

ETHOS URBAN

Clause 4.6 Variation to Development Standard – Height of Buildings

164 Hawkesbury Road, Westmead

Submitted to Paramatta City Council
On behalf of Western Sydney University

30 November 2018 | 218313



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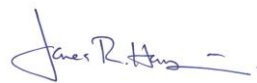
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1.0 Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of Western Sydney University (WSU). It is submitted to Paramatta City Council (the Council) in support of a Crown Development Application (DA) for a mixed use development at 164 Hawkesbury Road, Westmead.

Clause 4.6 of the *Paramatta Local Environmental Plan 2011* (PLEP) enables Council to grant consent for development even though the development varies a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

- that the applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- 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 in which the development is proposed to be carried out.

The consent authority's satisfaction of those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

While these cases referred to the former SEPP 1, the analysis remains relevant to the application of clause 4.6(3)(a). Further guidance on clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**);
- demonstrates that the proposed variation is in the public interest (**Section 6.0**); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Section 7.0**).

This Clause 4.6 variation request relates to the 'maximum height of buildings' development standard under Clause 4.3 of the PLEP and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated November 2018. This Clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify variation to the standard.

2.0 Development standard to be varied

The height of buildings development standard for the site and the broader WSU Westmead precinct is established by Clause 4.3 of the PLEP 2011. The maximum permissible building height across the precinct varies from 31m to 48m, with the subject site allocated a maximum of 31m as illustrated in **Figure 1**.

For the avoidance of doubt, the site the subject of the development application is outlined in yellow in the figure below, and the extent of wider WSU Precinct is outlined in light blue.



Figure 1: PLEP height map extract

Source Parramatta LEP 2011

3.0 Nature of the variation sought

The site was subdivided from the wider WSU campus site as part of DA/571/2014, which was approved in February 2015. As part of DA/571/2014 the precinct was subdivided into 5 lots, with roads and open spaces approved for construction. Building envelopes were also approved for each lot including quantities of floor space and specific land uses.

In relation to the subject site (Lot 2), DA/571/2014 approved two building envelopes with a height of nine storeys, and with a total GFA of 30,700m² to be used for commercial, retail, health and serviced apartment uses.

The Clause 4.6 request that was submitted (and approved) at the time argued that allowing the building envelopes to exceed the building height development standard achieved an improved built form outcome, including improved building separation, smaller floor plates (with potentially more elegant future built forms), and greater amenity.

In preparing the plans for the proposed development, Architectus have refined the work undertaken by Cox in the preparation of the application for the WSU precinct (specifically relating to Lot 2), approved with DA/571/2014. The approved envelopes envisaged buildings on the site which varied the height of building development standard (to a minor extent) and defined the street frontages on three sides of Lot 2, creating a plaza to the north of the site, fronting Darcy Road. In refining this design, Architectus have provided the following critique of the approved building form:

- The approved building form creates a barrier between the new plaza and the heritage asset on Lot 1;
- The plaza space is reduced by the presence of the building located on the southern portion of the site (Lot 2);
- The building within the plaza area severs views to the south of the heritage building; and
- The building form as approved limits connections to the precinct's central park.

These observations are illustrated in **Figure 3**.

