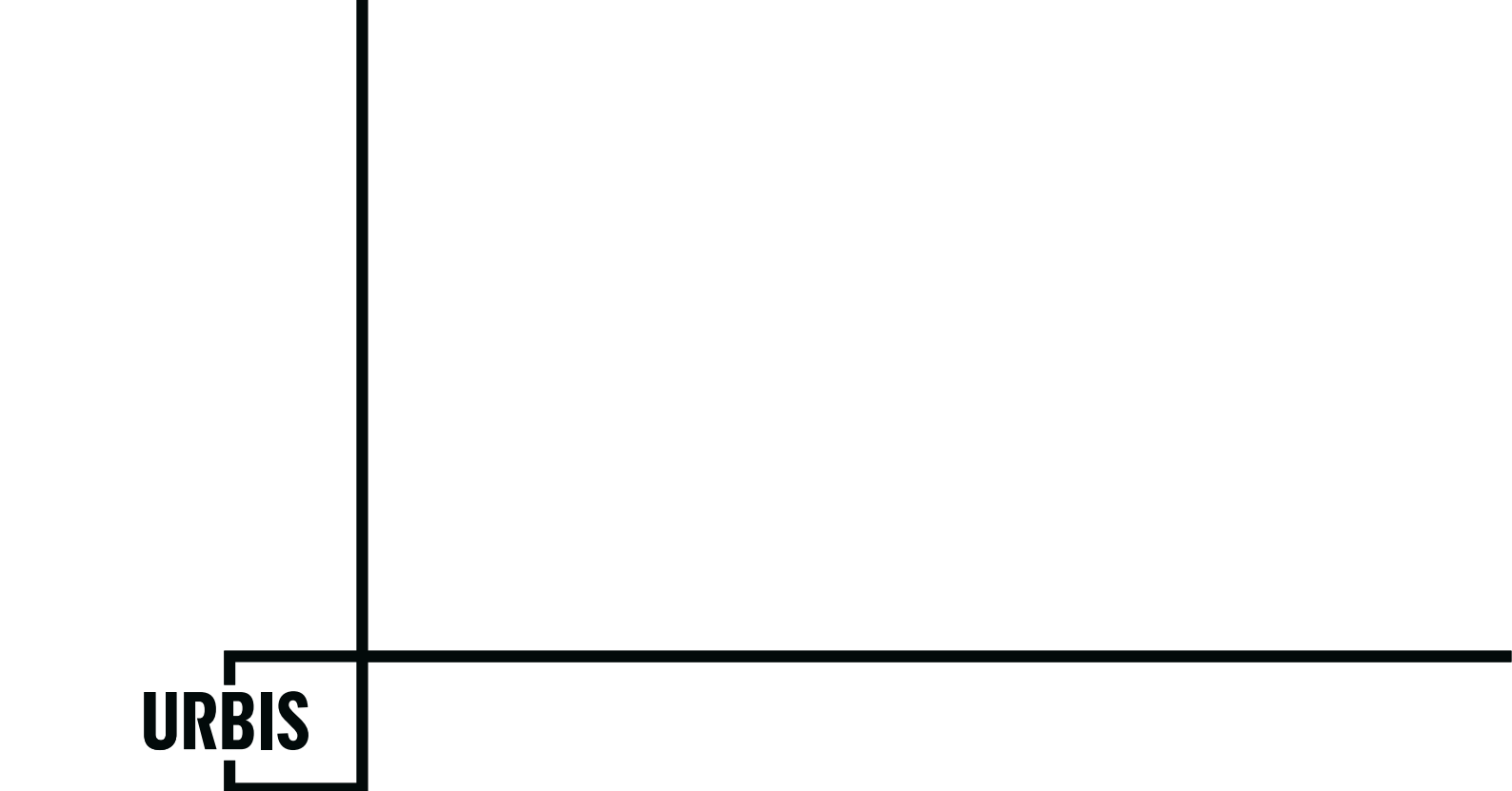




URBIS

CLAUSE 4.6 VARIATION REQUEST

Bankstown Local Environmental Plan
2015 Clause 4.3 Height of Buildings

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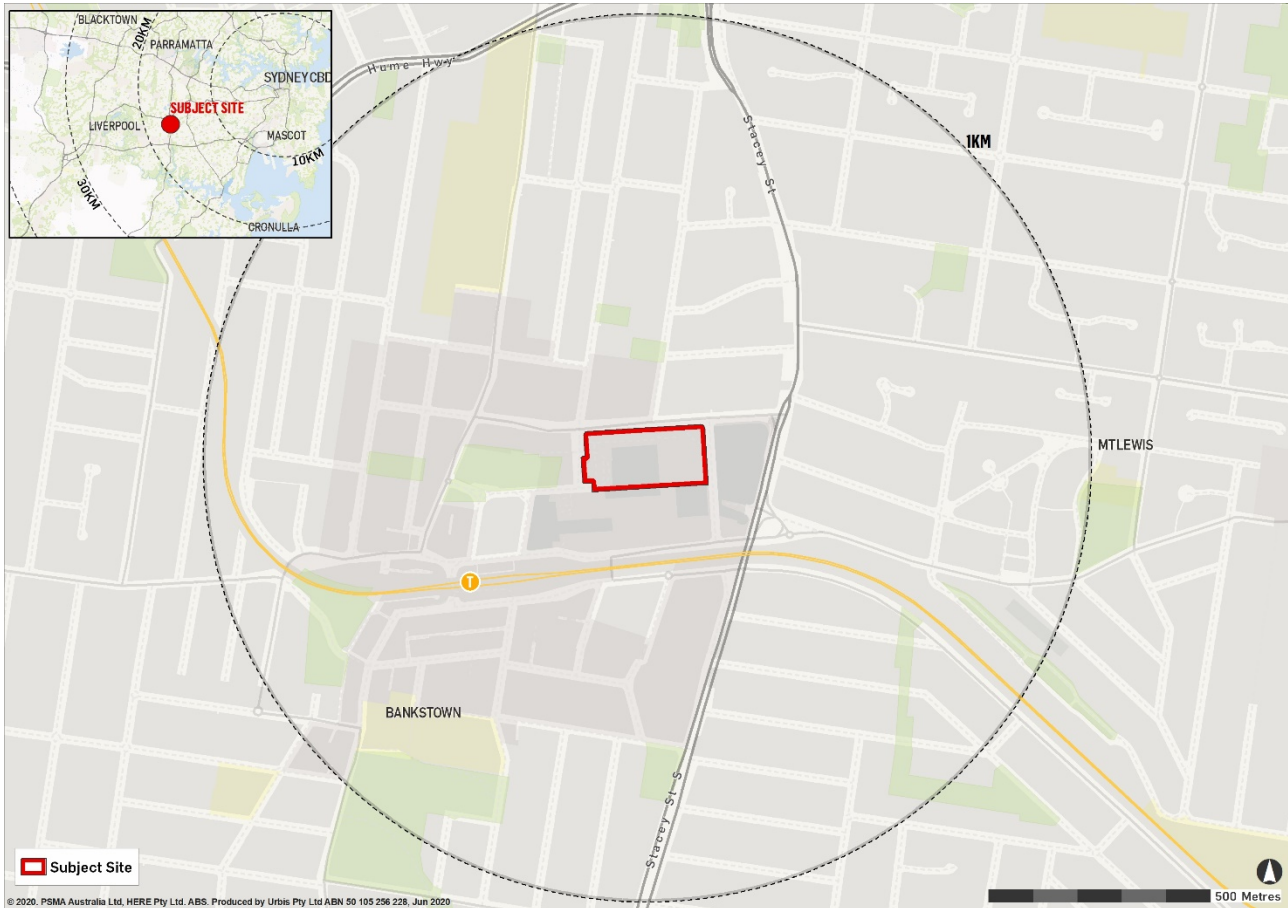
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1. INTRODUCTION

This Clause 4.6 Variation Request (**the Request**) has been prepared by Urbis Pty Ltd on behalf of Vicinity Centres PM Pty Ltd (**the Applicant**) and accompanies a Development Application (**DA**) for the construction on the existing bus interchange site of a new mixed-use development with a podium containing food and beverage offer and an eat street, three commercial office towers with basement car parking, along with associated public realm and landscaping at 1 North Terrace, Bankstown (**the site**) (**Figure 1**).

