



Clause 4.6 – Exceptions to Development Standards – Height of Buildings (Cl4.3)

Address: 168 Walker Street North Sydney – Proposed Mixed Use Development

1.0 Introduction

This is a written request to seek an exception to a development standard under clause 4.6 – Exceptions to Development Standards of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). The development standard for which the variation is sought is Clause 4.3 Height of Buildings under the NSLEP 2011.

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1');
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2'); and
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3').

The following sections of this written request demonstrate that the proposed development addresses the principles identified in the above judgements.

2.0 Description of the planning instrument, development standard and proposed variation

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

The North Sydney Local Environmental Plan 2011 (NSLEP2013).

2.2 What is the zoning of the land?

The zoning of the land is B4 Mixed Use.

2.3 What are the Objectives of the zone?

The objectives of the B4 Mixed Use Centre zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.*

2.4 What is the development standard being varied?

The development standard being varied is the height of buildings development standard.

2.5 Is the development standard a performance based control?

No. The development standard is a numerical control, expressed as a maximum RL.

2.6 Under what Clause is the development standard listed in the environmental planning instrument?

The development standard is listed under clause 4.3 of the NSLEP2013.

2.7 What are the objectives of the development standard?

The objectives of clause 4.3 are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

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

Clause 4.3 of the NSLEP 2013 establishes a maximum height control for the site as illustrated on the extract of the Height of Buildings Map included in Figure 1 and described below:



North Sydney Local Environmental Plan 2013

Height of Buildings Map - Sheet HOB_002A

Maximum Building Height (m)

L	8.5	S	24
K	10	T1	25
C	11	T2	26
M	12	U1	30
N	13	U2	33
Q1	15	W1	40
Q2	16	W2	42
Q1	19,15	X	49
Q2	20	Y	50

Maximum Building Height (RL m)

0 - 20
21 - 40
41 - 60
61 - 80
81 - 100
101 - 120
121 - 140
141 - 160
161 - 180
181 - 200

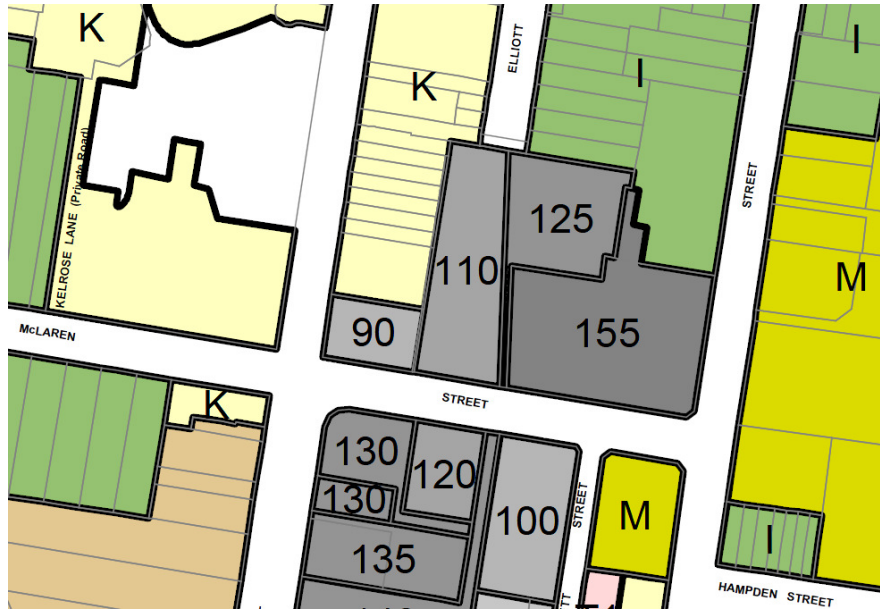


Figure 1: Extract from Height of Buildings Map – NSLEP 2013

The maximum height is expressed as RL 155. The ground levels across the site vary from approximately RL 70 to approximately RL 74.5. In the location of the building footprint the RL is assumed to be approximately RL 70, thereby limiting the building height to approximately 85m.

2.9 What is the proposed numeric value of the development standard in the development application?

The proposal varies in height from RL 147.44 to RL 167.46 as shown below in Figure 2. Note the Figure includes the RL maximum level as the red dashed line.

