

**CLAUSE 4.6 VARIATION
REQUEST
BURWOOD LEP 2012
CL. 4.3(2) BUILDING
HEIGHT**

**3 DEANE STREET
BURWOOD**

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

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1. INTRODUCTION

This clause 4.6 variation request has been prepared by Urbis Pty Ltd on behalf of Club Burwood RSL. This request has been prepared in support of a concept Development Application (DA) for 3 Deane Street, Burwood, being land bound by George Street, Shaftesbury Road, Deane Street and Marmaduke Street, Burwood (the site). The site excludes 63 Shaftesbury Road.

The concept DA seeks consent for a mixed-use development with a building envelope that exceeds the maximum 60 metre height standard prescribed by clause 4.3 of Burwood Local Environmental Plan 2012 ('BLEP 2012'). However, the proposal complies with the building height plane ('BHP') established under the provisions of clause 4.3A of BLEP 2012.

The proponent has received legal advice that a clause 4.6 variation request to Clause 4.3 Height of Buildings standard of BLEP 2012 is not required. This legal advice has been provided to Burwood Council (Council).

Notwithstanding this advice, Council has requested that a clause 4.6 variation request be supplied with the concept DA to seek a variation of the height of building control under clause 4.3. This written request has been prepared for abundant caution and seeks an exemption to the Height of Buildings standard applying to the site under the BLEP 2012.

2. ASSESSMENT FRAMEWORK

2.1. CLAUSE 4.6 OF BURWOOD LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.6 of BLEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

to provide an appropriate degree of flexibility in applying certain development standards to particular development, to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- a) *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) *There are sufficient environmental planning grounds to justify contravening the development standard.*

Furthermore, the consent authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018.

This written clause 4.6 request justifies the non-compliance with the Height of Building development standard applicable to the site under clause 4.3 of BLEP 2012...

2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements have addressed the manner in which variations to development standards are required to be approached.

The correct approach to preparing and dealing with a request under clause 4.6 is summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

*[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of*

satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

- [15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- [16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.
- [17] The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
- [18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].
- [19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
- [20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
- [21] A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
- [22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
- [23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.
- [24] The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental

planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

- [25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant’s written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
- [26] The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant’s written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
- [27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
- [28] The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the *Planning Circular PS 18-003* issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.
- [29] On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the *Court Act*. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].

3. SITE AND LOCALITY

3.1. SITE ANALYSIS

The site has an area of 9,248sqm and is bound by George Street to the north, Shaftesbury Road to the east, Deane Street to the south and Marmaduke Street to the west. The site includes the area of Waimea Street that is now closed and Marmaduke Street adjacent to the site that has been closed. The site excludes 63 Shaftesbury Road.

The street address and legal description is identified within **Table 1**. An aerial photograph is provided as **Figure 1**

Table 1 – Site Details

Street Address	Legal Description
3 Deane Street Burwood	Lot 30 in DP1231727

Figure 1 – Aerial Photograph of the Subject Site



Source: Nearmap, Urbis

The site is presently occupied by detached dwelling houses and two and three storey residential flat buildings (RFBs). A Scout Hall is located at 17 Waimea Street and a former library is located at 2- 4 Marmaduke Street. The buildings will be demolished to facilitate the future development of the site.

A detailed description of the site is provided in the addendum Statement of Environmental Effects prepared by Urbis, accompanying the submitted development application.

3.2. SURROUNDING CONTEXT

The surrounding locality is characterised by a mix of land uses and architectural styles. The Burwood Town Centre is currently experiencing significant renewal and redevelopment, predominantly comprising mixed use commercial and high density residential development.

The site is surrounded by the following:

To the north of the site are a number of medium density residential buildings. Further north is Westfield Burwood.

To the east of the site are a number of low density residential uses that reside outside the Burwood Town Centre. Immediately to the east of the site is 63 Shaftesbury Road, comprising a brick and tile three storey RFB.

To the south of the site is the railway reservation.

To the west of the site is Burwood Railway Station and the Burwood Town Centre, including shop top housing fronting Burwood Road and number of large scale commercial and residential developments.

4. THE PROPOSED DEVELOPMENT

4.1. DEVELOPMENT OVERVIEW

Pursuant to section 4.22 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the concept DA seeks approval for the mixed-use redevelopment of the site including:

- Uses including registered club, hotel or motel accommodation, commercial premises, entertainment facilities, function centre and recreation facility (indoor);
- Building envelope associated with the podium;
- Building envelope for one tower above the podium, with a maximum height of 94.66 metres;
- Maximum GFA across the site of 37,173sqm;
- Vehicle access points; and
- A maximum of 1,250 car spaces provided within the basement envelope.

