

Cl. 4.6 of Blacktown Local Environmental Plan 2015  
Request to Vary the Maximum Building Height  
Development Standard

Proposed Shop Top Housing Development  
47-67 Rooty Hill Road North, Rooty Hill



Prepared by  
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For  
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November 2020

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*Signed:*

A handwritten signature in black ink, appearing to read 'Michael Gheorghiu', written in a cursive style.

*Date:*

11 November 2020

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# 1 Introduction

## 1.1 Overview

This Clause 4.6 of *Blacktown Local Environmental Plan 2015* (LEP) exceptions to development standards report (**Clause 4.6 Report**), requests a variation to the maximum building height development standard of 14 metres, for the proposed development located at 47-67 Rooty Hill Road North, Rooty Hill (**Site**). This Clause 4.6 Report supports the Statement of Environmental Effects (**SEE**) report, which has been prepared on behalf of JS Architects Pty Ltd (**JS Architects**).

This Clause 4.6 Report and SEE include an assessment of the proposed works in terms of the matters for consideration as listed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (NSW) (**the Act**) and Clause 50 of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**the Regulations**).

The preparation of this Clause 4.6 Report and supporting SEE, has relied upon the adequacy and accuracy of supporting architectural plans prepared by JS Architects in support of the development.

## 1.2 Clause 4.6 of the LEP

Clause 4.6 of the LEP provides the mechanism to vary development standards, which states:

*"4.6 Exceptions to development standards*

- (1) The objectives of this clause 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.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless—*
  - (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*

*(b) the concurrence of the Planning Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Planning Secretary 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 Planning Secretary before granting concurrence."*



## 2 The Site

This section of the report provides a review of the subject site.

## 2.1 Site Location

The site is located at 249, 259 & 271 Railway Terrace, Schofields. The site is in proximity to the following centres:

- Approximately 230 metres to the Rooty Hill Train Station;
- Approximately 2 kilometres to Mount Druitt Train Station;
- Approximately 6 kilometres from the Blacktown Town Centre, The train journey from Rooty Hill Station to Blacktown Station is approximately is 7 minutes; and
- Within 15 kilometres of the Parramatta City Centre. The train journey from Rooty Hill Station to Blacktown Station is approximately is 20 minutes.

The subject site including adjoining lands along Rooty Hill Road North is zoned for local business uses.

Refer to Figure 1 and 2 for the site's local context and Figure 3 for the site in its regional context. Also refer to Figure 4 for the site's location in relation to the future existing railway transport infrastructure.



