

ATTACHMENT 5



CLAUSE 4.6 VARIATION - HEIGHT

40-42A PARK ROAD, AUBURN NSW 2144

**DEMOLITION OF EXISTING STRUCTURES &
CONSTRUCTION OF A IN-FILL AFFORDABLE RESIDENTIAL FLAT BUILDING**

FEBRUARY 2019

**SUBMITTED TO
CUMBERLAND COUNCIL**

**PREPARED FOR
JUST AHEAD PTY LTD**

PREPARED BY



Morphology Design Associates Pty Ltd.
ABN 12 620 205 852
P: (02) 9744 7035
E: office@ghazia.com
Suite 2, Level 2, 14 Railway Parade Burwood NSW 2134

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Clause 4.6 Variation to Development Standards

Exception for Height of Building

1. Introduction

This report accompanies the subject Development Application (DA) comprises the following at 40-42A Park Road, Auburn:

- i. the demolition of existing structures and
- ii. the construction of a six-storey residential flat building comprising thirty-two (32) residential apartments, two (2) one-bedroom apartments, twenty-one (21) two-bedroom apartments and nine (9) three-bedroom apartments, with a total provision of thirty-six (36) car parking spaces including four (4) accessible parking spaces.

The proposal seeks exception pursuant to Clause 4.6 of the Auburn Local Environmental Plan 2010 (ALEP 2010) to the development standard contained within which relates to height.

The proposed development is illustrated on the Architectural Plan, Issue A, Project No. P18-028, dated 06/02/2019, prepared by Ghazi Al Ali Architect Pty Ltd.

2. Exception Sought

An exception is sought under Clause 4.6 of the ALEP 2010 for the height variation indicated in the table below.

Clause	Control	Proposed	Variation
4.3 Height of Building	18 m	19.38m (roof slab)	1.38m (7.6% variation)
		19.99m (lift overrun)	1.99m (11% variation)

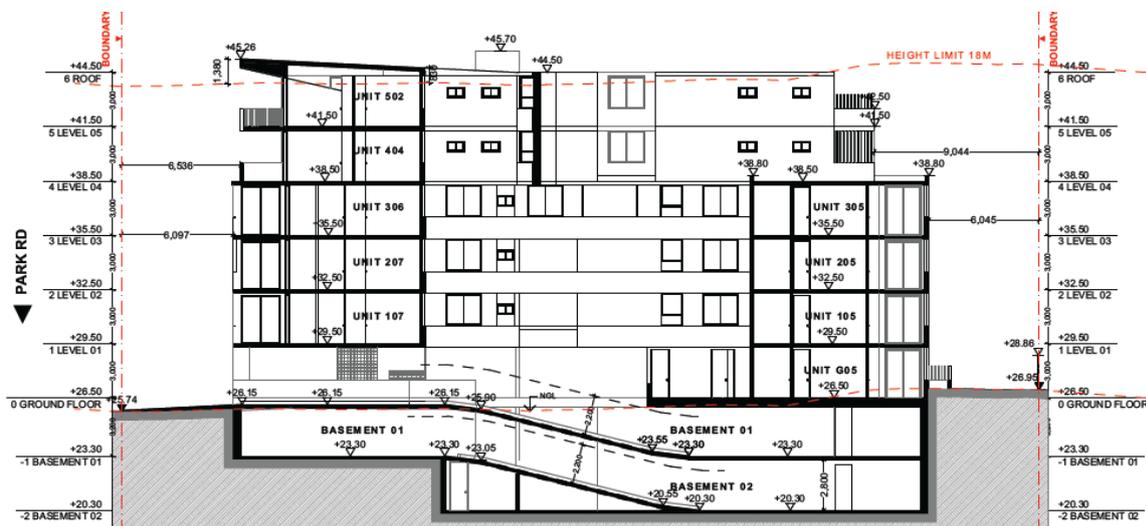


Figure 1. Section AA showing extent of Height Breach (Extract from Architectural Plan A1401 Sections AA)