Figure 1 – Site Location



Source: Urbis

The Request seeks an exception from the maximum height of buildings standard prescribed for the site under clause 4.3 of the *Bankstown Local Environmental Plan 2015 (BLEP 2015)*. The variation is request is made pursuant to clause 4.6 of BLEP 2015 and relates to a protrusion of rooftop plant rooms above the 35m height limit applicable to the site.

An extract of the Height of Buildings map is provided **Figure 2** below, with the site outlined in yellow.

Figure 2 – Height of Buildings Map



Source: BLEP 2015

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated April 2021.

2. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for the construction on the existing bus interchange site of a new mixed-use development with a podium containing food and beverage offer and an eat street, two commercial office towers, and a pavilion building with basement car parking, along with associated public realm and landscaping.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated April 2021. The proposal is also detailed within the architectural drawings prepared by FJMT that form part of the DA.

A summary of the key features of the proposed development is provided below:

- Site preparation including the demolition of existing structures and tree removal;
- Excavation for and construction of two levels of basement car parking consisting of 322 car spaces and 241 bicycle parking spaces. Access to the basement will be via Jacobs Street, with a secondary connection to the existing centre car park which is accessed via Rickard Road;
- Re-alignment of car parking spaces and landscaping of the at-grade car park fronting Rickard Road immediately east of the site;
- Construction of two eight storey mixed use commercial buildings referred to as Tower 1 and Tower 2 including:
 - End of trip facilities;
 - Ground floor including a mix of retail tenancies, wellness and co-working spaces, food and beverage tenancies and commercial lobbies;
 - Commercial office spaces on levels 1-8; and
 - Roof level plant.
- Construction of a part five, part six-storey mixed use commercial building along Jacobs Street referred to as the 'Pavilion' including:
 - Lower ground level food and beverage tenancies and a commercial lobby;
 - Ground level food and beverage tenancies, wellness and gym spaces and a commercial lobby;
 - Commercial office spaces on levels 1 – 4 with a terrace garden on level 4 and a green roof.
- Reconfiguration of the existing shopping centre entry and commercial spaces along western façade of the existing shopping centre for food and beverage tenancies creating an 'Eat Street' pedestrian laneway. The revised plans also include two additional tenancies within the existing centre along this laneway and adjacent to the reconfigured entry to further enhance the revitalisation of this façade. Reconfiguration of these tenancies has been approved under a separate consent but the layouts have been included in the plan set so that the works can be delivered under a single Construction Certificate as part of this project;
- Provision of public accessways and spaces including the north-south 'Eat Street'; an east-west pedestrianised zone aligned with The Mall; an east-west Green Boulevard forming an extension of Civic Drive; an elevated public plaza along Jacobs Street and a north-south pedestrian laneway running between Tower 1 and the Pavilion building;
- Inclusion of public domain upgrades on Council land between the current Jacobs Street carriageway and the site boundary, to allow for grade changes responsive to accessibility standards and to facilitate equitable access from the footpath to the east-west Green Boulevard. The works include regrading of public domain and installation of steps and planter beds;
- Provision of detailed site landscaping and street tree planting throughout and on the curtilage of the site;
- New road alignment along Jacobs Street;
- The proposed operating hours of the development are:

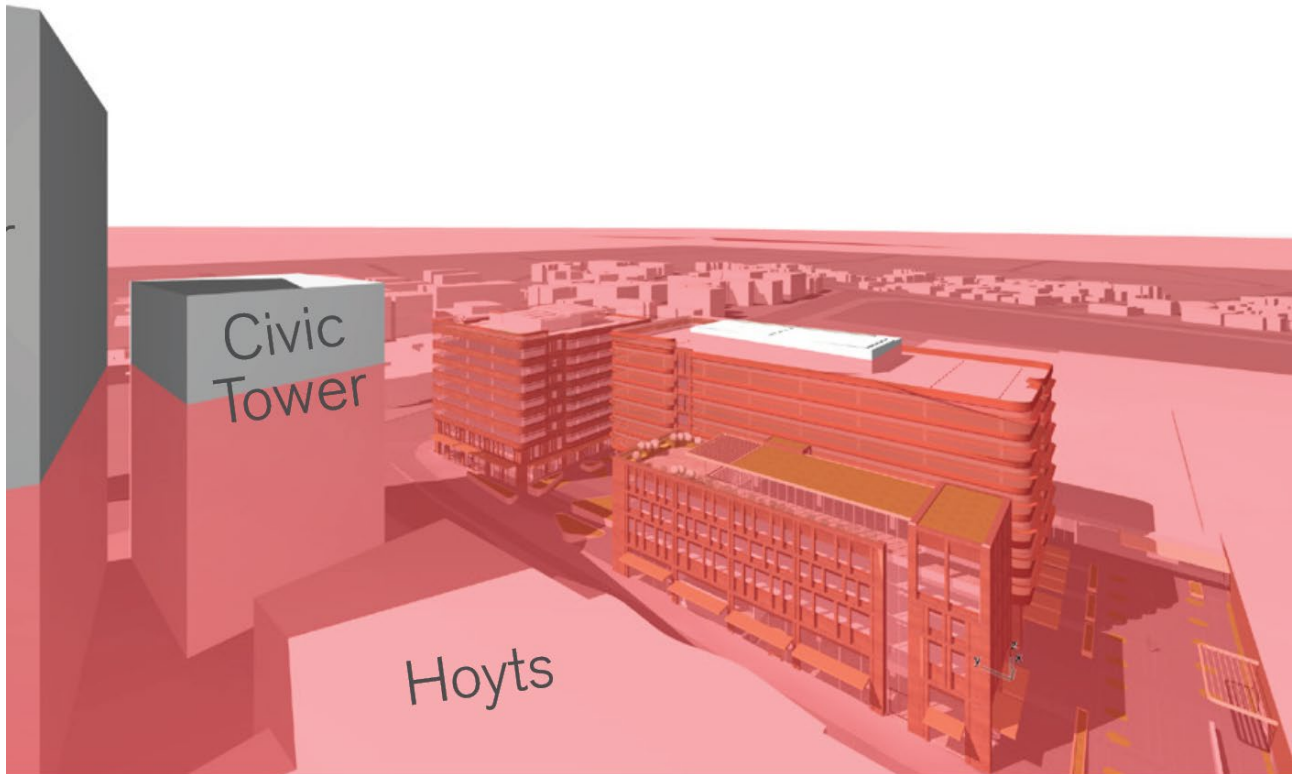
- Commercial office towers: 7am to 6pm (with 24-hour secure access for staff);
- Food and beverage facilities: 6am to 11pm (including access to office ground level amenities);
- Retail: 8am to 10pm.

3. REASON FOR THE VARIATION

This clause 4.6 variation request relates to the location of one plant room on the rooftop of the eastern commercial building as shown at Error! Reference source not found..

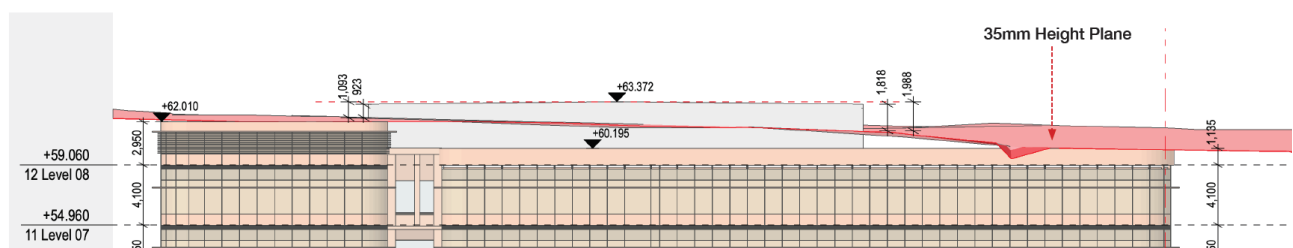
The height exceedance resulting from the rooftop plant room ranges from 0.923m (at the north east corner) to 1.98m (at the south west corner) above the 35m height control due to the topography of the site, as shown at Error! Reference source not found.. This results in a maximum 5.6% breach to the 35m standard.

Figure 3 – Height Blanket Diagram



Source: FJMT

Figure 4 – Height breach extent



Source: FJMT

The originally lodged three building design did not comprise a breach to the height of building standard. The intention of the project was to have a fully compliant building design.

