

Addendum 1

Statement of Environmental Effects
and Clause 4.6 Exception to HOB

Project No.147

Client: The Calautti Family Trust ABN 90 876 690 543
1600 Canterbury Road
Punchbowl NSW 2196

The Site: 1600 Canterbury Road
Punchbowl NSW 2196

Date: 23 June 2015



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1 Executive Summary

1.1 Purpose

This is an addendum to the Statement of Environmental Effects ("SEE") dated 23 June 2015.

This addendum has been prepared for submission with the replacement application and in satisfaction of Part 6, Division 1, Clause 55(2) of the *Environmental Planning & Assessment Regulation 2000* ("Regulation"):

"If an amendment or variation results in a change to the proposed development, the application to amend or vary the development application must have annexed to it written particulars sufficient to indicate the nature of the changed development"

We note that Council will, as the proposal is integrated development, *"immediately forward a copy of the amended or varied application to the concurrence authority or approval body"*, ibid clause 55(3) of the Regulation.

The addendum addresses the amendments to the development application (DA) specifically addressing Council's letter dated 5 May 2015 as required by Schedule 1, Part 1, Section 2 (1)(c) of the in accordance with the Section 105 (j-k) of the Environmental Planning and Assessment Act 1979 ("Act").

Schedule 1, Part 2(4) of the Regulation provides:

"A statement of environmental effects referred to in subclause (1) (c) must indicate the following matters:

- a) the environmental impacts of the development,*
- b) how the environmental impacts of the development have been identified,*
- c) the steps to be taken to protect the environment or to lessen the expected harm to the environment,*
- d) any matters required to be indicated by any guidelines issued by the Director-General for the purposes of this clause."*

This addendum SEE does not purport to be an assessment under section 79C and limits itself to the requirements of the Regulation. This SEE relies in good faith upon details provided by the architect and a range of consult experts as is necessary and reasonable subject to clause 283 of the Regulation.

1.2 Description of the amendments and additional information

We address this in the same order articulated in Council's letter dated 5 May 2015:

1. Compliance with clause 7 SEPP 55 is demonstrated by the submission of a Detailed Site Investigation Report dated 25 March 2015 in addition to the Preliminary Site Investigation Report dated 16 December 2014.
2. An exception to the HOB development standard is justified by the clause 4.6 submission within this addendum SEE. The cause is flood levels and access requirements for trucks.
3. The commercial Building Depth is justified by the need to maintain supermarket capable floor plate sizes with this being the desired and optimal use for the commercial space. If other uses were proposed the floor plan can be reconfigured to deliver full compliance with the ESD requirements under Part J of the BCA in addition to Council's DCP.
4. The amended plans have addressed the DCP setbacks and a more detailed explanation is set out below.
5. The amended plans have addressed the building separation requirements and a more detailed explanation is set out below.
6. The amended plans address the façade articulation.
7. The amended plans provide not less than 12m² of POS for each unit.
8. Traffic Engineering is addressed by further detailed modelling by McLaren Traffic Engineering dated 19 June 2015.

9. Stormwater Management, Concept and Erosion and Sedimentation Controls are all addressed by the reports of Loka Consulting Engineers Pty Ltd dated 17 June 2015.
10. Waste Management is addressed by Dickens Solutions' Waste Management Plan dated June 2015.
11. Solar Access is addressed by views from the Sun Plans by Urbanlink Architects dated 19 June 2016
12. Ventilation is addressed by Corss Ventilation Plans by Urbanlink Architects dated 19 June 2016
13. Design Verification and SEPP 65 Design Principles are addressed by Urbanlink Architects.

1.3 Setbacks

The following setbacks have been provided by the amended plans:

- Canterbury road: level 5 & 6 is setback 8m
- Canterbury road: Basement is setback 3m from the boundary
- Eastern, South eastern and southern elevations have increase setbacks
- Eastern elevation setback increased from 2m to 3m
- For the southeast portion of block C, there is an 15m wide channel and easement which provides a further setback to the industrial area.

