



**Application to vary the building height development
standard under Clause 4.6 of the Parramatta Local
Environmental Plan 2011**

18–20 Irving Street, Parramatta
Lot 30 DP2633 and Lot 1 DP830369

October 2018

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October 2018

EXECUTIVE SUMMARY

The NSW Land and Housing Corporation requests that the City of Parramatta Council grant consent to the proposed development at 18–20 Irving Street, Parramatta, despite the proposed development contravening the Height of Buildings development standard within the *Parramatta Local Environmental Plan 2011* (PLEP 2011).

The request is considered to be reasonable and justifies that compliance with the standards is unnecessary on the grounds that:

- There are sufficient environmental planning grounds to justify the contravention of the development standard namely the provision of more social housing in an accessible location consistent with the Parramatta Housing Strategy, the NSW Government's Plan *Future Directions for Social Housing in NSW*, the *Greater Sydney Region Plan 2018*, the *Central City District Plan 2018*, consistency with the relative objectives of the development standard and under the Parramatta Local Environmental Plan 2011 (PLEP 2011) and compliance with *State Environmental Planning Policy 65* (SEPP 65) and the *Apartment Design Guide* (ADG);
- The proposed development is in the public interest, as the objectives of the land use zone and the standards are both achieved notwithstanding the non-compliance;
- The contraventions achieve a better outcome for and from the development without significant environmental impact by providing more social housing, better utilisation of well-located land and is consistent with the emerging character of the locality of increased residential density;
- The request satisfies the tests set by the Land and Environment Court for the justification and assessment of variations to development standards; and
- The Design Excellence Advisory Panel considers "the additional height may be considered appropriate due to its context and minimal impact on adjoining developments".

1 INTRODUCTION

The subject site consists of two (2) lots that share a common boundary and is located at 18–20 Irving Street, Parramatta. The site has a combined site area of 1,280.3m². The legal description of the site is Lot 30 DP2633 and Lot 1 DP830369. The site is located in the Parramatta Local Government Area (LGA).

The NSW Land and Housing Corporation (LAHC) proposes a 22 unit development with a maximum building height of 14.1 metres at the Irving Street frontage and 15.1 metres at the rear of the site, which exceeds the Height of Building control, a development standard under the PLEP 2011.

Clause 4.6 of the PLEP 2011 provides the City of Parramatta Council with a degree of flexibility in applying the standards to the proposed development, subject to a written request by the applicant justifying any contraventions and demonstrating that compliance is unreasonable or unnecessary in the circumstance of the case. In addition, the Land and Environment Court, in *Wehbe v Pittwater Council* (2007) NSW LEC 827, *Winten Developments Pty Ltd v North Sydney Council* (2001) NSW LEC 46 and *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) NSWLEC 118 has articulated principles and tests regarding the justification for, and assessment of, exceptions to development standards. The proposed development is assessed against the established principles at **Section 4**.

Building height

The PLEP 2011 maximum building height for the site is 11 metres. The extent of the proposed contravention of the height standard in the PLEP 2011 varies by elevation and ranges from

compliance to a maximum exceedance of 4.1m at the south-east corner of the building, resulting in a maximum building height of 15.1m. This is illustrated in **Figure 3** to **Figure 6** below.

Floor Space Ratio

Additional floor space provisions are afforded by the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP 2009) for development of affordable housing. Refer to **Section 2.2** below.

A summary of the proposed development is provided at **Table 1** below.

Table 1 Summary of proposed development

	Parramatta LEP 2011	SEPP ARH 2009	Proposed
Height of Building	11 metres	N/A	15.1 metres (14.1 at the Irving Street frontage and 15.1m at the rear)
Floor Space Ratio	0.8:1	1.3:1 Bonus 0.5:1 FSR for development of affordable housing (<i>Cl 13 ARH SEPP 2009</i>)	1.26:1

This request therefore:

- Addresses the matters required to be considered by Council in exercising its discretion to the Height of Building development standard under the PLEP 2011;
- Justifies the height of the proposed development, and demonstrates why compliance with the development standard is unnecessary and unreasonable in this case in terms of the objectives of the standard and the zone, as well as the tests for assessment by the Land and Environment Court; and
- Demonstrates why the City of Parramatta Council should exercise its discretion by granting consent to the proposed development, despite a non-compliance with the PLEP 2011.