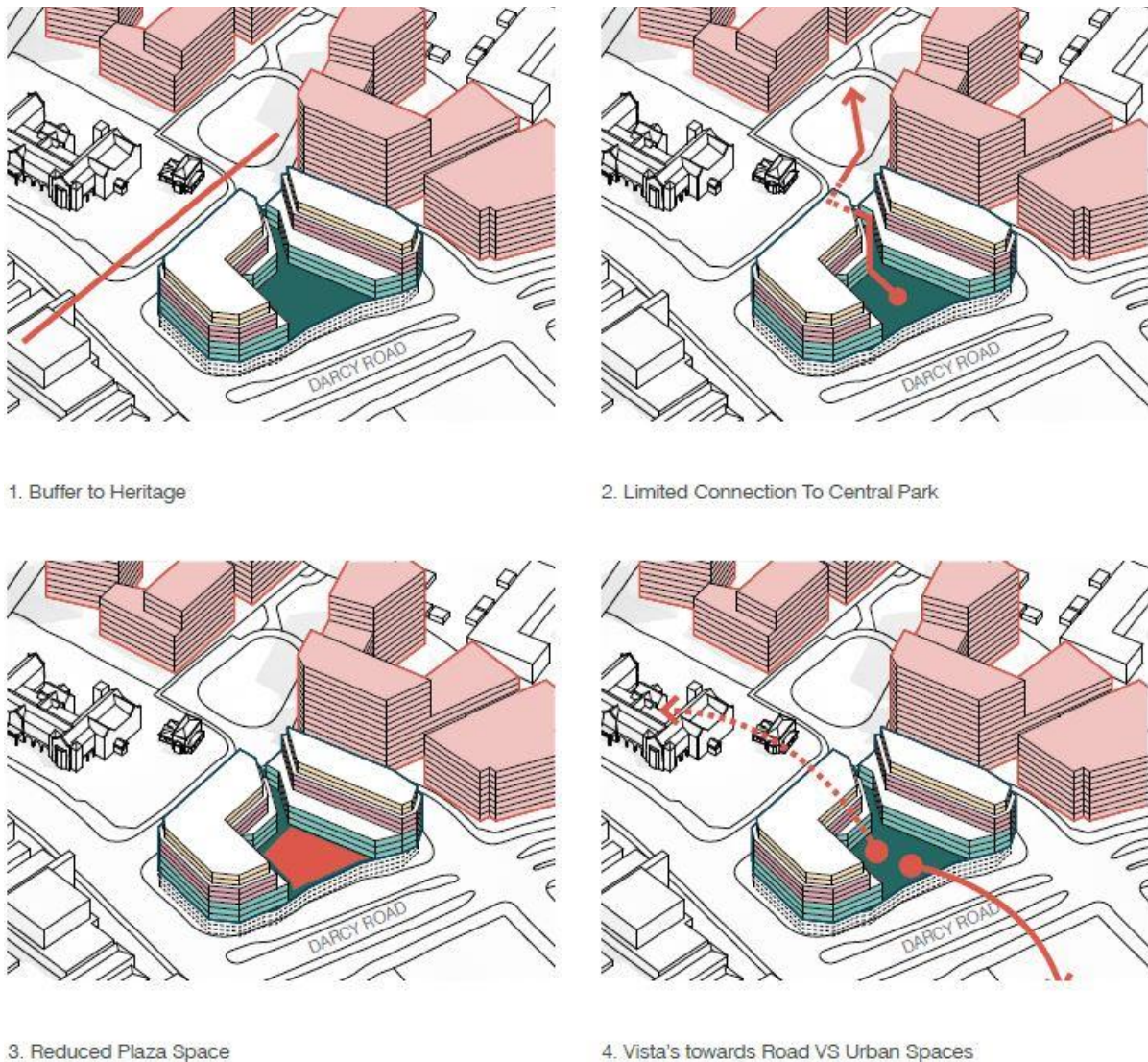


Figure 2: Design critique of the approved building envelopes on Lot 2 under DA/571/2014

Source: Architectus

In order to address the critique of the approved building envelope, Architectus re-approached the design principles for the site to improve:

- The appreciation of the heritage buildings to the immediate south on Lot 1;
- pedestrian permeability; and
- amenity experienced by future users of the site.

Architectus' strategy involved re-allocating the 30,700m² of approved floor space within in the site to create an improved central plaza area and visual and physical north-south connection. The removal of the building mass that was approved along the internal road to the south of the site and the reallocation of this floor area to the two remaining buildings, effectively increases the overall height of the development. Figure 3 illustrates how the floor area within the proposed development has been distributed to respond to Architectus' critique of the approved building envelopes. The resulting development comprises two separate towers, each with a maximum height as outlined below:

- Western tower: maximum height 52 m (20 m exceedance of development standard)
- Eastern tower: maximum height 39 m (7 m exceedance of development standard)