1.4 Building Separation

The following separation has been provided by the amended plans:

- Western elevation level 5 & 6 setback a further 1m to allow 9m setback from the boundary.
- Block B & Block C level 5 & 6 revised to allow 13m building separation between non-habitable rooms and habitable rooms for levels 5 & 6
- Block C and the Industrial Zoned land to the southeast are separated by the drainage channel and wide, heavily landscaped buffer/transition along the boundary.

1.5 Calculations

There is only one numeric non-compliance and that is the maximum HOB is exceeded and this is subject to an amended clause 4.6 submission.

In short, the additional HOB is necessitated by flood levels and the need to raise the building height to allow truck access for medium rigid vehicles.

Whilst it is not relevant for the purpose of the clause 4.6 submission, which demonstrates that the zone and HOB objectives are achieved, there are no adverse urban design or amenity impacts arising from the proposed variation to the HOB. The clause 4.6 demonstrates that the zone and HOB objectives are achieved.

Urbanlink Architects have summarised the numeric compliance table as follows - Figure 1 – Calculation Tables Urbanlink Architects

SITE AREA	13120m ²		
CONTROL	MIN. REQUIRED	PROPOSED	COMPLIES
SOLAR ACCESS	70%= 208 Units	225 Units	YES
CROSS VENTILATION	60%= 178.2 Units	180 Units	YES
SINGLE ORIENTATED SOUTH FACING UNITS	MAX ALLOWABLE 10%= 29.7 Units	19 Units	YES
CARPARKING	TOTAL 684	TOTAL 684	YES
1 space/1 bed 1.2 space/2 bed 2 space/3 bed	1 x 96(1 Bed)= 96 1.2 x 185(2 Bed)= 222 2 x 16 (3 Bed) = 32	351 SPACES	YES
Visitor= 0.2 per unit	0.2 x 297 units = 59.4	60 SPACES	YES
commercial= 1 per 22m ²	5973m ² / 22 = 272	272 SPACES	YES
CAR WASH	1	1	YES
COURIER	1	1	YES
Bicycle= 1 space/5units	297 Units/5 = 59.4	60 SPACES	YES
CONTROL	MIN. REQUIRED	PROPOSED	COMPLIES
COMMON SPACE	10% of site = 1312m ²	3061m ²	YES
CONTROL	MAX. REQUIRED	PROPOSED	COMPLIES
BUILDING HEIGHT	18m	20.14m	NO

GFA	
LEVEL	AREA
GROUND	5973m ²
LEVEL 1	4666m ²
LEVEL 2	4900m ²
LEVEL 3	4900m ²
LEVEL 4	4434m ²
LEVEL 5	4434m ²
TOTAL	29,307m²

UNIT MIX				
	1BED	2BED	3BED	TOTAL
LEVEL 1	12	37	6	55
LEVEL 2	24	38	2	64
LEVEL 3	24	38	2	64
LEVEL 4	18	36	3	57
LEVEL 5	18	36	3	57
TOTAL	96	185	16	297
	32.30%	62.30%	5.40%	

Figure 1 – Calculation Tables Urbanlink Architects

1.6 Environmental Impacts

The key issues are:

- Key Site Urban Design
- Remediation
- Road widening
- Traffic Generating Development
- Traffic Noise
- Flooding
- Ground Water
- Hazardous Materials

1.7 Impact Identification

The environmental impacts have been identified by reference to:

- The Act and Regulation.
- Review of relevant Environmental Planning Instruments (in particular the LEP, SEPP 55, SEPP 65, SEPP (Infrastructure) and the DCP. Draft EPI have also been considered.
- Pre-DA meeting with Roads and Maritime Service (RMS).

- Preliminary Site Investigation by Trace Environmental.
- Traffic study and detailed traffic and parking report by McLaren Traffic Engineering.
- Detailed flood study by Kustom Engineering.
- Geotechnical report by SMEC Testing Services.
- Concept stormwater design and erosion and sedimentation control and soil management plan and details by LOKA Consulting Engineers Pty Ltd.
- Landscape Plan by eco Design.
- Site Inspections by Daintry Associates Pty Ltd.

