

1. Clause 4.6 Exception to Development Standards

1.1 Introduction

This Clause 4.6 variation request seeks to vary Clause 4.3 of *Lake Macquarie Local Environmental Plan 2014* (the 'LEP') on the height of building limit for the proposed development (DA/419/2018). The proposed development at Cary Street, Toronto involves a six (6) storey Mixed Use Development and two (2) levels of basement car parking within the Toronto Town Centre. The request seeks variation to the three different height of building limits under the LEP.

The site is a large site that contains a mix of permissible building heights. Furthermore, it is located on busy Cary Street that provides the main northern entrance into Toronto as development proceeds from mainly residential to mixed use commercial and residential district and further to the central business district of Toronto.

Clause 4.6 of the LEP enables development consent to be granted for a proposed development even though the proposed development would contravene a development standard such as the maximum height limit imposed by the LEP for the site.

This variation request is made having consideration for the requirements of Clause 4.6 of the LEP and in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying Development Standards: A Guide* and has incorporated relevant principles from NSW Land and Environment Court decisions including:

1. *Four2Five Pty Limited v Ashfield Council* [2015] NSWLEC 90;
2. *Wehbe v Pittwater Council* [2007] NSWLEC 827 ('Wehbe'); and
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action').

The objectives Clause 4.6 of the LEP are set out in subclause (1) 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.

As was detailed in *Initial Action* and confirmed by the Court of Appeal in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at [179], there are two preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for a proposed development that contravenes a development standard:

'...15. The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

...

26. The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. ...'

The request for variation aims to meet requirements of Clause 4.6(4)(a)(i) and (ii) and address matters required to be demonstrated by Clause 4.6(3) in the circumstances of this case to enable development consent to be granted for the proposed development. This Variation Request should be read in conjunction with the Statement of Environmental Effects included (SEE) in the Development Application for the site.

1.2 Development Standard to be Varied

This Clause 4.6 Variation Request seeks the variation of Clause 4.3 of the LEP maximum building height for the site. There are three maximum building heights specified in the relevant LEP height of building map for the site and these range between 10, 13 and 16 metres. This can be seen in the extract from the LEP Height of Building Map HOB_009B in Figure 1 below and Appendix 4 of the SEE.

The LEP defines 'height of building' in the Dictionary as meaning:

'in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.'

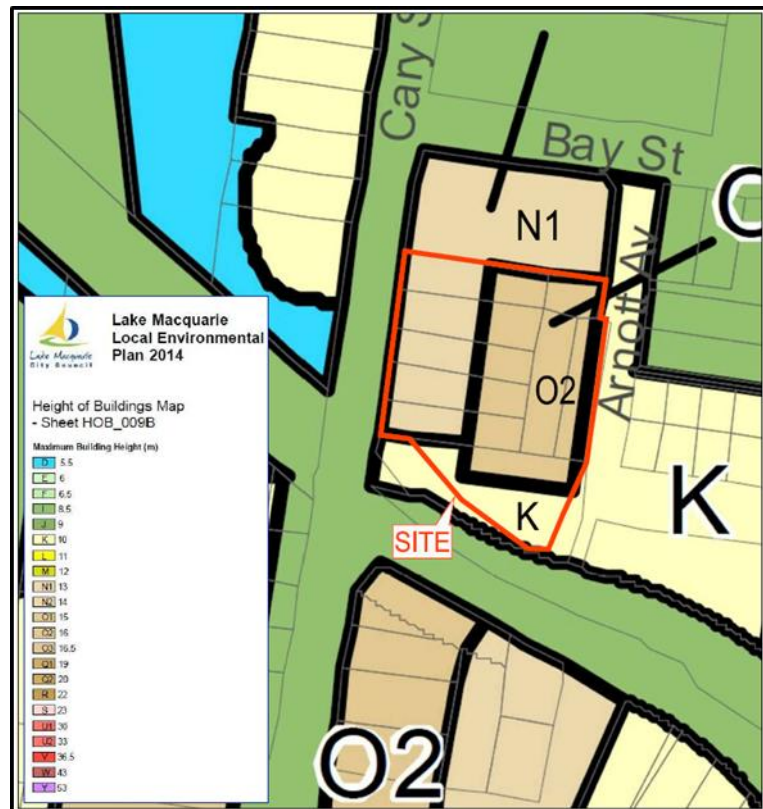


Figure 1 – Extract from Height of Buildings map (source: LEP 2014)