Figure 1. Subject site



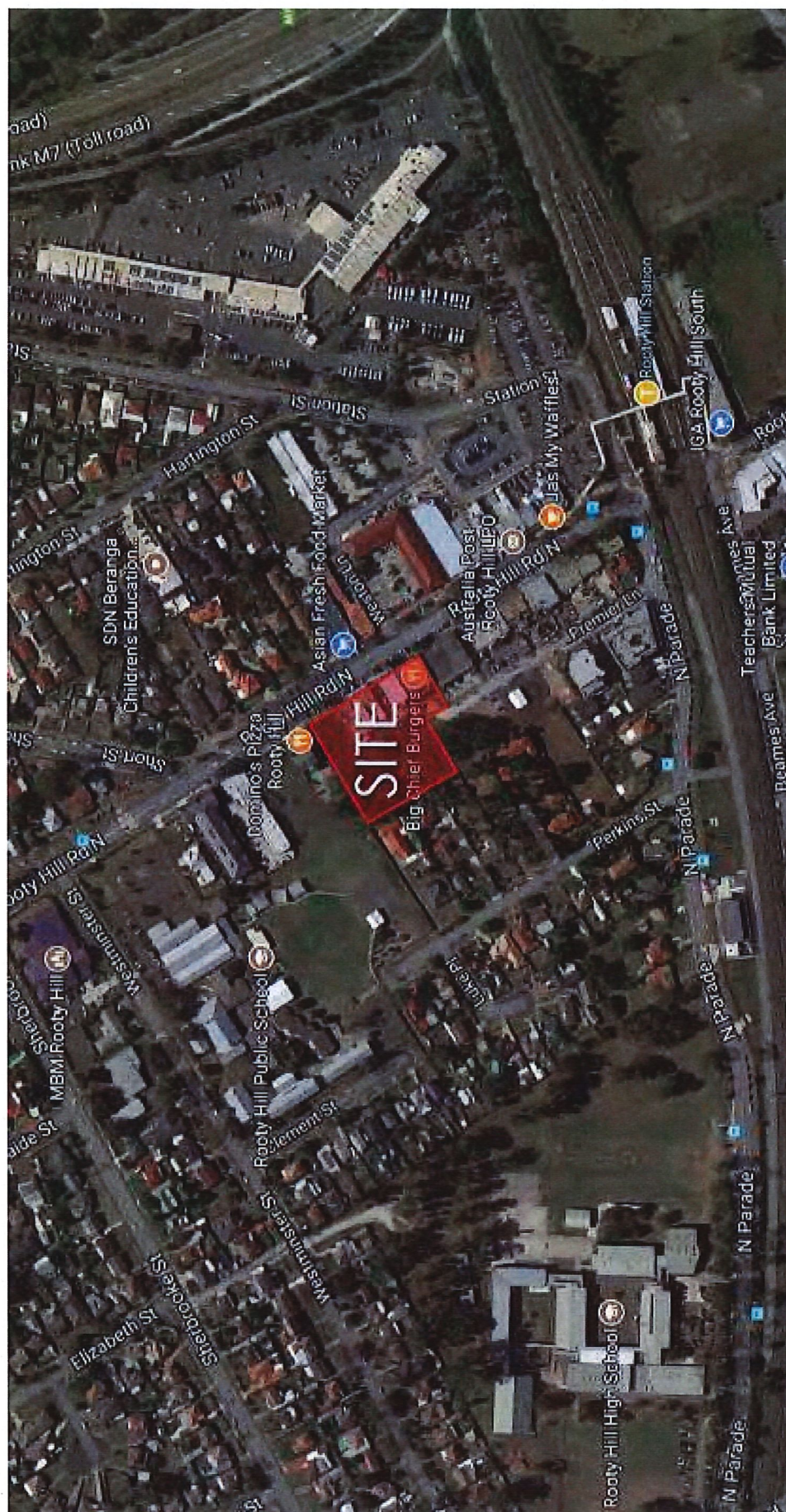


Figure 2. Subject site in its Town Centre context



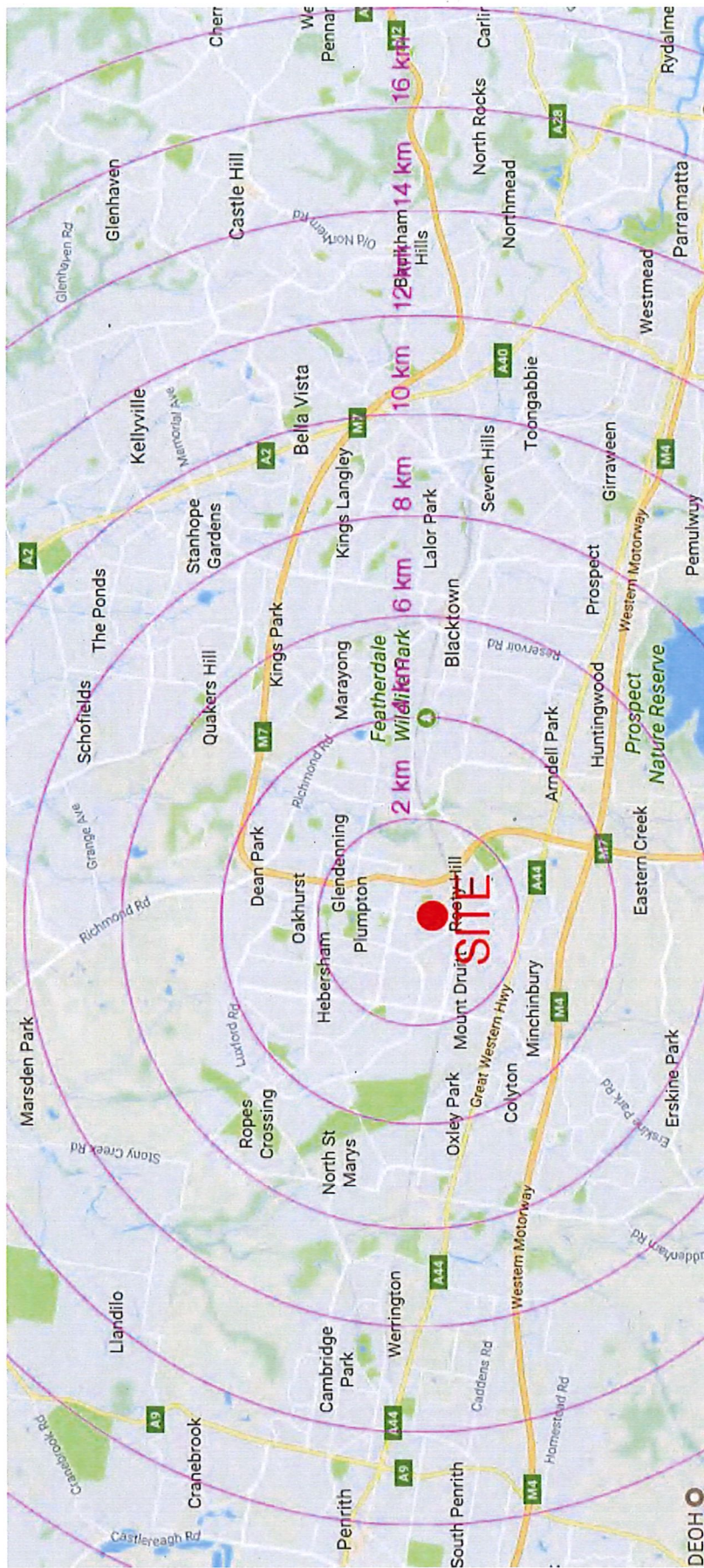
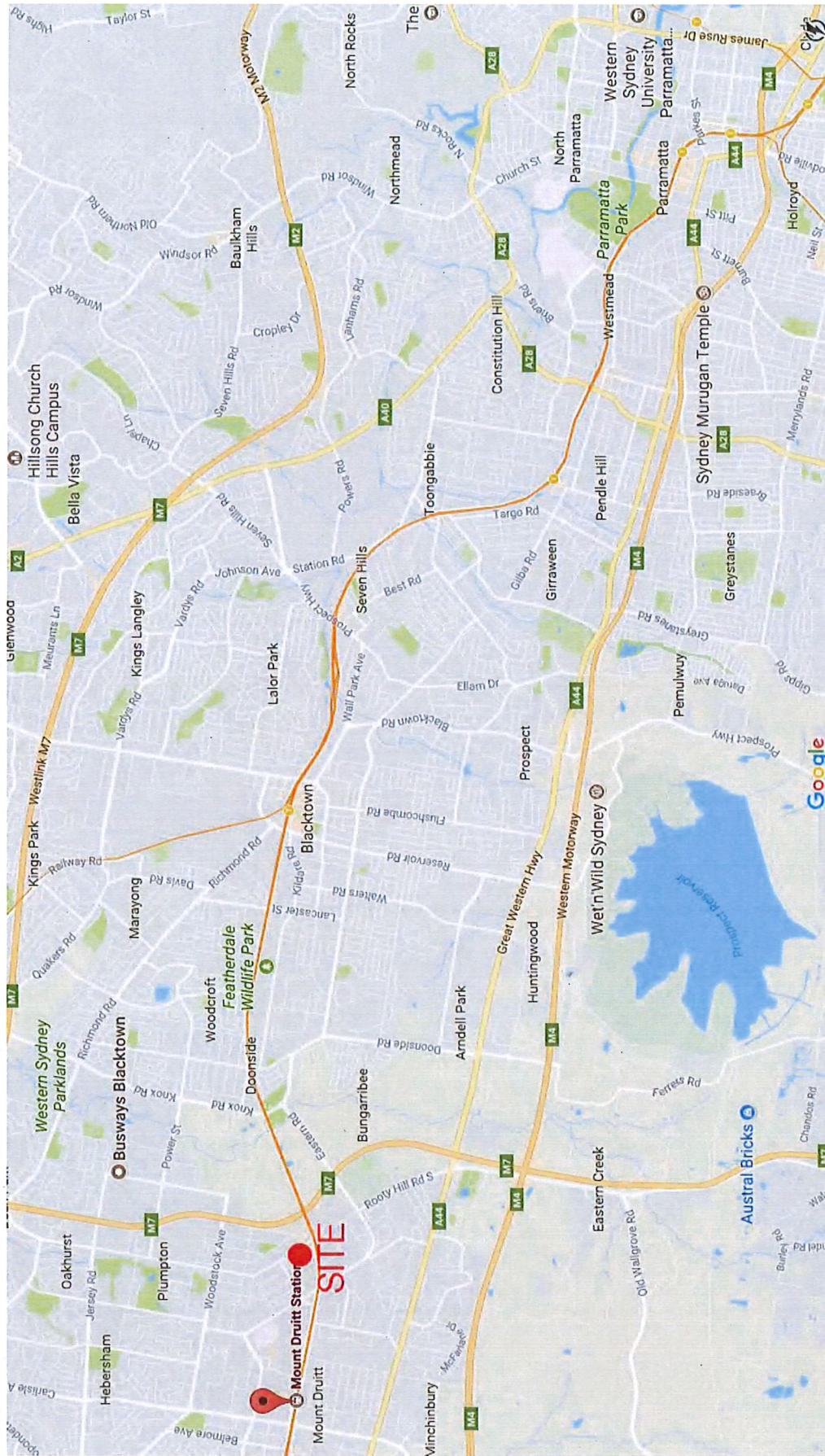


