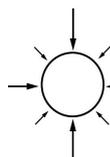


CLAUSE 4.6 EXCEPTION REQUEST

HEIGHT OF BUILDINGS

No.27 ALBERT ROAD

STRATHFIELD



**NEXUS**

Environmental Planning Pty Ltd

CLAUSE 4.6 VARIATION REQUEST

HEIGHT OF BUILDINGS

No.27 ALBERT ROAD

STRATHFIELD

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## 1. Introduction

This objection to the Height of Buildings development standard of Strathfield Local Environmental Plan 2012 (**LEP 2012**) has been prepared to accompany a development application to Strathfield Council (**the Council**).

The development application relates to demolition of the existing structure and the erection of a new generation boarding house at No.27 Albert Road, Strathfield (**the Site**). **Figure 1** shows the location of the Site.



**Figure 1:** Location map with the Site highlighted in yellow. © SIX Maps

## 2. Relevant Development Standard

Building height is defined in LEP 2012 as:

**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.

**Sub-clause 4.3** of LEP 2012 states:

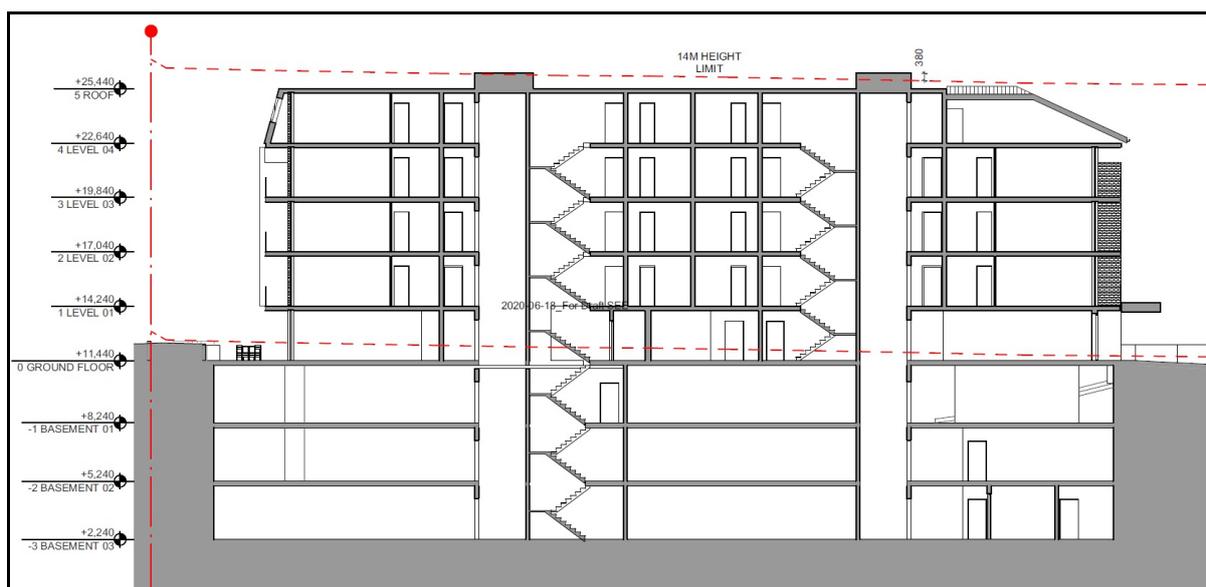
#### **4.3 Height of buildings**

- (1) *The objectives of this clause are as follows:*
  - (a) *to establish the maximum height of buildings,*
  - (b) *to ensure that buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
  - (c) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The maximum height of buildings development standard is 14 metres.

The proposed development is within the maximum building height except for part of the lift overrun of the development which breaches the development standard by a maximum of 380mm.

**Figure 2** shows Section AA which indicates where the proposed development is non-compliant with the development standard and **Figure 3** is an extract from the 3D height plane diagram which indicates which part of the proposed development exceeds the 14m Height of Buildings development standard.



**Figure 2:** Section AA of the proposed development indicating where the proposal breaches the 14 metre height of buildings development standard.



**Figure 3:** Extract from the 3D building height plane which shows where the proposed development breaches the 14 metre height of building development standard.

It is the 14 metre height of buildings development standard which is the subject of this variation request.

### 3. Objection to the Height of Buildings Development Standard

**Sub-clauses 4.6(1) & (2)** of LEP 2012 state:

- (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.*

**Sub-clause 4.6(3)** of LEP 2012 provides for variation to development standards as follows:

- (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.*

For the reasons set out below, the merits of the application should properly be considered in the context of **sub-clause 4.6(3)**.

