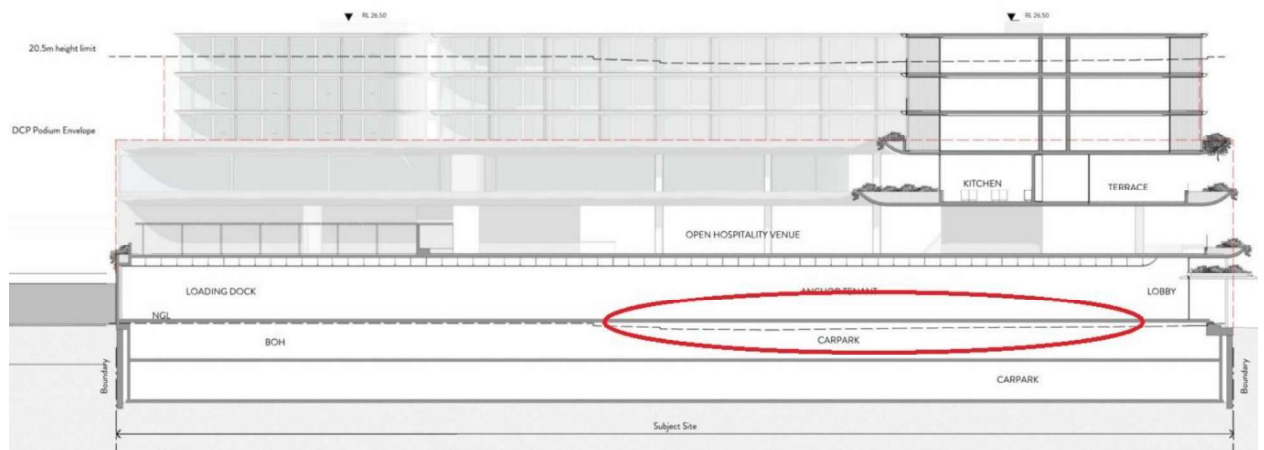
The following environmental planning grounds are submitted to justify contravening the maximum building height:

1. The proposal provides for a redistribution of the building's built form to the northern and eastern edges of the site and away from the low density properties adjacent to the southern boundary. The proposed setbacks to the southern and western boundaries being greater than required under the Bayside DCP, provide for a superior outcome to the neighbouring properties compared to a DCP compliant built form. The proposal redistributes floor space from within this “DCP allowable envelope” within an upper level that partially exceeds the height limit.
2. The proposal is for six storey development, which could be expected of the planning control, allowing 20.5m. The height breach is caused by functional design requirements associated with the building typology as set out below.
3. The height variation can be partly attributed to the need to provide adequate floor to ceiling clearance for a 2,400m² full line supermarket which has a pre-determined requirement for more than 4.5m clearance necessary for the functional and operational needs of the business (5m floor to floor). The retention of a full-line supermarket on the site provides significant benefits for the public, and economy of the surrounding locality, compared with development that does not have the same functional needs that may comply with the height limit.



As indicated in the section detail below, the proposed supermarket has a floor level of RL 3.5m and a ceiling level of 8.1m.



4. The proposed development must be elevated 0.7m above the existing ground level of 2.8m to accommodate a development that will be protected for all flood events up to the design flood level (1% AEP) affecting the site. Council has advised that the internal parts of the development must be located at 0.5m above the 1% AEP flood level of 3.0m to ensure the protection of life and property. This is particularly evident in the section below which indicates the area along the site's northern boundary where there is a natural sag point and the building elevated above the flood level.



