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URBIS

CLAUSE 4.6 VARIATION REQUEST STATEMENT

Height of Building

Prepared for
IRIS CAPITAL

September 2023

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1. INTRODUCTION

This Clause 4.6 Variation Request (**'the Request'**) has been prepared on behalf of Iris Capital (**'the applicant'**) and accompanies a Development Application (**'DA'**) for a mixed-use development at 165 – 167 and 185 Hume Highway, Greenacre.

The proposed development (specifically two buildings) seeks a minor variation to the Height of Buildings standard contained under CBLEP 2023. Specifically, 'Building A' which has a variation of 0.5m for an exhaust fan, and 'Building B' which has a variation of 2.9m to relates principally to a lift core/plant only (i.e. the parapet of the building is fully compliant) to enable equitable access to communal open space on the roof of this building which has arisen through feedback and engagement with Council.

The proposed variation to the height standards demonstrates that compliance with the standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient planning grounds to justify this variation. In summary, these circumstances can be summarised as follows:

- **The proposed variations do not give rise to any inconsistency with the objectives of the height standard.** Specifically, the minor variations relate principally to plant/service/exhaust spaces which do not compromise the established character, amenity and landform of the area. Further, the areas of the height standard where variation occurs continues to minimise overshadowing, visual impacts and the streetscape, visual amenity of the area.
- **The proposed variation does not result in any unreasonable impacts to surrounding properties.** The additional building height will not result in unreasonable impacts to public spaces adjacent residential developments. All additional overshadowing falls within the existing site area and will not be discernible from the public domain.
- **There is misalignment between CBLEP 2023 and CBDCP 2023 site specific provisions in relation to the maximum building height (LEP) and height in storeys (DCP).** CBDCP 2023 identifies a height in storeys control of 5 storeys (Building A) & 6 storeys (Building A) which the proposed development is under (i.e., 4 and 5 storeys respectively). We believe the misalignment arises from differing assumptions of floor-to-floor heights and allowances in the DCP compared to the LEP. The DA scheme proposes a more generous floor to floor height (i.e., 6m) an assumed typical floor to floor height of 3.1m and an allowance for plant/lift cores above this. To fully comply with the height of building standard this would inevitably result in either reduced floor to floor heights at the ground level, or a reduction in residential floor levels or a 3 to 4 storey-built form arrangement which differs a lot from a 5 to 6 storey form anticipated under the DCP.
- **The proposed massing and site specific DCP provisions have gone through rigorous assessment.** The Planning Proposal was supported by an Urban Design Report prepared by Squillace in September 2021. It is also noted that subsequent work has been undertaken through a Council commissioned peer review undertaken by Architectus which has informed revisions to setbacks and the structure plan. The massing of the buildings and arrangement on site have been subject to a rigorous review and deemed acceptable. As noted above, the proposed development is below the 'height in storeys' provisions of the CBDCP 2023.
- **The proposed variation results in an enhanced residential amenity improvement compared to a strictly compliant form.** The proposed development includes 29% (3,175m²) of the site area for communal open space, which exceeds the ADG requirement. The rooftop provides 574m² of communal open space; equating to 18.6% of the sites communal open space. The proposed rooftop communal open space will provide high quality communal open space for future residents to improve residents' wellbeing, enable DDA access, has been programmed to improve social connection and their overall experience. The rooftop communal space has been carefully designed to deliver high quality landscaping and shade for residents. Most of the rooftop is below the height plane, with only the lift lobby and lift overrun above the prescribed height.
- **As a result of land dedication for public reserve, the available site area has been reduced therefore making it more difficult to deliver communal open space below the prescribed height plane.** The proposal (via a Voluntary Planning Agreement) seeks to deliver 600m² of public open space to improve the Peter Reserve. The reduced site area has challenged the site planning and resulted in the need for communal open space to be provided on the rooftop.

- **The bulk of the building is compliant with the height control; both the parapet of Building A and Building B comply.** The parapet of Building A is 15.94m and the parapet of Building B is 17.05m, therefore the bulk of the building is sitting below the respective 17m and 20m prescribed height limit.

Overall, the additional height is considered justifiable from an environmental planning perspective as it delivers a significant public benefit.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated September 2023.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

1. SITE CONTEXT

1.1. SITE DESCRIPTION

The site is known as 'The Palms' and is located at 165 – 167 and 185 Hume Highway, Greenacre and is legally described as Lot 402 in DP631754. The site is an irregular shape and comprises a 13,891m² parcel of land with a frontage to Hume Highway.

The site currently accommodates a two-storey hotel known as 'The Palms' containing a sports bar, VIP lounge, bistro, function centre, short-term accommodation, and a large at-grade carpark. The site also contains a public park known as Peter Reserve. The hotel currently operates 7 days a week and is open during the following hours:

- Monday to Thursday: 10am – 4am
- Friday: 10am – 6am
- Saturday: 9am – 6am
- Sunday: 9am – 12am.

Figure 1 Site Location



Source: Urbis, 2023

1.2. REGIONAL CONTEXT

The site is located within the Canterbury-Bankstown Local Government Area (LGA), approximately 15km west of the Sydney CBD and 10km south-east of Parramatta CBD. Canterbury-Bankstown LGA is located within the South District, which also includes Georges River and Sutherland.