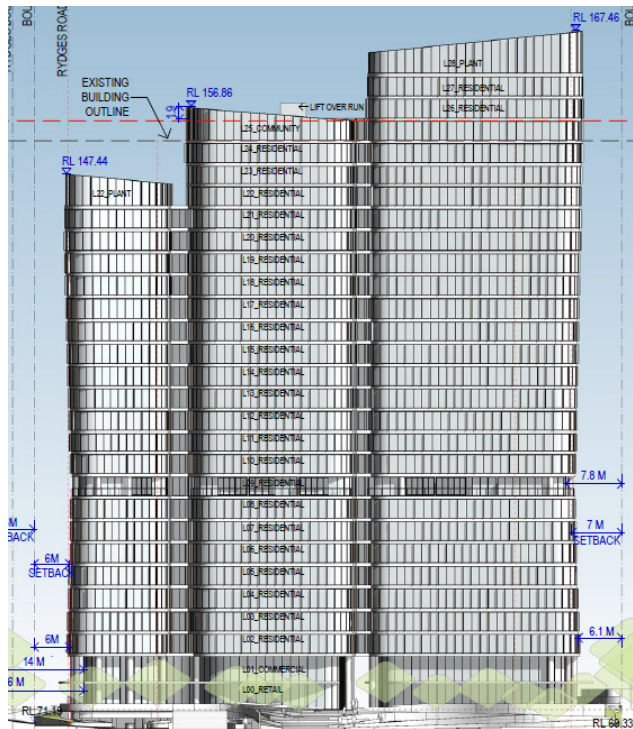


Figure 2: Non-compliance with height limit

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

The percentage of the variation to the absolute top point of the building is estimated to be 15.5%. This is to the section of the building referred to as "tower pod 3" as shown below in Figure 3.

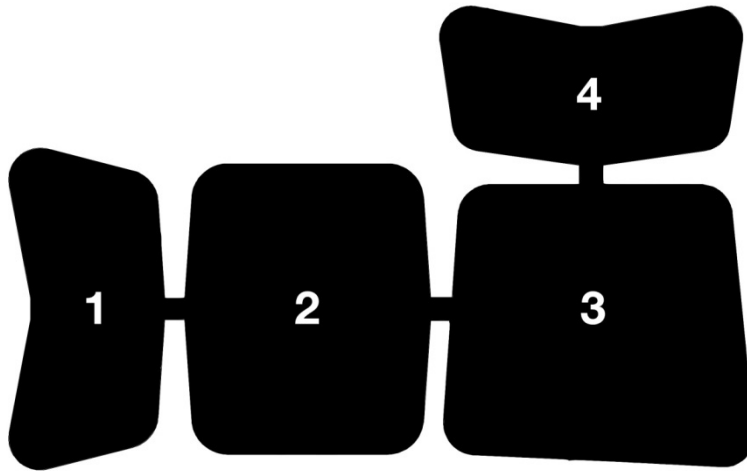


Figure 3: Location of the "tower pods"

Tower pod 2 does in part exceed the maximum RL but this component, to a maximum of RL 156.86, as shown in Figure 2 above. This minor component is considered to be an *architectural roof feature* as allowed under the provisions of Clause 5.6 of NSLEP 2013 and this component of the building is not required to be addressed by the Clause 4.6 variation request. Comments in relation to Clause 5.6 are provided below.

5.6 Architectural roof features

(1) *The objectives of this clause are as follows:*

(a) *to permit variations to maximum building height standards for roof features of visual interest,*

Comment: the section of roof on tower pod 2 is a sculptural element consistent with the architectural form of the both the overall roof of the building and the curvilinear form of the building. It is a feature of visual interest.

(b) *to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard,*

Comment: as described above the sculptured roof form is a decorative element and the remainder of the roof (tower pods 1 and 4 and a substantial part of 2) are contained within the maximum height standard.

(c) *to maintain solar access to new and existing buildings, public reserves and streets,*

Comment: the minor section of tower pod 2 has a negligible solar access impact.

(d) *to promote the retention and, if appropriate, sharing of existing views.*

Comment: the relevant section of roof will have no impact on views.

(2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.

(3) Development consent must not be granted to any such development unless the consent authority is satisfied that:

(a) the architectural roof feature:

(i) comprises a decorative element on the uppermost portion of a building, and

(ii) is not an advertising structure, and

(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and

(iv) will cause minimal overshadowing, and

Comment: as discussed above, the relevant section of roof is a decorative element. The section of roof will not be an advertising structure, does not include floor space or capable of being modified for such and will have negligible overshadowing impacts.