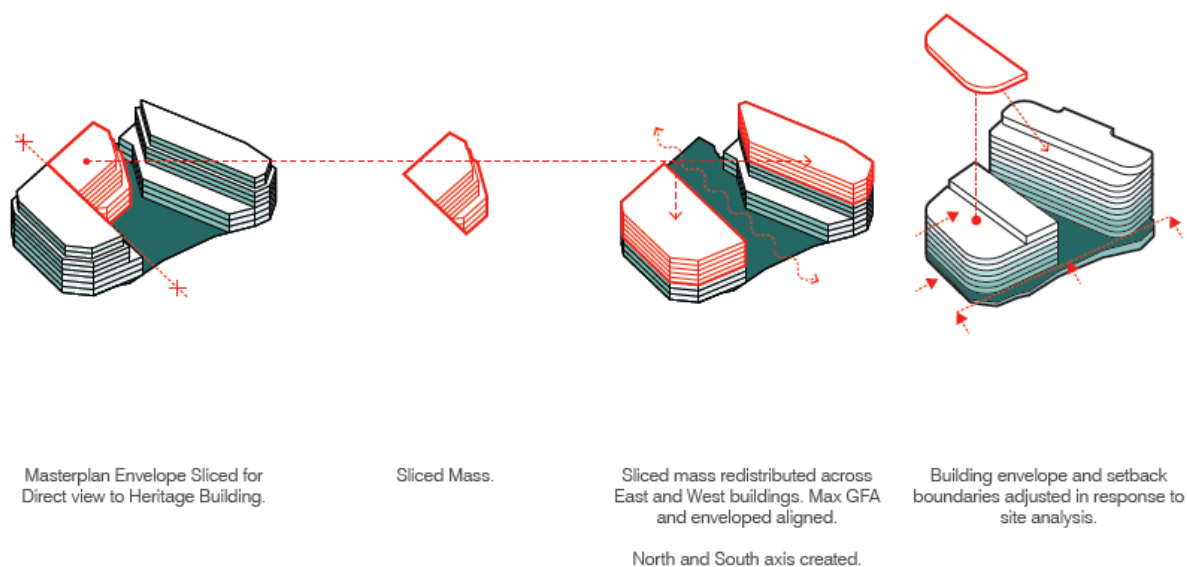


Figure 3: Key changes in building form

Source: Architectus

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis may be of assistance in applying clause 4.6 given that subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

The five methods outlined in *Wehbe* were:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
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 (**Fourth Method**).
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 (**Fifth Method**).

In this instance, the First Method and the Fourth Method are of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary.

4.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of the development standard contained in Clause 4.3 of the PLEP are:

- (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to require the height of future buildings to have regard to heritage sites and their settings,
- (d) to ensure the preservation of historic views,
- (e) to reinforce and respect the existing character and scale of low density residential areas,
- (f) 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.

The proposal is assessed against the objectives for the height of buildings development standard below.

Objective A: to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan

The PLEP 2011 nominates different maximum height limits for various areas within the WSU precinct, providing a transition of building heights reducing from 48m in the south west of the WSU precinct to 31m within and surrounding the site.

The Panel has approved development applications on Lot 4 and Lot 5 within the precinct (which are respectively subject to a maximum height of buildings of 48m and part 40m / part 31m) with a maximum height of up to 70.1m (an exceedance of 75.5% more than the relevant development standard). **Figure 4** shows the building envelopes approved as part of DA/571/2014 and **Figure 5** shows the building heights approved since on Lot 4 and Lot 5. Clearly a transition in heights is maintained by the proposed development.

The proposed development, and specifically those elements of the development which exceed the development standard continue provide a transition of built form and land use intensity in cohesion with the remainder of the precinct, and therefore, satisfies this objective.

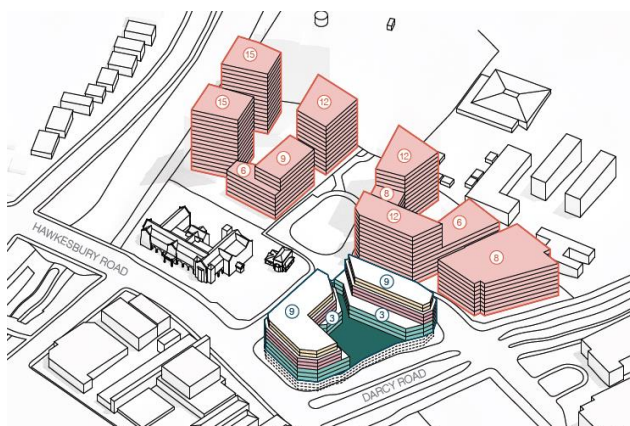


Figure 4: Building Envelopes approved as DA 571/2014



Figure 5: Approved developments on Lot 4 and Lot 5 and the proposed development

Objective B: to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development

Visual Impact

This built form proposed by the development (including the proposed height variation) has been designed to respond to and refine the building envelopes approved as part of DA 571/2014. The development now proposed is generally consistent, in terms of the visual impact, with that previously approved. The height variation does not result in the unreasonable disruption of views, loss of privacy or loss of solar access to any surrounding development.