1.8 Mitigation

The steps to be taken to protect the environment or to lessen the expected harm to the environment include:

- Achievement of Key Site objectives through high quality urban design
- Remediation in accordance with a Remediation Action Plan and verification by an Accredited Site Auditor, in particular with respect to removal of old fuel tanks
- The proposed work are clear of the area proposed for widening of Canterbury Road
- Flood study setting new floor levels above 1:100
- Concept stormwater design
- Groundwater will be addressed by tanking the basement levels.
- Hazardous Materials Survey prior to demolition and compliance with AS2601 and relevant Workcover requirements.
- Secured site with all environmental controls in place and maintained.

1.9 Director General's Guidelines

The Director General has not gazetted and guidelines under Schedule 1, Part 2(4)(d) of the Regulation. The format of this SEE and relevant content follows DoPI draft guidelines (un-published).

2 The Site

2.1 Address and Real Property Description

The site is 1600 Canterbury Road, Punchbowl.

2.2 Real Property Descriptions and Principal Development Standards

The site consists of 5 lots as shown in Figure 2 - Simplified Lot Boundaries.

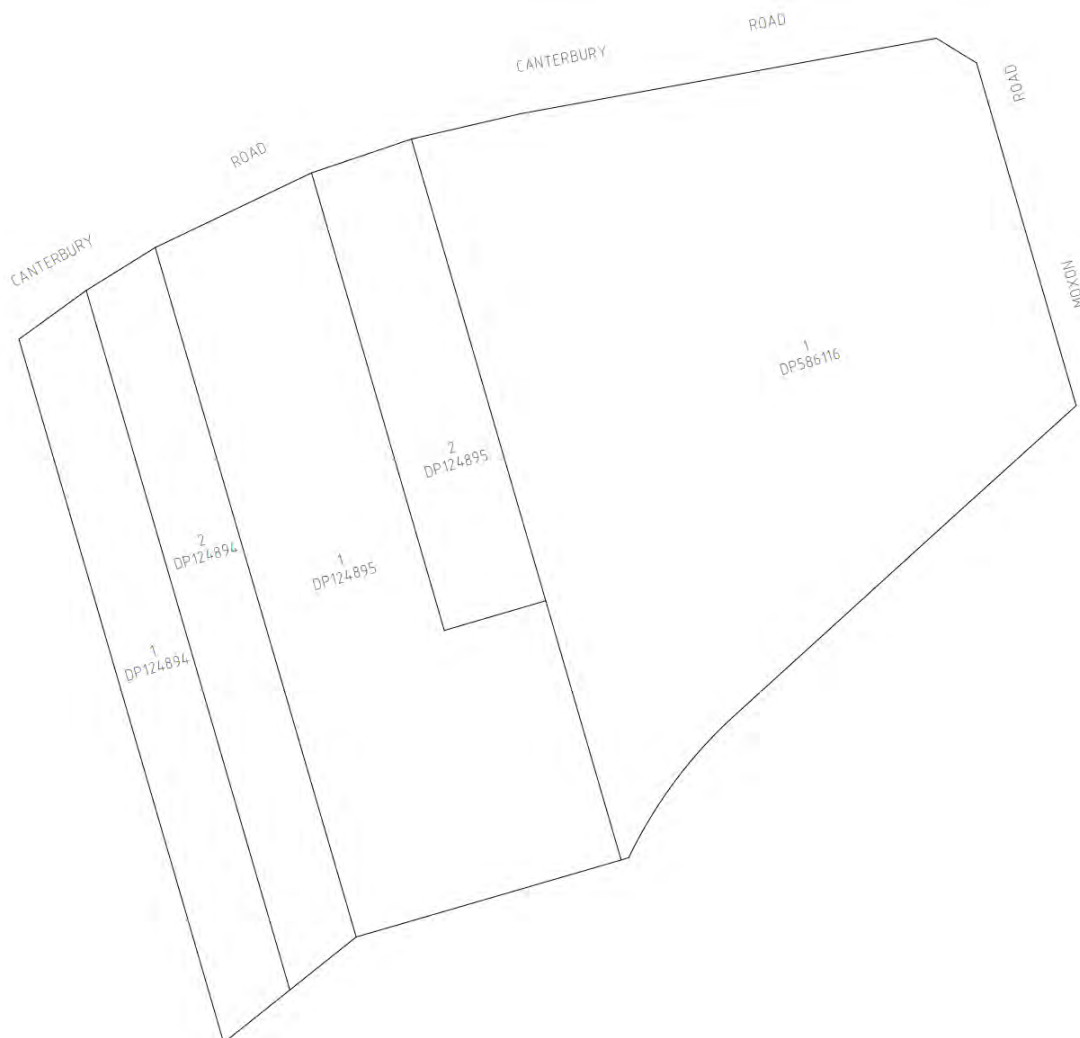


Figure 2 - Simplified Lot Boundaries

Table 1 - Real Property Description & Principal Development Standards

Lot	Section	DP	Site Area	Zone	HOB	FSR	Max GFA
1	-	124894		B5	18m	None Assigned	None Assigned
2	-	124894		B5	18m	None Assigned	None Assigned
1	-	124895		B5	18m	None Assigned	None Assigned
2	-	124895		B5	18m	None Assigned	None Assigned
1	-	586116		B5	18m	None Assigned	None Assigned
Total Site Area			1.314ha by DP		Total Maximum GFA		

2.3 Clause 4.6 Exception to HOB

The proposal exceeds the maximum HOB. The cause of the variation is the requirement to comply with clause 6.3 (Flood Planning) of the LEP by raising the building height to a freeboard to a 100 year flood and to allow clearance under the building for vehicular access off Canterbury Road and Stacey Street.

This submission complies with:

1. [PS 08-003 - Department of Planning](#)
2. [Varying Development Standards: A Guide August 2001 - NSW Department of Planning & Infrastructure.](#)

Submission

It has been established by a series of decisions in the Land and Environment Court that generally in order to maintain an objection that compliance with a standard is unreasonable or unnecessary, it is first necessary to discern the underlying object or purpose of the standard.