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

Comment: all plant is integrated into the roof design

Tower pods 1 and 4 are fully compliant with the maximum height standard and in fact are both substantially below the maximum, with the maximum variation below the standard being approximately 9%.

3.0 Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to clause 4.6 at 4.6(1) are as follows:

(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(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating 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.

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and clause 4.6(5) requires the Secretary in deciding whether to grant concurrence must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 ('Four2Five No 1');
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 ('Four2Five No 2'); and
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3').

The principles that stem from the relevant authorities may be summarised as follows:

- (a) The relevant objectives are those stated in the controls not unidentified underlying objectives at [57] in Four2Five No. 1;
- (b) That the sufficient environmental planning grounds have to be particular to the circumstances of the proposed development to the site at [60] in Four2Five No. 1; and
- (c) The five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* remain relevant however you need something more than way 1 in *Wehbe* to satisfy the unreasonable and unnecessary test in clause 4.6(3)(a) as that test is now encompassed in clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition.

Method 1 in *Wehbe* requires a demonstration that the objectives of the relevant development standard are achieved notwithstanding non-compliance with the numerical standard. As a result of Four2Five, it is now necessary to demonstrate something more than achieving the objective of the standard. A development that contravenes the development standard and as a result achieves the objective of the development standard to a greater degree than a development that complied with the standard, would suffice.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the height of buildings standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The additional height, i.e. above the height of buildings control, is sited and designed in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing, view loss or privacy impacts.

- There is minimal difference in the impacts between a building that strictly complies with height of buildings control including:
 - Visual and acoustic privacy impacts: The building achieves appropriate building separation, is arranged on the site in a manner to mitigate privacy impacts to the neighbouring properties. The higher elements of the building in tower pod 3 are substantially set back from the rear northern property boundary and therefore the interface with those properties and residential properties in Walker Street and will not generate any significant visual or privacy impacts. This built form is shown in Figure 5 below.
 - Visual impacts: Due to the non-complying components of the building being located on the south-eastern section of the site there is not a significant difference in visual impacts between the proposed building a complying building.

The reduced height, below the maximum RL, of tower pod 1, closest to the western boundary, and tower pod 4, closest to the northern boundary results in an improved outcome with the adjoining properties, with height redistributed to the corner pod 3. The design is a conscious effort to take away building height – compliant building height – from the sensitive side boundaries and redistribute this floor space and height on to the less sensitive section of the site.

The upper levels on tower pod 3, above the maximum RL contain 2 residential levels and building plant and represent floor space taken out of tower pods 1 and 4. The upper levels of tower pod 3 will not present as an imposing visual mass when viewed from the surrounding area, due to the setbacks of the building from McLaren and Walker Streets and the relatively modest increase in scale above a complying height.

A comparison between a height “compliant” built form, shown in Figure 4 and the proposal, shown in Figure 5 is shown below.