In Council's letter to Vicinity dated 6th October 2020 in connection with this application, it was requested that Tower 1 (the easternmost commercial building) be set back further to the north so as not to sit above the eastern extension of The Mall that is envisaged by Council's "Complete Streets" policy, in order to 'safeguard the extension of The Mall as a shared street in the future'. It is noted that Complete Streets is not an Environmental Planning Instrument nor a Development Control Plan.

As part of Vicinity's response to the matters raised by Council relating to this application, the scheme has been amended to facilitate a 20m wide, open to the sky, pedestrian connection at The Mall from Jacobs Street to the front entrance of the shopping centre.

This amendment to the design is proposed solely for the purpose of reducing the issues raised by Council and seeking development consent for this mixed use proposal. This action does not constitute an endorsement by Vicinity of the strategy within Complete Streets. Vicinity do not propose that the 20m setback constitute an open to the sky public road or public pedestrian connection running through the established enclosed shopping centre, in circumstances where there are significant retail tenancies with long term leases. It remains Vicinity's position that this future policy approach for a road running through the centre of Bankstown Central would be highly detrimental to the ongoing vitality and viability of the shopping centre.

In order to accommodate the 20m wide building separation, at Council's request, the commercial buildings were reconfigured to

- Respond to the site context, street frontage integration and provision of public space, and
- Ensure that overall GFA was maintained across the buildings.

Whilst the rooftop plant on Tower 2 fronting Rickard Road remains below the 35m height limit, the reconfiguration of Tower 1 to a smaller footprint to accommodate The Mall extension has resulted in the need to relocate lost GFA to Level 07 (which originally comprised a half floor of GFA and half floor of plant), with the plant room pushed onto the roof resulting in the minor breach to the height of building standard. Following the reconfiguration of the building to accommodate The Mall extension and the relocation of the plant to the roof, there is still a loss of 229sqm in GFA for Tower 1 from the original proposal.

4. VARIATION TO HEIGHT OF BUILDINGS STANDARD

4.1. DEVELOPMENT STANDARD

Clause 4.6 of the BLEP 2015 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 are:

- (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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development. In determining whether to grant consent for development that contravenes a development standard, clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates:

- (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.*

Furthermore, the consent authority must be satisfied that 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, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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.*

4.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several Land and Environment Court (**NSW LEC**) planning principles and judgements have refined the manner in which written requests to vary development standards should be approached.

This approach is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. Consistent with paragraph 22, this request will demonstrate that compliance with the development standard is unreasonable or unnecessary using one way.

22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

This request is prepared in accordance with paragraph 17.

*[17] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under *State Environmental Planning Policy No 1 –Development Standards to compliance with a development standard*, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*

These relevant principles will be addressed in the following discussion.

5. CLAUSE 4.6 VARIATION REQUEST: HEIGHT OF BUILDINGS

The following sections of the report provide an assessment of the request to vary the development standards relating to the height of buildings development standard in accordance with clause 4.6 of BLEP 2015.

Detailed consideration has been given to the following matters within this assessment:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

5.1. CLAUSE 4.3 HEIGHT OF BUILDINGS

The height of buildings development standard under the BLEP 2015 for the site is 35m.

The objectives of the development standard per subclause 4.3(1) of the BLEP 2015 are as follows:

- (a) *to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) *to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) *to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) *to define focal points by way of nominating greater building heights in certain locations.*

5.2. KEY QUESTIONS

Is the planning control a development standard – clause 4.6(2)?

The height of buildings control prescribed under clause 4.3 of the BLEP 2015 is a numerical development standard capable of being varied under clause 4.6 of the BLEP 2015.

Is the development standard excluded from the operation of clause 4.6?

The development standard is not excluded from the operation of clause 4.6 as it is not listed within clause 4.6(6) or clause 4.6(8) of the BLEP 2015.

What is the underlying objective or purpose of the standard?

The objectives of the standard are outlined in clause 4.3(1) of the BLEP 2015 as reproduced at 4.1 above. The underlying purpose of the standard is to ensure that new development is compatible with the existing environment in which it is being built, to provide appropriate height transitions between development and to define focal points through the use of greater building heights in certain locations.

