

Clause 4.6 Variation Request – Height of Buildings

Request to vary Clause 4.3 Height of Buildings in *Inner West Local Environmental Plan 2022*

469-483 Balmain Road, Lilyfield



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

Contact:

Michael Oliver
Director

moliver@ethosurban.com
9956 6962

This document has been prepared by:

Lara Reynolds/ Matthew Di Maggio 28/11/2023

This document has been reviewed by:

Michael Oliver

28/11/2023

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1.0 Introduction

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Roche Group. It is submitted to Inner West Council (Council) in support of a Concept and Stage 1 Development Application (DA) for a mixed-use development at 469-483 Balmain Road, Lilyfield (the site).

Clause 4.6 of the *Inner West Local Environmental Plan 2022* (IWLEP 2022) enables the consent authority to grant consent for development even though the development contravenes a development standard. This Clause 4.6 Variation Request relates to the development standard for the height of buildings under Clause 4.3 of the IWLEP 2022.

The objectives of Clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances – Clause 4.6(3)(a).
- There are sufficient environmental planning grounds to justify the contravention of the development standard – Clause 4.6(3)(b).

This document demonstrates that compliance with the building height 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 development standard. As such, this document satisfies the provisions of Clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation). It is also supported by Architectural Plans (amended) prepared by CHROFI (**Appendix A**).

The extent of the building height variation relates to the proposed lift and stairs overruns and canopy structures for rooftop communal open space. This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed development achieves the objectives of Clause 4.3 of the IWLEP 2022 in that:
 - The proposed height exceedance will be compatible with the character of the locality, including with the existing character and the desired future character of the locality as per the Leichardt Development Control Plan 2013 (LDGP 2013).
 - The lift overruns, stair overruns and canopy structures are centrally positioned on the rooftop of Building A, B and C. This ensures that the height exceedance would not result in any further amenity impacts on surrounding residential developments when compared to a compliant scheme.
 - The proposed minor height exceedances support a desirable transition in height and scale from the taller/denser forms of development proposed to lower scaled residential development to the south of the site.
- This request demonstrates that there are sufficient environmental planning grounds to vary the standard in this instance because:
 - The proposed development will facilitate improved amenity outcomes by providing high-quality rooftop, communal spaces for residents. These spaces enable residents to obtain desirable views and outlook, whilst encouraging passive recreation and social interaction.
 - The proposed development does not result in any significant environmental impacts, with regards to overshadowing, privacy or visual impact, when compared to a compliant scheme.
 - The proposed height variation does not preclude compliance with the floor space ratio (FSR) standard under the IWLEP 2022.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the IWLEP 2022.

2.0 Site and Proposed Development

2.1 Site Description

The site is located at 469-483 Balmain Road, Lilyfield within the Inner West Local Government Area (LGA). It is within an area that is characterised by a range of light industrial, commercial and low density residential uses. **Figure 1** shows the property boundaries and existing site features. The site is owned by Roche Group, has a total area of 6,824m² and comprises Lot 2 DP1015843. It has a gentle fall from its northwest to its southeast (from the frontage at Balmain Road to its rear at Fred Street), with an approximate level difference of 2.85 metres.

The site is currently occupied by multiple industrial buildings that have historically been utilised used predominately for light industrial and creative purposes. The buildings typically range from 1 to 2 storeys in height and are generally built to the site boundaries. An external, hardstand area is located at the southwestern corner of the site.



Figure 1 Site Aerial

Source: Nearmap & Ethos Urban

2.2 Description of the Proposed Development (as amended)

Concept Proposal: Submitted pursuant to Sections 4.22 and 4.23 of the *Environmental Planning and Assessment Act 1979* (EPA&A Act) to satisfy the requirements for a development control plan (DCP) under Clause 6.25(3)(b) of the *Inner West Local Environmental Plan 2022* (IWLEP 2022). The Concept Proposal seeks consent for:

- Land uses consistent with those permitted under the IWLEP 2022, including for 'residential flat buildings' and 'light industries'.
- Site layout and configuration.
- Maximum building envelopes.
- Retention of existing character buildings.
- Design principles and controls that address each of the requirements set out under Clause 6.25(4) or the IWLEP 2022.
- Redevelopment for proposed employment use 'link building' between the character buildings. Minimum employment use GFA of 222sqm.
- Construction of a future bridge link 'L1' servicing the character buildings.

Detailed (Stage 1) DA: Detailed consent for Stage 1 of the proposed development, comprising:

- Partial demolition of existing buildings and structures within the site, including partial demolition of link building between character buildings to facilitate structural support to Building C above.
- Retention of existing character buildings (with all works associated with their upgrade, fit-out and use subject to future DAs).
- Structural works in and around the proposed character buildings to support the construction of Building C above.
- Site preparation works, including termination or relocation of site services and infrastructure, remediation, tree removal and the erection of site protection fencing.
- Construction and use of a new development comprising several buildings supporting residential apartments and permissible employment uses (indicative) as follows:
 - 6,000m² of light industrial uses, at least 1,200m² of which would be used for light industries associated with creative purposes (222sqm of employment use has been deferred to Stage 2). Construction of these areas would consist of 'cold-shell' works only.
 - 90 residential apartments.
 - 5% of the gross floor area (GFA) of the residential accommodation proposed to be used for affordable housing.
- Basement excavation/construction including car parking for 153 vehicles for staff and residents (including 11 accessible parking spaces), services, plant, storage, waste management areas and loading facilities.
- Works to provide public domain and communal open space areas, including associated landscaping.
- Infrastructure and services augmentation (as required).

Amended subsequent detailed proposals

Stage 2 (subject to separate future DA):

- Redevelopment for proposed employment use 'link building' between the character buildings. Minimum employment use GFA of 222sqm; and
- Construction of a future bridge link 'L1' servicing the character buildings.