Figure 2 Regional Context



Source: Urbis, 2023

1.3. LOCAL CONTEXT

The site is located in Greenacre in the south-west of Sydney along the Hume Highway Enterprise Corridor known as Greenacre Motor Alley. The surrounding development generally consists of industrial development to the north across Hume Highway and low-density residential development to the south, east and west of the site and includes:

- **North:** The Chullora Industrial Precinct is located immediately to the north of the site across Hume Highway. Further north is the Chullora TAFE
- **South:** Low density residential development comprised of one to two storey detached dwellings adjoins the site to the south.
- **East:** A single storey commercial building occupied by a granite and marble supplier and a small pocket park known as Peter Reserve adjoins the site to the east. Further east is low density residential development comprised of one to two storey detached dwellings.
- **West:** A single storey residential dwelling is located to the immediate west, with low density residential comprised of one to two detached dwellings.

Vehicle access to the site is via driveways on Hume Highway. Pedestrian access to the site is via Hume Highway. The site is served by public transport with it being within 100m walking distance from a bus stop on the north side of Hume Highway which provides services to Lidcombe Railway Station. There is also approx. 130m walking distance from a bus stop on Hillcrest Avenue, which provides services to Bankstown Railway Station.

Figure 3 Site Images



Picture 1 Site entrance on Hume Highway

Source: Google Images, 2023



Picture 2 Hume Highway looking west

Source: Google Images, 2023



Picture 3 Hume Highway looking east

Source: Google Images, 2023

2. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for a mixed use development.

The proposal comprises the staged demolition, construction and operation of The Palms site located at 165 – 167 and 185 Hume Highway, Greenacre. The proposal includes the construction of a new mixed-use development with ground floor commercial premises and residential apartments above, hotel accommodation, a pub, three residential buildings and a public reserve.

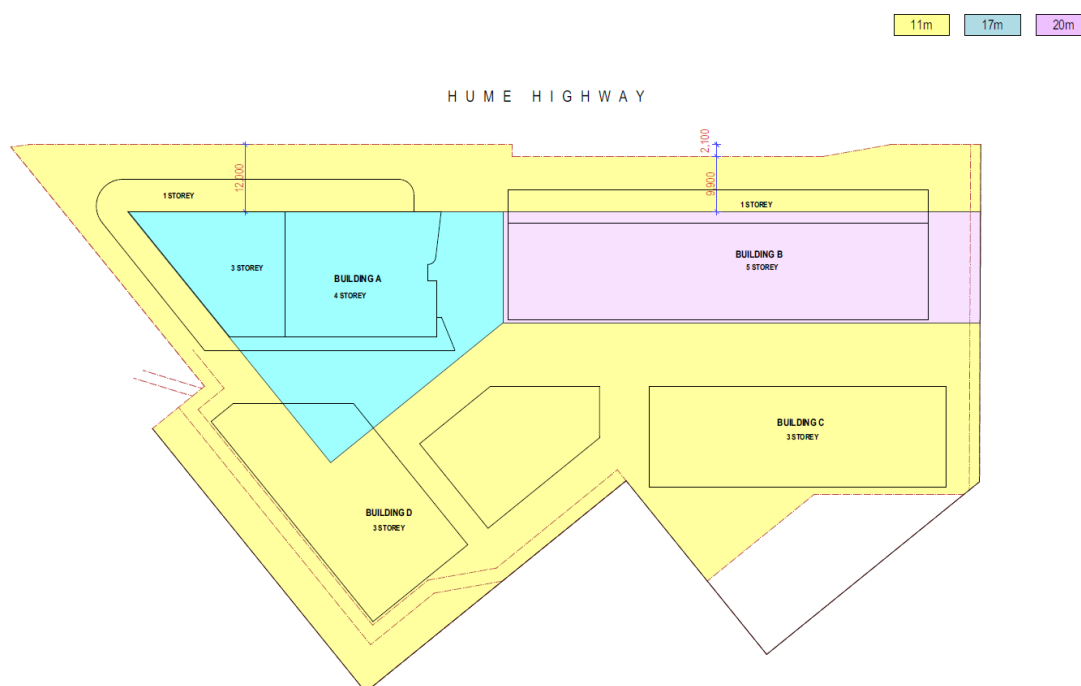
2.1. OVERVIEW OF THE PROPOSED DEVELOPMENT

This DA will comprise the staged demolition, construction and operation of a pub, hotel, mixed-use building, and residential flat buildings. The key features of the redevelopment are:

- Demolition of existing hardstand and structures including an existing pub, and construction:
 - a hotel containing 56 rooms,
 - a mixed-use building containing 37 apartments and 1,459m² of ground floor commercial GFA, and
 - three residential flat buildings containing 55 apartments.
- Basement car parking comprising 323 car spaces;
- Vehicle access to the site via a new slip lane on Hume Highway;
- Associated landscaping and public domain improvements;
- Commercial tenancies will front Hume Highway to enhance activation of the ground plane and pedestrian traffic. These will be accompanied by appropriate landscaping features to enhance the public domain; and
- Construction of ancillary infrastructure and utilities as required.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated September 2023. The proposal is also detailed within the architectural drawings and Design Report prepared by EJE that form part of the DA. Figure 4 illustrate the location of the buildings in contrast to the LEP height provisions.

Figure 4 Location of the proposed buildings in contrast to the LEP height provisions



Source: EJE Architecture, 2023

2.2. BUILDING A

Building A comprises the following:

- Demolition of the existing of the existing hotel and pub
- Excavation works to accommodate the 2 level basement car park that extends underneath Building B
- Construction of a 3 level pub and hotel building comprising:
 - Ground level and mezzanine pub comprising 1,487m² gaming area, sports lounge and dining / function area
 - 3 levels of hotel comprising 56 rooms
 - 2 basement levels of car parking with 179 parking spaces (136 for Building A and 43 for Building B)
 - Rooftop terrace
 - A loading bay at the rear of the building
 - Landscape zone at the front and side of the site

The proposed design of Building A is shown in Figure 5.