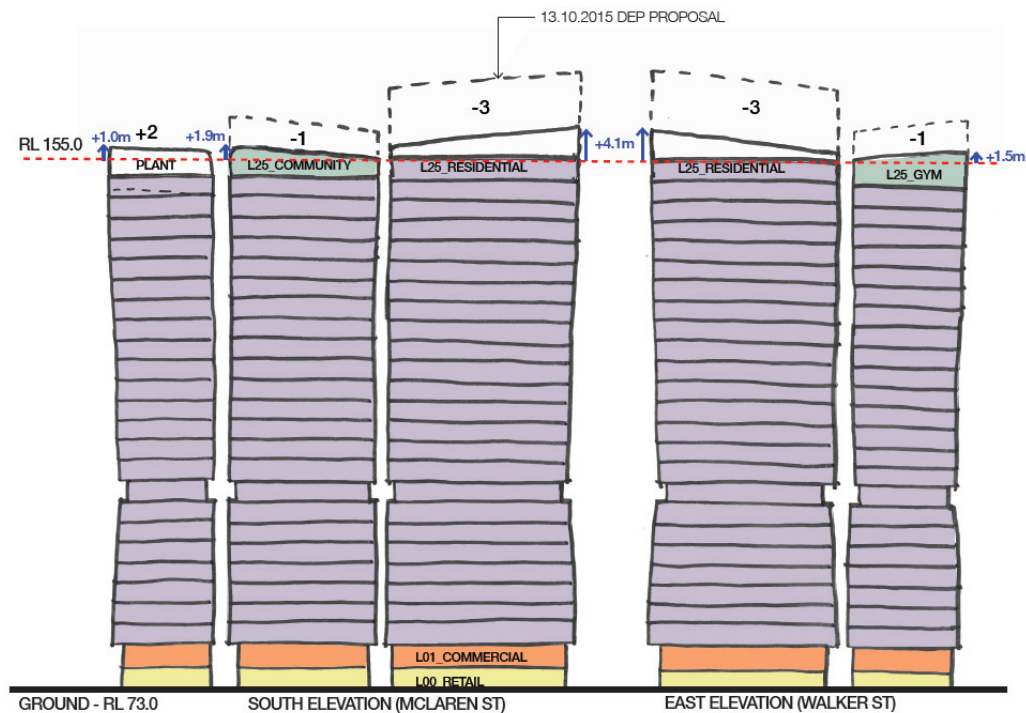


Figure 4: Indicative built form of a height compliant scheme

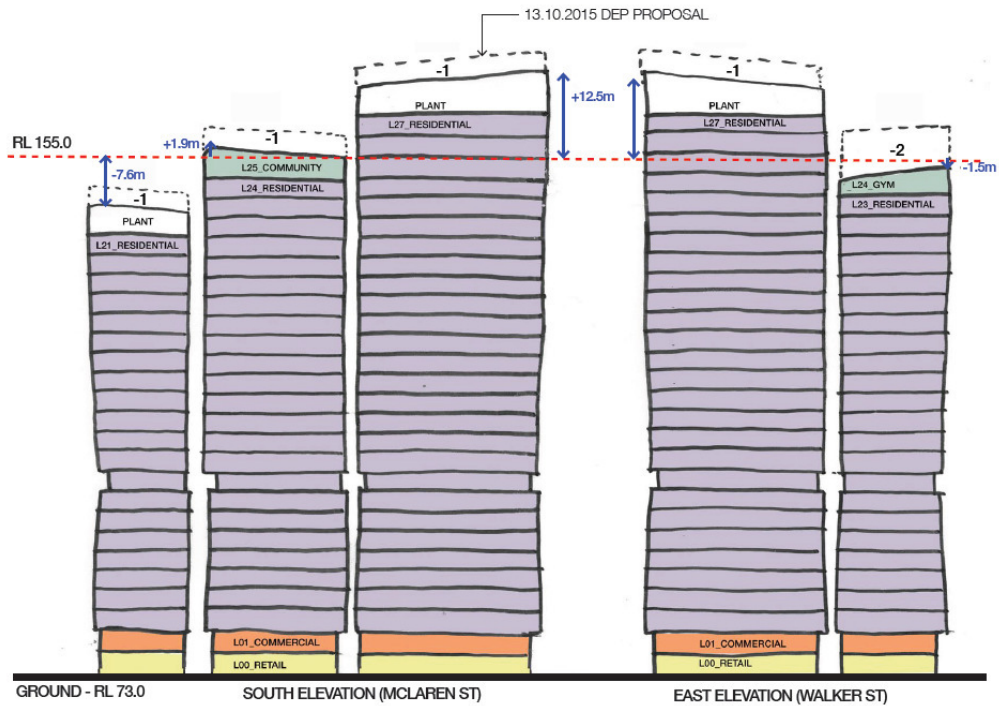


Figure 5: Height of proposed scheme.

- **Overshadowing impacts:** Due to the stepped and sculptured built form, with sections of building under and over the maximum height standard, there are moderately different overshadowing impacts as compared with a fully compliant building uniformly built to the maximum. The variation in building height across the site, with some sections of the building below the maximum height standard, and some above, results in some minor variations to a “compliant” shadow impact. The architectural drawing package includes detailed analysis, with the only potential impact on residential and public open space zoned land being to the east of the North Sydney centre. Information taken from the architectural drawings is included below in Figure 6.