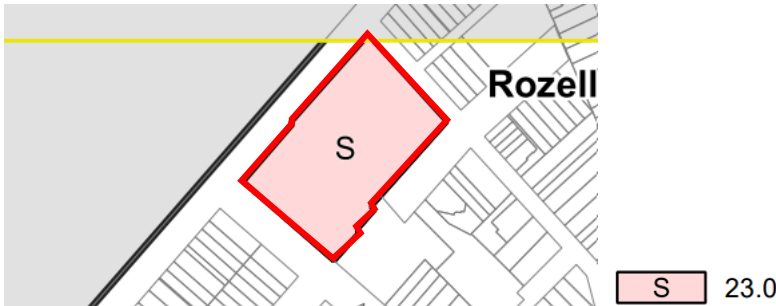
Stages 3+ (scope may vary dependent on tenant requirements - subject to separate future DA/s):

- Seeking consent for various DAs relating to specific tenancies, including fit-out and uses, including permissible employment uses;
- Strata and stratum DAs for the various buildings/tenancies; and
- Signage strategy/strategies.

3.0 Development Standard to be Varied

A summary of the environmental planning instrument, development standard and proposed variation is provided in **Table 1** below.

Table 1 Summary of the Proposed Variation

Matter	Comment																																				
Environmental Planning Instrument	Inner West Local Environmental Plan 2022																																				
Land Use Zone	E4 General Industrial																																				
Development Standard to be Varied	<p>Clause 4.3 – Height of Buildings</p> <p>The objectives of this clause are as follows—</p> <p>(a) to ensure the height of buildings is compatible with the character of the locality,</p> <p>(b) to minimise adverse impacts on local amenity,</p> <p>(c) to provide an appropriate transition between buildings of different heights.</p> <div></div>																																				
Type of Development Standard	Numerical Development Standard																																				
Numeric Value of the Development Standard	23m																																				
Description of the Variation	The proposed development seeks to provide communal open space on the rooftop of Buildings A, B and C. To accommodate this, the buildings require a lift overrun, stair overrun and canopy structure that will exceed the height of building development standard.																																				
Existing and Proposed Numeric Values	<table><tr><th>Component</th><th>Proposed Height</th><th>Proposed Variation</th></tr><tr><td colspan="3">Building A</td></tr><tr><td>Lift Overrun</td><td>RL 59.95 (25.37m)</td><td>2.37m / 10.3%</td></tr><tr><td>Stair Overrun</td><td>RL 58.55 (23.96m)</td><td>0.96m / 4.2%</td></tr><tr><td>Canopy Structure</td><td>RL 59.2 (24.77m)</td><td>1.77m / 7.7%</td></tr><tr><td colspan="3">Building B</td></tr><tr><td>Lift Overrun</td><td>RL 59.95 (25.5m)</td><td>2.5m / 10.9%</td></tr><tr><td>Stair Overrun</td><td>RL 58.55 (24.08m)</td><td>1.08m / 4.7%</td></tr><tr><td>Canopy Structure</td><td>RL 59.2 (24.87m)</td><td>1.87m / 8.1%</td></tr><tr><td colspan="3">Building C</td></tr><tr><td>Lift Overrun</td><td>RL 59.75 (25.53m)</td><td>2.53 / 11%</td></tr><tr><td>Stair Overrun</td><td>RL 58.35 (24.05m)</td><td>1.05m / 4.6%</td></tr></table>	Component	Proposed Height	Proposed Variation	Building A			Lift Overrun	RL 59.95 (25.37m)	2.37m / 10.3%	Stair Overrun	RL 58.55 (23.96m)	0.96m / 4.2%	Canopy Structure	RL 59.2 (24.77m)	1.77m / 7.7%	Building B			Lift Overrun	RL 59.95 (25.5m)	2.5m / 10.9%	Stair Overrun	RL 58.55 (24.08m)	1.08m / 4.7%	Canopy Structure	RL 59.2 (24.87m)	1.87m / 8.1%	Building C			Lift Overrun	RL 59.75 (25.53m)	2.53 / 11%	Stair Overrun	RL 58.35 (24.05m)	1.05m / 4.6%
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Matter	Comment		
	Canopy Structure	RL 59.20 (24.68m)	1.68m / 7.3%

The extent of the proposed variation is illustrated in **Figure 2** and **Figure 3**. Architectural drawings providing further detail of the variation sought are provided at **Appendix A**, which comprised detailed architectural plans (amended).