2 JUSTIFICATION FOR EXCEPTION TO THE STANDARDS

Clause 4.6 Exceptions to development standards of the PLEP 2011 provides Council with a degree of flexibility in applying the Height of Buildings development standard to the subject development application (Clause 4.6(1)) provided that: the standards are not excluded from this discretion (Clause 4.6(2)); particular planning outcomes are achieved (Clause 4.6(3)); and that certain procedural requirements are met (Clauses 4.6(4)).

Each of these matters is addressed below.

2.1 Consistency with Objectives of the Clause

Clause 4.6 (1) states:

“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.”*

The non-compliance with the PLEP 2011 Height of Buildings development standard is driven by the goal of achieving better outcomes for and from the development. The proposed development aims to achieve the objects of the EP&A Act, including:

- object of the Act to promote the delivery and maintenance of affordable housing;
- Achieving the orderly and economic use and development of the land given its access to services and transport;
- Delivering more social (affordable) housing, consistent with the NSW Government's *Future Directions for Social Housing in NSW*;
- Implementing the City of Parramatta Council's *Community Strategic Plan 2018–2038* which advocates for more social housing in the area; and
- Achieving the objectives of the *Greater Sydney Region Plan 2018* and the *Central City District Plan 2018* regarding the provision of social (affordable) housing and high density development in key transport nodes and corridors.

Despite the non-compliance with the standard, the proposed development will have a minimal impact on the amenity of the surrounding development with respect to overshadowing, views, visual impact and privacy.

This planning view is also supported by the Parramatta Design Excellence Advisory Panel, which “considers that since the site is at the end of the street and has no northern neighbours, the additional height may be considered appropriate due to its context and minimal impact on adjoining developments”. The Panel ultimately supports the proposal and “*advises that this is a well-considered and presented scheme and that the architectural, urban design and landscape quality is of a high standard*” (extract from minutes of Panel meeting).

2.2 Matters for consideration

In deciding whether or not to grant consent, Council is required to satisfy itself that the request for the variation demonstrates that:

- There are sufficient environmental planning grounds to justify contravening the development standard (Clause 4.6(3)(b)); and
- The proposed development is in the public interest and consistent with the objectives of the standard and the zone in which the development is proposed to be carried out (Clause 4.6(4)(a)(ii)).

These clauses are addressed below.

Clause 4.6(3)(b) – Environmental planning grounds

It is considered that there are sufficient environmental planning grounds to justify contravening the Height of Building development standard under the PLEP 2011. The development is considered to be consistent with:

- The objectives of *Clause 4.3 Height of Buildings*;
- *Clause 13 Floor Space Ratios* of the ARH SEPP 2009;
- SEPP 65 and the accompanying ADG; and
- Relevant plans and strategies.

These matters are addressed below.

Objectives of Clause 4.3 Height of Buildings

Table 2 Compliance with Clause 4.3 of the PLEP 2011

Objectives of Clause 4.3	Compliance	Comment
a) <i>to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan</i>	Yes	<p>In recent years, the area has seen an introduction of a number of medium density housing developments, including contemporary multi-dwelling housing and residential flat buildings. These indicate that the area is undergoing a transition from low density housing to medium density housing, particularly evident along Irving and Tennyson Streets.</p> <p>The proposed development reflects the existing scale of surrounding residential flat buildings and will contribute to the medium density housing scale of this area of Parramatta. The design, scale and materiality of the proposed development is consistent with the character of the locality.</p> <p>The proposed development provides a transition in height to the adjacent property to the south as the building steps down from the 4-storey portion of the building, which is located to the north of the site, to the 3-storey portion of the building which is closer to the adjacent property and is compliant with the PLEP 2011 maximum building height of 11m.</p> <p>The proposed height non-compliance is not considered to be contrary to the existing scale of the area.</p>
b) <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development</i>	Yes	<p>The expected impacts of the proposed development <i>will not</i> be noticeably different when compared to a development scheme under the 11 metre height control.</p> <p>The visual impact of the development will be minimal as it is infill development and the 4-storey component of the building is designed to present as a receding and unobtrusive built form.</p> <p>Views and vistas from surrounding properties will not be impacted as the site does not sit within any significant view lines or vistas.</p> <p>Overshadowing impacts the adjacent property to the south only and impacts of the proposed development compared with a strictly complying development scheme will be minimal. Solar access is maintained to the back yard outdoor space of the neighbouring property for 50% of the day. The height non-compliance does not significantly increase overshadowing when compared to a complying development. Refer to Figure 7 below.</p> <p>It is noted that this clause requires a proposed development to <i>minimise</i> disruption to existing development (rather than have no impact). The proposed development (including the 4-storey portion of the building) has been designed to ensure that loss of privacy, loss of solar access and visual impacts are minimised.</p>
c) <i>to require the height of future buildings to have regard to</i>	Yes	<p>The site is not identified as a heritage item or located within a heritage conservation area.</p> <p>It is noted that the University of Western Sydney</p>