Figure 3. Subject site in its regional context





NB: Site located on T1 Railway Line identified by orange coloured line.

Figure 4. Subject site proximity to railway line

## 2.2 Site Description

The site comprises three allotments. Currently, the site consists of the following:

- 47 Rooty Hill Road North - two storey brick building, retail shop front with residential uses above;
- 53 Rooty Hill Road North - two storey brick building, retail shop front with residential uses above;
- 59 Rooty Hill Road North – two storey brick building, retail shop front with residential uses above; and
- 67 Rooty Hill Road North – vacant land

The site is in an older town centre area that is in desperate need of revitalisation.

The site is generally flat and includes a strip of shops along the Rooty Hill Road North streetscape. The streetscape appears tired of a 1970s or 1980s design, with a redeeming quality being the large trees lining the streetscape.

Table 1 provides additional details of the site.

Table 1. Site Description

Property	Details
Legal Description	
47 Rooty Hill Road North	Lot 1 DP875266
53 Rooty Hill Road North	Lot A DP399706
59 Rooty Hill Road North	Lot 60B DP361039
67 Rooty Hill Road North	Lot 60A DP361039
Site Area	Total = 6,387sqm
47 Rooty Hill Road North	787 sqm
53 Rooty Hill Road North	1,569 sqm
59 Rooty Hill Road North	2,041 sqm
67 Rooty Hill Road North	1,990 sqm
Site Frontage	The following are approximate dimensions:
47 Rooty Hill Road North	20 metres
53 Rooty Hill Road North	20 metres
59 Rooty Hill Road North	25.5 metres
67 Rooty Hill Road North	25 metres
Site Length	The following are approximate dimensions:
47 Rooty Hill Road North	40 metres
53 Rooty Hill Road North	80 metres
59 Rooty Hill Road North	80 metres
67 Rooty Hill Road North	80 metres



## 3 The Proposal

This section describes the proposed development designed by JS Architects. Refer to architectural plans prepared by JS Architects Pty Ltd for design details of the proposal.

### 3.1 Proposed Development

#### General

The proposed development is for a shop top housing development. Generally, the following works are proposed:

- Site preparation works for construction including demolition;
- Construction of the following:

#### Retail Suites

- Total – 13 suites
- Block A – 9 suites
- Block B – 4 suites

#### Residential Units

- Total – 69 units
- Unit Block A – 42 units
- Unit Block B – 27 units

#### Car Parking

- Total – 215 car parking spaces
- Block A - 140 car parking spaces
- Block B – 75 car parking spaces
- Associated civil engineering works; and
- Associated landscaping works.

#### Proposed Building Height

The maximum building height development standard that applies to the site is 14 metres as identified in the *Blacktown Local Environmental Plan 2015*. The proposal does not comply with maximum building height development standard. The non-compliances are generated by the lift overrun, roof level entry lobby, roof parapet encroachments. Refer to Section 5 of this report for details of non-compliances.



## 4 Development Standards

The key environmental planning instrument (EPI) and relevant section of the EPI that applies to the site is *Blacktown Local Environmental Plan 2015 (LEP)*. In accordance with Clause 4.3 of the LEP the maximum building height is 14 metres.

## 5 Proposed Variation

The proposed development seeks an exception to the maximum building height of 14 metres in the Growth Centres SEPP. The non-compliances are generated by the lift overrun, roof level entry lobby, roof parapet encroachments and part of the western end of the proposal directly facing Rooty Hill Road North, including solid awning style architectural feature.

Refer to Figures 5 to 10 that show the elements of the proposal that exceed the maximum building height limit.

Table 2 below identifies the degree of exceedance of the building height. Note that the ground level varies for both blocks, whereby Block A ranges from RL41.50 to RL42.45, while Block B ranges from RL41.98 to RL43.00. The 14 metre maximum building height controls varies with the existing ground level.

Table 2. Building Height Exceedance Summary

Element	Height above development standard	% Difference of 14m HOB
Parapet	Level = RL57.10	
Block A	Range from 0.6m to 1.6m	4.2% to 11.4%
Block B	Range from 0.5m to 1.2m	3.5% to 8.5%
Fire stairs	Level = RL59.10	
Block A (north end)	2.55 metres	18.2%
Block A (south end)	3.1 metres	22.1%
Block B	2.6 metres (RL57.30)	18.5%
Lift overrun	Level = RL60.00	
Block A (north end)	3.2 metres	22.8%
Block A (south end)	4.3 metres	30.7%
Block B	3.3 metres (RL60.20)	23.5%

It is considered that the non-compliances are acceptable for the site because:

- The location of the non-complying built form is not visible from the street;
- The major non-compliances are located towards the centre of the proposal and well setback from the building edge of each proposed block;
- The roof common open space offers high quality residential amenity; and
- The proposed non-compliances are not considered to generate any adverse environmental impacts.