Disruption of Views

The refinements to the building form that are proposed will improve views to and from public places by allowing the building form that was previously approved adjacent to the neighbouring heritage building (the southern wing of the eastern building) to be relocated within the site (refer to **Figure 3**). This refinement to the previously approved building envelope will improve views to and from this adjacent heritage building and therefore improve views within and surrounding the precinct. The additional height that is proposed as a result of the relocation of building form within the site will not affect the views of any exiting residential buildings or views from any area of public domain in the vicinity of the site, but rather, facilitate the opening up of views to the heritage item from within the precinct. Views from the site to the east (towards the Sydney CBD and Parramatta) will also be maximised.

Loss of Privacy

The additional height proposed as part of this development will not cause any detrimental impact on privacy as separation to existing and future buildings within the precinct is substantial and well in excess of any guidelines.

Loss of Solar Access

Shadow studies have been provided as part of the architectural package for the proposed development which demonstrate that the impact of the proposed height variation on solar access is comparable to the impact of the approved building envelopes.

Summary

The proposed development, including that part of the development which exceeds the maximum height of buildings development standard, will not have any detrimental visual impacts, views impacts, privacy impacts, and solar access to existing development and therefore satisfies this objective.

Objective C: to require the height of future buildings to have regard to heritage sites and their settings

The height of the proposed development is modest when compared to the heights approved on Lot 4 and Lot 5 and adopts principles for height associated with the envelopes approved in DA561/2014. The increase in building height that has been introduced as part of the proposed development results from refinements to the approved building envelopes to improve the relationship of the development to the adjacent heritage building, and improve the amenity of the ground plane on Lot 2.

As shown below in **Figure 6** and **Figure 7** the change to the building form will allow for views to and from the adjacent heritage building to be enjoyed, where if the site were developed in line with the approved building envelopes, these views would not be possible. The proposal allows the heritage buildings to be appreciated and enjoyed from within the proposed public plaza.



Figure 6: Views to neighbouring heritage building form the north

Source: Architectus



Figure 7: Views to Lot 1 from the central public plaza

Source: Architectus

Objective D: to ensure the preservation of historic views

As shown in **Figure 6** and **Figure 7**, the refinements to the building envelopes have allowed for a new view to the adjacent heritage building on Lot 1 to be created from the public plaza. This would not have been possible if the approved building envelopes were maintained. The additional height resulting from the relocated floor space does not create any additional impacts on historic views. Because the proposed development will not detrimentally impact any existing historic views and because the refinements proposed to the approved building envelopes will create additional views to the surrounding historic buildings, the development clearly satisfies this objective.

Objective E: to reinforce and respect the existing character and scale of low density residential areas

The proposed development will not detrimentally affect the character and scale of the surrounding low-density development.

Objective F: 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.

Shadow studies have been provided as part of the architectural package for the proposed development which demonstrate that the impact of the proposed development on sky exposure and solar access to surrounding buildings and surrounding public domain will be largely consistent with the impact of the approved building envelopes. Therefore, this objective is still achieved despite the height variation.

4.2 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 (Fourth Method)

As shown in **Figure 4** and **Figure 5**, since the approval of DA/571/2014, which provided for building envelopes for each lot within the WSU campus site, the Panel has granted consent to DA/1271/2016 which applies to Lot 4 and DA/968/2016 which applies to Lot 5. The building areas denoted in red within **Figure 5** highlight the areas of these approved buildings which exceed the applicable height limit.

In granting consent for the approved developments on Lot 4 and Lot 5, the Panel have effectively abandoned the maximum height of buildings development standard as it applies to the WSU precinct. In light of these approvals, compliance with the standard is both unreasonable and unnecessary. Future development, including the proposed development should instead have regard to the surrounding approved developments.