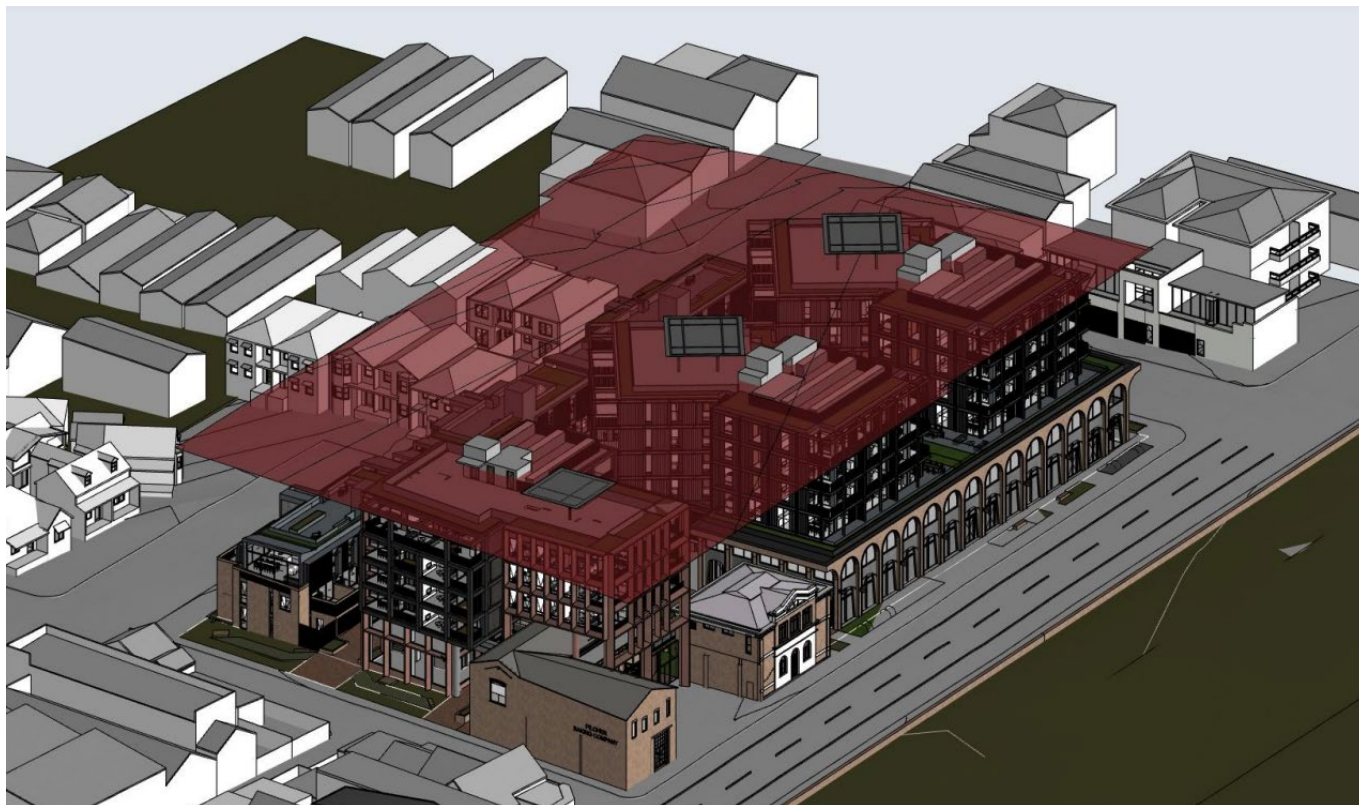


Figure 2 Height Plane Diagram illustrating the Extent of the Proposed Variation

Source: CHROFI

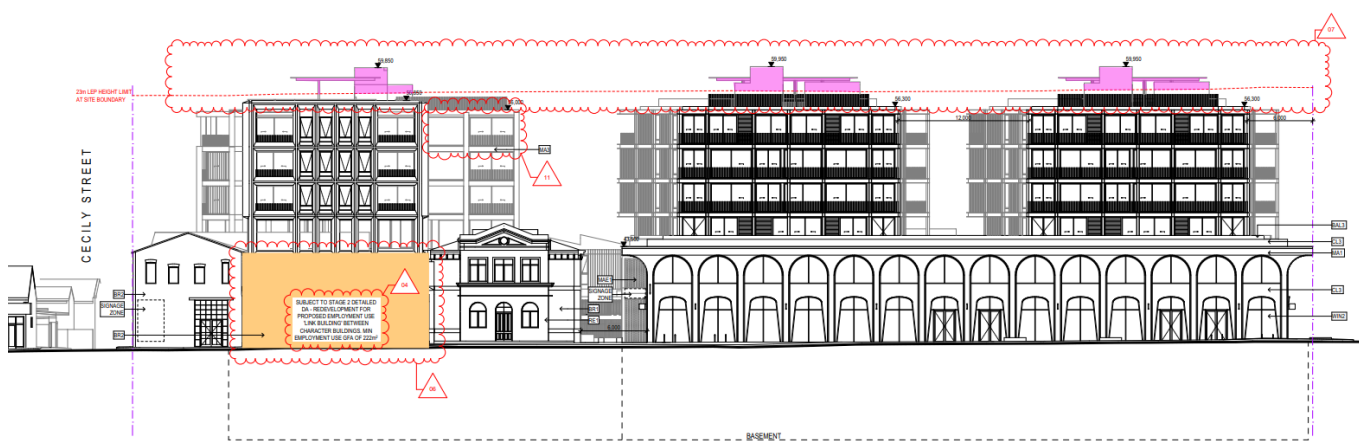


Figure 3 Height variation shown from the Northern Elevation (highlighted in pink)

Source: CHROFI

4.0 Justification for the Proposed Variation

Clause 4.6(3) of the IWLEP 2022 provides that:

4.6 Exceptions to development standards

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- (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.

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*).
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*).
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (*Al Maha*).

4.1 Role of the Consent Authority

The role of the consent authority in considering this written request for a Clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters in Clause 4.6(4)(a):

1. That the applicant's request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).
2. That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The consent authority is required to form these two opinions first before it considers the merits of the DA, and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

Notwithstanding this, Clause 4.6(4)(a)(i) and (ii) has since been repealed. The note under Clause 4.6(3) references the EP&A Regulation which requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in Clause 4.6(3)(a) and (b).

This report provides the basis for the consent authority to reach the required level of satisfaction. This Clause 4.6 Variation Request is proposed in context of Clause 4.3 of the IWLEP 2022. Relevant matters contained in Clause 4.6 of the IWLEP 2022, with respect to the height of building development standard, are addressed below.

4.2 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class i.e. there may be additional ways. Further, that it is not necessary for an applicant to establish each of the methods.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the IWLEP 2022 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 Variation Request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
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 (**Fourth Method**).
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. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This Clause 4.6 Variation Request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height control pursuant to the **First Method** outlined in *Wehbe*.

In the judgement for *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

The sections below address the matters in clause 4.6(3)(a), and in particular how the objectives of the development standard are achieved notwithstanding the non-compliance with the numerical control.