Figure 5. West elevation – Block A – showing area exceeding maximum building height control



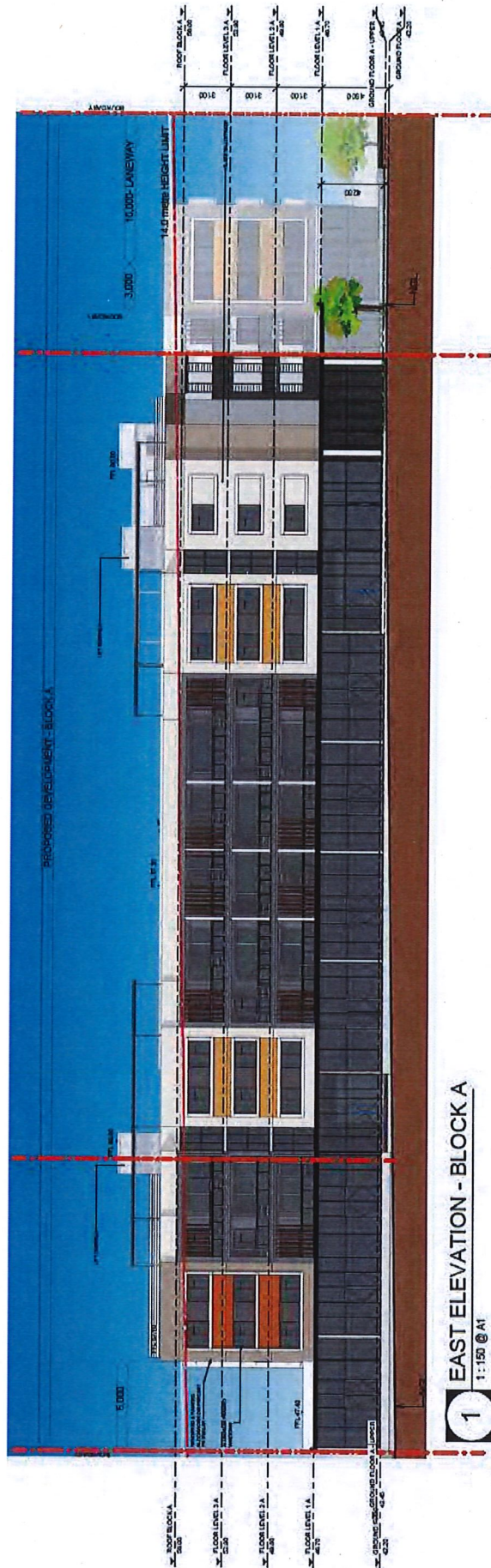


Figure 6. East elevation – Block A – showing area exceeding maximum building height control



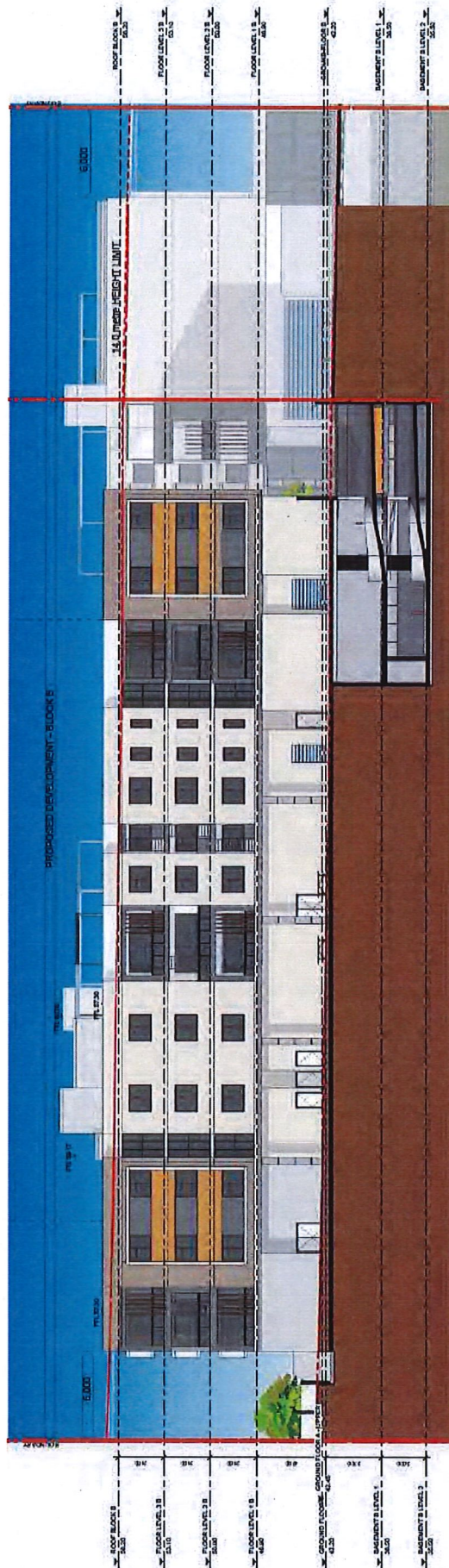
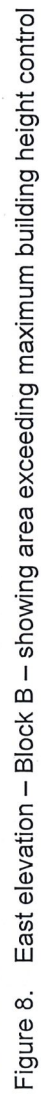


Figure 7. West elevation – Block B – showing area exceeding maximum building height control







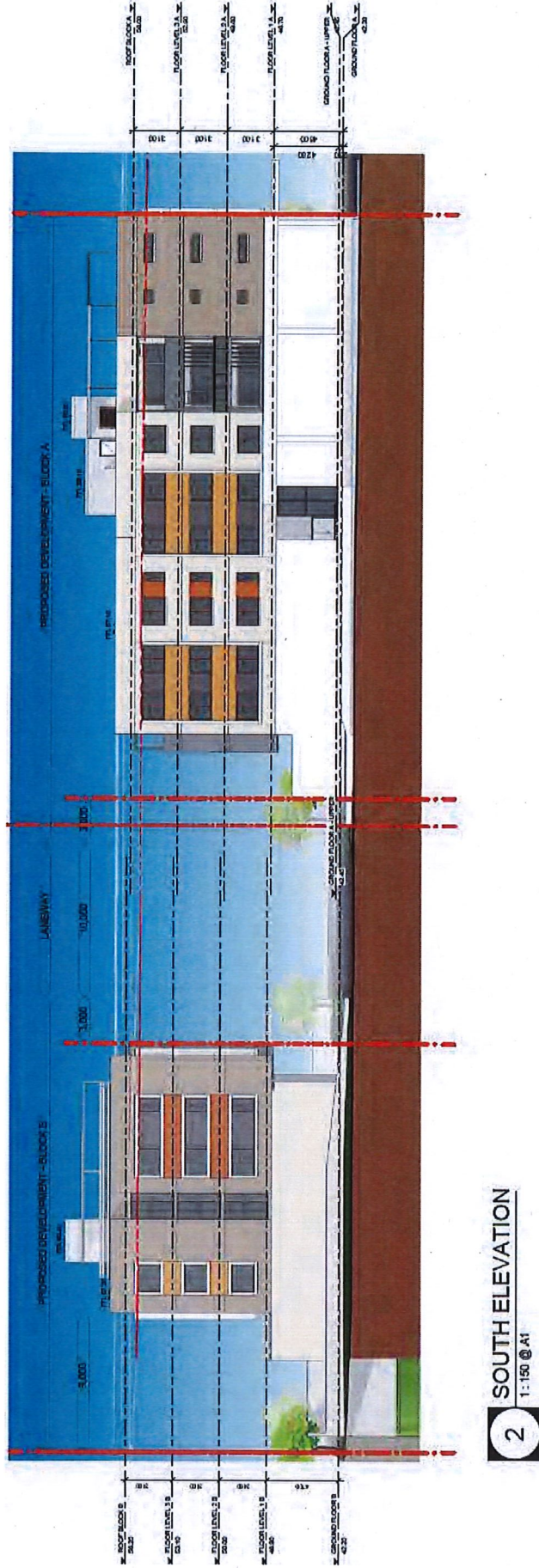


Figure 10. South elevation – showing area exceeding maximum building height control



## 6 Justification for Request

This Clause 4.6 Report seeks a relaxation of the development standards in Clause 4.3 of the *Blacktown Local Environmental 2015*.

