

Written application providing grounds for an exception to a development standard – 47 Park Road, Rydalmere

Submitted together with the development application

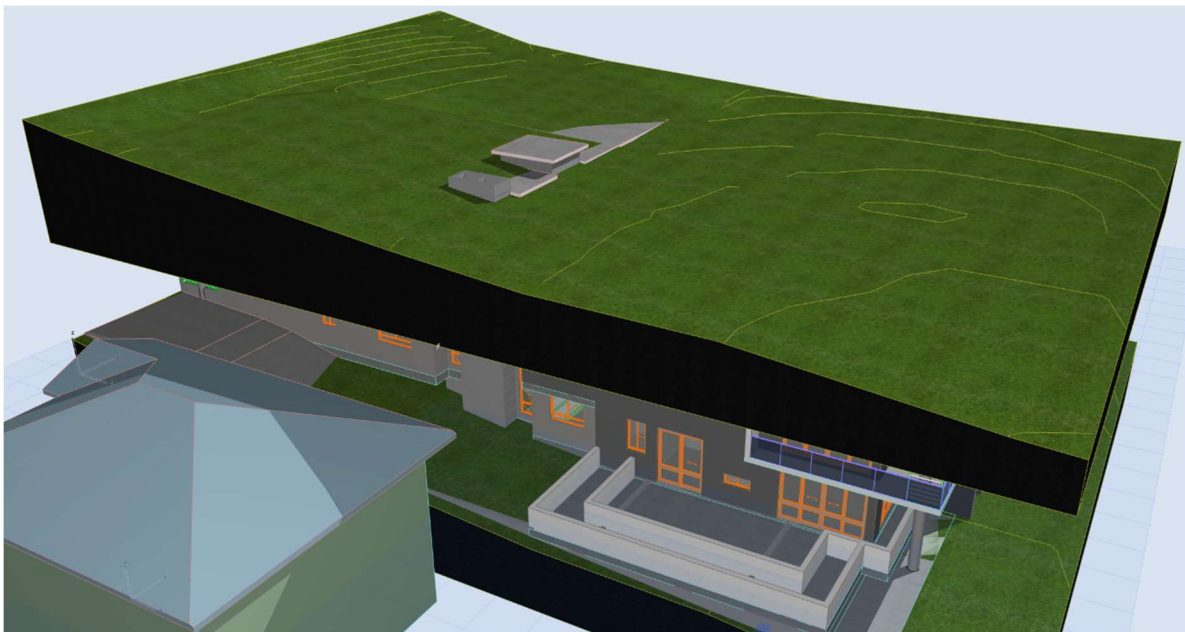
1. Introduction

This clause 4.6 exception request has been prepared behalf of Design Effect Pty Ltd. It is submitted to Parramatta Council in support of a development application for a residential flat building at 47 Park Road, Rydalmere.

As shown by Height Planes below, the proposed development comprises a 3-storey residential flat building that predominantly complies with the 11m maximum building height control under the Parramatta LEP 2011 with the exception of the elevator over-run.

Accordingly, an exception pursuant to Clause 4.6 of the Parramatta LEP 2011 is requested. The non-compliance at the highest point is 900mm with also a small portion of the roof for about 200mm. The area of the elevator overrun is 8.3 sqm compared with a floor plate of 587.47 sqm, 1.4% of the floorplate.

The elevator overrun area which is in the central portion of the building and substantially recessed from the public domain so it is not read in the streetscape. This is clearly shown on the 3d extract below.



The proposed non-compliance with the height standard comes from the provision of an elevator well to provide access from the car parking basement and the ground floor entrance to each level of the building. Without the elevator well there would be less accessibility within the building, particularly to the upper floors.

Clause 4.6 of Parramatta LEP 2011 enables Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 exception request relates to the development standard for height of buildings under clause 4.3 of Parramatta LEP 2011, and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Barry Millwood Planning dated 1 June 2021.

This clause 4.6 exception request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 exception request demonstrates that, notwithstanding the non-compliance with the height development standard, the proposed modification:

- is consistent with the objectives of both height of buildings development standard and the R4 High-Density Residential zone; and
- has an appropriate built form response to the streetscape and surrounding development and results in little to no additional impact;

Therefore, the modification may be approved with the exception as proposed in accordance with the flexibility allowed under clause 4.6 of Parramatta LEP 2011.

2. Background Information

Name of the environmental planning instrument that applies to the land

Parramatta Local Environmental Plan 2011

Zoning

R4 Residential High Density

Zone objectives

- *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 provide facilities or services to meet the day to day needs of residents.*
- *To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.*
- *To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.*

3. Development standard requested to be varied

Height of buildings under clause 4.3 of the Parramatta LEP 2011. Clause 4.3 provides that “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 building heights for the site are shown on the Height of Buildings Map in Parramatta LEP 2011 (extracted below).