5.3. CONSIDERATIONS

5.3.1. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? – clause 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard to be achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause

environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings standard as specified in clause 4.3 of the BLEP 2015 are detailed in Table 1 below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 1 Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
<i>(a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located</i>	The height exceedance resulting from the rooftop plant room ranges from 0.92m to 1.98m above the 35m height control due to the topography of the site. This results in a maximum 5.6% breach. The element exceeding the height standard is solely plant and will not have adverse visual or amenity impacts on neighbouring sites or the public domain as it is small in scale and located in the centre of the proposed building footprint. The height exceedance is varied between the northern and southern part of the roof, as a result of the crossfall within the site. The character of the area is a metropolitan centre comprising commercial and retail uses, civic buildings and future provision of taller building elements comprising WSU to the north west of Bankstown Central Shopping Centre. The overall proposal responds to and supports the function of the Bankstown CBD by providing much needed office space in an accessible location within the centre, consistent with Council’s vision. The parapet heights of the commercial buildings sit below the 35m height standard. The inboard plant room structure does not add to the perception of building bulk and scale and will not be read from the ground level public domain as a protruding

Objectives	Assessment
	element above the predominant parapet building height. The height of the proposal will remain consistent with the scale of development expected on this site and envisaged for the wider CBD precinct.
<i>(b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential</i>	The site is not located within the R2 Zone therefore this subclause does not apply.
<i>(c) to provide appropriate height transitions between development, particularly at zone boundaries</i>	The 35m height of building standard applicable to the land provides a transition in scale from the taller building heights permitted to the south (towards the railway station) and to the west (comprising the Bankstown Civic Core), to the lower scale residential building heights north of Rickard Road. It is noted that, despite the theoretic height transition, current development across this precinct does not reflect the maximum building heights permitted. The minor exceedance of the 35m height standard, located centrally within the footprint of the commercial building, and towards the southern end of the development, will not jeopardise the theoretical height transition. It will however assist in realising delivery of commercial buildings within the Bankstown CBD core that are otherwise consistent with the applicable planning controls for the site. The proposal will also assist in achieving the vision of the draft Bankstown Master Plan which was published by Council for exhibition on 29 March 2021. Although the draft Master Plan does not specifically identify new controls for the subject site, it is noted that it is located within an area likely to have a 18-25 storey height control. Given this, the current proposal is well within the future desired height control for this part of the CBD.
<i>(d) to define focal points by way of nominating greater building heights in certain locations.</i>	The proposed building height breach is not intended to create a focal point, and the plant room element has been designed to be recessive in appearance. The proposed exceedance does not derogate from the prominence of the proposed commercial

Objectives	Assessment
	buildings at this corner location nor the quality of their appearance. The proposal generally accords with the LEP height controls, except for a minor encroachment of plant on one tower. Given the limited nature of the control breach, it will not have negative impacts on the surrounding area as the height overrun will not be readily visible from ground level as demonstrated in Figure 5.

The objectives of the development standard are therefore considered to be achieved, notwithstanding the non-compliance with the standard.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

The proposed height contravention is very minor in nature, and solely comprises plant, meaning it does not consist of any GFA. It is also located at the centre of the rooftop of the proposed development, which serves to reduce its visibility and any visual impacts upon the surrounding public domain.

The proposed breach of the height limit allows for the revised development design, following extensive discussion with Council. It is considered that the proposal offers a contemporary and high quality new office development, which will assist with the regeneration of the CBD and will contribute to the realisation of Council's vision for a rejuvenated Bankstown CBD as articulated in the draft Bankstown Master Plan. It is noted that the proposed height of Tower 1 would be well below the building heights envisaged for this area of Bankstown CBD under the draft Master Plan, therefore the minor overrun is unlikely to impact on the future built environment at this part of the town centre.

Furthermore, Vicinity Centres has a current Planning Proposal which was lodged with Council in December 2019, which seeks additional height across the Bankstown Central site. Discussions are progressing with Council Officers and it is expected that the proposal will be issued to the Department of Planning, Industry and Environment later in 2021 for Gateway determination.

In light of the above, it is considered that requiring strict compliance with this control in these circumstances would be unreasonable.

- **The burden placed on the community (by requiring strict compliance with the standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The proposal will allow for the redevelopment of the site for high quality commercial office space in the Bankstown CBD in a way that is commercially viable, and in a manner consistent with Council's stated request to provide for a 20m wide pedestrian accessway aligning with The Mall. The proposal will also assist in regenerating Bankstown CBD, in a manner envisaged by the draft Bankstown Master Plan.