Objectives of Clause 4.3	Compliance	Comment
<i>heritage sites and their settings</i>		Rydalmere campus, located over James Ruse Drive from the site, is a State heritage item known as <i>UWS Parramatta Campus (former Rydalmere Hospital and Female Orphan School)</i> (item number I00749). The development will not have any impact to this property.
d) <i>to ensure the preservation of historic views</i>	Yes	The proposed development will not impact historic views as the site is not located within any significant view lines or vistas.
e) <i>to reinforce and respect the existing character and scale of low density residential areas</i>	Yes	As provided above, in recent years, the area surrounding the site has seen an introduction of a number of medium density housing developments, and transition away from low density residential development. The proposed development will therefore contribute to the character of medium density development in this area of Parramatta.
f) <i>to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</i>	Yes	The site is not located within a commercial centre.

Clause 13 of the ARH SEPP 2009

Additional floor space provisions are afforded by the *State Environmental Planning Policy (Affordable Rental Housing) 2009* (ARH SEPP 2009) for development of affordable housing:

Clause 13 Floor space ratios

- 1) *This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.*
- 2) *The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:*
 - a) *if the existing maximum floor space ratio is 2.5:1 or less:*
 - i. **0.5:1**—*if the percentage of the gross floor area of the development that is used for affordable housing is **50 per cent or higher**, or*

Given that the development is proposed to be wholly for the purpose of affordable housing, the existing floor space ratio is less than 2.5:1, and the ARH SEPP 2009 prevails over the PLEP 2011 where there is an inconsistency, an additional 0.5:1 FSR is permitted to the proposed development in addition to the existing 0.8:1 FSR. The applicable maximum FSR is therefore 1.3:1.

The proposed FSR is 1.26:1 and therefore complies with the maximum permissible FSR under the *ARH SEPP 2009*.

The building height non-compliance is therefore necessary to achieve a social housing development to the maximum density under the controls. The portion of the building above the 11m height largely comprises of wall, ceiling area and roof form of four (4) apartments only. The additional height above

the 11m control is required to achieve a full habitable floor with appropriate ceiling heights, as required by SEPP 65 and the ADG.

SEPP 65 and the accompanying ADG

As required for a residential apartment building, the proposed development complies with the requirements of SEPP 65 and the ADG. Refer to the ADG Schedule of Compliance at **Appendix E** and the SEPP 65 Design Verification Statement at **Appendix F** of the SEE.

The proposed development provides for ceiling heights for habitable and non-habitable rooms in accordance with minimum requirements under the ADG. The proposed minimum floor-to-floor height will be 3m, which satisfies the recommended 2.7m minimum habitable room ceiling height and 2.4m minimum non-habitable room ceiling height.

The building height non-compliance is therefore necessary to achieve required minimum ceiling heights in accordance with the ADG.

Relevant plans and strategies

The development provides for social housing and is therefore consistent with relevant plans and strategies including the *Parramatta Affordable Housing Policy*, the NSW Government's Plan *Future Directions for Social Housing in NSW*, the *Greater Sydney Region Plan 2018*, the *Central City District Plan 2018*.

As at June 2017 there were over 51,000 households on the waiting list for social housing of which 2,206 are within the Parramatta/Baulkham Hills allocation zone. The waiting list for one and two bedroom units/houses in this zone is currently 5 to 10 years.

The proposed building height exceedance will provide for four (4) social housing apartments, out of a combined total of twenty two (22) apartments. It therefore further increases the available social housing supply, supported by the relevant strategic plans.

Clause 4.6(4)(a)(ii) – the public interest

The proposed development is considered to be in the public interest because it is development for the purpose of social housing, which is consistent with relevant housing strategies, and complies with the objectives of *Clause 4.3 Height of Buildings* and the objectives for development within the *R4 High Density Residential* zone, as provided below.