For completeness, the objectives of the height of buildings development standard contained in Clause 4.3 of the IWLEP 2022 are as follows:

- (a) to ensure the height of buildings is compatible with the character of the locality,*
- (b) to minimise adverse impacts on local amenity,*
- (c) to provide an appropriate transition between buildings of different heights.*

4.2.1 Objective (a): to ensure the height of buildings is compatible with the character of the locality

The LDCP 2013 provides some guidance in terms of the intended character of specific localities that are subject to the IWLEP 2022. It identifies the site as forming part of the Commercial/Industrial Sub Area of the wider Nanny Goat Hill Distinctive Neighbourhood. An extract is provided at **Figure 4**.

The wider Nanny Goat Hill Distinctive Neighbourhood is characterised predominantly by residential development that is 1-2 storey in height and a detached cottage or townhouse style. Alternatively, the Commercial/Industrial Sub Area is characterised by a range of light industrial, warehouse, cafe, neighbourhood shop, retail and office uses.

More specifically, the following development surrounds the site:

- **To the northeast:** Development comprises 1-2 storey buildings along Balmain Road and include a gym, takeaway restaurant and various retail uses. The wider area is characterised by a mix of light industrial, showroom and creative developments.
- **To the northwest:** The site is bounded by Balmain Road. Beyond this is Callan Park which is a 61-hectare space that incorporates sporting ovals, various State heritage buildings, open green space and walking/cycling paths.
- **To the southeast and southeast:** Development comprise a mix of low to medium residential development to the rear of the site.

It is expected that the built form and character of the Nanny Goat Hill District Neighbourhood will evolve over time in accordance with the desired future character controls in the LDCP 2013. In sum, the desired future

character for the Nanny Goat Hill Distinctive Neighbourhood seeks to encourage further development, whilst also retaining the existing character of the area.

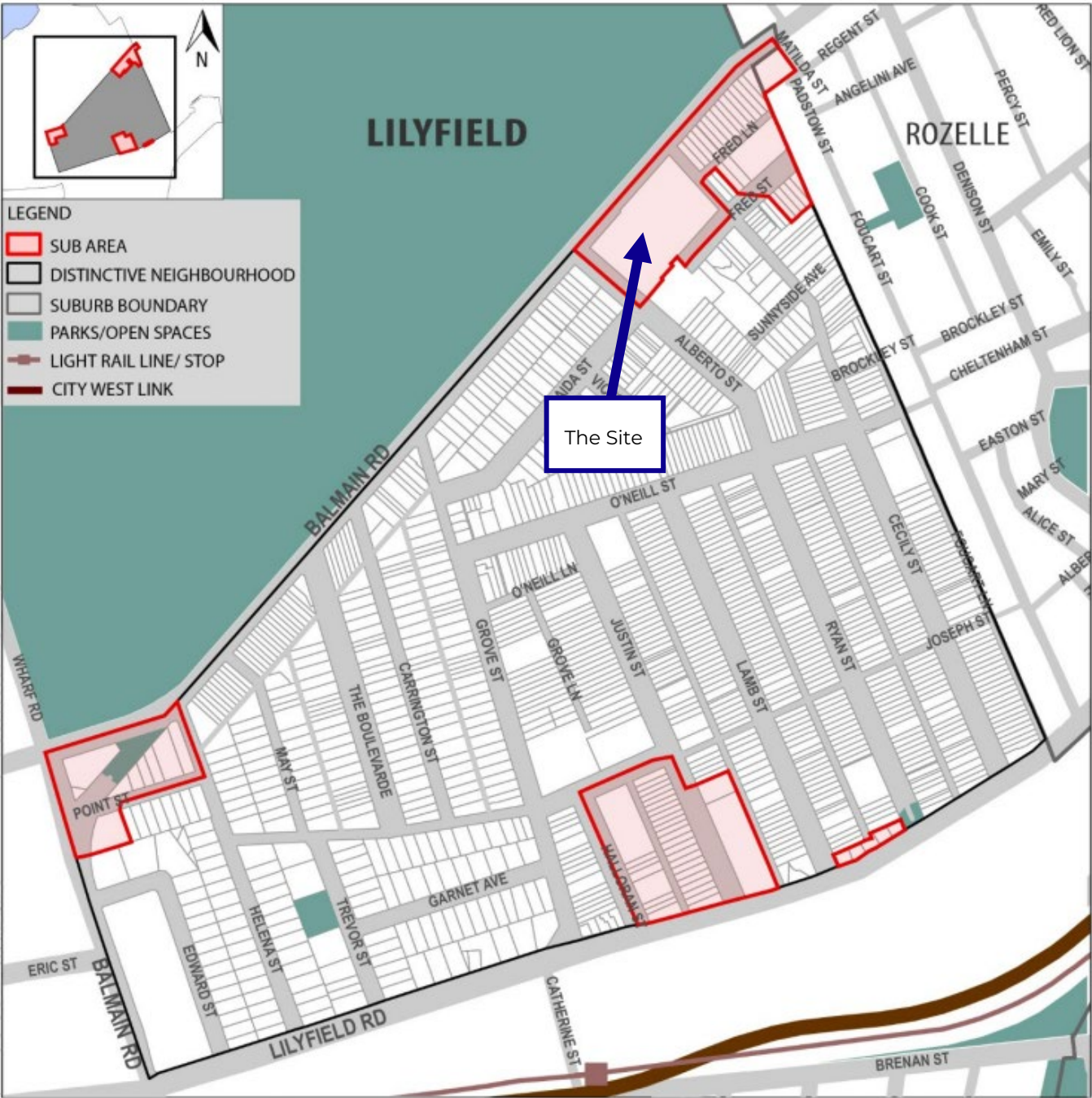


Figure 4 Commercial/ Industrial Sub Areas within the Nanny Goat Hill Distinctive Neighbourhood

Source: LDCP 2013

However, it is also noted that a Planning Proposal at the site was endorsed and approved on 26 February 2021. The overarching objective of the Planning Proposal was to:

“...allow redevelopment of the light industrial site, to retain and improve the amount of industrial floor space on the Site, provide for the ongoing creative uses on the Site, and provide for a supply of residential dwellings in close proximity to employment and services. The proposed mix of uses is consistent with the current and future needs of the local area and will make a positive addition to the Balmain Road streetscape while providing significant amenity improvements to the surrounding residential development.”