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* and *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* Preston CJ outlined that Commissioners on appeal exercising the functions of the consent authority have power to grant consent to developments which contravene the building height standard (cl 4.6(2)), however, they cannot grant such a development consent unless they:

- Are satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)).
- Are satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).
- Have considered a written request which demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and they are satisfied that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)).
- Have considered a written request which demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

### 3.1 Objectives of the Zone

The objectives of the R3 Medium Density zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development would:

- provide for the affordable rental housing needs of the community,

- assist in the provision of a variety of housing with access to services and facilities,
- enhance the amenity of existing and future residents and the neighbourhood, and
- ensure that a high level of residential amenity is achieved and maintained.

The proposal would be consistent with the objectives of the R3 Medium Density Residential zone.

### 3.2 Objectives of the development standard

The underlying objectives of the height of buildings development standard contained in **Clause 4.3** of LEP 2012 are:

- (a) to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area,*
- (b) to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area,*
- (c) to achieve a diversity of small and large development options.*

Notwithstanding the minor breach of the development standard, the proposed development would:

- Facilitate the use of the Site for medium density residential development which is generally compatible with and improves the appearance of the existing area,
- Assist in achieving a consolidated pattern of height in the area,
- Minimise overshadowing of the adjoining residential development which would provide for the desired level of solar access to all properties adjoining the Site,
- Minimise the visual impact of the built form within the existing and future medium density residential development of the locality,
- Provide a building height and form which is consistent and compatible with both the desired and approved character of residential development in the vicinity of the Site, and
- Provide for a development form which takes its clues from the existing and recently approved development in this part of Albert Road.

The proposed development would be consistent with the objectives of the height of buildings development standard.

### 3.3 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

In *Wehbe v Pittwater Council [2007] NSWLEC 827* Preston CJ comprehensively examines a number of ways of establishing that compliance with a development standard is unreasonable or unnecessary, and states:

*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 rationale is that 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 (no purpose would be served).*

The 380mm non-compliance with the height of buildings development standard is confined to part of the lift overrun. The degree of non-compliance is seen in **Figures 2 and 3**.

The proposed development could comply with the height of buildings development standard, however, the proposed development has been designed to continue the urban design of the medium density residential development adjoining the Site and located in the vicinity of the Site. This has resulted in a small non-compliance with the Height of Buildings development standard as shown in **Figure 2 and 3**. A compliant building on the Site would result in reduction of one (1) storey in the built form which would be incongruous with the surrounding medium density residential development and would, thus, be inconsistent with objective (a) and (b) of the development standard which are:

- (a) *to ensure that development is of a height that is generally compatible with or which improves the appearance of the existing area,*
- (b) *to encourage a consolidation pattern that leads to the optimum sustainable capacity height for the area,*

To strictly apply the 14 metre maximum height of buildings development standard to the proposed development would be unreasonable and unnecessary as the proposed development would provide a development which can meet the objectives of the zone and the underlying objective and purpose of the development standard in that:

- The 380mm non-compliance would not be perceived from the public domain.
- The proposed height, bulk and scale of the proposed development are compatible with the desired future character of the locality.
- The proposed development will live in harmony with other development in the vicinity of the Site.

- The proposed development will have negligible visual and overshadowing impact, will not disrupt views, and will not result in any loss of privacy to existing development and the public domain.
- The proposed development is consistent with the objectives of both the height of buildings development standard and the zone.
- The development compliments the height profile of other development in the vicinity of the Site and those which are expected to form the redevelopment section of Albert Road within which the Site is located.
- It is both unreasonable and unnecessary to comply with the height of buildings development standard in circumstances where the reason why the development does not comply is that the non-compliance generally results from the continuation of the design criteria for development in the locality.

### 3.4 Are there sufficient environmental planning grounds to justify contravention of the development standard?

The proposed development is within the R3 Medium Density Residential zone and would be consistent with the objectives of the zone in that it would:

- provide for the affordable rental housing needs of the community,
- assist in the provision of a variety of housing with access to services and facilities,
- enhance the amenity of existing and future residents and the neighbourhood, and
- ensure that a high level of residential amenity is achieved and maintained.

A suitable development is proposed for the Site notwithstanding the minor non-compliance with 14 metre height of buildings development standard.

In the circumstance of this development application, the objection to the development standard is well founded and should be supported as it has adequately addressed the matters required to be demonstrated by **Clause 4.6(3)** of LEP 2012. The development would be in the public interest because it would provide a planning outcome consistent with the objectives of the development standard, the objectives of the R3 Medium Density Residential zone and the design response created by development adjoining the Site and in the general locality of the Site.