Figure 5 Proposed Building A



Source: EJE Architecture, 2023

2.3. BUILDING B

Building B comprises the following:

- Demolition of the existing buildings and structures
- Excavation works to accommodate the 2 level basement car park that extends underneath Building A
- Construction of a five-storey mixed-use commercial building comprising:
 - 1,450m² GFA ground floor commercial and retail area

- Services such as waste and plant room located in the basement car par
- 37 residential apartments across 4 levels with a total GFA of 4,030m2
- 2 basement levels of car parking with 179 parking spaces (136 for Building A and 43 for Building B)
- Rooftop terrace
- Landscaping at the front and rear of the building
- Residential lobby accessed from Hume Highway

Figure 6 Proposed Building B



Source: EJE Architecture, 2023

3. VARIATION OF HEIGHT OF BUILDING STANDARD

This section of the report identifies the development standard, which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

3.1. DEVELOPMENT STANDARD

The Request seeks an exception from the height prescribed for the site under clause 4.10 of the CBLEP 2023. CBLEP prescribes the maximum heights across the site as:

- 20m in the portion of the site where Building B is located
- 17m in the portion of the site where Building A is located
- 11m in the portion of the site where Building C, D and E is located.
- Figure 7 illustrates the various height of building standards over the site, extracted from the CBLEP 2023.

Figure 7 Height of Building Map



Source: eSpatial Portal (as amended by Urbis)

3.2. PROPOSED VARIATION TO CLAUSE 4.3 OF THE CBLEP

This clause 4.6 variation request seeks to gain approval for a variation to the maximum height of building as prescribed by clause 4.3 of the CBLEP

As demonstrated by the architectural plans provided by EJE Architecture, the proposed height of development is 17.5m for Building A and 22.9m for Building B. Building C, D and E are all 11m.

A summary of the numerical details of the variation area outlined below.

Table 1 Numeric Overview of the Proposed Variation

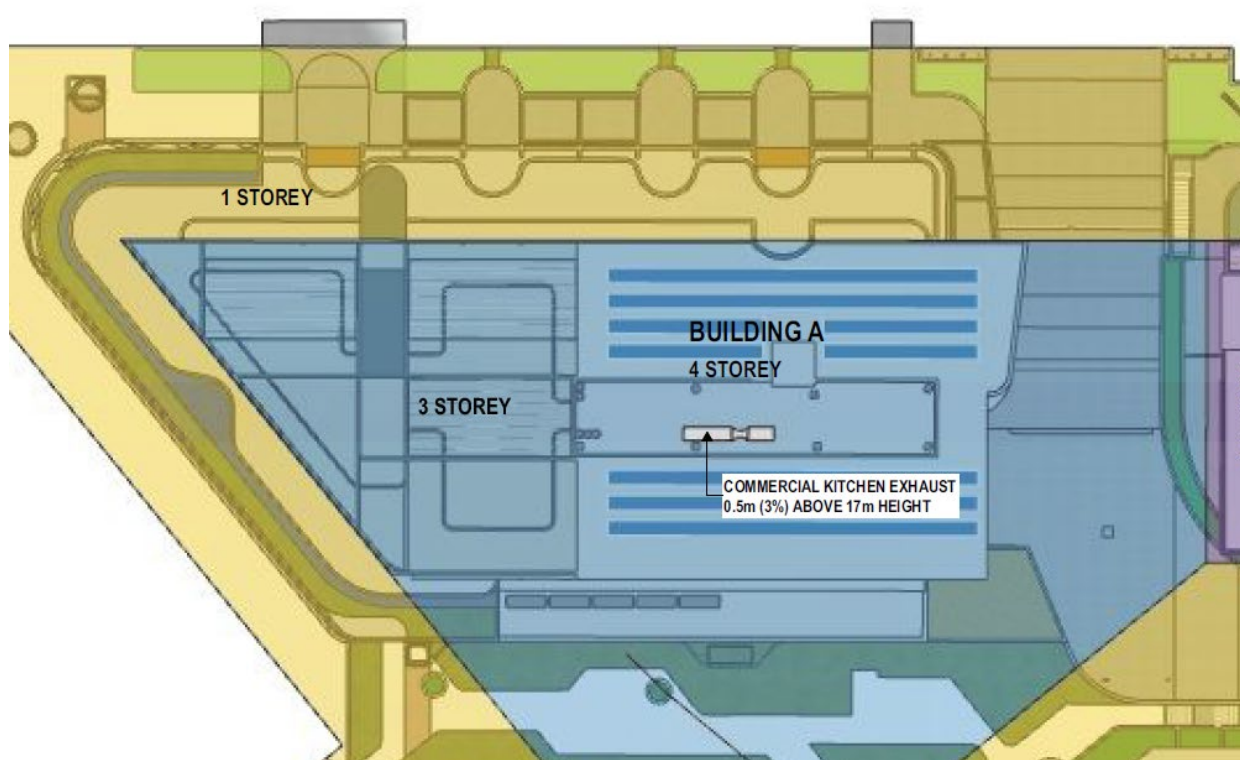
Building	Standard LEP	Control DCP	Description of Variation	Variation
Building A	17 metres (part 11 metres)	5 storey	Commercial Kitchen Exhaust – 0.5m above the prescribed 17 metre height development standard	17.5 metres (0.5 metres above the prescribed height limit). 2.94% Note: a 4 storey building is proposed.
Building B	20 metres (part 11 metres)	6 storey	Lift overrun and lobby – ranging between 1.4 to 2.9 metres above the 20 metre height development standard	22.9 metres (2.9 metres above the prescribed height limit) – lift overrun 14.5% 22 metres (2 metres above the prescribed height limit) – lobby roof 10% Note: a 4 storey building plus a roof terrace is proposed.
Building C	11 metres	3 storey	Nil variation – complies with prescribed height of building standard.	N/A
Building D	11 metres (part 17 metres)	3 storey	Nil variation – complies with prescribed height of building standard.	N/A