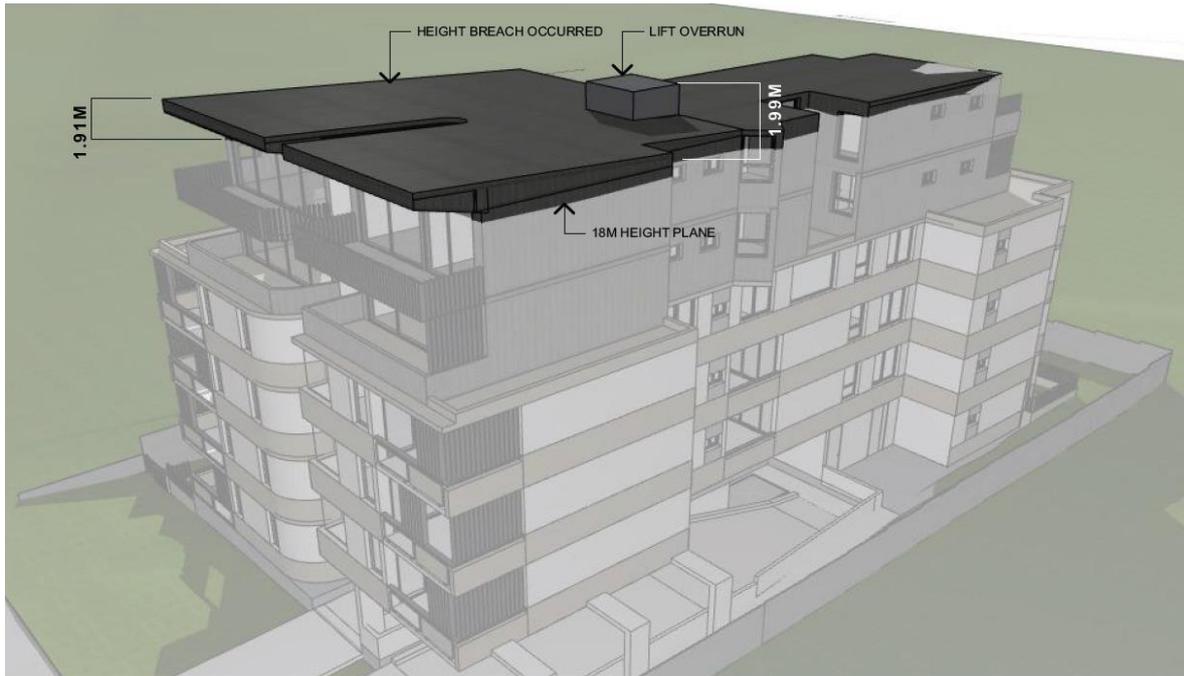


Figure 2. Proposed building height relative to 18m 3D height plane (Extract from Architectural Plan A1401 Section AA)

3. Exception consideration

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under an LEP. Subclause 4.6(3) (a) and 4.6(3) (b) state that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that the strict compliance with the development standard is unreasonable and unnecessary.

4. Auburn LEP 2010 Clause 4.6 Exceptions to Development Standards

4.6 Exceptions to development standards

(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 Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the 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 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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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,
 - (c) clause 5.4,
 - (ca) clause 6.8.

I. Is compliance with the development standard unreasonable and unnecessary in the circumstances of the case? Are there sufficient environmental planning grounds to justify contravening the development standard?

In this proposal, applying the maximum height standard of the development is unreasonable and unnecessary. The following demonstrates that how the proposed development has coincided with planning standards and controls:

The Auburn LEP 2010 maximum height control that applies to the site is 18m. The six-storey residential flat building will have a maximum height of 19.99m at the lift overrun.

1. Flooding

The subject site is located within the flood plan area. According to the Flood Study prepared by SGCE, the subject site is flood affected with 100-yr flood level occurring at RL 26.00m at the north-western corner of the site. The Auburn Council's DCP requires the flood planning level to be 500mm above the calculated 100-yr ARI flood levels and 0.15m basement entry.

The proposed development has adopted the flood planning levels and set the Ground Floor level at RL26.50m, as well as the basement crest at RL26.15m.

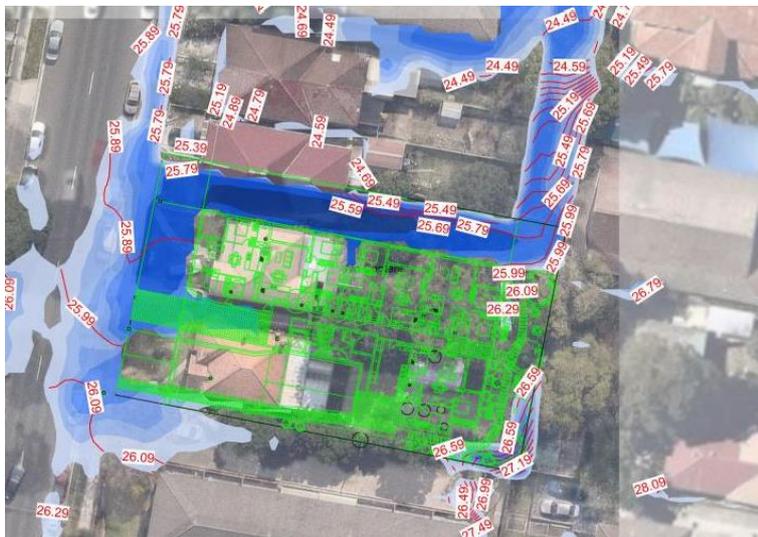


Figure 3. Flood levels after proposals (Extract from Flood Study prepared by SGCE)