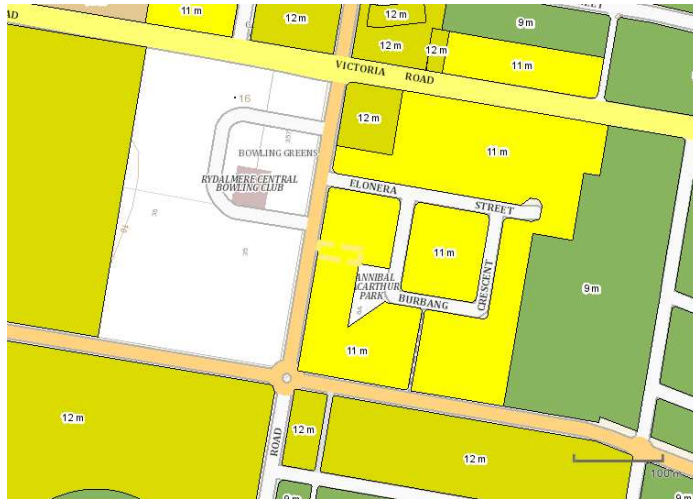


Figure 1 Maximum building height under Parramatta LEP 2011 (site highlighted in yellow)

Numeric value of the development standard

11 m

Proposed numeric value

11.9 m for the elevator well and up to 11.2 m over a small area of proposed residential flat building. The balance of the building is below or substantially below the height limit.

Percentage exception (between proposal and Parramatta LEP 2011)

8.2 %

The area of the elevator well that exceeds the maximum height limit is about 8.1 sqm. This equates to about 1.4% of the area of the building footprint exceeding the maximum height limit. The area of the roof non-compliance is of a similar area but with a height exceedence of up to only 200 mm.

Is the development standard a performance-based control?

No

4. Objectives of the development standard (Height)

- (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to require the height of future buildings to have regard to heritage sites and their settings,
- (d) to ensure the preservation of historic views,
- (e) to reinforce and respect the existing character and scale of low-density residential areas,
- (f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.

5. Matters for considering an exception under Cl 4.6 of the Parramatta LEP 2011

Clause 4.6(3) of the Parramatta LEP 2011 provides that:

4.6 Exceptions to development standards

(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.

Cl 4.6(4) of Parramatta LEP 2011 also states:

(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.

Cl 4.6(5) of Parramatta LEP 2011 also states:

(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.

5 Part Test from Land and Environment Court

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five-part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded as follows:

- | | |
|--------|---|
| Test 1 | The objectives of the standard are achieved notwithstanding non-compliance with the standard. |
| Test 2 | The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary. |
| Test 3 | The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable. |

Test 4 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

Test 5 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 would be unreasonable or unnecessary.

Further to this, the NSW DPIE suggests council consider objectives when assessing applications.

The planning objectives for certain land generally identified in State (Metropolitan and Regional Strategies) and more specifically in LEPs. Objectives may relate to the purpose of the zone and intended strategic land use direction, or they may be set out in local provisions addressing matters such as residential amenity, heritage conservation, riparian corridor protection etc.

The planning objectives of a development standard are usually stated in the relevant clause, as well as being interpreted within the context of the whole LEP. For example, a floor space ratio for commercial development in a business zone is designed to indicate the desired scale of development for business, office and retail purposes. It reflects the intended regional and local distribution of commercial space and the capacity of the transport system to service the area.

The planning objectives for a locality may overlap to some extent with the objective of the development standard, but are likely to include a broader range of considerations than those attached to the development standard.

DPIE advises that when assessing applications for varying development standards under, Council should take into account both the mandatory zone objectives as well as any additional objectives.

Councils should also take into consideration mandatory or added objectives set out in clauses contained in Part 4 - Principal Development Standards. The objectives of these clauses explain the intention of planning tools to be used to achieve the overall objectives of the zone. The hierarchy of policy intention is established from the overarching Aims of the Plan (Standard Instrument Clause 1.2), zone objectives, land use table and the objectives in SI clauses setting out development standards.

6. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case - CI4.6 (3)(a)

The relevant development standard is CI 4.3 Building Height. Comments are also provided in relation to objectives of the R4 High Density Residential zone.

Objectives of CI 4.3 Building Height

Comments are provided in relation to objectives of CI 4.3 Building Height.

Objective (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,

The site is located on the low side of Park Road and slopes down toward the rear. The proposed residential flat building itself steps down the slope. From the street it presents as a 3-storey building. The list overrun would not be visible from the street as it is located midway through the building.

The following illustration shows the expected view from the street.