Building	Standard LEP	Control DCP	Description of Variation	Variation
Building E	11 metres	3 storey	Nil variation – complies with prescribed height of building standard.	N/A

The below figures illustrate:

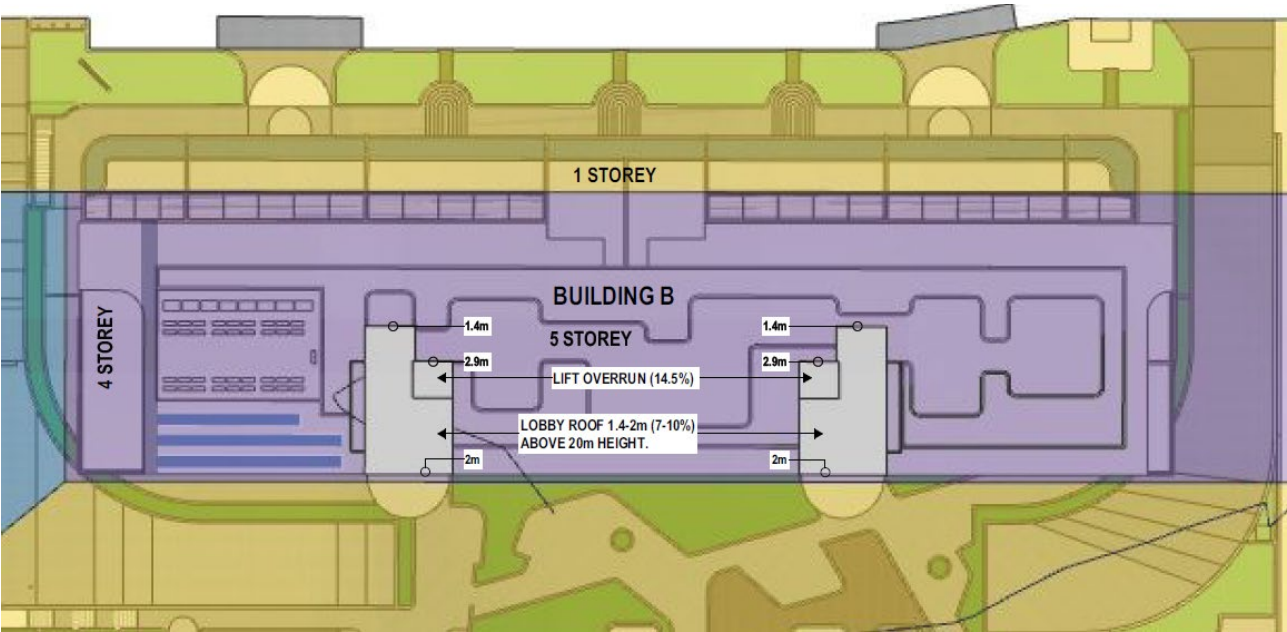
- Figure 8: Building A exceedance for commercial kitchen exhaust
- Figure 9: Building B exceedance for lift overrun and lift lobby
- Figure 10: western perspective of the variation