### 6.1 Assessment of the Objectives of Relevant Standards

The objectives and assessment of each clause is provided below.

#### Maximum Building Height

Clause 4.3 of LEP states:

##### *"4.3 Height of buildings*

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

- (a) to minimise the visual impact, loss of privacy and loss of solar access to surrounding development and the adjoining public domain from buildings,*
- (b) to ensure that buildings are compatible with the height, bulk and scale of the surrounding residential localities and commercial centres within the City of Blacktown,*
- (c) to define focal points for denser development in locations that are well serviced by public transport, retail and commercial activities,*
- (d) to ensure that sufficient space is available for development for retail, commercial and residential uses,*
- (e) to establish an appropriate interface between centres, adjoining lower density residential zones and public spaces.*

(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.*

#### Assessment

The proposal meets the above objectives in the following ways:

- The height non-compliance is limited to the **lift overrun, roof level entry lobby, roof parapet encroachments**. These elements are a series of separate elements, which form the roof level of each proposed block. While non-compliant the parapet ensures a continuous architectural language to the top of the development. Further, the lift overrun and fire staircase block elements of non-compliance would not be evident from the street.

Further to the above, due to the orientation of the site and location of the non-complying lift overrun and fire staircase block elements, these elements would not generate any adverse overshadowing impacts on adjoining properties.

In relation to view loss and privacy the proposed non-compliance does not generate any further view loss and privacy impacts than a compliant development. The proposal is compliant with setbacks to adjoining properties and should a complaint development be sought it still would be recommended that a roof top common open space be included in order to achieve Council's required minimum common open.

In relation to public domain the proposed development provides an active street frontage and has no adverse impact on the public domain, further the non-compliance has no material impact on the public domain.

Therefore, the non-compliance is acceptable because:

- The proposal is consistent with the intent of the zone and the future character of the area;
- The proposal is within a Town Centre close to public transport and is encouraged for denser development by Council; and
- The proposal includes retail and commercial ground floor uses.

As such, the proposed non-compliance is considered to be reasonable for the site.

## 6.2 Assessment of the Objectives of the Land Use Zone

The site is subject to the following land use zone:

- B2 Local Centre

The objectives of the B2 Local Centre Zone in the LEP are as follows:

*"Zone B2 Local Centre Zone*

### *1 Objectives of zone*

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To encourage the development of an active local centre that is commensurate with the nature of the surrounding area.*

### Assessment

The proposal meets the above objectives by:

- The proposal, as a shop top housing development is consistent with the desired future character for the area and provides retail uses and housing that meets the needs of the community;
- The proposal offers opportunities for employment by way of the proposed retail floor space close to public transport;
- The proposal offers increased housing and activities within the Town Centre close to public transport which in turn supports increased patronage of public transport;
- The proposal is consistent with the intended activities in the Town Centre while not diminishing the existing residential amenity of surrounding development.

## 6.3 Clause 4.6 Assessment

For development consent to be granted to a non-complying development, Council must be satisfied that the provisions of Clause 4.6(3)-(5) of the LEP have been satisfied. The proposed development has been assessed under these provisions, having regard to the application of these provisions established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 82;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 ('Four2Five No 3'); and



- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Accordingly, the following assessment is made:

**Clause 4.6(3)**

Clause 4.6(3), stipulates that development consent will not be granted to a non-complying development unless it can be demonstrated that:

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

**Unreasonable or Unnecessary Assessment**

Preston CJ in *Wehbe v Pittwater Council* [2007] NSW LEC 827 outlined five criteria which may demonstrate that compliance with a development standard is "unreasonable or unnecessary".<sup>1</sup> The criteria are articulated as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*
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.*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*<sup>2</sup>

An assessment of the above criteria in relation to the subject development is outlined below:

**(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard**

The development is consistent with the objectives of the standard and does not create any significant environmental impacts. Consequently, strict compliance with the development standard is unnecessary as the development meets the objectives of the LEP. It is also unreasonable, in that no purpose would be served through strict compliance by the proposed development. As such, it is unreasonable and unnecessary in this circumstance to comply with the development standard.

**(ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary**

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved as outlined in (i) above.

**(iii) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

<sup>1</sup> *Wehbe v Pittwater Council* [2007] NSW LEC 827, [42]-[49].

<sup>2</sup> *Ibid.*

Not applicable. The underlying object or purpose of the standard would not be defeated or thwarted if compliance was required but would result in an inferior development that does not optimise the site's development capability. Moreover, the impacts generated between a non-complying scheme and a complying is minimal.

**(iv) 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**

Not applicable. The development standard has not been virtually abandoned. However, as discussed above a complying scheme would result in an inferior development that does not optimise the site's development capability. Moreover, the impacts generated between a non-complying scheme and a complying is minimal.