To found an objection it is then necessary to be satisfied that compliance with the standard is unnecessary or unreasonable in the circumstances of the case. Although the court has urged a generous application of SEPP No. 1 and has repeatedly declined to attempt exhaustively to define the limits of the dispensing power and, in particular, what is embraced by the expression "circumstances of the case", it is now established that it is not sufficient merely to point to what is described as an absence of environmental harm to found an objection (cf *Wehbe v Pittwater*, *Memel Holdings* etc.).

Furthermore, the objection is not advanced by an opinion that the development standard is inappropriate in respect of a particular zoning. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 Preston CJ is very clear where he says:

"An objection would not be well founded by an opinion that the development standard is inappropriate in respect of a particular zoning (the consent authority must assume that standard has a purpose)."

Therefore, it is now established that although the discretion conferred by SEPP No. 1 is not to be given a restricted meaning and its application is not to be confined to those limits set by other tribunals in respect of other legislation, it is not to be used as a means to effect general planning changes throughout a municipality such as are contemplated by the plan making procedures set out in Part III of the *Environmental Planning and Assessment Act 1979*. These principles may be reasonably applied to clause 4.6 of the Standard Instrument LEP.

Again Preston CJ confirms this when he states in *Wehbe* that:

"The dispensing power under SEPP 1 also is not a general planning power to be used as an alternative to the plan making power under Part 3 of the Act."

See also *Hooker Corporation Pty Limited v Hornsby Shire Council* (NSWLEC, 2 June 1986, unreported). Objections must therefore justify the departure from a development standard having regard to the above principles. In *Winton Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) it was established that in order to apply the principles of the *Hooker* case five (5) questions should be asked. These questions form the basis of this process.

This objection under clause 4.6 of the LEP applies the "[Varying development standards: a guide](#)", published by the NSW Department of Planning and Infrastructure (DoPI) dated August 2011.