Figure 8 Building A exceedance



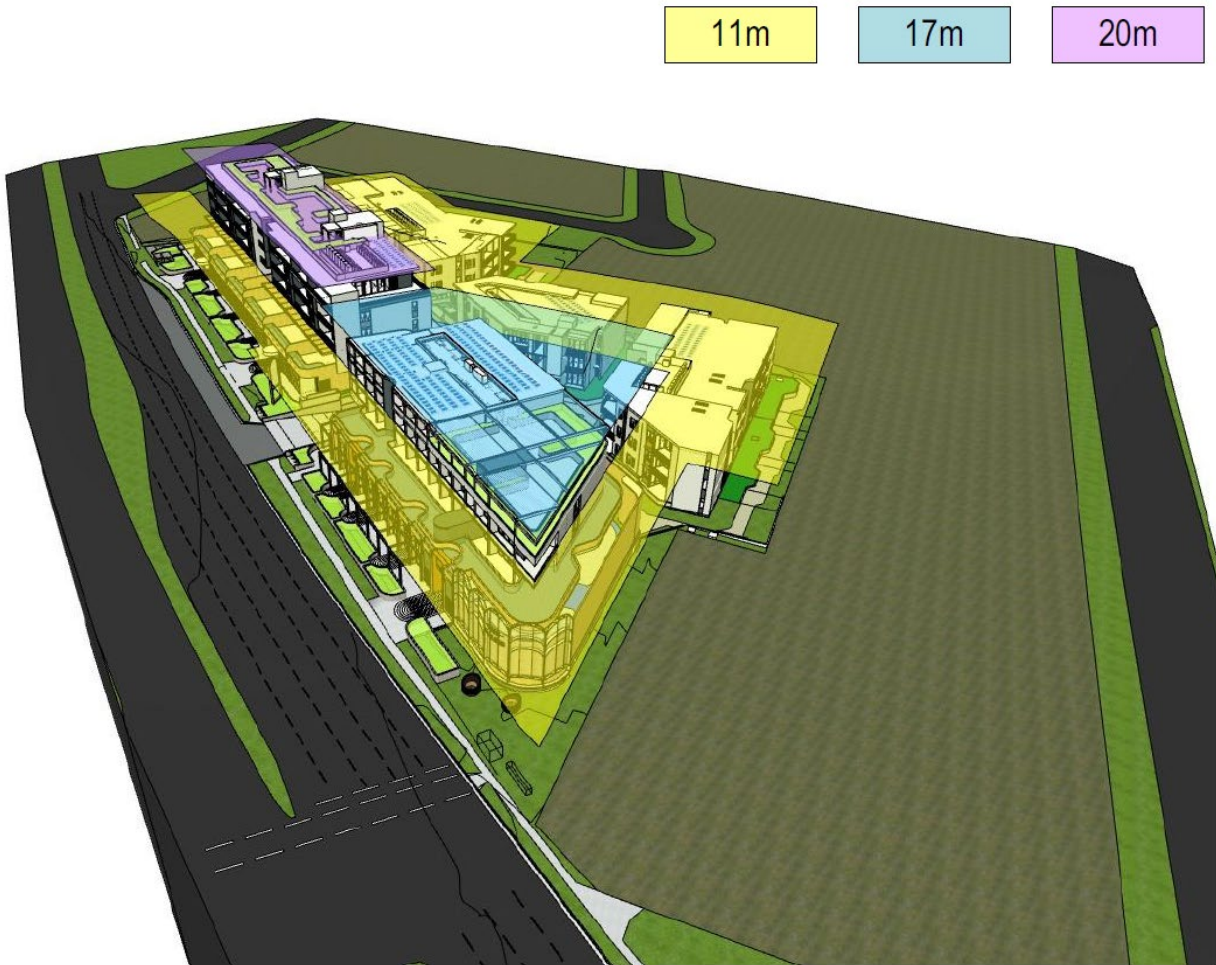
Source: EJE Architecture, 2023

Figure 9 Building B exceedance



Source: EJE Architecture, 2023

Figure 10 Western perceptive of the variation



Source: EJE Architecture, 2023

4. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of CBLEP 2023 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of CBLEP 2023 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 DA 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(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development 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.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have 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 Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS20-002 'Variations to development standards' dated 05 May 2020. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

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

This clause 4.6 request demonstrates that compliance with the height of building development standard prescribed for the site in clause 4.3 of CBLEP 2023 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of building development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

5. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of building in accordance with clause 4.3 of CBLEP 2023.

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 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. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of building prescribed by clause 4.3 of CBLEP 2023 is a development standard capable of being varied under clause 4.6(2) of CBLEP 2023.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of CBLEP 2023.

5.2. 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 are 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 building as specified in clause 4.3 of CBLEP 2023 are detailed in **Table 2** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 Assessment of Consistency with Clause 4.3 Objectives

Objectives	Assessment
(a) to establish the height of development consistent with the character, amenity and landform of the area in which the development will be located,	<p>The parapet of both Building A and B is below the height plane, only the lift lobby, the overrun of the lift and the overrun of the plant above the prescribed height.</p> <p>Due to the minor nature of this overrun of Building A (increase of 0.5m) and B (increase of 2.9m) the impact is considered negligible and therefore consistent with the character and landform of the area. Despite the overrun being negligible, communal space on the rooftop will improve the amenity and wellbeing of future residents.</p>
(b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of 2 storeys in Zone R2,	N/A
(c) to provide appropriate height transitions between development, particularly at zone boundaries,	The height transitions between buildings have carefully considered context, scale, and appearance. Despite contravening the prescribed height, ensure the amenity of the public domain has been maintained.
(d) to minimise overshadowing to existing buildings and open space,	All additional overshadowing from the variation falls within the existing site area and will not impact adjacent properties or public open space.
(e) to minimise the visual impact of development on heritage items and heritage conservation areas,	The proposal is not a heritage item, within a heritage conservation area or located within the vicinity of a heritage item or heritage conservation area.
(f) to support building design that contributes positively to the streetscape and visual amenity of an area	The proposed building design includes a new façade, embellished with vegetation on the front and rear of the building. Vegetation on the front of the building lines the footpath and creates interest into the building from the public. The carparking currently on the front of the building is proposed to be relocated underground to improve the visual amenity from the street. These design strategies contribute to the visual uplift from the Hume Highway and the Peter Reserve.

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **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])

Not relied upon.

- **The burden placed on the community (by requiring strict compliance with the FSR 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]).

Not relied upon.

5.3. 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 sufficient 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:

Overshadowing

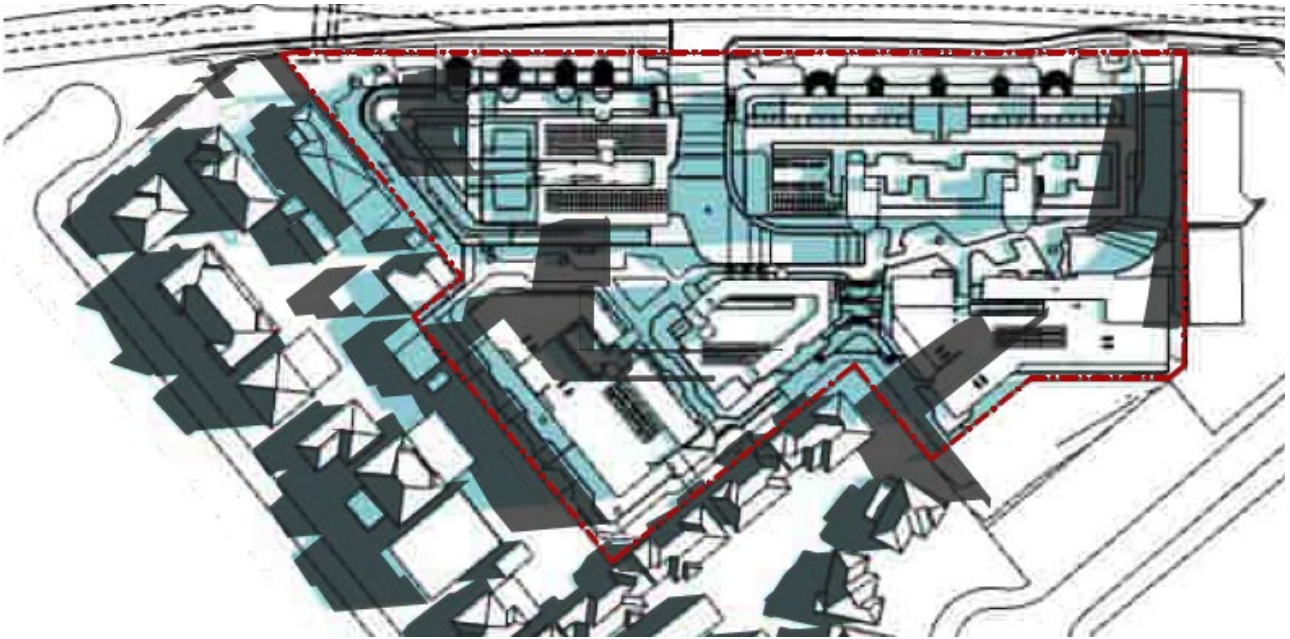
A Shadow Analysis has been prepared by EJE. In addition to the shadow analysis, significant overshadowing modelling and a Solar Access Study has also been completed within the Planning Proposal.

The proposed variation does not result in any additional overshadowing outside the site boundary.

Specifically, the following conclusions are made:

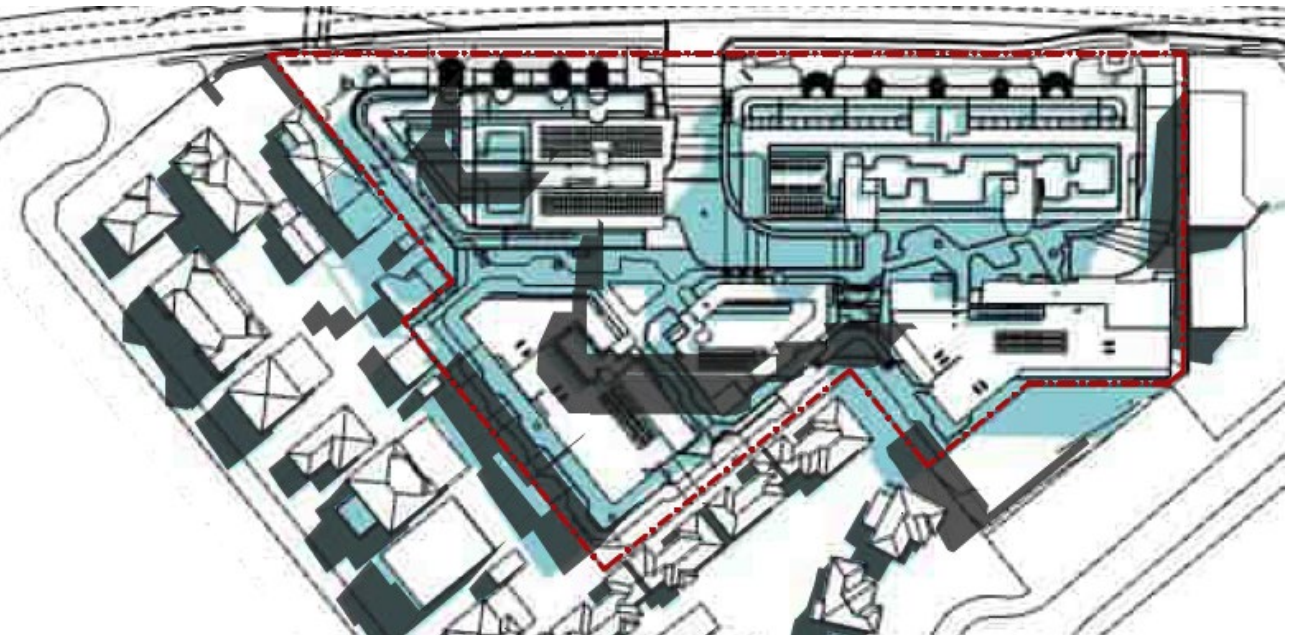
- At 9am the additional shadow created by the proposal will have an impact on some residential properties to the south of the site. However, the proposed variation does not result in any additional overshadowing outside the site boundary.
- At 12pm the additional shadow created by the proposal will have an impact on some residential properties to the south and east of the site. However, the proposed variation does not result in any additional overshadowing outside the site boundary.
- At 3pm the additional shadow created by the proposal will have an impact on some residential properties to the south and east of the site, and Peters Reserve. However, the proposed variation does not result in any additional overshadowing outside the site boundary.