Objectives of Clause 4.3 Height of Buildings

Refer to the objectives of the development standard which are addressed at **Table 2** above.

Of particular note is Objective (b):

- b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development*

As provided above, it is considered that the development is consistent with this objective as the development has been designed to *minimise* visual impacts, privacy impacts, and loss of solar access on the residential property to the south and *will not* be noticeably different when compared to a development scheme under the 11 metre height control.

The 4-storey component of the building is located towards the northern side of the proposed building, which steps down to the south. The building is setback from the southern boundary by 7.5m, with the 4-storey component of the building setback an additional 4.5m above the lower levels, resulting in a total setback of 12m from the southern side boundary to the 4-storey component of the building. As such, the building will minimise visual impacts, privacy impacts, and loss of solar access on the residential property to the south (16 Irving Street).

In addition, the 4-storey component of the building is set back from the site frontage by 6.2m, which provides an additional 1.2m setback above the lower levels of the building and is clad in grey prefinished wall panels. The 4-storey component of the building therefore presents as a receding and unobtrusive built form when viewed, and will not dominate the streetscape, resulting in minimum visual impact.

The Architectural Design Report (**Appendix C**) provides detailed shadow analysis that demonstrates the difference in the shadow impact between a 3-storey building (compliant building height) versus a 4-storey building (non-compliant building height) on the adjacent property to the south is negligible.

Land to the north of the site is occupied by the Victoria Road on-ramp and will not be developed in the future, and land to the west and east of the site is occupied by roads and road verges and will therefore not be impacted by overshadowing.

Objectives of the R4 High Density Residential zone

The site is identified within the *R4 High Density Residential* zoning under the PLEP 2011. The objectives of the R4 zone are addressed below:

1) *Objectives of zone*

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide opportunity for high density residential development close to major transport nodes, services and employment opportunities.*
- *To provide opportunities for people to carry out a reasonable range of activities from their homes if such activities will not adversely affect the amenity of the neighbourhood.*

The proposed development is for the purpose of a *residential flat building*, which is a permitted land use within the *R4 High Density Residential* zone.

The proposed development, and height non-compliance, raises no inconsistencies with the objectives of the R4 zone given it proposes a permissible land use, will contribute to Parramatta's diverse housing needs within a high density residential environment, and will not result in any conflict with the adjoining property such as overshadowing, privacy, sunlight impacts and view impacts.

The proposed building height exceedance will provide for four (4) social housing apartments (out of combined total of twenty two (22) apartments) and therefore will have a positive social impact.

2.3 Procedural Requirements

The procedural requirements of Clause 4.6 of PLEP 2011 are addressed below.

Clause 4.6(2)

Clause 4.6(2) states that "*this clause does not apply to a development standard that is expressly excluded from the operation of this clause*".

Clause 4.3 *Height of Buildings* of the PLEP 2011 is not expressly excluded from the operation of Clause 4.6, and therefore, variation to the maximum height standard can be considered under this clause.

It is noted that Clause 4.6(8)(ca) of the PLEP 2011 does not allow development consent to be granted for development that would contravene the height of a building control in Parramatta City Centre by

more than 5%. The site is not identified within Parramatta City Centre on the *Additional Local Provisions Map*, and therefore Clause 4.6(8)(ca) does not apply to the subject site.

Clause 4.6(3)

Clause 4.6 (3) requires a “written request from the applicant that seeks to justify the contravention of the development standard” that justifies “compliance with the development standard is unreasonable or unnecessary in the circumstances of the case”.

This Clause 4.6 variation provides a written request to contravene the PLEP 2011 Height of Buildings development standard. In this instance, compliance with the maximum building height standard is considered unnecessary as the proposal allows the development to respond to the topography without resulting in a major departure from the controls or the desired development outcome envisaged by the planning controls.

Clause 4.6(4)(b)

Clause 4.6(4)(b) stipulates that Council must not grant consent to any variation unless the concurrence of the Secretary has been obtained.

Planning Circular no PS08–003 Variations to development standards (dated 9 May 2008) provides that the concurrence of the Secretary of the Department of Planning and Environment can be assumed where Councils have adopted Clause 4.6 of the Standard Instrument. As such, the final requirement identified above can be assumed to be satisfied.

3 JUSTIFICATION FOR BUILDING HEIGHT VARIATION

The site is identified within the *R4 High Density Residential* zoning under the PLEP 2011.