5.0 Clause 4.6(3)(b) There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the PLEP requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

5.1 Benefits of the Development as Proposed

As discussed in **Section 3.0**, the underlying reason for the proposed increase in building height relates to the refinements to the approved building envelopes and the relocation of building mass along the southern extent of the site to the top of the eastern and western buildings (as illustrated in **Figure 3**). This design refinement results in two predominant outcomes, which are discussed below.

- **Taller buildings:** As a result of the design refinements, the two buildings now proposed on the site are taller than the building envelopes previously approved on the site. This is illustrated in **Figure 4** and **Figure 5**. As discussed in **Section 4.1** and **Section 4.2**, the increase in building height that is proposed is acceptable because the development is able to satisfy the objectives of the development standard notwithstanding the proposed departure from this standard, and because Council have virtually abandoned the height of building standard for the WSU Westmead precinct.
- **Improved public domain and ground plane orientation:** The relocation of building mass from the southern extent of the site (as shown in **Figure 3**) results in an ability to improve pedestrian permeability through the site and the relationship of this permeability to existing (and future) transport nodes adjacent, and improve visual connections through the site, including views to and from the adjacent heritage buildings (refer to **Figure 6**).

Overall, the improved ground plane, pedestrian, and visual connections, facilitated by the proposed development provides benefits to the site which outweigh any impact caused by the building height proposed above the 31m development standard. In light of this there are clearly sufficient environmental planning grounds to justify the contravention of the development standard.

5.2 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court observed that the phrase "environmental planning grounds" is not defined, but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 1** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the height development standard.

Table 1 Assessment of proposed development against the Objects of the EP&A Act

Object	Comment
(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,	The proposed development will promote the economic and social welfare of the community through the appropriate redevelopment of a currently vacant lot within the wider redevelopment of the WSU campus.

Object	Comment
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposed development will facilitate ecologically sustainable development by allowing an appropriate addition to the WSU campus site that will have no negative impact on environmental and social considerations and will support the economic health of the broader Westmead precinct through employment opportunities.
(c) to promote the orderly and economic use and development of land,	The proposed development will facilitate a development on the site that is orderly an economic in consideration of the surrounding developments and the recent approval of developments on Lot 4 and Lot 5, both of which include significant departures from the maximum height of buildings development standard.
(d) to promote the delivery and maintenance of affordable housing,	The proposed development is not relevant to this object.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed development will have no impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Consistent with the development approved as DA/571/2014, the proposed development will allow for an appropriate distribution of floor space and building height within the WSU campus precinct to allow for the proper management of the cultural heritage assets within the site. By focussing the building forms on Lot 2 (the site) and through the proposed distribution of the floor space which allows physical and visual connections to and from the heritage item, the development is able to properly account for the heritage curtilage and significance of the adjacent building.
(g) to promote good design and amenity of the built environment,	The proposal has refined and developed the envelopes approved by the Panel as part of DA/571/2014, improving the urban outcome and amenity offered by the site. Notwithstanding this refinement, the development now proposed is consistent with the amount of floor space approved.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant BCA codes and will promote the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to the proposed development
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified in accordance with the requirements of Council's DCP.

6.0 **Clause 4.6(4)(A)(li) 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**

6.1 **Consistency with the objectives of the development standard**

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in **Section 4.1** of this report.

6.2 **Consistency with the B4 – Mixed Use objectives**

Objective A – To provide a mixture of compatible land uses.

The proposed variation will contribute to the delivery of a combination of commercial, education, retail, and child care land uses on Lot 2 within the WSU campus redevelopment. This is consistent with the approved DA for the site, which approved a mixture of compatible land uses, including residential, commercial, education and health land uses, as well as public open space across the WSU campus precinct.

In providing appropriately scaled buildings, the proposed development complements the recently approved mixed use buildings on Lot 4 and Lot 5 and therefore provides an appropriate mix of compatible land uses. It is therefore consistent with this objective notwithstanding the additional height proposed as part of this application.

Objective B – 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.