The proposed development seeks to deliver upon the strategic vision and objectives of the Planning Proposal approved for the Site.

Following on from the Planning Proposal, Clause 6.25(3)(b) of the IWLEP requires the preparation of a site-specific development control plan for the subject site, which is satisfied through the lodgement of a Concept DA

pursuant to Section 4.23 of the EP&A Act. This makes clear that there are unique site-specific circumstances for matters that will inform the intended character of the locality, including matters relating to design principles, distribution of open space, building envelopes, and environmental impacts, that are not contemplated in the existing LDCP 2013. Accordingly, it is also necessary to consider the consistency of the proposed development with the character of the locality as it is intended to be developed pursuant to the site-specific provisions of the IWLEP 2022.

The proposed variation to the height of building development standard remains consistent with the character of the locality as facilitated by the site-specific provisions of the IWLEP 2022 that relate to the subject site. In comparison to a fully compliant building, the varying elements would be concealed when viewed from the streetscape or neighbouring buildings (refer to **Figure 5** and **Figure 6**). They would not impact on the bulk or massing of the development, by way of their positioning within the central portion of each rooftop.

The lift overruns, stair overruns and canopy structures would allow communal open space that would otherwise be provided on the ground plane to be relocated to the rooftops of Building A, B and C. By freeing up the ground plane, the extent of publicly accessible open space that can be provided on site is maximised, ensuring that the site maximises the amenity and vitality of employment and creative uses within the precinct and maximising the benefits of the development to the local community. The variation directly enables these improvements to the ground plane by enabling the provision of communal open space at roof level, freeing up the ground plane for additional space that supports the intended character of this precinct as a vibrant, mixed use employment precinct.

The proposed variation therefore directly supports, and is compatible with, the existing and future character of the locality.



Figure 5 Section A including pedestrian and neighbouring property view lines

Source: CHROFI

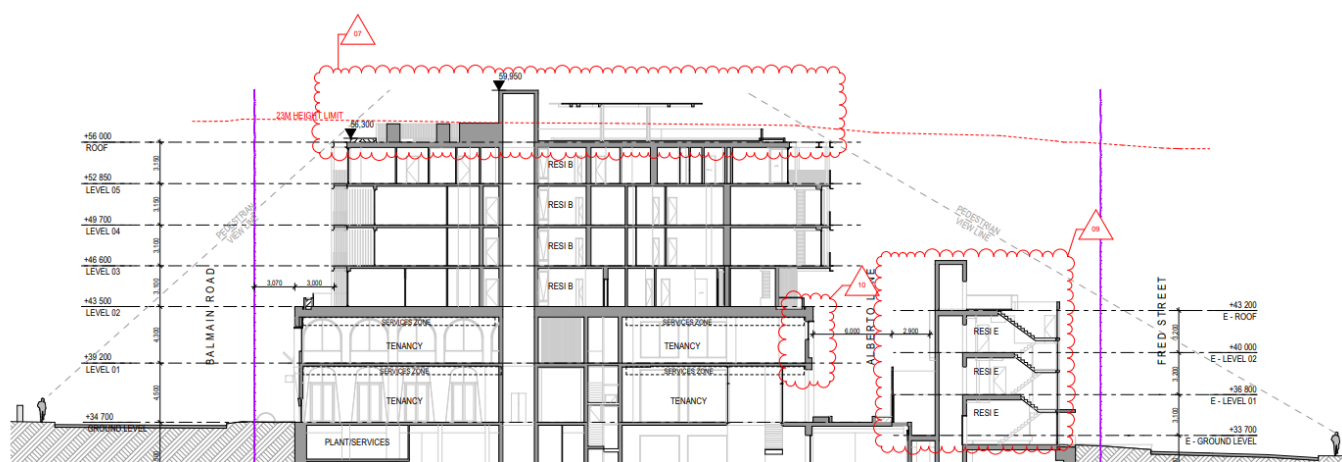


Figure 6 Section C including pedestrian view lines from Balmain Road and Fred Street

Source: CHROFI

4.2.2 Objective (b): to minimise adverse impacts on local amenity

The building elements which will exceed the height limit have been designed to minimise adverse impacts on local amenity. Further discussion is provided in the sections below.

Visual Impact

Most of the proposed development will fall under the 23m height limit, with only minor building elements to exceed the height of building limit. These elements are isolated to the central, rooftop portions of Building A, B and C. They will be significantly setback from the site boundaries (at a minimum 6m) to ensure they are not perceptible from key points of the public domain or within surrounding properties. The sections at **Figure 5** and **Figure 6** above illustrate that the building elements which exceed the height of building development standard will not be perceptible.

Overshadowing

Shadow diagrams prepared by CHROFI (refer to **Figure 7**) clearly shows that the building elements to exceed the height limit will have minimal impact on the residential development to the south and the west when compared to a fully compliant building. This is due to the location of the lift overruns, stair overruns and canopy structures within the central portion of the rooftops and the extent of their setbacks to the site boundaries.

The varying building elements would not impede living rooms and private open spaces of surrounding residential properties from receiving at least 3 hours of solar access during mid-winter. On this basis, the exceedances will not adversely local amenity in terms of overshadowing.