**(v) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.**

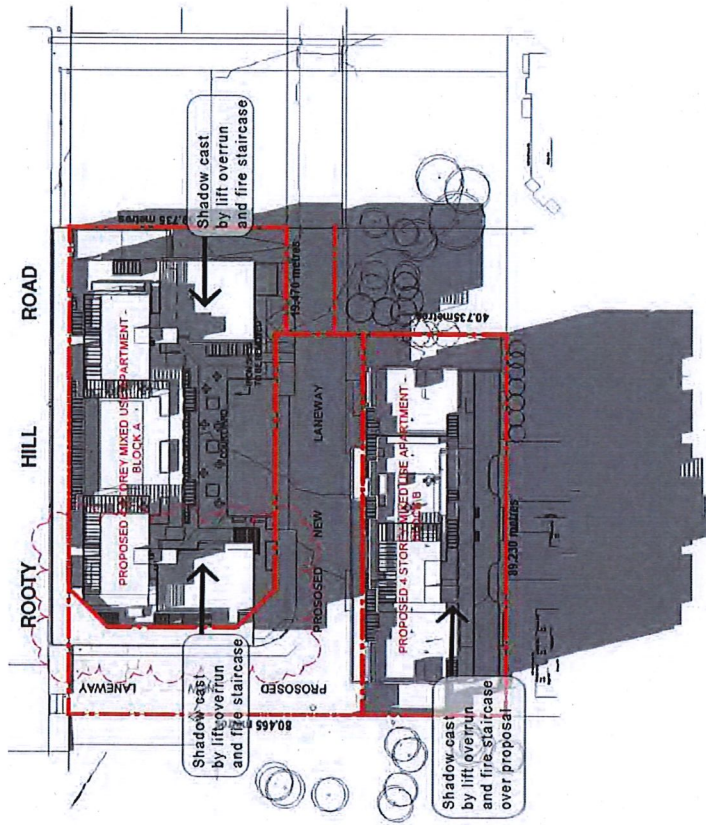
Not applicable. Zone 'B2 Local Centre' is an appropriate zone given the site's location. The proposed uses are also consistent with the land use zone. As such this exception to development standard request does not rely on this reason.

The Clause 4.6 exception to development standard request appropriately addresses *Wehbe v Pittwater Council [2007] NSW LEC 827*, therefore the proposed variation satisfies cl 4.6(3)(a) and is well founded.

*Further Discussion of Unreasonable or Unnecessary Assessment*

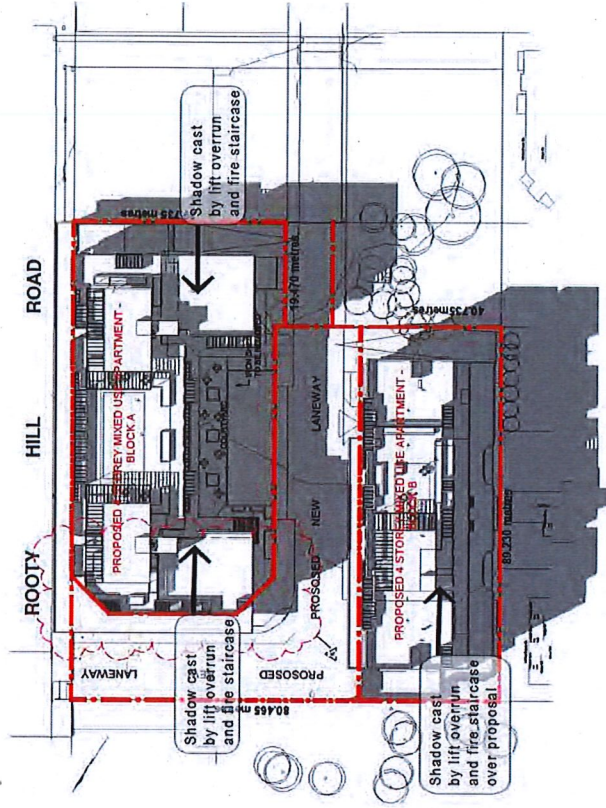
Given the orientation of the site and maximum permissible building height development standard a compliant development on the subject site would still generate overshadowing to the property on the southern and western boundaries of the subject site. The lift overrun and fire stair case non-compliance would have no material impact from overshadowing on adjoining properties. The shadow diagrams found in Figures 11 to 17 demonstrate this. In particular, Block B has a parapet non-compliance of between 3.5% to 8.5%. This is considered to be acceptable in the circumstance given that the proposal only casts shadows on the adjoining properties on the west of the subject site in the morning and that a compliant development is likely to casts a similar shadow.





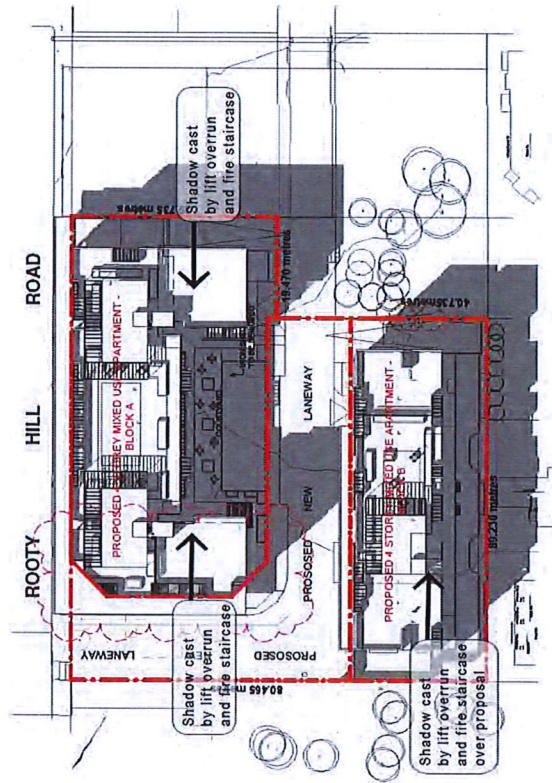
**1** SHADOW DIAGRAM - 21st June 9am  
1:500@A1

Figure 11. 9am Shadow



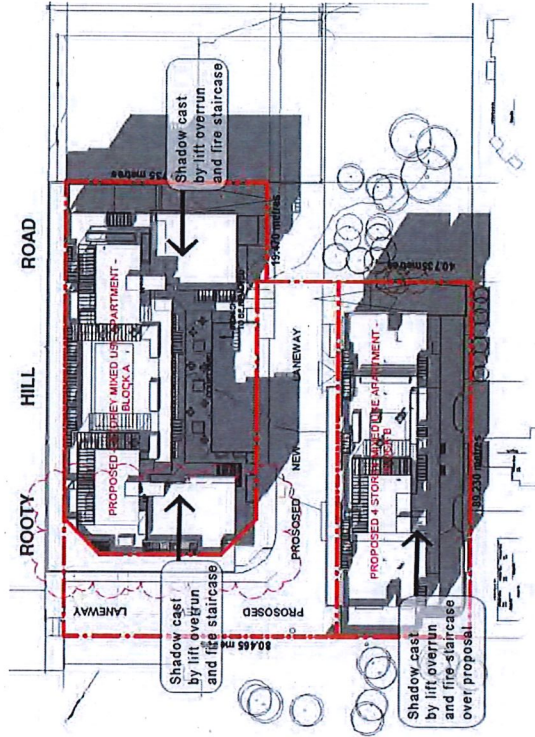
**2** SHADOW DIAGRAM - 21st June 10am  
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Figure 12. 10am Shadow