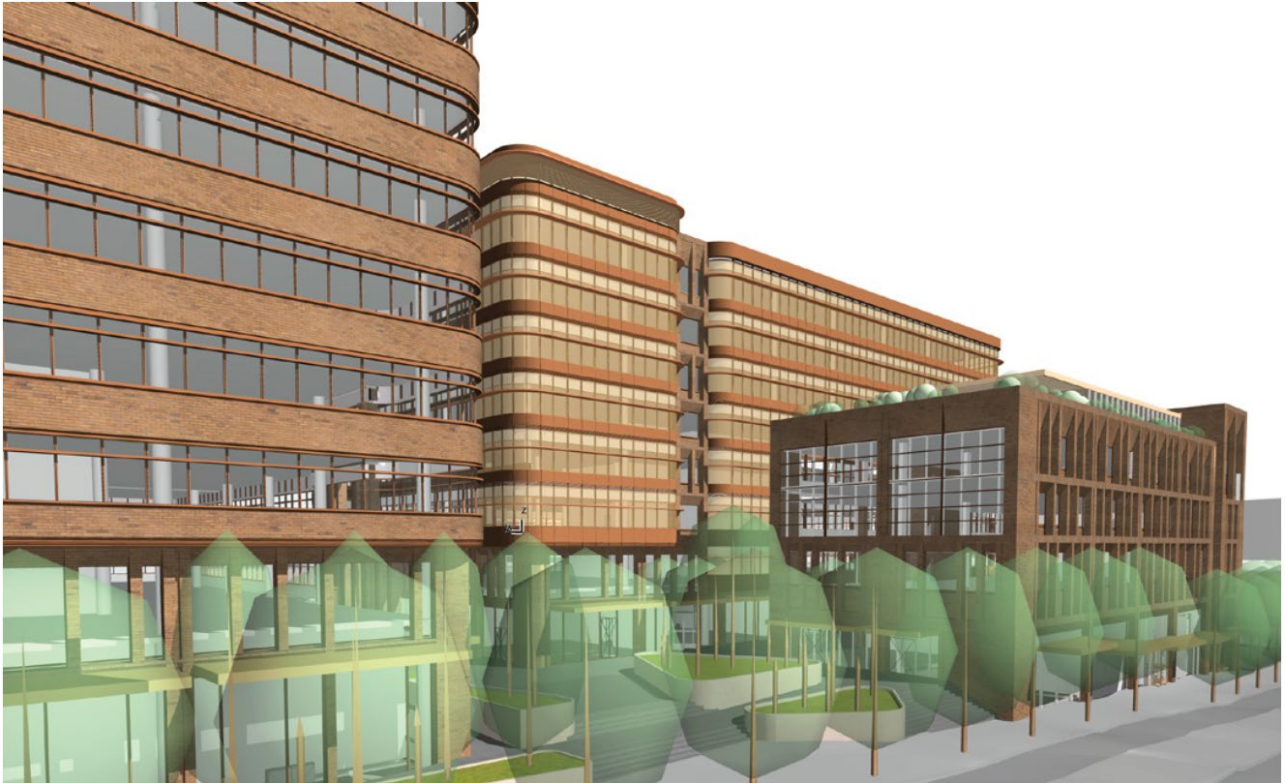
Requiring strict compliance with the height standard would reduce the overall GFA of the project, diminishing the project viability and reducing opportunities to attract quality commercial tenants who require larger commercial floorplates.

The minor height overrun accommodates no habitable space and is for the sole purposes of screened rooftop plant. **Figure 5** includes views from street level, demonstrating that the top of rooftop plant room is not visible. The additional height for the rooftop plant will also be screened so it presents a coordinated appearance when viewed from above. The subject height breach will not give rise to any adverse visual impacts.

The benefits derived from realising the proposed commercial office buildings in the manner proposed are not outweighed by the inconsequential impacts resulting from the plant room height breach on Tower 1.

Given the above, it is considered that requiring strict compliance with this development standard would be disproportionate to the inconsequential adverse impacts of the proposed non-compliance.