2. Architectural roof feature

The proposed roof element is designed for decorative purpose and does not contain any additional floor space for the GFA. The height exceedance is a combined outcome of both flood affection and architectural roof feature design. The roof element is not an advertising structure and is not capable to be transformed into future additional floor space. The proposal is consistent with the objectives of Clause 5.6 Architectural roof feature.

3. Affordable housing

The proposed residential flat building is under SEPP Affordable Rental Housing 2009. To accommodate the additional density in the development it is better to place the extra density higher than compromising the side setbacks.

In addition, the applicable 18m height limit would anticipate six-storey development to occur. The proposed residential flat building has a consistent floor to floor height of 3m among the proposed six storeys. The proposed development has provided a rationalised level for each storey.

Nonetheless, the building height non-compliance of the Auburn LEP height standard will be considered insignificant and to have no adverse impact on neighbouring properties as well as the amenity of the proposed development.

The additional shadow casted by the height-breaching building element is minimal and within acceptable range.

Therefore the strict compliance with height standard is unreasonable and unnecessary in this circumstance.

II. Is it consistent with the objectives of Clause 4.3 height standard?

The table below demonstrates how the proposed development satisfies the objectives of clause 4.3 of the Auburn LEP 2010, although the numerical non-compliance with height standard exists.

Objective of Clause 4.3	Proposed/Comments	Satisfaction
(a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and	The applicable floor space ratio is achieved by proposed six-storey residential flat building.	Yes
(b) to ensure that the height of buildings is compatible with the character of the locality.	The proposed height of building is compatible with the future character of the area	Yes

III. Is it consistent with the objectives for development within the zone?

The objectives of the R4 – High Density Residential zone are:

- To provide for the housing needs of the community within a high density residential environment.*

The proposed residential flat building will increase the local housing supply to meet the additional housing needs in the growing community in Auburn area.

- To provide a variety of housing types within a high density residential environment.*

The proposed development has been designed with a variety of dwelling types including 1-Bedroom dwellings, 2-Bedroom dwellings and 3-Bedroom dwellings, as well as accessible dwellings to meet the residents' needs from a wider community.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development does not include other land use. Thus this objective is not applicable.

- To encourage high density residential development in close proximity to bus service nodes and railway stations.*

The proposed residential flat building is high density residential development located within 800m to Auburn railway station and accessible to public transport.

IV. Is the proposed development in the public interest?

The proposed development is in line with public interest as follows:

- The proposal has improved the land utilisation of R4 – High Density Residential zoned land in Auburn, comparing to existing situation as being left as underdeveloped dwelling houses.
- The proposed development contributes to additional housing supply in R4 – High Density Residential zone to meet the growing population in Cumberland local governmental area and the wider Sydney metropolitan area.

- The thoughtfully-designed and well-articulated built form of the proposed development is of good input into the redevelopment of the locality.
- The development proposal includes landscape works bringing positive contribution to the setting of the building and improving the presentation of the proposed residential flat building to Park Road.

5. Conclusion

The Development Application is for proposed in-fill affordable residential flat building at 40-42A Park Road, Auburn. An exception is sought, pursuant to Clause 4.6 of Auburn Local Environmental Plan 2010 to the maximum permissible height prescribed by Clause 4.3 of the of Auburn Local Environmental Plan 2010.

The proposed maximum variation to the development standard is 1.99m (11% of 18m height limit) at the lift overrun. It is acknowledged that the non-compliant elements do not generate unacceptable adverse environmental impacts. The above assessment finds that the variation will not result in unreasonable environmental impacts, and consequently, strict compliance with the height standard is unnecessary and unreasonable.

The flood affection of the site has led to an increase in building height. Given site constraints, the proposal contains minimal level changes to achieve a balance between flood protection and the amenity and accessibility of future residents. The ground floor has been designed to achieve the freeboard level required at RL26.50m for the 100 year flood event.

With the variation of height, the proposed development is capable to provide high level of amenity in terms of sufficient setback, good direct sunlight, and contributing to the streetscape as well as consistency with relevant objectives of both the height standard and the R4 High Density Residential zone. Therefore, the exception sought is in line with public interest.

For the above reasons, this Clause 4.6 has presented the justification for the building height variation and is worthy of council's support.