The site is located approximately 150m from Westmead station, and is in close proximity to the route for the Parramatta Light Rail and proposed Sydney Metro West projects, as well as various bus routes to the Parramatta and Sydney CBDs. The variation will therefore facilitate 30,700m² of GFA in a manner which is consistent with the built form principles for the precinct, and in a location that is close to existing and future transport infrastructure, and will allow the integration of suitable uses in an accessible location, encouraging public transit patronage. Bicycle parking and end of journey facilities will be provided within the proposed development, which will help to encourage active modes of transport, including walking and cycling. The height variation allows for a simple but more integrated development. The proposed variation is therefore consistent with this objective.

Objective C – To encourage development that contributes to an active, vibrant and sustainable neighbourhood.

The proposed variation will facilitate the delivery of a development that includes activated ground floor interfaces and an active central plaza area. In delivering a new plaza the development will encourage a range of active uses within the publicly accessible open space. The proposed development will have a minimum NABERS requirement of 4 stars and an aspiration to achieve a five star NABERS rating, thereby assisting in the delivery of an ecologically sustainable precinct.

Objective D – To create opportunities to improve the public domain and pedestrian links.

The proposed variation will facilitate the delivery of a publicly accessible plaza that delivers improved linkages through the precinct and between the precinct open space, the heritage assets within the precinct, and the edge of the precinct. This is illustrated in **Figure 3**.

The additional height proposed as part of this development application allows the area of the plaza to be maximized by allowing the relocation of the approved floor space to the upper levels of the building.

The proposed plaza realises an opportunity to improve the public domain and deliver a significant pedestrian link within the precinct, by providing a quality open space that includes new trees and areas for members of the public to sit. The proposal for the public domain, which is replicated in **Figure 8**. The proposed variation will assist in delivering this outcome, and is therefore consistent with this objective.