Development for the purposes of a ‘residential flat building’ is permitted with consent within the R4 zone under the PLEP 2011. The development is for social housing, therefore will provide positive social impacts to the Parramatta Local Government Area.

As set out by *Clause 4.3 Height of Buildings* of the PLEP 2011, the maximum height of building for the site is 11 metres.

Refer to extracts of the PLEP 2011 Land Use Zoning and maximum Height of Buildings maps at **Figure 1** and **Figure 2** below.

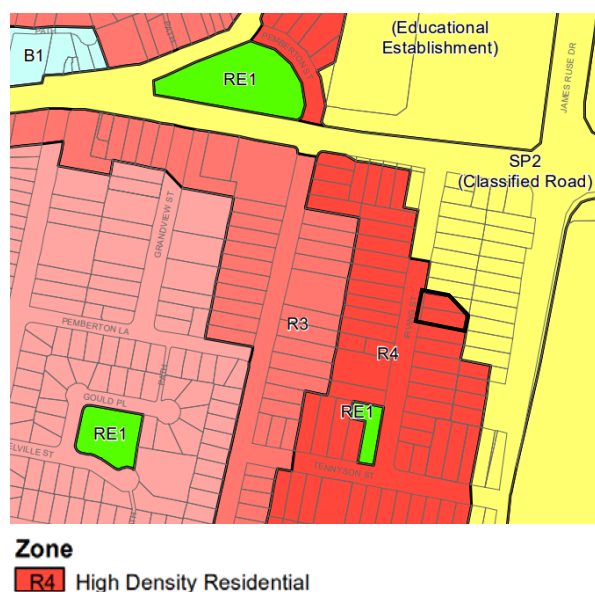


Figure 1 PLEP 2011 Land Zoning Map

Site outlined in black

Source: PLEP 2011 Land Zoning Map - Sheet LZN_009

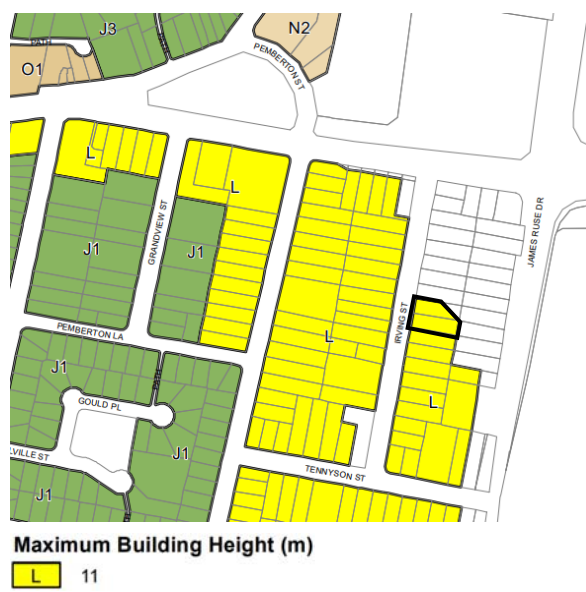


Figure 2 PLEP 2011 Height of Buildings Map

Site outlined in black

Source: PLEP 2011 Height of Buildings Map - Sheet HOB_009

The proposed development is comprised of a part-3 and part-4 storey building, with the 4-storey portion of the building located towards the northern boundary of the site. The 3-storey portion of the building complies with the maximum building height, however the 4-storey portion of the building exceeds the 11m maximum building height. Accordingly the non-compliance with the height control only relates to part of the development only.

Given the sloping topography of the site, the building height non-compliance varies from a 2.6m exceedance at the north-west corner of the building (building height of 13.6m) to a 4.1m exceedance at the south-east corner of the building (building height of 15.1m).

As outlined under Section 1 of this report, the additional building height responds to the objective to provide for the maximum social housing density available to the site by adopting the bonus Floor Space Ratio (FSR) provisions of Clause 13 of the *ARH SEPP 2009*.

The extent of the non-compliance is illustrated in the elevation views of the proposed development at **Figure 3** to **Figure 6** below. The PLEP 2011 maximum building height is marked in red.



Figure 3 Extract of architectural elevation – west elevation

The PLEP 2011 maximum building height in relation to the proposed development is illustrated by the red dashed line.