The concept DA does not seek approval for:

- Any works, including demolition, excavation, construction and public domain improvements;
- The final arrangement of land uses;
- Layout, mix or number of hotel rooms;
- The design of the building exteriors including facades and roofs; and
- Public domain and landscape design.

Separate Stage 2 DAs will be prepared and submitted to undertake physical works on site.

4.2. URBAN DESIGN AND AMENITY

4.2.1. Scale of the Podium and Tower

The Project Team have engaged in extensive consultation with Burwood Council staff and their Urban Design Consultant, GMU. During the pre-lodgement consultation, and in multiple post lodgement discussions, Council staff and GMU have encouraged the delivery of a tall slender tower, as opposed to multiple tower forms or one tower with a large floorplate.

The variation to the 60m height of building standard facilitates a taller, more slender tower to be provided on the site. Strict compliance with the height of building standard would necessitate the reallocation of permissible floorspace to the lower levels. This would result in an increase in the length and width of the tower delivering larger floorplates. Alternatively, this GFA could be redistributed within a second tower. However, both of these outcomes are not considered the optimal outcome for the site as it would increase the overall bulk and scale of the proposal.

The concept design submitted with the concept DA provides podium/tower height proportion of 1:3 to 1:4. The uses within the podium require greater floor to ceiling heights (i.e. conference and auditorium facilities) than typical commercial or residential use. As such, an average 20m podium height is proposed. A tower that exceeds the 60m height of building development standard better achieves the podium to tower proportions suitable for the site.

The proposed massing strategy has been and been informed by the building height plane under clause 4.3A of BLP 2012. The envelope for the concept DA is contained within the angled height plane established under clause 4.3A. Compliance with the angled height plane mitigates potential adverse impacts on residents living adjacent to the Burwood Town Centre and ensure adequate solar access is maintained.

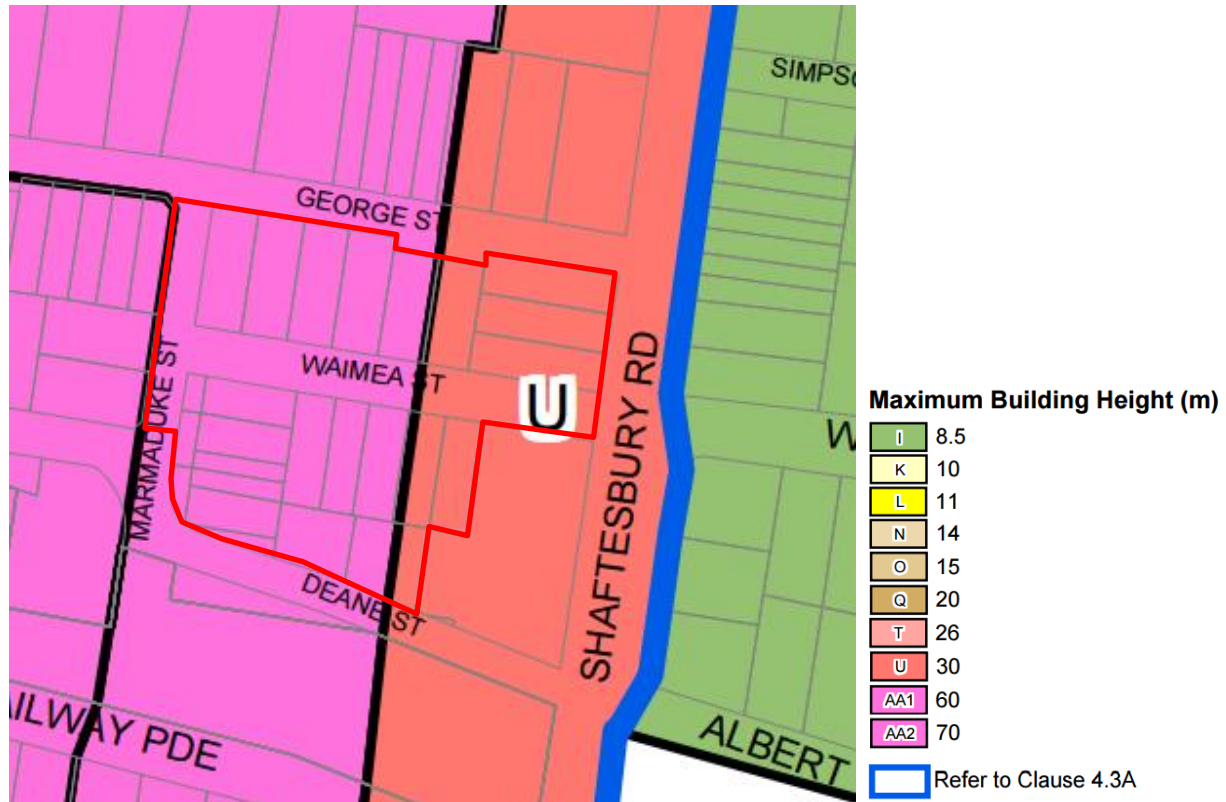
5. DEVELOPMENT STANDARD

Clause 4.3 (2) of BLEP 2012 states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