Figure 11 June 21 Overshadowing Diagrams



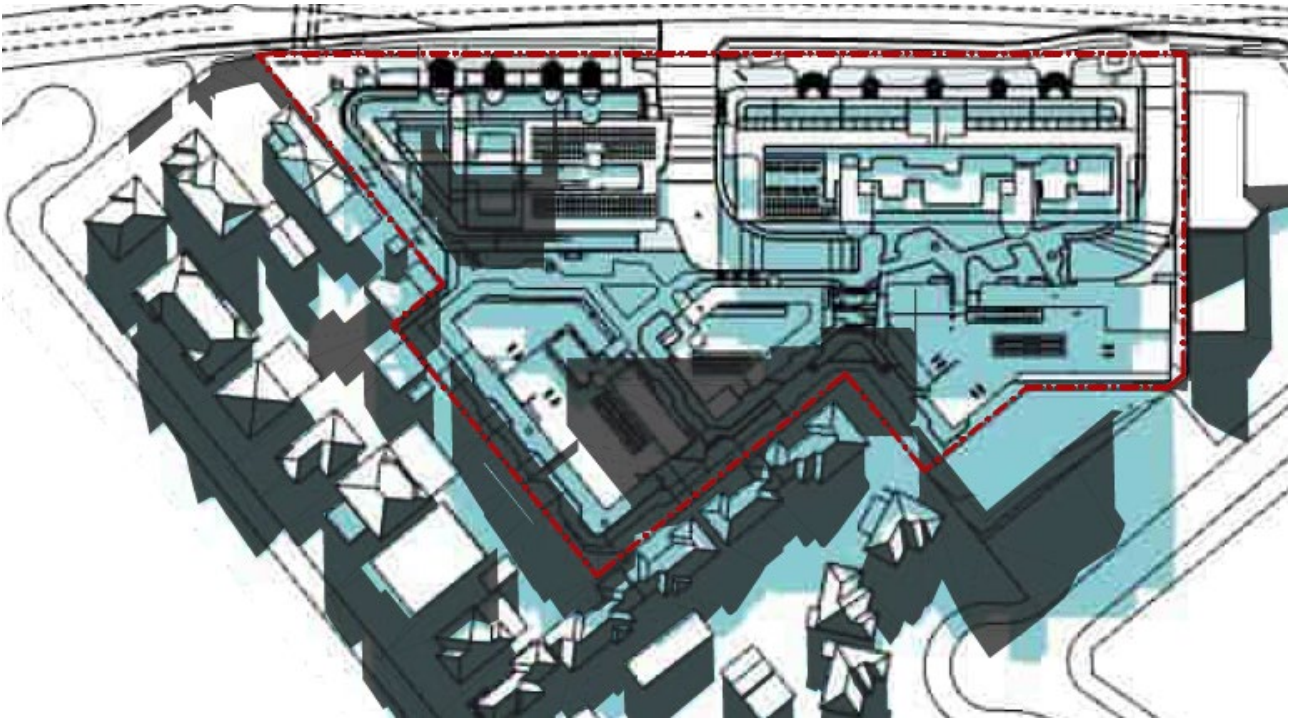
Picture 4 9am (existing in grey and proposed in blue)

Source: EJE, 2023



Picture 5 12noon (existing in grey and proposed in blue)

Source: EJE, 2023



Picture 6 3pm(existing in grey and proposed in blue)

Source: EJE, 2023

The shadow impacts of the proposed development are suitable and consistent with the anticipated level of development envisaged by the LEP.

Bulk and scale

The proposed development has been designed to respond to the reference scheme that was supported by Council as part of the Planning Proposal. The reference scheme however did not adequately consider the requirements for kitchen exhaust and lift overruns to service the Building B rooftop.

The residential buildings have been designed to mitigate any impacts on the adjoining residents whilst providing adequate solar access and cross-ventilation to residential apartments. The levels of the building have been articulated to break up the building scale and design elements including landscaping and vertical screen address privacy concerns.

The lift overrun and kitchen exhaust is setback over 15 metres from the front setback; the extent of the variation is negligible and barely visible from the public domain.

The bulk of the building is significant below the height in storeys control and the bulk of the building is compliant with the height control. Both the parapet of Building A and Building B comply. The parapet of Building A is 15.94m and the parapet of Building B is 17.05m, therefore the bulk of the building is sitting below the respective 17m and 20m prescribed height limit.

Alignment between CBLEP 2023 and CBDCP 2023

The CBLEP 2023 and CBDCP 2023 site specific provisions do not align in respect to building height.

The proposed height in storeys, as specified by the CBDCP 2023, is above the CBLEP 2023. Building A proposes 4 storeys and Building B proposes 5 storeys: whilst the CBDCP specifics 5 storeys and 6 storeys are permitted respectively (refer to **Figure 12**).

Figure 12 Extract from site specific DCP

Development controls

6.7.1 Storey limit (not including basements)

C1 Development must not exceed the building storey limit that corresponds with the maximum building height shown for the site on the Height of Buildings Map and detailed in Table 2.

C2 Table 2: Building storey limits

Maximum building height as shown on the Height of Buildings Map	Storey limit (not including basements)
11m	3 storeys (no attic)
14m	4 storeys (no attic)
17m	5 storeys (no attic)
20m	6 storeys (no attic)

Source: CBDP 2023

A typical floor to floor for a retail/commercial at ground level is 4.3 metres (4 metres floor to ceiling is reflected in the ADG, then assuming 0.3m for slab thickness), whilst a typical floor to floor for a residential level is 3 metres (2.7 metres floor to ceiling is reflected in the ADG, then assuming 0.3m for slab thickness). A typical hotel floor to floor would be at least 3 metres.