5. The proposed development provides for a 5 star hotel on the site which will satisfy a local and regional need for high quality tourist and visitor accommodation in southern Sydney. Elements of the height breach can be related specifically to the functional needs of this use which differ from residential development including the incorporation of a function space, formal restaurant, casual food and beverage outlets and service functions into the development. The first and second levels of the development provide for a floor to floor height of 4m which exceeds the needs of residential uses at these levels and contributes to the overall height of the building.
6. Setting aside the lift overrun to the roof, which is inset from the edges of the buildings and not readily visible, the 2.41m height breach is easily attributed to the combination of the above factors. That is 1.3m of additional floor to ceiling height at ground level compared with the minimum required under Part 4C-1 of the ADG (4.6m versus minimum 3.3m requirement); 700mm of flood affectation; and 900mm per level at Levels 1 and 2 above minimum ADG floor to floor height for residential uses (3100mm floor to ceiling height required). The first two items equate to 2m of additional height, with all items contributing 3.8m additional height. The height breach is 2.4m to the upper part of the roof (excluding lift overrun) and can therefore be explained by these specific



typological requirements. The hotel (and supermarket) typology will provide significant benefits to the locality, LGA and region and the height breach can be attributed to the functional needs of these uses.

The burden of removing a full level of hotel rooms to achieve strict compliance, or remove the supermarket use at ground level would be a disproportionate response to the impacts of the minor non-compliance. In essence, the non-residential uses within the development that contribute to employment growth in the LGA play a significant role in contributing to the height non-compliance of the development as higher floor to ceiling heights.

7. The proposed lift overrun at RL 23.64m contributes towards allowing the entire building being fully accessible for all patrons visiting the premises as well as staff and avoids discrimination based on mobility. Removal of the lift to the upper level would be counterproductive given the minimal impacts of its inclusion.
8. The upper level of the building exceeding the LEP maximum height control has been designed to minimise building bulk through the adoption of a slimline roof profile and through exclusion of any roof top elements beyond the lift overrun. The overall height of the building exhibits a high level of articulation, integrated landscaping, soft edges and 'green' urban amenity, thereby making a significant contribution towards the development achieving design excellence.
9. The benefits of the additional height, through the provision of additional hotel rooms and retention of the ground level supermarket, can be provided in the absence of any significant environmental impacts that could be considered unacceptable. Shadow impacts are minimised through siting of the upper levels, privacy impacts have been managed, view impacts are acceptable and the visual bulk of the building, expressed as six storeys, is a height that could be expected of the height controls.
10. The proposal meets the objectives of development standard and meets the objectives of the MU1 Mixed Use zone (as further detailed below).
11. The proposed development achieves the objects of Section 1.3 of the EP&A Act, specifically:
 - a) The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for a high-quality commercial development containing a 5 star hotel, full line supermarket and a dining and entertainment facility (s1.3(c)).
 - b) Despite the height variation, the proposed development will not adversely impact the heritage significance of the heritage item in the vicinity of the site (s1.3(f)).
 - c) The proposed development promotes good design and amenity of the built environment through well considered design which is in response to its setting and connect (s1.3(g)).

The abovementioned environmental planning grounds are not general propositions. There are unique circumstances to the site and the proposed development. The additional height will facilitate a high-quality development with excellent levels of internal amenity that does not prejudice the character or appearance of the local streetscape or levels of residential amenity enjoyed by local neighbouring properties.

The merits of the proposal on 'environmental planning grounds' needs to be balanced with the burden that strict compliance places on the site and whether strict compliance will result in a sufficient outcome. The development has been designed to provide a high-quality urban outcome, with the building designed so as to minimise impact on the

views, privacy or amenity of neighbouring properties. The non-compliance has no perceptible adverse impact on the streetscape as it reads as part of a cohesive, high-quality development.

To require strict compliance would therefore result in an unreasonable burden on the development with no demonstrable built form or amenity benefits.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

"87. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the noncompliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

88. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard".

For the reasons listed above, it is considered that there are sufficient environmental planning grounds to support a variation to height of building standard, particularly when one considers the benefits associated with locating residential floor space to the uppermost level of the building, where it will achieve excellent levels of residential amenity.

7. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (Clause 4.6(4)(A)(I))

Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 8a below). Clause 4.6(3)(b) is addressed in Section 6 above.



The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 8 below.

8. 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 (CLAUSE 4.6(4)(a)(ii))

Objectives of Development Standard

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 8.6 are addressed below.

