

Annexure 1: Clause 4.6 Variation

Clause 4.3 under the Holroyd LEP 2013 stipulates a maximum building height of 15m for the subject site. The development exhibits the following building height elements:

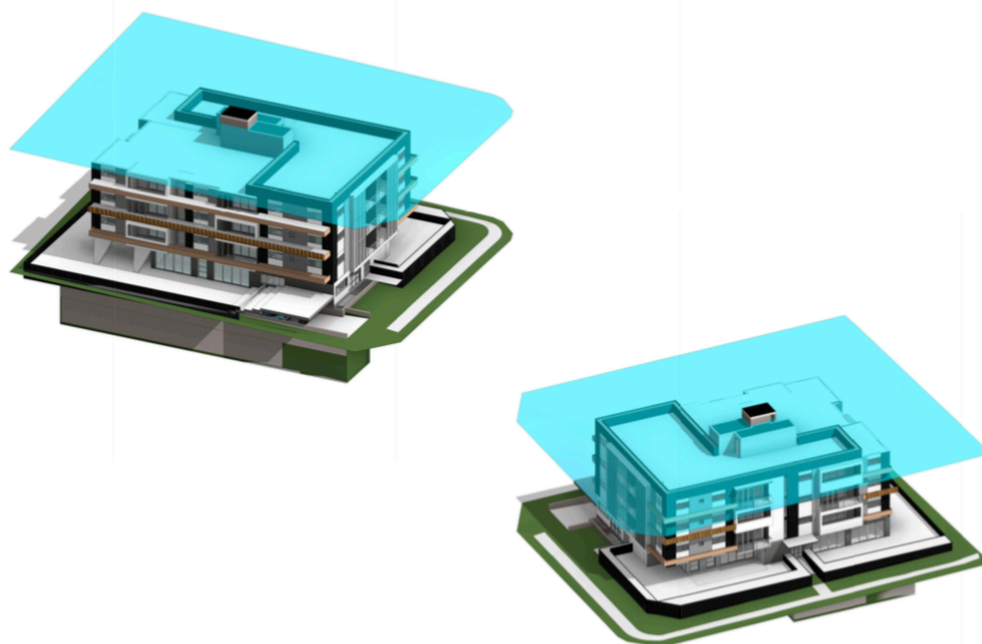
Portion	Maximum Height	Departure
Upper level of residential units (i.e. habitable floor area)	13m	None
Lift Over-run and Fire Stair	16.5m	1.5m & 10%

A detailed discussion against the relevant provisions of Clause 4.6 are provided below.

As shown on the sections and 3D height plan below and within the following page, the variation to height control is only limited to the lift and stairwell overrun and the habitable floor space is well below the height limit.

This is a function of the by-product of providing access requirements to service the building and additional amenity provided to the common open space area with a small scale pergola structure.





The design of the building ensures that the habitable floor space is contained below the maximum building height line which indicates that the variation is not simply a means of achieving additional development yield on the site, but a site specific design response.

In this case the variation stems from a portion of the lift and stairwell overrun. It is noted that the lift and stairwell overruns are recessed and not visible from the street level with the structure associate with the rooftop communal open space negligible from the street frontages and as addressed below the proposal continues to be consistent with the underlying intent of the control and the variation is considered appropriate as the variation enables the rooftop common area to be provided with suitable disabled access.

Clause 4.6 of the Holroyd Local Environmental Plan 2013 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

- (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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Each of these provisions are addressed in turn overleaf.

Clause 4.6(3)

In accordance with the provisions of this clause it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved.

The objectives of the building height development standard are stated as:

- (1) *The objectives of this clause are as follows:*
- (a) *to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,*
 - (b) *to ensure development is consistent with the landform,*
 - (c) *to provide appropriate scales and intensities of development through height controls.*

The current development proposal is predominantly consistent with the building height with the exception of a small portion of the building and lift overrun, the proposal remains consistent with the objectives based on the following:

- Non-compliance is minor in nature with the majority of the building being compliance with the building height control and with the lift and stairwell overrun recessed, its impact to the streetscape is negligible as it will be visually unnoticeable when viewed from the street level.
- Due to the minor nature of the variation it will not have any adverse amenity impacts. In this regard it is noted:

- The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of the development.
 - The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss or overshadowing.
 - The proposed variation will not lead to view loss or interrupt on views to and from the site.
 - The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal.
- The proposal has been designed to ensure that privacy impacts are mitigated that the proposal will not obstruct existing view corridors.
 - The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing an attractive mixed use building that provides good address to the street frontage and complying with key planning controls applying to the proposal
 - The proposal is not located within a low-density area and the proposal represents an appropriate built form on the site.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances. The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Clause 4.6(4)

In accordance with the provisions of Clause 4.6(4) Council can be satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

As addressed the proposed development is in the public interest as it remains consistent with the objectives of the building height control. In addition the proposal is consistent with the objectives of the R4 zone, being:

- *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 provides facilities or services to meet the day to day needs of residents.*

The proposal ensures that the high density nature of the zone is retained and there is not a significant change to the character of the locality. In addition the proposal complements and enhances the local streetscape by virtue of the careful siting of the development.

It is understood that the concurrence of the Director-General can be assumed in the current circumstances.

Clause 4.6(5)

As addressed it is understood the concurrence of the Director-General may be assumed in this circumstance, however the following points are made in relation to this clause:

- a) The contravention of the height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal and minor nature of the variation;
- b) There is no public benefit in maintaining the development standard as it relates to the current proposal as the proposal is consistent with the underlying objectives of the control and the fact that the minor non-compliance does not lead to excessive bulk and scale and it will not set an undesirable precedent for future development within the locality.

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its particular circumstances.

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, which will be characterised by residential development of comparable height and character. The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.