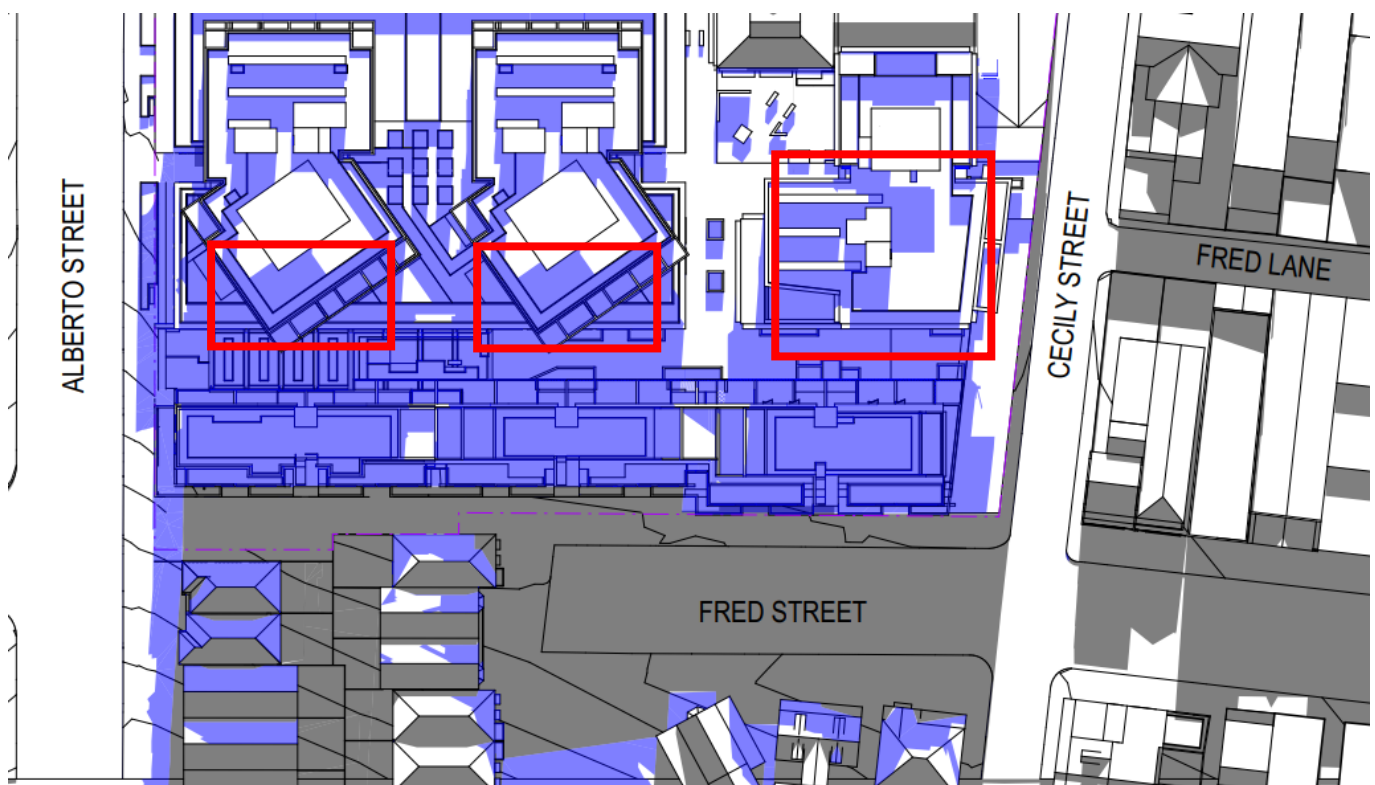


Figure 7 The Extent of Overshadowing resulting from the Height Exceedance (shown in red)

Source: CHROFI

Open Space

As noted above, the proposed variation would facilitate the provision of communal open space at the rooftop level, which allows the ground plane to be used more effectively to deliver high-quality, publicly accessible open space. Due to the location of the COS areas on the rooftops, which has been enabled by the building height variation, the ground plane offers more of a diversity of publicly accessible open space, which assists to cater for a wide range of age/uses groups. This includes the provision of informal play areas for children and shaded seated areas for passive recreation and to encourage social interaction. **Figure 8** on the following page illustrates the freeing up of the ground plane in order to provide more publicly accessible, open space as described.

Further, the variations would also reduce the potential for land use conflict to arise by separating publicly trafficable areas (including those associated with employment uses and through-site connectivity) with communal open space that are to be utilised by residents only. Access to the communal open space on the rooftops would be managed by access passes provided to residents.

