



Hawkesbury City Council

attachment 2
to
item 3

Clause 4.6
Objection

date of meeting: 21 March 2019
location: Council Chambers
time: 11:30 a.m.

7.0 REQUEST TO VARY A DEVELOPMENT STANDARD

7.1 INTRODUCTION

This application to vary a development standard has been prepared in accordance with the *Department of Planning & Infrastructure Guide 2011*.

7.2 MATTERS FOR CONSIDERATION

1. WHAT IS THE NAME OF THE ENVIRONMENTAL PLANNING INSTRUMENT THAT APPLIES TO THE LAND?

Hawkesbury Local Environmental Plan (LEP) 2012.

2. WHAT IS THE ZONING OF THE LAND?

The site is zoned **B2 Local Centre** under Hawkesbury LEP 2012.

3. WHAT ARE THE OBJECTIVES OF THE ZONE?

Zone B2 Local Centre

2 Objectives of zone

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

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- *To encourage employment opportunities in accessible locations.*
 - *To maximise public transport patronage and encourage walking and cycling.*
 - *To promote the development and expansion of business activities to meet the optimum employment and social needs of Hawkesbury.*

**4. WHAT IS THE DEVELOPMENT STANDARD BEING VARIED?
E.G. FSR, HEIGHT, LOT SIZE**

The maximum building height of the development.

**5. UNDER WHAT CLAUSE IS THE DEVELOPMENT STANDARD
LISTED IN THE ENVIRONMENTAL PLANNING INSTRUMENT?**

4.3 Height of buildings.

**6. WHAT ARE THE OBJECTIVES OF THE DEVELOPMENT
STANDARD?**

4.3 Height of

(1) The objectives of this clause are as follows:

- (a) to protect privacy and the use of private open space in new development and on adjoining land,*
- (b) to ensure that the bulk of development is not excessive and relates well to the local context,*
- (c) to nominate heights that will provide a transition in built form and land use intensity,*
- (d) to ensure an appropriate height transition between new buildings and heritage items.*

7. WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Maximum building height of 12m.

8. WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN YOUR DEVELOPMENT APPLICATION?

Proposed building height of 12.6m.

9. WHAT IS THE PERCENTAGE VARIATION (BETWEEN YOUR PROPOSAL AND THE ENVIRONMENTAL PLANNING INSTRUMENT)?

The development exceeds the allowable building height by 5%.

10. HOW IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THIS PARTICULAR CASE?

It is generally considered that the compliance with a development standard is unreasonable or unnecessary when a development still achieves the underlying of the objectives of the standard despite the non-compliance.

Therefore an assessment of the development against each relevant clause objective is provided below:

4.3 Height of building

**(a) to protect privacy and the use of private open space
In new development and on adjoining land,**

The non-compliance relates only to the lift overrun and as such this element of the development has no potential to adversely impact upon the privacy of private open spaces.

Analysis in previous sections of this report demonstrates that the broader development causes no adverse privacy impacts.

**(b) to ensure that the bulk of development is not
excessive and relates well to the local context,**

The non-compliance relates only to the lift overrun and as such this element of the development has limited potential to cause an excessive bulk or scale impact. The lift overrun only has a maximum dimension of 2.5m, so its limited scale and location centrally on the roof will ensure that it has very limited view from the street or public domain areas.

Analysis in previous sections of this report demonstrates that the broader development causes no adverse privacy impacts.

**(c) to nominate heights that will provide a transition in
built form and land use intensity,**

The broader township has a 12 m height limit. Therefore, the lift overrun, by itself, causes no discernible disruption to appropriate transitions between height and land use intensity across the Richmond Township.

(d) to ensure an appropriate height transition between new buildings and heritage items.

A heritage impact accompanies the development application and demonstrates that the development causes no adverse impact upon the values of adjacent heritage items.

11. HOW WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 5(A)(I) AND (II) OF THE ACT.

Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979 provide:

The objects of this Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,***
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,***

The subject site does not accommodate any features of natural or ecological significance.

Further, the proposed development seeks to simply make better or more efficient use of a currently underutilised parcel of land.

As such the development represents orderly and economic development of the land and therefore can be considered to be consistent with the object of the Act.

12. IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL? GIVE DETAILS.

No. The development standard is clearly a numerical standard.

13. WOULD STRICT COMPLIANCE WITH THE STANDARD, IN YOUR PARTICULAR CASE, BE UNREASONABLE OR UNNECESSARY? WHY?

Strict compliance with the development standard would demand that an alternate development proposal be advanced that reduces the overall building height inclusive of any lift overrun.

However, the vast majority of the proposed built form achieves the relevant development standard. Further, the non-compliance with the maximum building height standard is relatively minor (i.e. 5%) and relates to a very small building element that will have limited visual presence in the streetscape given that a casual observer of the development would not be able to perceive the non-compliance.

In the context of these factors, it is considered that strict compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case.

14. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? GIVE DETAILS.

The development proposal as submitted allows for a more limited development footprint, as it allows the mass of the built form to extend vertically on the site.

An outcome of this design approach is that the major mass or built volume of the development is provided at the rear of the site, where it is less legible and therefore has a more limited visual presence in the streetscape.

The accompanying heritage reports recognises that this restricted building footprint helps to provide a generous setback to the important Windsor St streetscape and therefore reduces the visual presence of the development.

Accordingly, if a complying development were to be provided then it would be required to extend further south over the site and towards the Windsor St streetscape, thereby causing a sub-optimal design outcome in terms of heritage conservation.

Such an arrangement would also cause apartments to be provided with a southern aspect, which results in no solar access and therefore reduced sustainability and amenity outcomes for the development.

Finally, notwithstanding the subject developments non-compliance with the relevant numerical development standards, the development will still meet all the relevant underlying objectives of those standards.

In this context, there is considered to represent sufficient environmental and planning grounds to justify a contravention of the development standard.

8.0 CONCLUSION

The application seeks council consent to the redevelopment of the site for a new mixed-use outcome.

The development proposal responds to both state and local planning strategies inclusive of the metropolitan strategy, by promoting mixed use development in existing centres and adjacent to public transport nodes and corridors.

The report provides an assessment against the relevant planning instruments and demonstrates consistency with the aims, objectives and provisions of that statutory planning framework inclusive of HLEP 2012 and SEPP 65 Apartment Design Guide.

A request to vary a development standard in relation to building height is also provided and demonstrates that strict compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

The development, will cause no significantly adverse environmental impact, provides a positive impact upon the built environment and makes an efficient and economic use of existing land and infrastructure.

As such it is considered there is good reason for Council to approve the subject Development Application.