As shown at Figure 2, the Height of Buildings Map sets a maximum height standard of 30m in the eastern portion and a 60m in the western portion of the site.

Figure 2 – Height of Buildings Map Extract



Source: BLEP 2012

The Site

The site is also subject to clause 4.3A of BLEP 2012. Clause 4.3A requires that the height of buildings on the site is not to exceed the building height plane established by the projection of a 36-degree angle cast one metre above the existing ground level on the eastern side of Shaftesbury Road, stating:

(2) Despite clause 4.3, the height of a building on land marked "Area A" on the Height of Buildings Map is not to exceed the building height plane for that land.

6. EXTENT OF CONTRAVENTION

6.1. VARIATION TO MAXIMUM BUILDING HEIGHT

The height of the proposed building envelope is described in **Table 1** and shown in **Figure 2**.

This demonstrates that the proposal complies with the 30m height control for the building podium. However, the proposed envelope exceeds the 60m height control established under clause 4.3 of BLEP 2012.

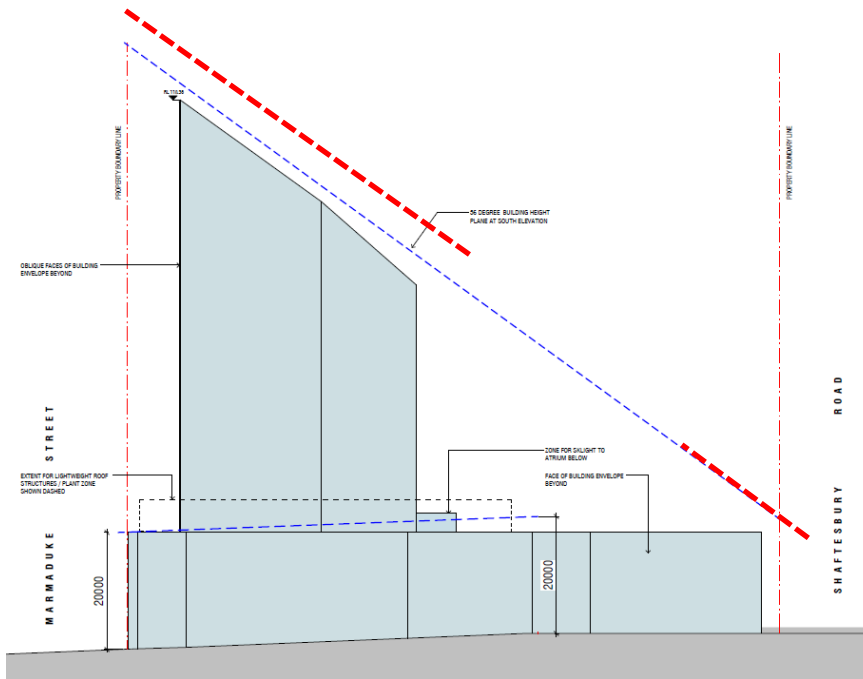
Notwithstanding the variation to the 60m control, compliance is achieved with the building height plane established under clause 4.3A (shown in red in **Figure 2**).

Table 2 – Height Summary

Component	Height of Buildings Control	Maximum Height of Proposed Envelope (m)	Variation
Podium	30m	25.25m	Complies
Tower	60m	92.06m- 94.66m	32.06m – 34.66m