The following elevations show the extent of the non-compliance with the building height limit.



Legal precedents

In *Veloshin v Randwick Council* [2007] NSWLEC 428, Roseth SC established a planning principle around assessment of height and bulk. This planning principle is considered appropriate in this instance, given height and bulk are the relevant drivers of development density.

The questions asked by Roseth SC that are most relevant to the proposed development are as follows:

1. Are the impacts consistent with impacts that may be reasonably expected under the controls?
2. How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?
3. Is the proposal consistent with the bulk and character intended by the planning controls?

In relation to the first question, the key issue is whether the additional height creates any significant additional impact that would not be present if the proposed development were to comply. It is considered that it would not create an additional impact as the extent of the non-compliance is minimal and over a small area. It is also located away from the front, side and rear boundaries.

In relation to the second question, the proposed development does not fundamentally depart from the desired bulk and scale under the relevant controls. The development is compliant except for a very small area.

In relation to the third question, it is noted that the intention of the zoning and density controls is to create a high-density residential environment in this location. The density proposed is commensurate with the locality.

Overall, the proposed building height is considered to maintain an appropriate development density given the expected scale of development under the controls and the relationship with surrounding development. The additional height elements do not result in a significant difference in how the buildings will be read, nor do they produce any significant adverse impacts.

Accordingly, it is considered that Objective (a) is therefore achieved despite non-compliance with the standard.

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

The proposed elevator overrun would not be visible from the Park Road as it is located midway through the building. The elevator well is part of a vertical feature when viewed from the southern boundary and future laneway. The proposed building is consistent with the expected visual impact of a 3-storey residential flat building anticipated by the Parramatta LEP 2011 and SEPP (Affordable Rental Housing) 2009.

There are no significant views in the locality that would be compromised as a result of the exception in the maximum height standard.

The elevator overrun would not result in any loss of privacy as the area of non-compliance does not have any windows.

The elevator overrun would have minimal impact on solar access given its relatively small size and location within the building footprint.

Accordingly, it is considered that that Objective (b) is therefore achieved as the proposed exception to the height limit would not compromise expected visual impact, existing views, privacy or solar access in the immediate vicinity.

Objective (c) to require the height of future buildings to have regard to heritage sites and their settings,

Not applicable, as there are no heritage buildings in the immediate vicinity that could be affected by the exception to the maximum height limit.

Objective (d) to ensure the preservation of historic views,

Not applicable, as there are no historic views that would be affected by the exception to the maximum height limit.

Objective (e) to reinforce and respect the existing character and scale of low-density residential areas,

Not applicable, as the site is in a residential area envisaged by the R3 High Density zone for residential flat buildings.

Objective (f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.

Not applicable, as the site is not within a commercial centre.

Objectives of Zone R4 - High Density Residential

Comments are provided in relation to objectives of the R4 High Density Residential zone.

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

The proposed non-compliance will facilitate the provision of a residential flat development consistent with a high-density residential environment and thereby assisting in satisfying the housing needs. The proposed elevator will make the proposed building more attractive as a place of residence to a broader range of people.

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

The proposed non-compliance will facilitate the provision of additional housing in the high-density residential environment.

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

Not applicable.

- ***To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.***

The site is close to a commercial centre anchored by a supermarket and is close to bus and ferry services that provide access to Parramatta and Sydney CBD as well as other centres.

The proposed non-compliance involving the elevator well will facilitate a more attractive development for its occupants and which is in close proximity to major transport nodes services and employment opportunities.

- ***To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.***

Not applicable.

Conclusion

Test	Comment
<p>Test 1</p> <p>The objectives of the standard are achieved notwithstanding non-compliance with the standard.</p>	<p>Compliance with the development standard is considered unreasonable or unnecessary in the circumstances of the case as the aims of cl. 4.3 (Maximum height of buildings) can be achieved notwithstanding the non-compliance, as the modification would be consistent with the high-density residential character envisaged by the R4 High Density zone and that the additional height does not substantially change how the buildings will be read in the context of the overall development and the heights envisaged under the Parramatta LEP 2011.</p>
<p>Test 2</p> <p>The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</p>	<p>While the underlying objective or purpose of the standard is relevant it is considered it is unnecessary in this situation.</p>
<p>Test 3</p> <p>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</p>	<p>The proposed modification would not defeat or thwart the development standard as the exception is only small and the area of the built upon area that does not comply is also small.</p>
<p>Test 4</p> <p>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</p>	<p>The development standard is not abandoned as the vast bulk of the proposed building is within the maximum building height and is consistent with other residential flat buildings in the immediate vicinity.</p>
<p>Test 5</p> <p>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 would be unreasonable or unnecessary.</p>	<p>Not applicable</p>

7. Environmental planning grounds to justify contravening the development standard - Clause 4.6(3)(b)

The non-compliance with the building height standard comes largely from the provision of an elevator for the building to facilitate access from the basement and from the front and rear entry to each level in the building. Without the elevator, access would be reduced for occupants.