The DoPI guidelines require that the following questions be answered:

1. What is the name of the environmental planning instrument that applies to the land?

Canterbury Local Environmental Plan 2012 (LEP)

2. What is the zoning of the land?

B5 – Business Development

3. What are the objectives of the zone?

- *To enable a mix of business and warehouse uses, and bulky goods premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for residential use in conjunction with mixed use development to create an attractive streetscape supported by buildings with a high standard of design.*
- *To support urban renewal that encourages an increased use of public transport, walking and cycling.*
- *To encourage employment opportunities on Canterbury Road and in accessible locations..*

4. What is the development standard being varied?

Height of Building (HOB)

5. Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 HOB

6. What are the objectives of the development standard?

HOB

- (a) to establish and maintain the desirable attributes and character of an area,
- (b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,
- (c) to support building design that contributes positively to the streetscape and visual amenity of an area,
- (d) to reinforce important road frontages in specific localities.

7. What is the numeric value of the development standard in the environmental planning instrument?

HOB 18m.

8. What is proposed numeric value of the development standard in your development application?

HOB is demonstrated by the detailed building height compliance plan including cloud diagrams and RL's at critical locations demonstrating

HOB (Building A) 20.14m (2.14m)

HOB (Building B) 20.08m (2.08m)

Hob (Building C) 19.41m (1.41m)

9. What is the percentage variation (between the proposal and the environmental planning instrument)?

HOB (Building A) 11.9%

HOB (Building B) 11.5%

Hob (Building C) 7.8%

Note these are specific maximum point encroachments above the 18m HOB.