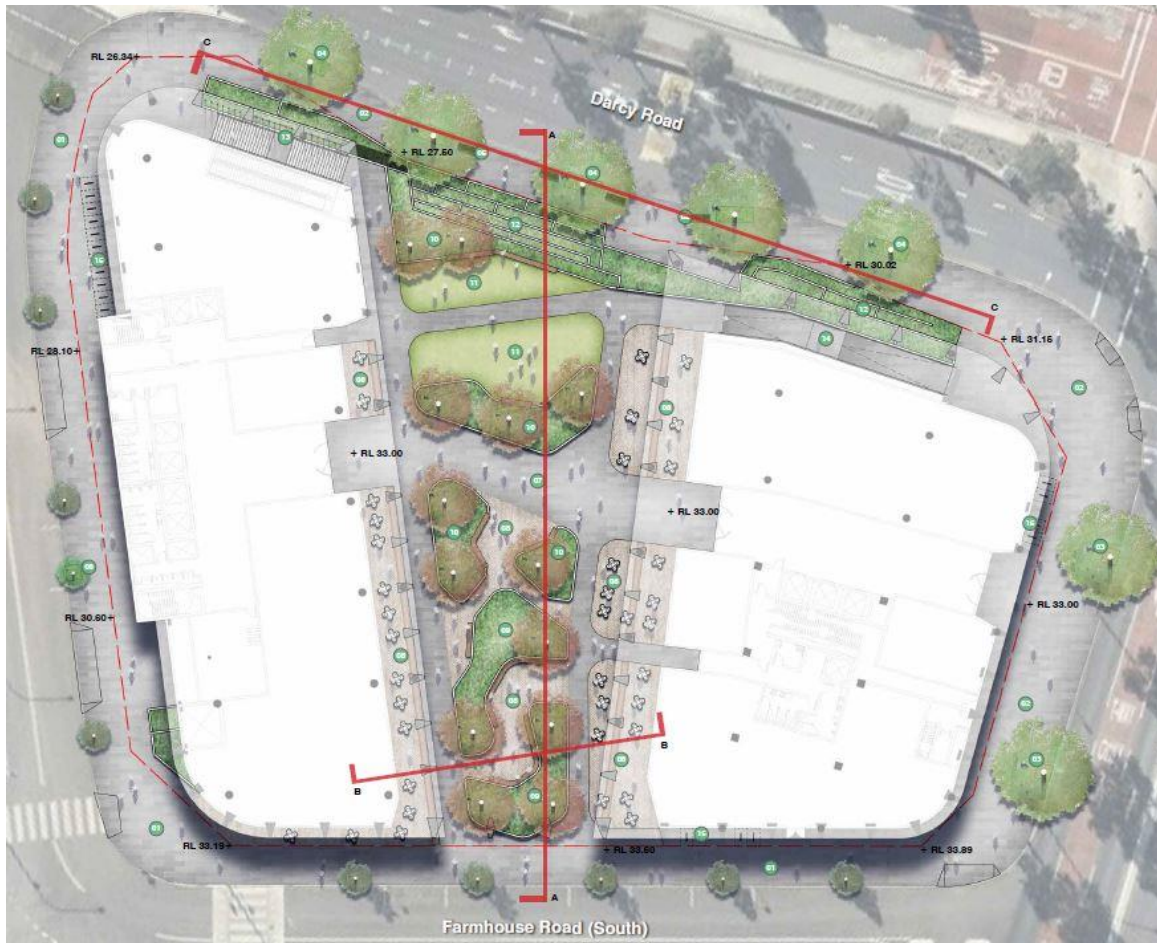


Figure 8: Public domain concept

Source: Oculus

Objective E – To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.

The site is located approximately 1.6km from the nearest B3 Commercial Core zone and therefore the proposed variation will not undermine the function of this higher order zone. The proposed variation is therefore consistent with this objective.

Objective F – To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.

The site is located approximately 1.3km from the Parramatta City Centre and therefore the development in this location will not impact the unique qualities and special character of this area. The proposed development is therefore consistent with this objective.

7.0 Secretary's Concurrence

Under Clause 4.6(5) of PLEP, the Secretary's concurrence is required prior to any variation being granted. Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 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 clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the proposed development, therefore the Secretary's concurrence can be assumed.

Nevertheless, the following section provides a response to those matters set out in Clause 4.6(5) of the SLEP which must be considered by the Secretary.

Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation to the maximum height of buildings development standard within the PLEP 2011 will not raise any matter in which of State or Regional significance. The variation sought as part of this application is consistent with those approved as part of DA/1271/2016 for Lot 4 and DA/DA/968/2016 for Lot 5 and will result in an improved ground plane orientation when compared to the previously approved building envelopes on the site.

Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the development standard. Requiring the maximum height of buildings on the site to be maintained at 31m would result in a built form outcome that is inconsistent with the overall redevelopment pattern that has since been approved throughout the WSU campus precinct, particularly in relation to the developments now approved on Lot 4 and Lot 5 (refer to **Figure 4** and **Figure 5**).

Clause 4.6(5)(c): Any other matters to be taken into consideration by the Secretary

None.

8.0 Conclusion

The site is subject to a maximum height of buildings development standard of 31m, which is applied by Clause 4.3 of the PLEP 2011. In approaching this development, Architectus reviewed the approved building envelopes and proposed a number of key amendments to improve the ground plane, pedestrian permeability, views to and from the site, and open space. These improvements necessitated a relocation of approved building mass (as expressed as GFA) from the southern edge of the site to the upper levels of the proposed buildings. This results in an exceedance of the maximum height of buildings development standard.

As expressed within this request to vary the maximum height of buildings development standard, the proposed exceedance is acceptable, and compliance with the development standard is unreasonable and unnecessary, because:

- The environmental planning impacts associated with the improvements to the ground plane (as outlined above) more than offset the impacts of the addition proposed building height;
- In approving DA/1271/2016 for Lot 4 and DA/968/2016 for Lot 5 Council and the Sydney Planning Panel effectively abandoned the relevant height of buildings development standard as it applies to the site and the surrounding WSU precinct;
- The proposed development is able to satisfy the objectives of the B4 Mixed Use zone; and
- The proposed development is able to satisfy the objectives of Clause 4.3 of the PLEP.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the height development standard is considered appropriate in these circumstances.

Despite the numerical non-compliance with the maximum height of buildings development standard, the proposed development is considered to satisfy the objectives of the development standard and the *B4 Mixed Use* zone.

The proposal will provide environmental benefits particular to the site through the provision of a new commercial and education centre within this existing precinct and will deliver a vastly improved public domain outcome when compared to the previously approved building envelopes on the site. On this basis, the Clause 4.6 variation is considered well founded and should be supported.