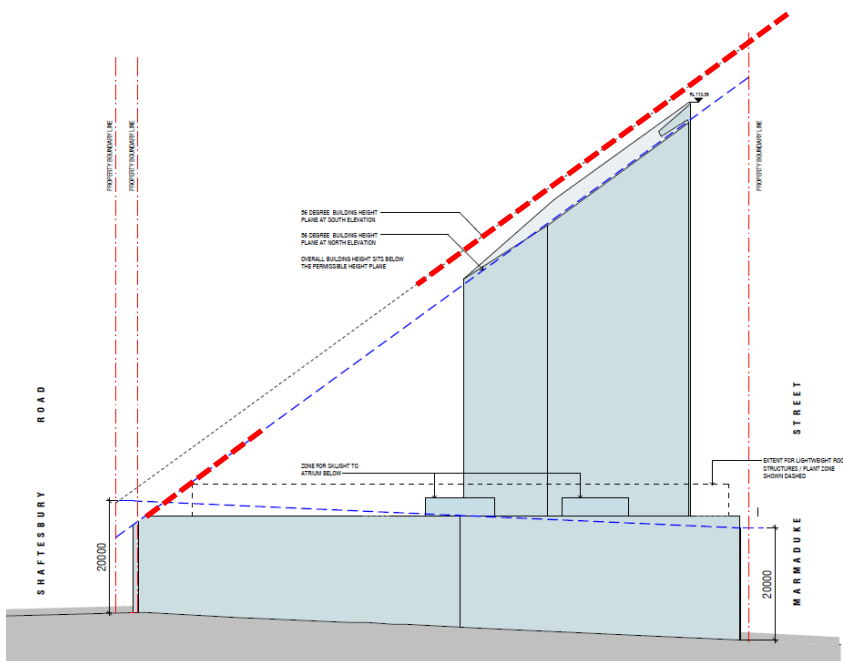
Extracts of the Building Control Drawing set are provided in the figures on the following pages.

Figure 3 – Proposed Building Envelope Elevations



Picture 1 – South Elevation

Source: Buchan



Picture 2 – North Elevation

Source: Buchan

7. CLAUSE 4.6 VARIATION REQUEST: HEIGHT OF BUILDINGS

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum height of buildings in accordance with Clause 4.6 of BLEP 2012.

7.1. CLAUSE 4.3 HEIGHT OF BUILDINGS

The maximum height of buildings development standard under BLEP 2012 is 30m in the eastern portion and 60m in the western portion of the site.

The objectives of the height of buildings development standard as per subclause 4.3(1) of BLEP 2012 are as follows:

- a) *To establish the maximum height of buildings to encourage medium density development in specified areas and maintain Burwood's low density character in other areas.*
- b) *To control the potentially adverse impacts of building height on adjoining areas.*

7.2. KEY QUESTIONS

Is the Planning Control a Development Standard?

The maximum height of buildings control prescribed under Clause 4.3 of the BLEP 2012 is a development standard capable of being varied under Clause 4.6 of BLEP 2012.

Is the Development Standard Excluded from the Operation of Clause 4.6?

The proposed variation to the maximum building height control is not excluded from the operation of clause 4.6(8). However, clause 4.6 cannot be used to justify a non-compliance with the angled height building plane established under clause 4.3A(2). No variation of the height plane control is sought.

What is the Underlying Object or Purpose of the Standard?

The objectives of the height of buildings standard of BLEP 2012 are set out above in Section 7.1. The underlying object or purpose of the development standard is to provide a built form that is compatible with the scale and character of surrounding development and avoids detrimental impacts on the amenity of the locality.

7.3. CONSIDERATION

7.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the 'five-part test' outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. These tests are outlined above in Section 2.2 (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests or 'ways'. **It may be sufficient to establish only one way**, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way

The development is justified against three of the Wehbe tests as set out below.

Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard

. The proposed development achieves the objectives of the development standard despite the non-compliance for the following reasons:

- High density development has been encouraged in this part of the Burwood Town Centre. The height proposed by the concept DA is compatible with the scale and character of existing and likely future development in the vicinity of the site;
- The Burwood Town Centre is transitioning into a high density mixed use area. This proposal is consistent with the desired future character of the area. Sites to the north and west of the site will inevitably undergo transition to higher density development.
- The proposed concept DA envelope is contained within the angled height plane established under clause 4.3A of BLEP 2012. The objectives of the angled height plane, as stated in clause 4.3A (1) are to mitigate any adverse impacts on the amenity of residents living adjacent to the Burwood Town Centre and ensure adequate solar access is maintained. Compliance with the angled height plane mitigates potential adverse impacts.
- The tower has been located within the western half of the site, the Burwood Town Centre. The additional shadow cast by the part of the building that exceeds the 60m height control predominantly falls onto the railway reservation.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not relied upon.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

The underlying object or purpose of the development standard is to provide a built form that is compatible with the scale and character of surrounding development and avoids detrimental impacts on the amenity of the locality.

The proposal complies with the FSR control established under clause 4.4 of BLEP 2012. If strict numerical compliance with Clause 4.3 of BLEP 2012 was required, the gross floor area(GFA) would be required to be reallocated to the lower levels. This would result in an increase in the length and width of the tower form by necessitating larger floorplates. Alternatively, the potential of the site would not be achieved if strict compliance was required

This outcome would thwart the objective of the development standard, in that it would increase the bulk and scale of the proposal and would result in additional adverse environmental impacts on surrounding sites.