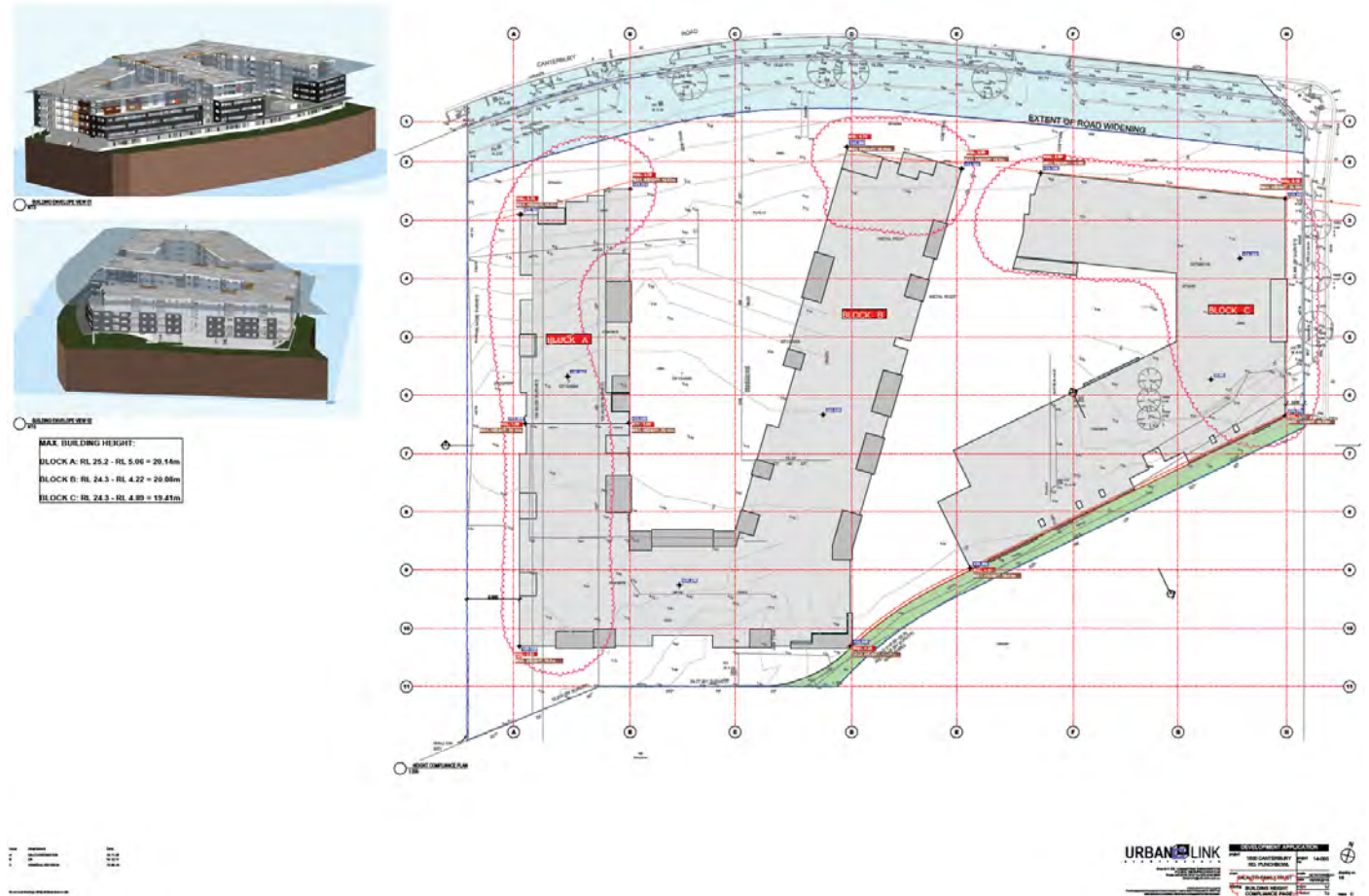


Figure 3 - HOB Compliance Plan

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The site is flood affected and the HOB of 18m is measured from existing ground level. There is a practical need to raise the building as detailed by the Flood Study. Further, the need to bring vehicles, including trucks in and under the building from Canterbury Road and Stacey Street as well as allow the left out only egress has necessitated higher ground floor ceiling heights. Forcing the proposal to comply with the HOB would result in an underutilisation of valuable land. The plan states "To meet the needs of a bigger population, we need a plan to manage growth – how to accommodate the 664,000 new homes that we will need" with a focus upon "providing homes closer to jobs", Direction 2.2 of the plan." If the clause 4.6 fails, the NSW Government and Council's LEP aims and objectives would be thwarted.

Despite the numeric non-compliance the following LEP objectives for HOB will be achieved:

(a) to establish and maintain the desirable attributes and character of an area

Submission: the proposal will set a high quality bench mark that defines the desired future character of this locality and meets the desired future character objectives of Council. The development demonstrates through its consolidated site approach and separation internally and externally that it will deliver a desirable character outcome consistent with the zone objectives.

(b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,

Submission: Those shadows that will be cast fall predominantly on the stormwater channel and the industrial land south of the site there are no impacts upon public open space and the internal solar access and amenity of COS is high.

(c) to support building design that contributes positively to the streetscape and visual amenity of an area,

Submission: The proposal will make a very positive contribution to the streetscapes of Canterbury Road, Moxon Road and when viewed from Stacey Street, the additional height will not be readily discernable. The building height in terms of the number of storeys will be as envisaged by the development standard, it is flood levels and clearance for truck access, in particular, that has drive the exception to the HOB.

(d) to reinforce important road frontages in specific localities.

Submission: The HOB exception is considered insignificant in terms of its impact upon the road frontage given the road widening and the proposed setbacks, the objective in the context of this design was not to provide contiguous block edge development rather articulate the built form in the three blocks as proposed. This objective is achieved in the context of this very large site and not influence by the exception sought.

11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?

"The objects of this Act are:

(a) to encourage:

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

(ii) the promotion and co-ordination of the orderly and economic use and development of land,"

Strict compliance would result in the refusal of the development.

Compliance in the circumstances of this case would produce a worse outcome in that the economy in scale of the development would result in a lower quality built form outcome and lower COS amenity outcomes, essentially a failure to achieve EPI objectives.

12. Is the development standard a performance-based control?

The development standard IS NOT performance based. The development standard however, contains specific objectives and the objectives are achieved on a performance basis despite the numeric non-compliance.

13. Would strict compliance with the standard, in this particular case, be unreasonable or unnecessary? Why?

Applying *Wehbe v Pittwater Council* [2007] NSWLEC 827, **one or more** of the following tests adequately justify why it is unreasonable and unnecessary to strictly comply with FSR development standards:

a. the objectives of the standard are achieved notwithstanding noncompliance with the standard;

Submission: All four (4) HOB objectives will be achieved. The proposal will preserve the amenity to neighbours. The southern neighbours separated by a new lane and the box culverts occupy industrial lands. Moxon Road separates the residential neighbours to the east from the site. The eastern neighbour's site will be subject to urban renewal and is currently bulky goods retailing. Canterbury road separates the site from other retail and commercial use on Stacey Street. The

urban form and streetscape outcome will enhance the locality. See above comments already made out.