1 SHADOW DIAGRAM - 21st June 11am  
1:500@A1

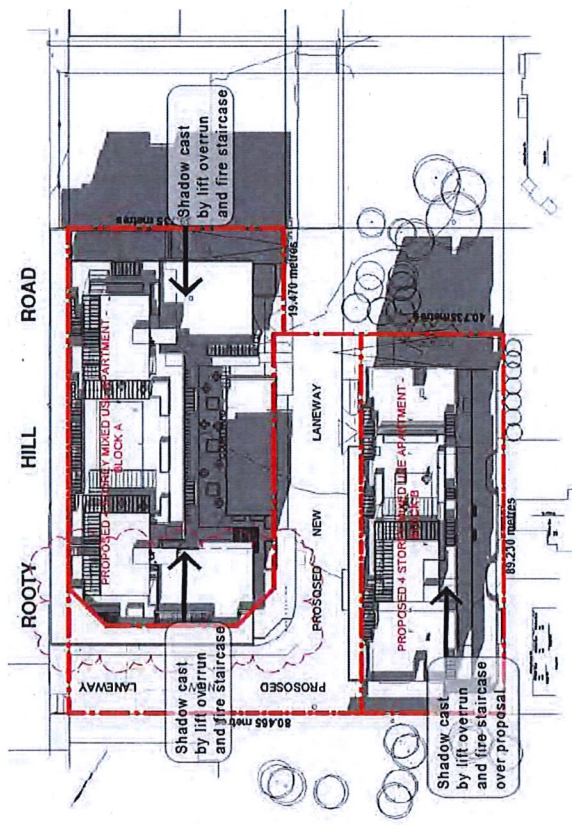
Figure 13. 11am Shadow



2 SHADOW DIAGRAM - 21st June 12pm  
1:500@A1

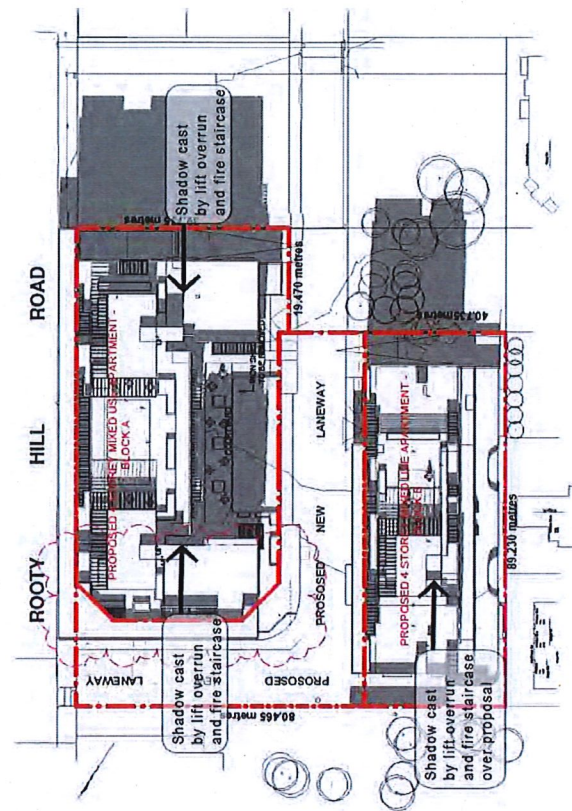
Figure 14. 12pm Shadow





1 SHADOW DIAGRAM - 21st June 1pm  
1:500 @ A1

Figure 15. 1pm Shadow



2 SHADOW DIAGRAM - 21st June 2pm  
1:500 @ A1

Figure 16. 2pm Shadow



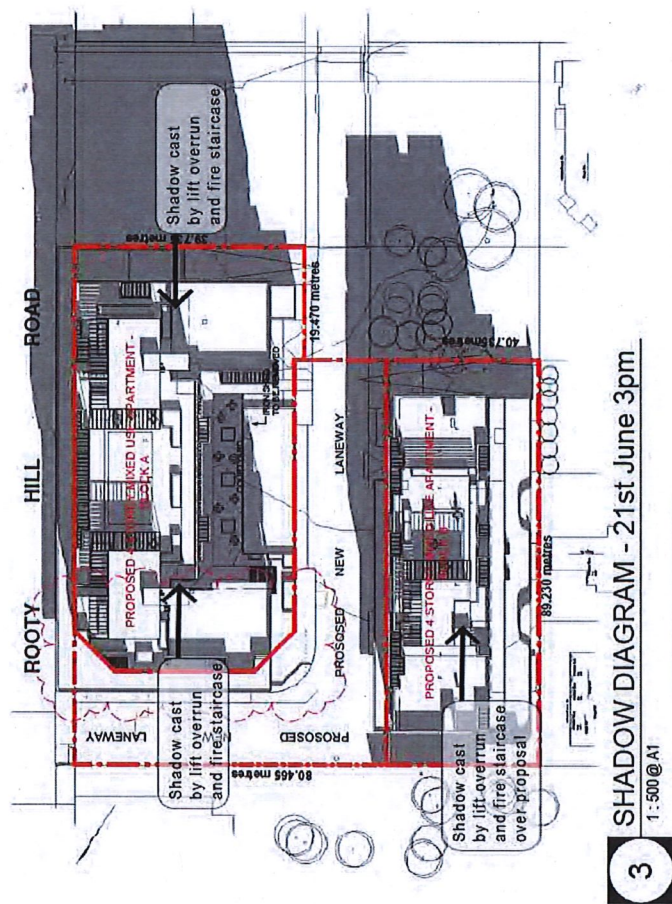


Figure 17. 3pm Shadow

Moreover, the shadow generated by the proposal is considered to be acceptable, given the site's orientation, as it generates a not too dissimilar shadow over the public domain in comparison to a compliant development.

While the lift overrun/fire stairs and roof structures exceed the maximum building height, they produce a significant benefit to the overall function and residential amenity of the proposal. In particular, these design features allow access to the common open space on the roof level. As such, the proposal is considered to generate a skilful design outcome in balance of the proposal with only minor environmental impacts.

Given the location of the non-complying portion of the built form, the degree of exceedance and the limited impacts of the non-compliance, it is considered that the non-compliance is acceptable for the site. Hence, compliance with the development standard is unreasonable and unnecessary as the impact generated is not significantly greater or worse than if the proposal complied with the development standard.

#### Environmental Planning Grounds

Clause 4.6(3)(b) requires sufficient environmental planning grounds to be demonstrated to justify a contravention of the development standard.