Source: DEM

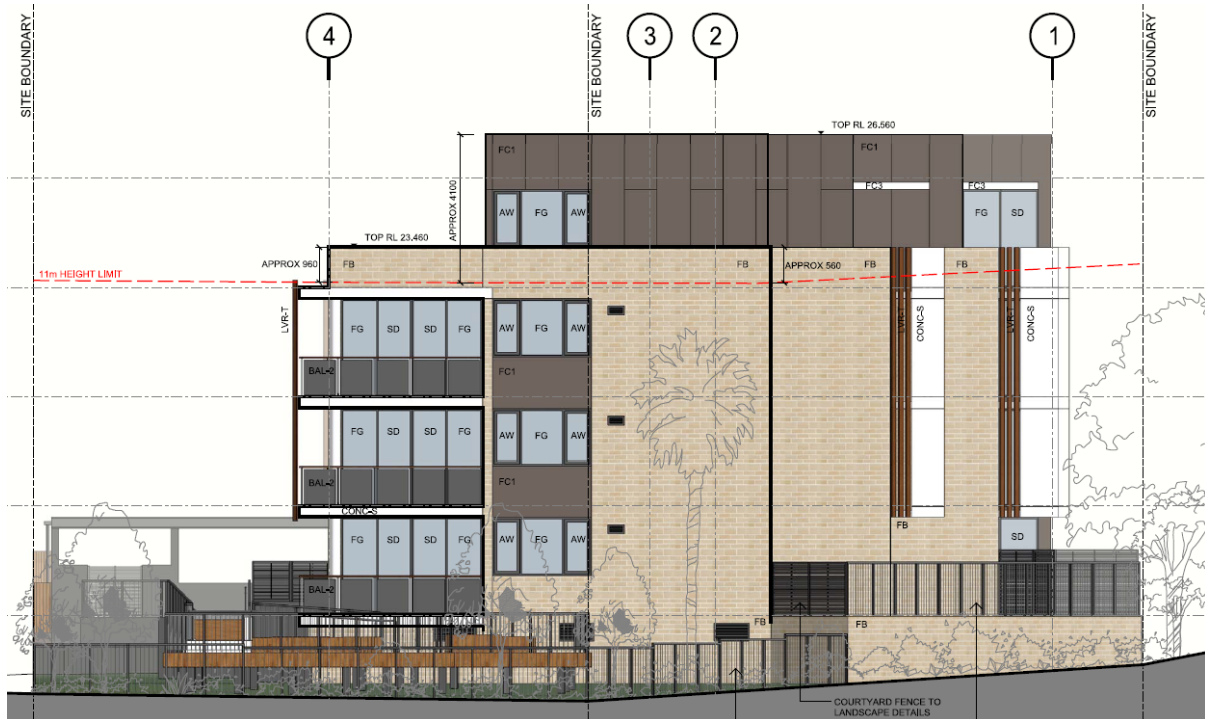


Figure 4 Extract of architectural elevation – east elevation

The PLEP 2011 maximum building height in relation to the proposed development is illustrated by the red dashed line.

Source: DEM



Figure 5 Extract of architectural elevation – north elevation

The PLEP 2011 maximum building height in relation to the proposed development is illustrated by the red dashed line.

Source: DEM



Figure 6 Extract of architectural elevation – east elevation

The PLEP 2011 maximum building height in relation to the proposed development is illustrated by the red dashed line.

Source: DEM

The topography of the site falls from the western boundary (Irving Street frontage) towards the eastern boundary (rear of the site) from a level of RL12.85 to a low point of approximately RL11.27. The level difference across the site is approximately 1.58m. There is also a slight fall, from the northern boundary of the site to southern boundary along the western boundary fronting Irving Street, with a level difference of 400mm.

As such, the proposed building's encroachment on the PLEP 2011 building height standard of 11m is not equal across the site. As the land falls, the proposed building accommodates the change in level through the basement car park level.

Table 3 below illustrates the variation to building height standard as viewed from different elevations.

Table 3 Extent of building height variation

Part of the building	Building height			
	PLEP 2011	Proposed maximum	Variation	%
Irving Street frontage: north-west corner	11 metres	13.55 metres	2.55 metres	23%
Irving Street frontage: south-west corner	11 metres	11.00 metres	0 metres	0%
Irving Street frontage: south-western most corner of 4-storey portion of the building	11 metres	14.10 metres	3.10 metres	28%
Rear of the site: north-east corner	11 metres	14.66 metres	3.66 metres	33%
Rear of the site: south-east corner	11 metres	11.96 metres	0.96 metres	8%
Rear of the site: south-eastern most corner of 4-storey portion of the building	11 metres	15.10 metres	4.10 metres	37%

Overshadowing impact studies have been undertaken which demonstrate the difference between a 3-storey building (compliant building height) and 4-storey building (proposed non-compliant building height) at mid-winter (21 June). The diagrams demonstrate that the shadow impact of the additional storey will be **minimal**. Solar access will be retained throughout the day across more than 50% of the rear yard (open space) of the adjoining property.