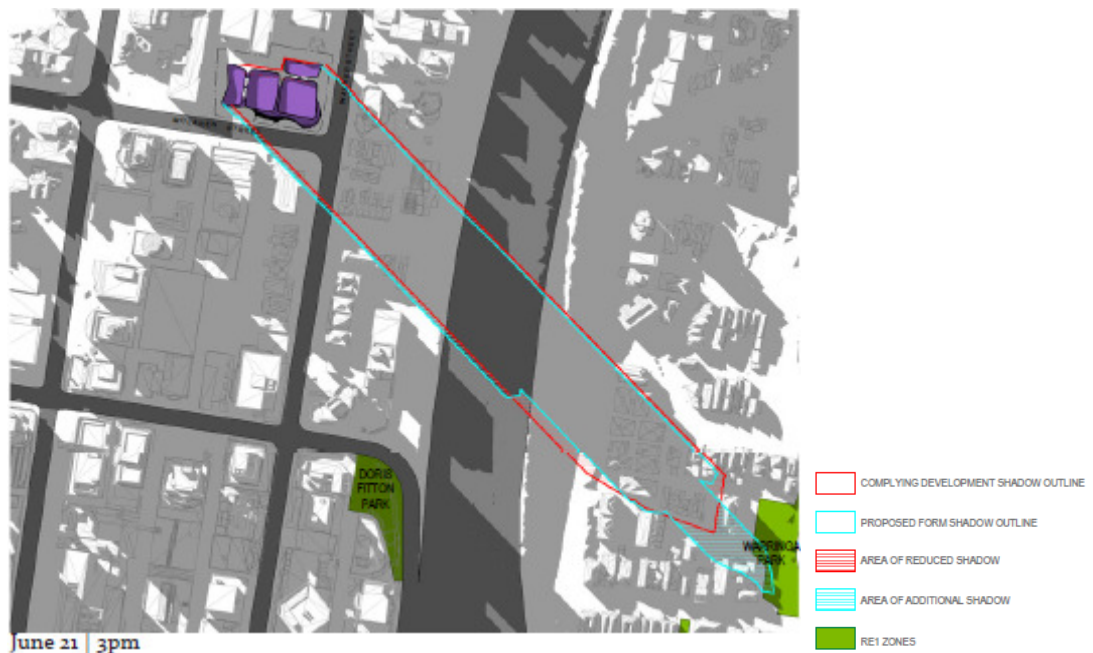


Figure 6: shadow diagram relating to residential area and public open space

The slightly extended shadow, resulting from that section of the building above the height standard, falls within existing shadows cast in the afternoon mid-winter. There is no net increase in shadow impact.

- View impacts: Given the height of the existing building on the site, relative to the height of surrounding development, there will be no direct impacts on major or significant views from surrounding properties from an increase in height above existing. There will be no direct view impacts from the one section of the building that is above the height development standard.

The increase in building footprint may impact on outlook and views across the site currently available to the Rydges Hotel to the north but any impact must be considered in the following context:

- The hotel site is “inboard” with no street frontage and tucked behind a number of properties, including the subject site.
- The hotel site relies entirely on borrowing amenity across property boundaries.
- The hotel is a commercial use and the consideration of view impacts is less sensitive than would otherwise exist for a residential building.
- Any view or outlook impacts result from a compliant footprint and built form on the subject site. The one area of height non-compliance on the corner of McLaren and Miller Streets has no additional impact.

To the west of the site is an existing low scale retirement village, with a concept building envelope approved. In the event that new development occurs at some stage in the future that is consistent in height and scale with the approved envelope then such development will sit well below the height of both the existing building and the proposed building. As a result, any development to the west is unlikely to be impacted.

- The level of non-compliance with the building height control is consistent with the variations contemplated and accepted by the consent authority with respect to approved development in the locality which vary the applicable height of buildings standard, particularly in cases where there are community facilities and building plant above the height standard. The Council has, through other development consents within the North Sydney Centre, demonstrated its acceptance to vary the development standard, with each of these variations specific to individual cases. As detailed within this request, the particular nature of the site warrants a variation to the height of buildings development standard.
- The development satisfies the objectives of the zone and the development standard.
- The proposal, inclusive of the height of buildings variation, is a superior planning outcome to what would be achieved by a strictly complying development.

3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

A development that strictly complied with the standard would likely result in a lesser urban design outcome. A development that strictly complied with the standard would likely result in a building uniform in height across the large site, which would not assist in breaking down the built form, particularly when viewed from McLaren Street to the south. A fully compliant scheme would result in a wall of built form stretching east-west along the site – a result similar to the monolithic building existing on the site.

3.2.3 Has the development standard been virtually abandoned or destroyed by the Council’s own actions in departing from the standard?

It cannot be said that the height of buildings development standard has been abandoned, however there are examples of approved development that exceed the height of buildings development standard within the vicinity of the site.