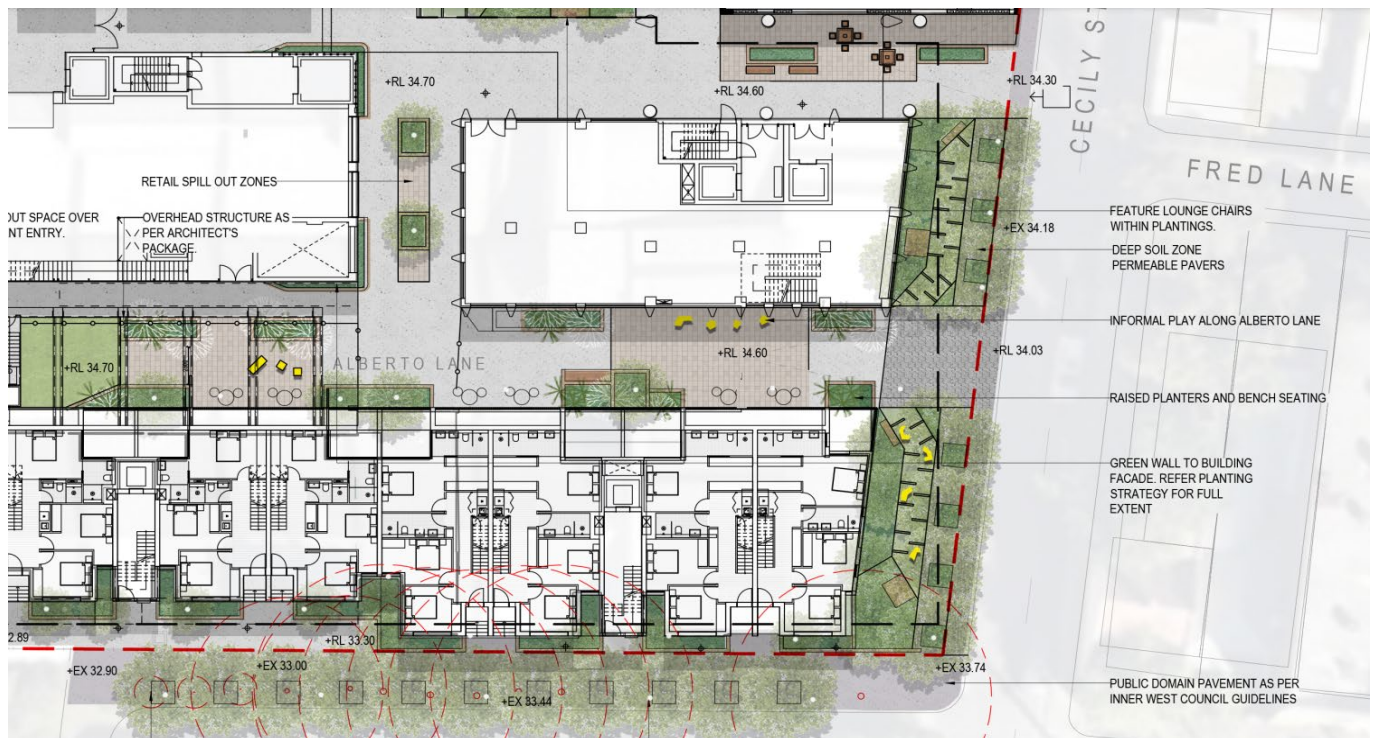


Figure 8 Extract of Ground Floor Landscape Plan

Source: Place Design Group

4.2.3 Objective (c): to provide an appropriate transition between buildings of different heights

The wider redevelopment seeks to gradually transition the building massing from Balmain Road (6 storeys) to low to medium density residential development in the south (1 to 3 storeys). This transition is shown at **Figure 9**. The building elements to exceed the height limit are consistent with this objective as their heights and locations sit well back from the roof parapet edge. As a consequence of this positioning, these building elements will ensure that there is an immediate transition in height within the site, between the varying elements and the roof parapet, such that the varying building elements are not perceptible in immediate local views and therefore do not alter the appropriate transitioning of building heights. Through the positioning of the varying building elements, there will be no adverse environmental impacts such as through views, overshadowing or visual privacy that would impact on the provision of an appropriate transition in building heights.

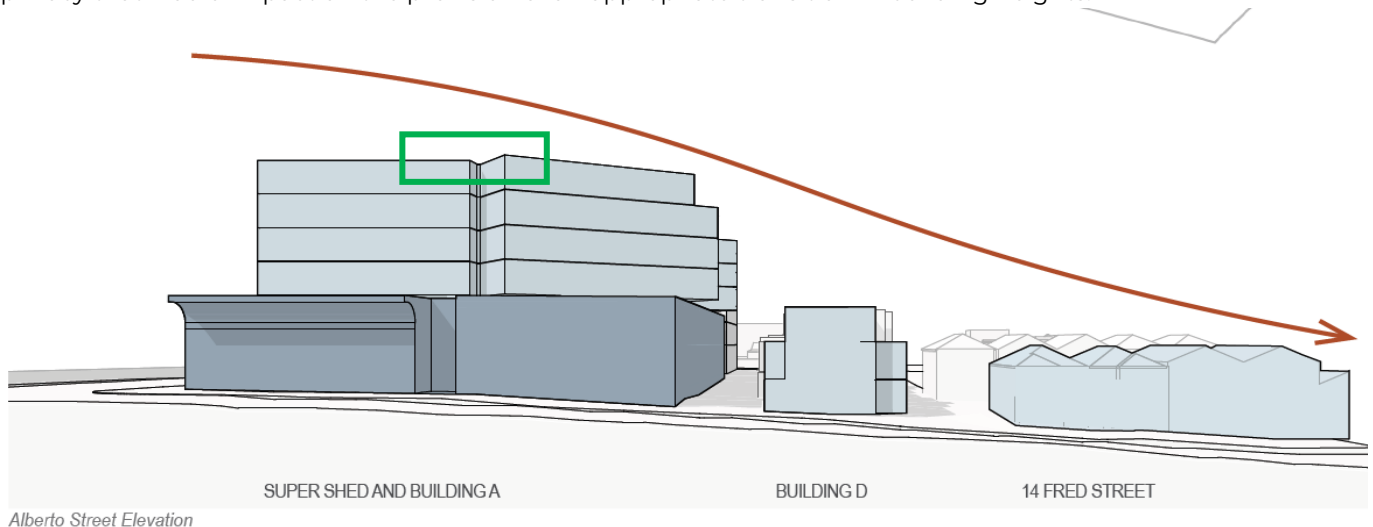


Figure 9 Diagrammatic Elevation and Transition viewed from Alberto Street (general location of the varying elements shown in green)

Source: CHROFI

4.2.4 Conclusion on Clause 4.6(3)(a)

For the reasons outlined above, it is considered that compliance with the height of buildings development standard in the IWLEP 2022 is unreasonable or unnecessary in the case of the proposed development.

4.3 Clause 4.6(3)(b): Environmental Planning Grounds to Justify Contravening the Development Standard

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height of building development standard as it applies to the site.

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. With regards to this application, there are particular elements that contribute to the proposed development's variation to the height of building development standard, and these are detailed below.

4.3.1 Residential and Public Amenity – Communal and Publicly-accessible Open Space

The proposed variation is a direct consequence of the provision of a lift overrun, stair overrun and canopy structure to enable the provision of additional communal open space on the rooftop of Buildings A, B and C. These spaces will significantly enhance residential amenity and help improve the overall environmental performance.