Refer to shadow analysis extracts from the Architectural Design Report at **Figure 7** below (taken at 9.00am, 12.00pm and 3.00pm), and hourly shadow diagrams at **Appendix C** attached to the Statement of Environmental Effects.

Option1a – 3.5 storeys 0900



Option1b – 3 storeys (Under Permissible Height) 0900



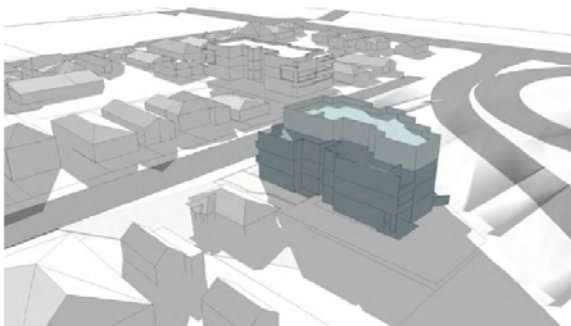
Option1a – 3.5 storeys 1200



Option1b – 3 storeys (Under Permissible Height) 1200



Option1a – 3.5 storeys 1500



Option1b – 3 storeys (Under Permissible Height) 1500

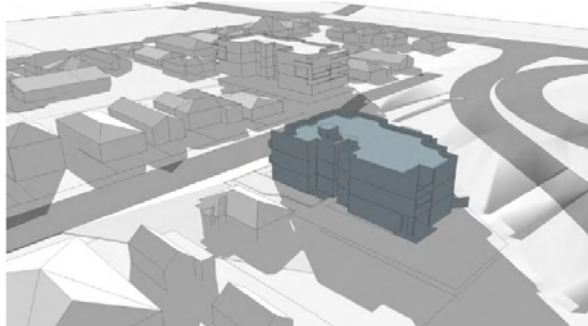


Figure 7 Shadow analysis
Source: DEM

The proposed development is considered to reflect the existing scale of surrounding residential flat buildings and will contribute to the medium density housing scale of this area of Parramatta. The design, scale and materiality of the proposed development is consistent with the character of the locality. The proposed development is considered to be in the public interest because it attains the objectives of the Height of Building standard of the R4 land use zone.

4 THE LAND AND ENVIRONMENT COURT PRINCIPLES/TESTS

Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118 is discussed below at **Section 4.1** and addresses the correct approach to consider Clause 4.6 requests.

Two landmark cases articulate the Court's view on reasonable arguments for, and assessment of, requests for exceptions to development standards. These are discussed further below at **Section 4.2** and **Section 4.3**.

4.1 Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118

In his decision in *Initial Action Pty Ltd v Woollahra Municipal Council (2018) NSWLEC 118*, Chief Justice Preston clarified the correct interpretation of Clause 4.6 requests with regard to Cl 4.6 (4)(a)(i) and (ii). A Cl 4.6 requests must:

- Adequately address the matters required by subclause (3) – that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Cl 4.6(3)(a)), and that there are sufficient environmental planning grounds to justify contravening the development standard (Cl 4.6(3)(b)); and
- Demonstrate that the proposed development will be in the public interest because it is consistent with the objectives of the development standard (in this case, Cl. 4.3 Height of Buildings) and land use zone objectives (in this case, R4 High Density Residential) (Cl 4.6 (4)(a)(ii)).

These matters are addressed below.

With respect to the subject site, compliance with the 11 metre maximum building height development standard is considered unnecessary in this case because the proposed development complies with the objectives of the subject development standard (*Clause 4.3 Height of Buildings*). The objectives of the development standards are addressed at **Section 2.2** above. Refer also to the five tests under *Wehbe v Pittwater Council* at **Section 4.2** below.

The development is considered to have sufficient environmental planning grounds given the development complies with the objectives of the development standards (addressed at **Section 2.2** above) and the FSR bonus provisions under the *ARH SEPP 2009* (refer to **Section 2.2** above).