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

A significant driver for the proposed building height has been the intention to provide quality tourist accommodation in the form of a 5 star hotel and the retention of a full-line supermarket on the site. Both of these important elements of the building have contributed towards the height variation on the site. These important economic drivers are consistent with the desire for Ramsgate Beach to become an attractive and desirable location for dining and entertainment at an appropriate scale. It is considered that height non-compliance is consistent with the desired future character of the Ramsgate Beach precinct which seeks to provide a community and tourist hub.

The height limit of 20.5m could expect six storey development. Whilst the proposal exceeds the height limit, it is a six storey form that will be compatible with development around it, including existing development to the north and likely future development of land to the west which is subject to the same planning controls.

Objective (b) To minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,

As demonstrated within the Statement of Environmental Effects, the proposed development does not have any significant adverse impacts on views, privacy or solar access to land that is within the public domain or private property. The degree of shadow cast by the proposal is consistent with, and in fact less than, what could be expected of DCP compliant development. That is, the shadow does not exceed what was envisaged at the time of "upzoning" the subject land. Privacy impacts, as they pertain to height are addressed. The proposal provides for a generous southern setback particularly to the substantive central part of the building, which well exceeds minimum setback requirements. View loss has been assessed in the original SEE and the amended proposal has reduced the development by a further two storeys. The impacts on view are considered to be consistent with what could be expected of development undertaken in accordance with the planning controls.





Objective (c) To nominate heights that will provide an appropriate transition in built form and land use intensity.

Despite the height non-compliance, the design of the proposal provides for a superior architectural design and response to the public domain that supports a better transition from the MU1 Mixed Use zone to the R2 Low Density Residential Zone to the south of the site. That is achieved by providing for a floor plate that is more efficient and setback further from the southern side boundary than a DCP compliant development. The northern and eastern edges of the site will be defined by an urban form and the southern edge of the site scales down significantly to transition to the adjoining R2 zone.

Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of the Zone MU1 are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To ensure built form and land uses are commensurate with the level of accessibility, to and from the zone, by public transport, walking and cycling.*

The proposed development is consistent with the objectives of Zone MU1 in that:

- The proposal will provide a mixture of compatible retail and non-residential land uses suitable for the local and wider community;
- The retail employment opportunities will complement the community needs in a highly accessible location
- The proposal provides attractive active street frontages to both Ramsgate Road and The Grand Parade that will encourage use by pedestrian traffic;
- The proposal encourages the use of active transport, including walking, cycling and other forms of public transport useage.

9. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Planning Secretary has been obtained (cl 4.6(4)(b)). Under clause 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice, attached to the Planning Circular PS 18-003 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.





The Secretary's concurrence may not be assumed by a delegate of a Council where the development contravenes a numerical standard by greater than 10%. It is noted this restriction does not apply to decisions made by a Local Planning Panel.

10. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6 (5)(a))

There is no identified outcome which would be deleterious to planning matters of State or regional significance that would result because of varying the development standard as proposed under the subject application.

11. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the required building height. As such there is no public benefit in maintaining strict compliance with the development standard.

The proposal seeks a maximum height of 23.64m or a variation of 3.14m (15.31%) under clause 4.3(2) of the *Bayside Local Environmental Plan 2021*.

Whilst the proposed building height exceeds the maximum permitted on the site, the proposed development is consistent with the objectives of the development standard and the objectives for development of the Zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

12. CONCLUSION

This written request has been prepared in relation to the proposed variation to the building height development standard contained in *Bayside Local Environmental Plan 2021*.

Despite the non-compliance with the height of buildings development standard, the proposed built form is compatible with the existing and desired character of the locality as anticipated by the planning controls under the *Bayside Local Environmental Plan 2021* and *Rockdale Development Control Plan 2011*.

It has been demonstrated that the proposed development sits comfortably with the locality and provides an appropriate built form that is compatible with the varied height of buildings in the locality. Furthermore, the proposed development will not have an unreasonable adverse impact on the amenity of adjoining properties.

The request explains that, with the proposed variation, the development satisfies the objectives of the standard and the objectives of the Zone MU1 Mixed Use. It further explains why it is therefore unreasonable and unnecessary to require strict compliance with the height of buildings development standard. In addition, this request demonstrates that there are sufficient site-specific environmental planning grounds to justify the variation, and therefore the proposal is considered to be in the public interest.