The main building forms, which exceed the height limit, are the lift overruns, fire staircases and parapet. The lift overrun and fire staircases provide access to the rooftop communal open space. The height non-compliance can create two issues of concern:

- Potential excessive and unacceptable overshadowing as a result of the additional bulk above the maximum building height; and
- View obstruction.

#### Overshadowing

Refer to previous discussion above under '*Further Discussion of Unreasonable or Unnecessary Assessment*'. In essence the proposal does not generate unacceptable impact on adjoining properties given the site's orientation and surrounding land uses.

Further, the non-compliance does not hinder the ability of the adjoining sites to achieve the required solar access in accordance with the ADG. The development is not out of character and not inconsistent with proposed future development in the area. Moreover, the proposal is consistent with the future desired character under the objectives of the land use zone.

#### View Obstruction

In relation to visual impacts, the lift overrun and fire staircase non-compliance would not be evident from the street and does obstruct any important views or vistas. It is believed that strict compliance with the development standard is unnecessary in the circumstances of the case, as the proposal generates no adverse impacts with regards to overshadowing and view loss.

Further, pursuant to the decision in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 it need not be demonstrated that the non-complying development has a "*neutral or beneficial effect relative to a complaint development*."<sup>3</sup> Should the design be amended to comply, it would cause an inferior design and planning outcome with no better environmental outcome. Accordingly, the proposal is optimal as it stands.

Furthermore, in *Initial Action*, at [23], Preston CJ held:

*"... The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purposes of the EPA Act, including the objects in Section 1.3 of the EPA Act."*

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<sup>3</sup> *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, [86].



An assessment of the Objects Section 1.3 of the Act is provided in the table below. The assessment found that the proposal does offend any of the Objects of the Act.

Table 3. Section 1.3 of the Act Assessment

Objects under Section 1.3 of the Act	Assessment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	Not applicable. The proposal does impact any of the State's natural and other resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	<p>The proposal meets the objectives of the B2 Local Centre zone and Council's inherent desired future character for the area. The proposal is considered suitable for the site and that it meets this object because,</p> <ul style="list-style-type: none"> <li>• it does not generate any significant adverse environmental impact;</li> <li>• provides shop top housing in a Town Centre, locating housing in close proximity to employment and uses/services/functions and future centre, while contributing the to economic role of the centre; and</li> <li>• provides greater housing choice in the area, while also providing housing in proximity to public transport, which achieves the objectives of the land use zone.</li> </ul>
(c) to promote the orderly and economic use and development of land,	The proposal achieves an orderly and economic use of the land. Refer to above assessment under Object (b).
(d) to promote the delivery and maintenance of affordable housing,	The proposal does not include affordable housing and there is no requirement or mechanism under Council's LEP to provide affordable housing. However, the proposal meets the objectives of the land use zone and Council's inherent desired future character for the area.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Not applicable. The site does not include any threatened and other species of native animals and plants, ecological communities and their habitats.

Objects under Section 1.3 of the Act	Assessment
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Not applicable. The site does not include any built and cultural heritage, including Aboriginal cultural heritage.
(g) to promote good design and amenity of the built environment,	The proposal is considered to be a good design outcome for the site, as it achieves a high quality residential amenity for future residents. The proposal also provides street activation and employment opportunities.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal seeks to achieve the proper construction and maintenance of the building. Any development consent would be subject to strict Conditions of Consent that the developer and building contractor would need to adhere to and demonstrate compliance with relevant Council requirements, National Construction Code requirements and Australian Standards.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	<p>The site is located within a Local Centre. The proposal achieves the NSW State Government's core aim under the Greater Sydney Region Plan to deliver a '30-minute city' by locating housing close to strategic centres and employment.</p> <p>The above is reinforced by the proposal meeting the objectives of the land use zone and Council's inherent desired future character for the area.</p>
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposal is subject to standard planning process for development consent. The proposal has been publicly exhibited and received no community submissions.

As such, given the assessment of the Objects of the Act and assessment of potential environmental impacts, there is sufficient justification for the proposal on environmental planning grounds, which are particular to the subject site, to allow for the contravention of the development standard.<sup>4</sup>

#### **Clause 4.6(4)(a)(i) and (ii)**

In satisfaction of the requirements in Clause 4.6(4)(a)(i), this Clause 4.6 Report has addressed all the necessary matters for consideration of the non-compliance by Council.

<sup>4</sup> *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, [60]; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90,[29].



The proposed development also satisfies Clause 4.6(4)(a)(ii) as it is consistent with the objectives of the development standard and the land use zone, as outlined previously. Namely, the proposed development:

- Does not adversely impact the amenity of the public domain;
- Will contribute to increased housing choice in the area; and
- Is an orderly, rational and economic use of the land.

Accordingly, the proposed development will be in the public interest because it is consistent with the objectives of the development standard and land use zone.

#### **Clause 4.6(5)**

The NSW Department of Planning and Environment (DP&E) has issued a Planning Circular (PS18-003) dated 21 February 2018 which provides guidance with respect to assumed concurrence of the Secretary when determining a development application that is supported by a Clause 4.6 request. The Planning Circular outlines the procedural and reporting requirements.

Therefore, this Clause 4.6 is also required to assess Clause 4.6(5) of the LEP. Clause 4.6(5) states:

*"4.6 Exceptions to development standards*

*(5) In deciding whether to grant concurrence, the Secretary 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.*

An assessment of the above criteria in relation to the subject development is outlined below:

***(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and***

The proposed non-compliance with the maximum building height development standard, does not raise any matters of significance for State or regional environmental planning. The contravention only relates to a local environmental planning matter and control.

***(b) the public benefit of maintaining the development standard, and***

Should the proposal comply with the maximum building height development standard, it would result in an inferior architectural and urban design outcome. The proposal does not generate any significant adverse impacts, and therefore there is no extra merit for providing a compliant scheme. Moreover, the reduction of the scale of the proposal would not alter in any way the proposal's design and appearance to the streetscape.

***(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.***

There are no other matters to be taken into consideration by the Secretary before granting concurrence. The proposal results in an orderly and economic development for the site.

## 7 Conclusion

The proposed development is within the public interest because it is consistent with the objectives of the relevant development standard, providing a particularly high level of amenity for future residents whilst maintaining the current level of amenity to surrounding development and for future development.

This Clause 4.6 Report provides a well-founded justification for the proposed non-compliance to maximum building height development standard under the LEP.

Therefore, it is considered that strict compliance with the development standard is unnecessary and unreasonable in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standards for Council to support the proposed development.



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