3.2.4 Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is appropriate for the site. The fundamental built form controls for the site are also generally appropriate, and with the exception of the departure of the building height, are met.

In this case it is the strict compliance with the maximum height for a section of the building that is proposed to be varied.

The resultant built form will be consistent with and not undermine the objectives of the B4 Mixed Use zone.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes. In the circumstances of the case, there are sufficient planning grounds to justify contravening the development standard.

Particular nature of the subject site – relationship of large corner site and neighbouring properties

The development site is considered to have site specific characteristics in relation to its large size and corner location, as well as having more sensitive land uses on only two property boundaries. Due to the large land area, the corner location, the orientation of the site, and the nature of the land uses bordering to the west (aged persons housing approved to increase in height and scale) and north (Wenona School), there is a capacity to redistribute “compliant” height away from the more sensitive boundaries and place this height on the south-east corner of the site.

The design response is a better planning outcome as it reduces built height and bulk away from the side boundaries, and relocates this height in a less sensitive location, in terms of impacts. The reduced height, below the maximum RL, of tower pod 1, closest to the western boundary, and tower pod 4, closest to the northern boundary results in an improved outcome with the adjoining properties, with height redistributed to the corner pod 3. The design is a conscious effort to take away building height – compliant building height – from the sensitive side boundaries and redistribute this floor space and height on to the less sensitive section of the site.

The upper levels on tower pod 3, above the maximum RL contain 2 residential levels and building plant and represent floor space taken out of tower pods 1 and 4. The upper levels of tower pod 3 will not present as an imposing visual mass when viewed from the surrounding area, due to the setbacks of the building from McLaren and Walker Streets and the relatively modest increase in scale above a complying height.

The design response does not result in any additional GFA or development yield, and in fact is slightly below a “height compliant” GFA.

Given the prominence of the corner of Walker and McLaren Streets, the design, with the additional height placed on this corner, also has the benefit of a built form landmark, reinforcing the prominent corner position.

As a result, the variation from the development standard results in both a better planning outcome and a superior architectural outcome specific to the site.

Complying development provides an inferior design and planning outcome

For the reasons stated above, a development that complies with the maximum standard would result in an inferior urban design and planning outcome for the site and the commercial centre.

A development could be designed to achieve compliance with the height of buildings standard and this would result in an inferior outcome for the site. It would result in greater built form in relation to the more sensitive side boundaries to the north and west. It would also result in a built form, when viewed from the public domain, that would be more monolithic in form, with a uniform building height, rather than the stepped and sculptured roof form proposed, contributing to breaking down the built form and providing a major new feature to the North Sydney skyline.

Summary

In summary, the development site is considered to have site specific characteristics that warrant the variation of the building height development standard in this case.

As detailed above, due to the large land area, the corner location, the orientation of the site, and the nature of the land uses bordering to the west (aged persons housing approved to increase in height and scale) and north (Wenona School), there is a capacity to redistribute “compliant” height away from the more sensitive boundaries and place this height on the south-east corner of the site.

The design response is a better planning outcome as it reduces built height and bulk away from the side boundaries, and relocates this height in a less sensitive location, in terms of impacts. The reduced height, below the maximum RL, of tower pod 1, closest to the western boundary, and tower pod 4, closest to the northern boundary results in an improved outcome with the adjoining properties, with height redistributed to the corner pod 3. The design is a conscious effort to take away building height – compliant building height – from the sensitive side boundaries and redistribute this floor space and height on to the less sensitive section of the site.

Requiring strict compliance with the building height standard will result in the proposed built form in tower pod 3, being two residential levels, being redistributed to tower pods 1 and 4 in locations closer to the adjoining and more sensitive side boundaries. It would be a response to achieving compliance with a control rather than what is best for the site and its circumstances.

The non-compliance with the standard does not result in a scale of building that is out of character with what would reasonably be expected or anticipated on the site under the current suite of planning controls and the Council would not be setting a precedent by varying the height control as proposed, given the specific circumstances of the site.

The development is a large and important site which can deliver design and planning excellence through the application of Clause 4.6 of NSLEP 2013.

3.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

3.4.1 Objectives of the height of buildings standard

The proposal remains consistent with the objectives of the height of buildings standard outlined in subclause 4.3(1) despite the non-compliance.

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The proposed built form will step on the sloping land in a form that mitigates potential built form impacts on neighbours to the north and west. At the ground level the building sensitively responds to the slope of the land on the prominent corner, integrating the retail level with McLaren Street and Walker Street.