Importantly, the inclusion of a rooftop communal open space ensures that the ground plane can be utilised more effectively for publicly trafficable pedestrian areas, including those associated with employment uses and through-site connectivity. This ensures that the quality of these spaces is not diminished by the need to provide communal open space on the ground plane to meet the requirements of the Apartment Design Guide. Rather, it ensures the ongoing efficiency, vitality and viability of these spaces.

To maintain equitable access to this rooftop communal open space and provide suitable shade for user amenity, the lift overruns, stair overruns and canopy structures will protrude slightly above the 23m height plane within the central portion of the Building A, B and C. This will not impact significant views to or from the site and will not generate any additional overshadowing on the surrounding locality. The building elements and the rooftop communal space have been integrated into the architectural form and design of the development.

Full adherence to the development standard would require the lift overruns and the enclosed rooftop communal space to be either reduced and or removed, residential storeys to be removed, or floor-to-floor heights for employment space to be reduced. A reduction to the lift and stair overruns would inhibit access to the rooftop. This would reduce the amount, type and diversity of communal open space available to the site. Alternatively, strict compliance would require a reduction in the number of residential storeys (and residential dwellings), which would be inconsistent with NSW Government policies to promote the supply of housing in order to meet the housing needs of the community and address the identified housing crisis. A reduction in floor-to-floor heights for the employment space would likewise result in a significant compromise in the quality of employment spaces and the ability of these spaces to successfully attract a diverse range of tenants to achieve the site-specific employment objectives of the IWLEP 2022.

Maintaining this development standard would therefore result in a sub-optimal design and amenity outcome for future residents of the site, employment uses within the site, and for the broader community. It would reduce the diversity and type of communal open space available to the development and impact its ability to provide a high-quality through site pedestrian link, or generate an undue reduction to industrial uses or residential floor space and housing supply.

Rooftop communal open space improves the availability of open space for future residents within the development, reducing demand on other public accessible spaces across the site. It also provides additional opportunities for social interaction and passive recreation for residents to assist to foster their wellbeing and a sense of community.

4.3.2 Environmental Impacts

The proposed varying elements do not cause significant additional environmental impact which would render it incompatible with its surrounding land uses and ensures the proposal is appropriate for the context of the site.

In particular, the variation will not result in significant additional overshadowing impacts to the surrounding public realm or existing residential receivers surrounding the site. The shadow diagrams provided back at **Figure**

7 provide a comparison of the shadows cast by a development that is compliant with the 23m height control and the proposed development.

The above provides that during mid-winter (being the worst-case scenario) the additional height resulting from the proposed variation would not result in additional overshadowing to external receivers. This is due to the height, length and location of rooftop elements that exceed the height limit. Therefore, the additional height does not contribute to the proposal's shadowing extent on the public domain or neighbouring properties windows and private open space.

Regarding privacy for surrounding residential receivers, it is noted that the trafficable areas of the rooftop are well setback from the boundaries ensuring overlooking to residential receivers is minimised. The proposed development on site is also generally compliant with the ADG minimum separation requirements and as such, will ensure that no adverse privacy impacts will occur for surrounding residential development.

Regarding view impacts, there are no known views obtained over the existing site, meaning that the additional height will not disrupt views from surrounding properties. The location of the building elements with the central portion of the rooftop and setback from the site boundaries will also ensure that any height exceedance will not be visible from the public domain (refer back to **Figure 6** and **Figure 7**).

4.3.3 Substantive Compliance with other Built Form Controls

When measured to the top of the parapet, the proposed development presents a range of heights which sit below the 23m (refer back to **Figure 2**). It is also noted that the proposed variation to the height does not hinder compliance with the maximum 2.2:1 floor space ratio control in accordance with Clause 4.4 of the IWLEP 2022. As such, notwithstanding the height variation resulting from the lift overruns, stair overruns and canopy structures, the proposed development remains consistent with the bulk and scale of the site envisaged through the principal development standards under the IWLEP 2022. The proposed variation therefore does not contribute to a development outcome that is inconsistent with the built form capacity afforded to the site under the planning controls.

The variation of the development standard in this instance:

- Is not significant or material.
- Continues to ensure that the overall height of the development is appropriate for the site and its context.
- Does not generate any direct adverse visual or heritage related impacts.

4.3.4 Conclusion on Clause 4.6(3)(b)

As detailed above, this written request adequately and comprehensively addresses the matters required to be demonstrated by Clause 4.6(3)(b).

5.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in Clause 4.3 of the IWLEP 2022 is unreasonable and unnecessary in the circumstances and there are sufficient environmental planning grounds to justify the contravention of the development standard.

This Clause 4.6 Variation Request demonstrates that, notwithstanding the non-compliance with the height development standard:

- The proposed height exceedance will be compatible with the character of the locality, including with the existing character and the desired future character of the locality as per the Leichardt Development Control Plan 2013 (LDCP 2013).
- The lift overruns, stair overruns and canopy structures are centrally positioned on the rooftop of Building A, B and C. This ensures that the height exceedance would not result in any further amenity impacts on surrounding residential developments when compared to a compliant scheme.
- The proposed minor height exceedances support a desirable transition in height and scale from the taller/denser forms of development proposed to lower scaled residential development to the south of the site.
- This request demonstrates that there are sufficient environmental planning grounds to vary the standard in this instance because:
 - The proposed development will facilitate improved amenity outcomes by providing high-quality rooftop, communal spaces for residents. These spaces enable residents to obtain desirable views and outlook, whilst encouraging passive recreation and social interaction.
 - The proposed development does not result in any significant environmental impacts, with regards to overshadowing, privacy or visual impact, when compared to a compliant scheme.
 - The proposed height variation does not preclude compliance with the floor space ratio (FSR) standard under the IWLEP 2022.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the IWLEP 2022.

Appendix A – Detailed Architectural Plans (amended)