Due to the topography of the site, the corresponding maximum building height limit drops to the rear of the site. The proposed building is accordingly stepped down at the rear to take account of the topography. The elevator is located midway through the building and is designed to provide access to each stepped level without occupants needing to walk up or down steps to access the adjoining stepped level to reach the elevator. This necessitates locating the elevator midway through the building. Had it been located to provide direct access to the front portion of the building it could have been located to comply with the maximum building height. However, this would require occupants of the rear portion of the building using stairs to walk either up or down a half storey to access the elevator. Likewise, if the elevator was located to provide access to the rear of the building this would require occupants of the front portion of the building using stairs to walk either up or down a half storey to access the elevator.

While in either scenario there would be compliance with the maximum building height, it is considered that the proposed design is more useful to the occupants while having minimal impact on the surrounding area.

It is considered that there are sufficient environmental planning grounds to justify contravention of the development standard, in the basis that:

- The proposed building is stepped down the slope of the land and the provision of an elevator to service all of the split-level floors necessitates its location in the middle whereby to service the rear portion of the building while servicing the front of the building results in the elevator overrun exceeding the maximum height limit.
- The provision of the elevator provides better access for the occupants
- The provision of the elevator does not create an adverse impact on the adjoining properties on the character of Park Road.

Conclusion

Test	Comment
<p>Test 1</p> <p>The objectives of the standard are achieved notwithstanding non-compliance with the standard.</p>	<p>The modification still results in a building, which steps down the site, would not stand out from adjoining development and is compatible with the topography of the local area.</p>

Test	Comment
<p>Test 2</p> <p>The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</p>	<p>The objective of the standard is relevant in that the majority of the building complies with the standard and achieves a building consistent with other new residential flat buildings in the locality.</p>
<p>Test 3</p> <p>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</p>	<p>The objective of the standard is relevant in that the majority of the building complies with the standard and achieves a building consistent with other new residential flat buildings in the locality. The purpose is therefore not thwarted. The non-compliance facilitates a more accessible building for its occupants.</p>
<p>Test 4</p> <p>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</p>	<p>The development standard would not be abandoned as the majority of the building complies with the standard. The non-compliance facilitates a more accessible building for its occupants.</p>
<p>Test 5</p> <p>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 would be unreasonable or unnecessary.</p>	<p>Not applicable</p>

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)

The proposed development is generally consistent with the maximum height standard and would be consistent with the size and scale of residential flat buildings in the vicinity. It would be consistent with the size and scale anticipated by the Parramatta LEP 2011 and SEPP (Affordable Rental Housing) 2009. The provision of the elevator facilitates residential accommodation that is accessible to a broader range of people. However, due to the topography of the site falling away toward the rear, in order for the elevator to service the front and rear dwellings the elevator needs to be located at the point where the front portion of the building is at its highest.

It is considered that the non-compliance with the height standard is not a result of seeking excessive amount of development but rather seeking to provide an elevator to facilitate better accessibility for future occupants on a sloping site.

The non-compliance will not adversely impact on the privacy of nearby dwellings and the proposed building will be compatible with the expected character of the locality in terms of building materials, height, scale, setback from front, side and rear boundaries.

Better outcome

Conclusion

Test	Comment
<p>Test 1</p> <p>The objectives of the standard are achieved notwithstanding non-compliance with the standard.</p>	<p>The proposed building will appear consistent with the maximum height envisaged by the standard and will be consistent with the residential flat buildings in the immediate vicinity. Such a design would not contravene the public interest.</p>
<p>Test 2</p> <p>The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</p>	<p>The objective of the standard is relevant in that the majority of the building complies with the standard and achieves a building consistent with other new residential flat buildings in the locality.</p>
<p>Test 3</p> <p>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</p>	<p>The objective of the standard is not thwarted in that the majority of the building complies with the standard and achieves a building consistent with other new residential flat buildings in the locality. The purpose is therefore not thwarted. The non-compliance facilitates a more accessible building for its occupants.</p>
<p>Test 4</p> <p>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</p>	<p>The development standard would not be abandoned as the majority of the building complies with the standard. The proposed building would appear consistent with other residential flat buildings in the immediate vicinity. The non-compliance facilitates a more accessible building for its occupants.</p>

Test	Comment
<p>Test 5</p> <p>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 would be unreasonable or unnecessary.</p>	<p>Not applicable</p>

It is considered that the exception to the standard for the proposed development is reasonable in the situation described above and will result in a better planning outcome.