Considering the typical floor to floor assumptions:

- A 5-storey building without any plant or lift overrun would be 16.3 metres, leaving only 0.7 metres on the rooftop for rooftop communal space, plant and lift overruns.
- a 6-storey building without any plant or lift overrun would be 19.3 metres, leaving only 0.7 metres on the rooftop for rooftop communal space, plant and lift overruns.

The proposed floor to floor for Building A and Building B, is as follows:

- Building A:
 - Ground floor to floor of 6.4 metres to provide high amenity to the pub and include the provision of a mezzanine level. Ground level to the mezzanine level is 3.50 metres floor to floor.
 - 3.15 metre floor to floor is proposed for the hotel level. 3 levels of hotel.
 - In total, Building A is 4 storeys.
- Building B:
 - Ground floor to floor of 4.5 metres provide high amenity to the ground floor tenancies.
 - 4 levels of residential above.
 - In total, Building B is 5 storeys.

The proposed development is below the specified height in storeys. The CBLEP 2023 height limit does not make for plant and lift overrun nor does the height limit consider the floor-to-floor requirements of the specific land uses. Regardless, the buildings are 1 storey below and seeking to protrude the maximum height limit for the provision of a kitchen exhaust and lift overrun.

The CBDP 2023 does not consider the specific land use needs for a pub, which requires higher floor to floor than a typical restaurant or commercial space to provide high quality amenity. The CBDP 2023 also does not consider the provision for structures on the roof and does not adequate spatial allowance.

The proposed massing and site specific DCP provisions have gone through rigorous assessment. The Planning Proposal was supported by an Urban Design Report prepared by Squillace in September 2021. It is also noted that subsequent work has been undertaken through a Council commissioned peer review

undertaken by Architectus which has informed revisions to setbacks and the structure plan. The massing of the buildings and arrangement on site have been subject to a rigorous review and deemed acceptable.

The proposed is set below the 'height in storeys' provisions of the CBDP 2023, compliance with the CBLEP 2023 would be unreasonably and unnecessary due to the misalignment.

Promote Residential Amenity and Wellbeing for Future Residents (Building B)

The proposed variation results in a better residential amenity improvement for further residents. The proposed rooftop communal open space will provide high quality communal open space for future residents to improve residents' wellbeing, has been programmed to improve social connection and their overall experience. The rooftop communal space has been carefully designed to deliver high quality landscaping and shade for residents. Most of the rooftop is below the height plane, with only the lift lobby and lift overrun above the prescribed height.

As a result of the dedication of 600m² of land, the available site area has been reduced therefore making it more difficult to deliver communal open space below the prescribed height plane. The proposal (via a Voluntary Planning Agreement) seeks to delivery 600m² of public open space to improve the Peter Reserve. The reduced site area has challenged the site planning and resulted in the need for communal open space to be provided on the rooftop.

The proposal that comprises communal open space offering a variety of functions. It has considered the site layout and building design as part of the scheme. It includes a dining landscaped area, rooftop terraces, informal amphitheatre and communal open spaces.

The height variation proposed onto Building B will allow the implementation of a lift and lobby into the building to service users to the rooftop. Should compliance be required, the deletion of a floor of residential would be required to provide the rooftop terrace and deliver the high amenity that is proposed.

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.

5.4. 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.

5.5. 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.

The consistency of the development with the objectives of the development standard is demonstrated in Table 2 above. The proposal is also consistent with the land use objectives that apply to the site under CBLEP 2023. The site is located within the B6 Enterprise Corridor zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 3 below.

Table 3 Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
To promote businesses along main roads and to encourage a mix of compatible uses.	The proposed development will promote businesses along the Hume Highway. Across the

Objective	Assessment
	buildings the proposed businesses are a three level pub, a rooftop terrace, residential flats and commercial spaces.
To provide a range of employment uses (including business, office, retail and light industrial uses).	The proposed development will result in the immediate generation of employment during the construction phase and increase to the long-term employment capacity of the area once the commercial offerings are operable.
To maintain the economic strength of centres by limiting retailing activity.	<p>The proposed development complies with clause 6.32 of the LEP which specifies a minimum non-residential floor space. 33.6% of the total GFA is attributed to commercial and retail. Clause 6.32 specifies that 30% of GFA must be for purposes other than residential accommodation.</p> <p>The proposed development will limit retailing to ensure the strength of local and strategic centres is maintained.</p>
To support urban renewal and a pattern of land use and density that reflects the existing and future capacity of the transport network.	The proposal includes construction of a slip lane on Hume Highway that will improve access to the development. There are It delivers on locating development close to an exciting commercial and retail hub and removes cars from the local and regional networks where possible, further satisfying the B6 zone objectives. The site is serviced well by public transport as it is situated within 400m of five bus routes; the 913, 925, 939, 941 & M90 services.
To promote a high standard of urban design and local amenity.	A high-quality and well considered landscape scheme has been provided at the proposal that comprises extensive landscaping and communal open space offering a variety of uses. It has considered the site layout and building design as part of the scheme. It includes a dining landscaped area, rooftop terraces, informal amphitheatre and communal open spaces.

5.6. 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 concurred to the variation under Department of Planning Circular PS20-002 'Variations to development standards' dated 05 May 2020. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given 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 height of building 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 height of buildings and the land use zone objectives despite the technical non-compliance.

Overall, 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. 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 height of building contained within clause 4.3 of CBLEP 2023 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.

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 height of building should be applied.

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