Figure 5 – Public Domain Views



Picture 1 View from Jacobs Street – rooftop plant room not visible

Source: FJMT



Picture 2 View from The Mall – rooftop plant room not visible

Source: FJMT

5.3.2. Are there sufficient environmental planning grounds to justify contravening the development standard? – clause 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficiency of environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The contravention includes no habitable space therefore does not provide additional GFA or FSR. The proposal is well within the permitted FSR.
- The element that exceeds the height control is solely plant and is located in the centre of the development thus minimising its visibility from the public domain.
- The additional height does not cause any additional overshadowing to the existing or proposed public domain. All shadow from the plant room falls on the roof of Tower 1.
- The height breach results directly in response to Council's request to set the building form further to the north to provide for the 20m pedestrian accessway, whilst still maintaining the overall commercial GFA of the project. This results in public benefits from increased publicly accessible plaza space to the south of the building and an improved overall public domain amenity at the ground plane.
- The height breach does not derogate from the achievement of the building height objectives nor in providing a transition in height and scale across the CBD.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed building height non-compliance in this instance.

5.3.3. Has the written request adequately addressed the matters in sub-clause (3)? – clause 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

5.3.4. Is the proposed development in the public interest? – clause 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

Consistency of the development with the objectives of the development standard is demonstrated in **Table 1** above. The proposal is also consistent with the land use objectives that apply to the site under BLEP 2015. The site is located within the B4 Mixed Use zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 2** below.

Table 2 Assessment of compliance with land use zone objectives

Objective	Assessment
<i>To provide a mixture of compatible land uses.</i>	The proposed height overrun will not include habitable floor space, however it will include plant which will service the proposed new commercial office space at the site. This commercial office use is not only compatible with the surrounding land uses, but also assists in providing jobs at an accessible location and provides an economic and commercial driver within the locality.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	As noted above, the proposal will introduce much needed commercial office space within the locality that is close to public transport, including a future Metro Station. The proposal will also incorporate bike parking and end-of-trip facilities.
<i>To maintain the role of the Bankstown CBD as a major metropolitan centre.</i>	The proposal will assist the role of the metropolitan centre by supporting the introduction of new commercial office space in an appropriate location, which will serve to stimulate the office market in the area. This will strengthen the role of Bankstown's CBD within the wider region. The new office floorspace, in conjunction with the new Western Sydney University Campus located on the opposite side of Jacobs Street will commence the CBD transformation process envisaged by Council's draft Bankstown CBD Masterplan, leading to significant economic and social benefits.

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the building height as 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. The proposed height breach will not derogate from achieving the objectives of the B4 zone.

5.3.5. Has the concurrence of the planning secretary been obtained? – Clause 4.6(4)(B) and Clause 4.6(5)

The Secretary can be assumed to have granted concurrence to the variation in accordance with Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have granted concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the building height will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the building height and the land use zone objectives despite the technical non-compliance.

The element of the building that exceeds the height standard simply comprises plant and housing and will not give rise to any unreasonable visual or solar impacts. Therefore, the variation to the standard will result in a superior outcome for future tenants of the site without compromising other stakeholders, which therefore provide a public benefit.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

6. CONCLUSION

For the reasons set out in this written request, strict compliance with the building height standard contained within clause 4.3 of BLEP 2015 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposed overrun does not comprise any habitable space or GFA, it is solely for the purpose of plant;
- The plant is associated with a new development for much needed commercial office space within the CBD, that compatible with its surroundings and is close to public transport;
- The height breach has arisen following a redesign of the proposal to accord, at this stage only, with Council's desire for a 20m wide shared-way east-west through the Bankstown Central Shopping Centre site. It is reaffirmed that Vicinity does not in any way support the delivery of such a shared-way through the operating retail shopping centre. Following the reconfiguration of Tower 1 to accommodate The Mall extension and the relocation of the plant to the roof, there is still a loss of 229sqm in GFA for Tower 1 from the original proposal.
- The proposed overrun has minimal impact to surrounding uses and is barely visible from the public domain as it is set back from the building edge and located in the middle of the roof, resulting in no visual or shadowing impacts;
- The proposed overrun encroaches the height limit by a minimal amount at a maximum of 1.86m (or 5.3%). Given the anticipated revitalisation of Bankstown CBD, through the Vicinity Planning Proposal and the draft Bankstown Master Plan, any minor height breach at this point in time would be inconsequential in view of the expected future character of the town centre.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the building height should be applied.

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