- b. the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Submission: the objectives are relevant and are achieved notwithstanding the numeric non-compliance with clause 4.3 because the proposal enables the achievement of broad public interest objectives in urban renewal of a identified Key Site, increasing housing choice with high amenity outcomes for the site and neighbours, remediation of contamination, removal of potentially hazardous building materials and more.

- c. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

Submission: The objectives of the Act would be defeated and thwarted by requiring compliance on the basis that it is the need to comply with clause 6.3 that is driving the exception sought.

- d. 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;

Submission: There has been no detailed analysis of compliance or otherwise with the development standard as it applies to other sites. It is noted however, that the height, shape bulk and external configuration of the proposal has been established through the design process to be compatible with the desired future character within B5 and to meet the desired future character as articulated by the LEP and DCP. The HOB outcome would not be justifiable without the delivery of significant net public benefits detailed by this SEE. Therefore, the issue of development consent, in the circumstance of this case, would not result in the development standard being abandoned or destroyed by the council's favourable consideration of the application. If others sought to achieve equivalent HOB outcomes, to that proposed by this development application, they would have to, in the circumstance of their case, demonstrate through a properly conceived and executed clause 4.6 submission, similar public benefits to the JRPP's satisfaction.

- e. compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

Submission: This is not applicable. The zone is B5 and this development standard is appropriate to the land and neighbouring land similarly zoned. It is reinforced that the clause 4.6 exceptions is predicated upon the acceptance of the public of the net public benefits that will accrue under the proposal and the particular flood levels that afflict the site.

Clause 4.6 Objection Summary

This Clause 4.6 submission represents a very robust justification for the contravention of the development standard in the context of clause 6.3 (Flood Planning) and the outcomes already acknowledged by the SEE.

The SEE specifically addresses the objectives of the LEP and supporting information as detailed above.

The Court has established on numerous occasions that it is insufficient merely to point to an absence of environmental harm in order to sustain an Objection under SEPP No.1 *Gergely & Pinter v Woollahra Municipal Council* (1984); *Hooker Corporation Pty Ltd v Hornsby Shire Council* (1986) *Winten Property Group Ltd v North Sydney Council* (2001) and *Memel Holdings Pty Ltd v Pittwater Council* (2001) and *Wehbe v Pittwater Council* [2007].

Rather, it is necessary to demonstrate that the strict application of the development standard in question would actually hinder the attainments of the objects of the Act. In other words, would the application of the development standard result in a more optimal environmental or ecologically sustainable outcome than

would occur in circumstances where the departure from the standard were permitted using the dispensing power of SEPP No. 1. (Equivalent to clause 4.6 of the LEP).

The submissions under questions above, in tandem with the SEE, the Flood Report and supporting documents, establish that the application will better attain the objects of the Act, SEPP 65-RFDC and the LEP.

It must be demonstrated, that there is a positive environmental or community outcome that arises directly out of the non-compliance. This clause 4.6 submission seeking the exceptions to the development standards demonstrates a better outcome in terms of flood planning.

The increased height will ensure that future occupants of the new building proposed will achieve significantly improved amenity in terms of solar access, ventilation, views and access to podium COS.

Once it has been established that there is a positive outcome associated with the area of non-compliance, and that compliance with the standard would hinder the attainment of that outcome, then it is necessary to establish the impact of the non-compliance. This should be done by clearly and accurately determining the extent of non-compliance.

There is no adverse environmental impact to an increase in the length of the shadows cast by the development upon industrial lands to the south. The shadow diagrams demonstrate this.

This assessment is not a merit assessment of the entire development, but rather an assessment of the specific impacts that may arise from the purported non-compliance (cf Winton Properties/Memel Holdings) and the positive net public benefits arising from the proposal that justify the exceptions to the HOB in the circumstances of this case.

Turning one's mind to the merits of the applicant's case for seeking an exception to the development standard (not the absence of any environmental harm) and at this application stage, without the benefit of assessing any submissions that may be made, it is submitted that the impacts of the contravention will deliver a better environmental outcome.