(b) to promote the retention and, if appropriate, sharing of existing views,

There are limited if any residential views across the site, given the height of the existing building and the relationship to neighbouring and adjoining properties and buildings. The non-compliant component of the building does not, of itself, impact on views.

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

Solar access is maintained to residential dwellings on residential zoned land and to public open space. Those areas specifically protected within the North Sydney Centre under NSLEP 2013 are not impacted by any non-compliance.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The non-compliant component of the development has no direct impact on privacy of residents. The proposed variation to the standard will in fact reduce the extent of residential apartments closer to sensitive side boundaries.

(e) to ensure compatibility between development, particularly at zone boundaries,

The proposed variation to the height development standard will in fact better achieve this objective, redistributing height and floor space away from the interface with the SP2 zone adjoining to the north.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

For the reasons stated throughout this submission, the scale and form proposed, particularly with the building height increased on the prominent corner of McLaren and Walker Streets, is appropriate in the location and consistent with the intended future character of the area, expressed through the suite of planning controls for the site. The variation does not result in greater GFA or development density but instead redistributes development across the site in order to achieve a better planning outcome.

3.4.2 Objectives of the zone

The objectives of the B4 Mixed Use are addressed as follows:

- *To provide a mixture of compatible land uses.*

This objective is achieved and is in no way impacted by the proposed variation.

- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

This objective is achieved and is not undermined in any way by the proposed variation. The proposal includes integrated retail, commercial and residential development on the northern edge of the North Sydney Centre, close to transport and services, with North Sydney train station within 750m.

- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*

The development will make a significant contribution to the mixed use centre of North Sydney, creating an exceptional environment on the site, as well as very high amenity residential apartments.

- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

The proposal is a mixed use building incorporating retail and commercial uses at lower levels and residential above.

3.5 Whether contravention of the development stand raises any matter of significance for the State or regional Environmental Planning?

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions. The variation sought is responding to the site circumstances.

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

The objects set down in Section 5(a)(i) and (ii) are as follows:

“to encourage

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, 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 coordination of the orderly and economic use and development of land...”*

A strictly complying development would result in a poorer planning and urban design response to the overall site and the area generally and in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act.

Strict compliance with the development standard would not result in discernible benefits to the amenity of adjoining sites or the public and in fact would be an inferior outcome.

The development as proposed is consistent with the provisions of orderly and economic development and strict compliance with the standard is not required in order to achieve compliance with the objectives.

3.7 Is there public benefit in maintaining the development standard?

Generally speaking, there is public benefit in maintaining standards. However, there is public benefit in maintaining a degree of flexibility in specific circumstances.

In the current case, strict compliance with the height of buildings standard would result in a poorer planning and urban design outcome in respect to the presentation of the building to, and its relationship with adjoining sites and the public domain.

There is, in the specific circumstances of this case, no public benefit in strictly maintaining the development standard, as the proposed development results in a better planning outcome for the site and the locality.

3.8 Is the objection well founded?

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

The development does not hinder the attainment of the objects specified within clause 5(a)(i) and (ii) of the Act.

4.0 Conclusion

Development standards are a means of implementing planning purposes for a development or area. Development standards must also be read in conjunction with the operation of Clause 4.6, which allows for flexibility in the application of such standards.

The proposed height is considered appropriate to the context and circumstances of the site, and does not result in a scale of development that is out of character with the surrounding development and anticipated character of the locality.

Contextually, the proposal will provide a development of a scale, form and density that appropriately responds to the sites' location in the B4 Mixed Use zone.

For the reasons set out above, the proposed development, incorporating the variation to the height development standard, will be a better planning and design outcome due to the specific site circumstances.

The variation to the height standard does not result in any additional GFA or development yield and is proposed only for the purposes of superior planning and design outcomes.

The proposed development is considered to better satisfy the objectives of the zone and the development standard by resulting in a more appropriate development outcome.

This submission satisfies the provisions of 4.6(3)(a), 4.6(3)(b), 4.6(4)(a)(i) and 4.6(a)(ii) of the NLEP 2013 as it has been demonstrated that compliance with the height of buildings development standard is both unnecessary and unreasonable in the circumstances of this case, there is sufficient planning grounds to justify contravening the standard, the development will be in the public interest and it is consistent with the objectives of the standard and the objectives for development within the B4 Mixed Use zone.