Test 4: The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Council and the Sydney Eastern City Planning Panel (formerly known as the Joint Regional Planning Panel) have supported and/or approved development applications with similar building height variations, including:

- o 18-29 George and 9-15 Deane Street - 21.4% variation
- o 121-123 Burwood Road – 13.14% variation
- o 29 George Street - 38.3% variation

The proposed development is considered compatible and consistent with the likely future development within the locality and compliance is considered unnecessary and unreasonable in the circumstances of the case.

Whilst the development standard has not been abandoned or destroyed, consent has been granted to developments within the Burwood Town Centre that exceed the height of buildings control including:

Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary

Not relied upon.

7.3.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

The proposed variation does not result in any significant adverse environmental impacts. There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including the following:

Compliance with Floor Space Ratio (FSR) Control

- The proposed height variation allows achievement of the planned density for the site. The proposal complies with the FSR control established under clause 4.4 of BLEP 2012. The Conceptual Architectural Drawings prepared by The Buchan Group (Buchan) demonstrate that the proposed Control Drawings can accommodate the built form envisaged for the site.

Compliance with Angled Height Plane (Clause 4.3A)

- The proposed podium and tower envelopes are located below the angled height plane established under clause 4.3A of BLEP 2012. The building height plane identifies an acceptable maximum height limit which may be considered for sites within the Burwood Town Centre.
- The building height plane, as it applies to the site, has been established to protect the amenity of the R2 Low Density Residential properties to the east of Shaftesbury Road. Compliance with the angled height plane will ensure the amenity of residents in the lower density residential areas to the east and south (on opposite side of the railway line) will be protected.

Overshadowing

- The shadow diagrams submitted to support the Stage 1 DA demonstrate the additional impacts resulting from the component of the building that exceeds the 60m height control. The following observations are made:
 - Between 9am and 11am additional shadow falls on the mixed use/residential buildings to the south-west. However, solar access is available to these properties between 12noon and 3pm.
 - From 12noon to 3pm, most of the additional shadow falls onto the railway reservation or street.
- The shadow generated from the portion of the building that exceeds the height of buildings control will not significantly impact the amenity of surrounding residential properties. As described previously, compliance with the building height plane will ensure that solar access on properties to the east of Shaftesbury Road is mitigated.

Visual Impact

- As described in section 4.2 the height variation allows for a taller, slender tower to be provided. This is considered an improved urban design outcome than if the proposal were to strictly comply with the 60m height control and still achieve the planned density.

Amenity

- The height variation permits a greater degree of separation to the neighbouring residential flat building (RFB) than might otherwise be achieved under an envelope that complied with the height control and achieved the maximum permissible FSR.

Traffic

- There are no additional traffic impacts associated with the variation as the maximum permissible GFA has not been exceeded.

In conclusion, there are sufficient environmental planning grounds to justify the contravention of the development standard.

7.3.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

The proposed development is consistent with the objectives of the development standard as outlined within **Section 7.3.1.**

The site is located within B4 Mixed Use Zone. The objectives of the B4 Mixed Use zone in the BLEP 2012 are considered within **Table 3.**

Table 3 – Assessment of Compliance with Land Use Zone Objectives

Objective	Compliance Assessment
<i>To provide a mixture of compatible land uses.</i>	<ul style="list-style-type: none">The proposal provides a genuine mixed use development with compatible land uses. Separate entries for the registered club and hotel uses are provided for in the indicative architectural drawings.
<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<ul style="list-style-type: none">Public transport patronage, walking and cycling will be encouraged through the colocation of employment and entertainment facilities within the Burwood Town CentreThe proposal is a high quality urban design outcome and aligns with the strategic importance of the Burwood Town Centre as a “strategic centre”.

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

7.3.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the maximum height of building development standard 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.

7.3.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

No public benefit will be achieved by maintaining the height control. The proposed development achieves the objectives of the building height development standard and the land use zoning objectives despite the numerical non-compliance.

The increase in building height will result in an improved urban design outcome by permitting a more slender tower envelope than would otherwise be achieved under a scheme that complied with the maximum FSR and height controls. It has also been demonstrated that the proposed variation will not result in an adverse environmental impact on the neighbourhood amenity.

Overall, it is considered that the proposal will result in a superior outcome for the site and the surrounding land and there would be no public benefit in maintaining the development standard.

7.3.6. 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. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

APPENDIX A HEIGHT CONTROL DIAGRAMS



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