The development will be in the public interest because it raises no inconsistencies with the objectives of the R4 zone and complies with the objectives of the development standard. The proposed development is a permissible land use, will contribute to Parramatta's diverse housing, and has been designed to minimise any conflict with the adjoining property such as overshadowing, privacy, sunlight impacts and view impacts. Refer to **Section 2.2** above. The proposed building height exceedance will provide for four (4) social housing apartments (out of combined total of twenty two (22) apartments) in an accessible location and therefore will have a positive social impact.

The case also identifies that the outcome of the breach to a development standard does not necessarily need to be a *neutral* or *better* outcome, if the relevant environmental planning grounds to assess it against don't require such. With regard to overshadowing, visual impact and privacy the objective of the development standard is to *minimise* disruption to neighbouring properties (Cl 4.3(1)(b)). The proposed development (including the 4-storey portion of the building) has been designed to ensure that such impact to neighbours are minimised, and therefore complies with the objective.

4.2 Wehbe v Pittwater Council (2007) NSW LEC 827

In his decision in *Wehbe v Pittwater Council (2007) NSW LEC 827*, Chief Justice Preston expressed the view that there are five different ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary. The five tests are considered in the table below.

i. <i>The objectives of the standards are achieved notwithstanding non-compliance with the standard</i>	The proposed development complies with the objectives of <i>Clause 4.3 Height of Buildings</i> . The objectives of the standard are addressed at Section 2.2 above.
ii. <i>The underlying objectives or purposes of the standard are not relevant to the development and therefore compliance is unnecessary</i>	The underlying objectives of the standard are relevant to the development. However, as provided in this request, compliance with the standard is considered unnecessary in this case.

iii. <i>The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable</i>	The underlying object or purpose of the standards would not be defeated or thwarted if compliance was required.
iv. <i>The development standards have been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standards and hence compliance with the standard is unnecessary and unreasonable; and</i>	This exception to development standards request does not rely on this reason.
v. <i>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.</i>	This exception to development standards request does not rely on this reason.

4.3 Winten Developments Pty Ltd v North Sydney Council (2001) NSWLEC 46

The exception to development standard request is assessed below against the accepted test for the assessment of development standard variation established by *Winten Developments Pty Ltd v North Sydney Council (2001) NSWLEC 46*.

a) Are the planning controls in question a development standard?	Yes, Clause 4.3 of the PLEP 2011 is a development standard.
b) What is the underlying object or purpose of the standards?	The objectives of the standard are addressed at Section 2.2 above.
c) Is compliance with the development standards unnecessary or unreasonable in the circumstances of the case?	Sections 2 and 3 demonstrate that compliance is unnecessary and unreasonable.
d) Is compliance with the development standards consistent with the aims of the Policy (to provide flexibility in the application of development standards); and, in particular, does compliance with the development standards tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979?	As demonstrated in Section 2 , compliance with the standards would be inconsistent with the objectives of Clause 4.6 and would hinder the attainment of the objects of the Act as discussed in Sections 2, 3 and 4 of this request.
e) Is the objection well founded?	<p>The objection is well founded on the grounds that the non-compliance:</p> <ul style="list-style-type: none"> – Has been demonstrated not to raise any issues of State or regional planning significance; – Achieves the objects of the EP&A Act and will provide positive social impacts to the Parramatta Local Government Area; – Enables a development that reflects the changing character of the locality without significant environmental impacts on the use and enjoyment of adjoining land uses, such as overshadowing, privacy, sunlight impacts and view impacts.

5 SUMMARY

The development proposes to vary the maximum PLEP 2011 Height of Buildings standard of 11 metres by a maximum of 4.1 metres resulting in a maximum building height of 15.1 metres.

The proposed development, and height non-compliance, will not be out of character with surrounding residential flat buildings and will be in context with the existing and future character of the area. Additionally, the expected impacts of the proposed development on surrounding dwellings will not be noticeably different when compared to the impacts of a scheme under the 11 metre height control.

The proposed height of the development supports the achievement of a social housing density available to the site, with both Council's FSR controls and the bonus provisions available via the *ARH SEPP 2009*.

The proposed height is supported on environmental planning grounds and is in the public interest, as outlined in this report.

It is therefore considered that the encroachment on the building height development standard at 18-20 Irving Street, Parramatta, is permitted under *Clause 4.6 Exceptions to development standards* and it is requested Council grant development consent.