This clause 4.6 submission should prevail to the extent that it allows a merit assessment under section 79C of the Act. Council should accept the clause 4.6 objection and apply its mind to the pure merits of the proposal.

The rigour of the submission rests primarily upon the design excellence exhibited by the proposal, including the better environmental outcomes to and from the development that will be delivered by the proposal.

The misconception of 10%

This submission notes that the point encroachments above a 10% variation are minor and that the 10% variation benchmark does not preclude the Council or JRPP from allowing the exception to the HOB in the specific circumstances of this case.

The ICAC made a total of 27 corruption prevention recommendations arising from operation Atlas, being an investigation into corruption allegations affecting Wollongong City Council in 2008. The purported 10% limit on SEPP 1 is not a limit SEPP 1 or clause 4.6, it arose from recommendation 1 of the ICAC's report as follows:

"Recommendation 1

That for at least two years after the election of a new Wollongong City Council, the Director General of the Department of Planning revokes Wollongong City Council's assumed concurrence for the use of SEPP 1 (or its equivalent) to determine departures from development standards of more than 10%."

In April 2010 the ICAC published the "Development Assessment Internal Audit Tool" and at page 8 of the Audit Tool, the general control framework includes a check that:

"Council's delegations policy clearly requires all development applications where there has been a variation greater than 10% in standards under SEPP 1 (or equivalent) to be determined by full Council".

There is an industry wide misconception that there is a theoretic limit upon the use of both SEPP 1 and Clause 4.6 that is 10%. The facts are that there are no numeric limits on the use of SEPP 1 or clause 4.6 but that best practice demands that where variations in excess of 10% are proposed the application must be reported to full Council for its determination in an open and transparent manner ensuring governance and community oversight.

So we are very clear, the 10% bench mark is not a limit on clause 4.6, rather it is a limit on staff delegations and the trigger for governance oversight of the process. That is exceptions to development standards greater than 10% should not be determined under staff delegations alone. Reporting to the JRPP achieves this objective.

Assumed Concurrence From The Director General of the Department of Planning

Clause 7 of SEPP 1 states that: Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in Clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.

In March 1989, Circular B1 advised councils that they may assume the Director-General of Planning & Infrastructure's concurrence under SEPP 1 in relation to all development applications, with the following exceptions:

- a. To erect a dwelling on an allotment of land zoned rural or non-urban or within the zones listed in Schedule A to Circular B1 (the WLEP does not contain any of the zones specified);
- b. To subdivide land which is zoned rural or non-urban or within the zones listed in Schedule A to this Circular B1 (again, the WLEP does not contain any of the zones specified).

Council's may assume the Director-General's concurrence under SEPP 1 in relation to these applications but only if:

- i. Only one allotment does not comply with the minimum area; and
- ii. That allotment has an area equal to or greater than 90 percent of the minimum area specified in the development standard.

Circular PS 08-003 Variations to development standards, dated May 2008, confirmed those arrangements;

"To avoid any doubt, this notification does not vary existing notifications to councils for assumed concurrence of the Director-General in respect of applications under SEPP 1. "

There is tension between Circular PS 08-003, and PS08-014 - Reporting Variations to Development Standards dated 14 November 2008. PS08-014 states under 'further requirements' that provided that any development application which involve a SEPP 1 related to a departure greater than 10% from a development standard should be determined by Council.

On the face of the planning circular (PS-08-014), it is accepted that the requirement for any application seeking a variation greater than 10% in standards under SEPP 1 is a suggestion for 'good practice'. It is our view that this is not a fetter on Council or JRPP's assumed concurrence under clause 64 of the *Environment Planning and Assessment Regulation 2000* ("the Regulation") because PS 08-03 explicitly confers assumed concurrence.

Conclusion

The clause 4.6 does not seek to effect planning change that should be made under Part 3 of the Act. The exception is sought on the basis of the specific affectations being flooding and clearance for access by trucks. A better environmental outcome is achieved by the proposal by virtue of a better flood planning design and raising the ground floor ceiling heights to facilitate truck access off Canterbury Road and directly from Stacey Street.