Proposed building heights are as indicated on the elevations submitted with the development application. The Cary Street building on average is 20.6 metres above natural ground level (excluding the roof garden) (RL23.9 minus ground RL3.3), which is a 7.6 metre variation to the 13 metre maximum building height. The highest part of the encroachment in the 13 metre height limit is a small area of the building being the 80m² roof garden, lift and stairs. The Arnott Avenue building is average 16.1 metres high (RL20.6 minus ground RL4.5).

The heights across the site proposed in the Toronto Town Centre Area Plan appear to be related to the slope of the land towards Lake Macquarie. Additional building heights toward Arnott Avenue would result in a similar overall height of buildings facing Cary Street to those facing Arnott Avenue. However, the proposed development has appropriately refocused building heights towards Cary Street that is a busy road that provides the northern entrance to Toronto.

121 Extent of Variation

Figures 2-4 below present the proposed building height and maximum permissible building height under LEP 2014 (not to scale).

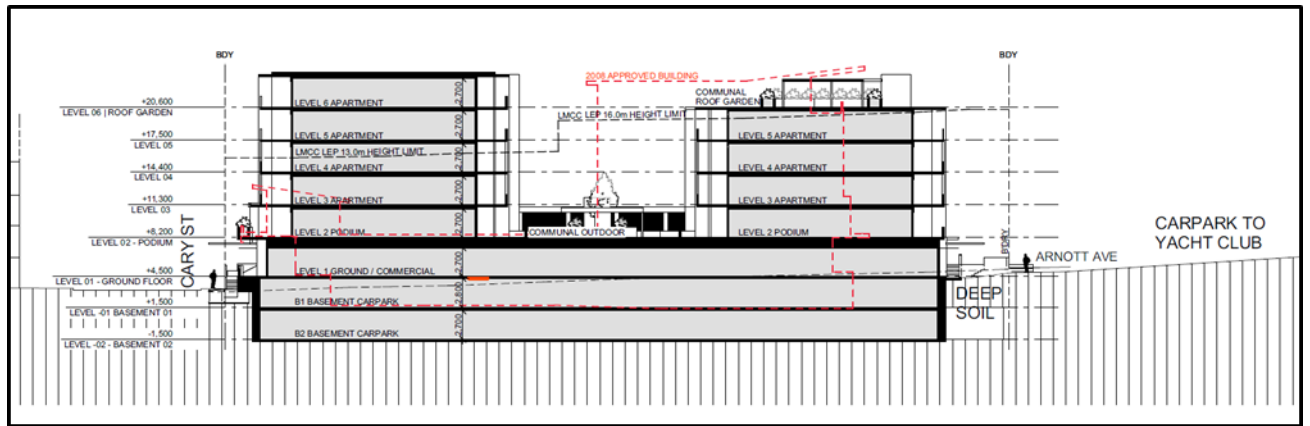


Figure 2 – Section A

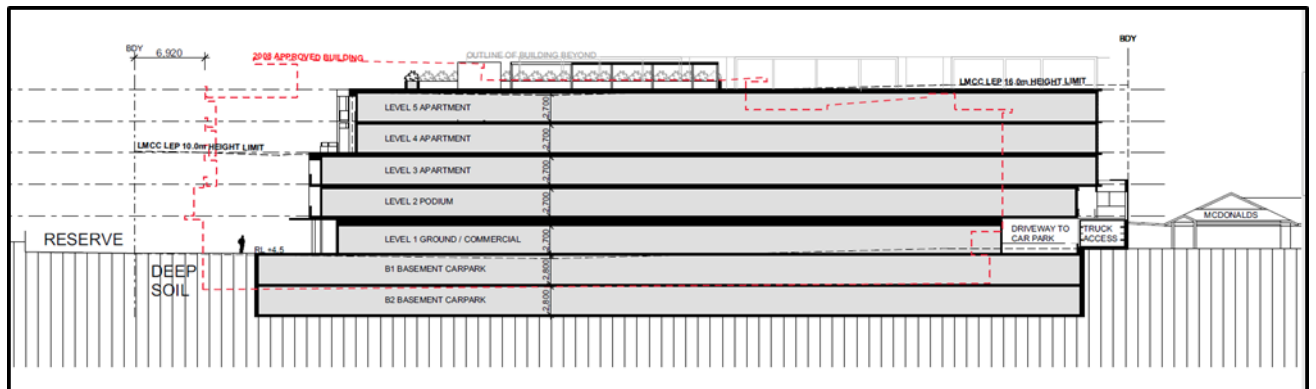


Figure 3 – Section B

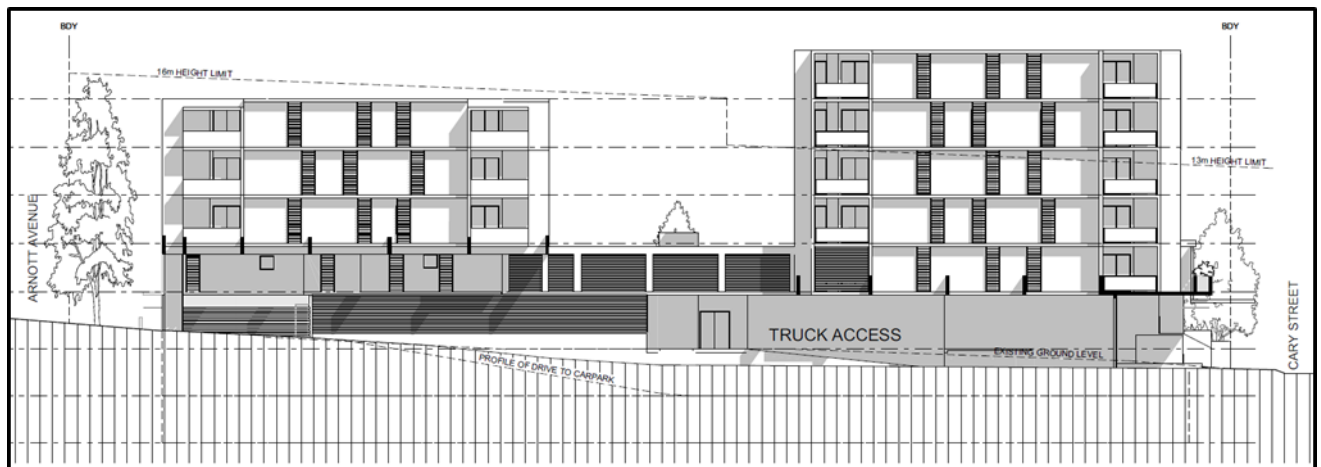


Figure 4 – Section C

The proposed extent of variation to the height limit is presented in Table 1 and Figure 5.

Table 1 – Variation to height limit

Height Control	Proposed Height	Variation (%)
10 metres	10.5 metres	5%
13 metres	20.6 metres to building and 23.6 metres to roof garden structures	58% to building and 81.5% to roof garden structures
16 metres	16.1 metres	0.6%

The above numerical variations need to be considered in the context of the overall development. A significant part of the site has not been developed as the separation in the middle allows creation of a podium level communal outdoor space that is 11 metres lower than the height limit. The space not utilised in the middle of the site should allow for greater building heights as it results in a higher quality built form. There are also substantial setbacks from the southern boundary in response to the heritage item and increased separation as requested by Council.

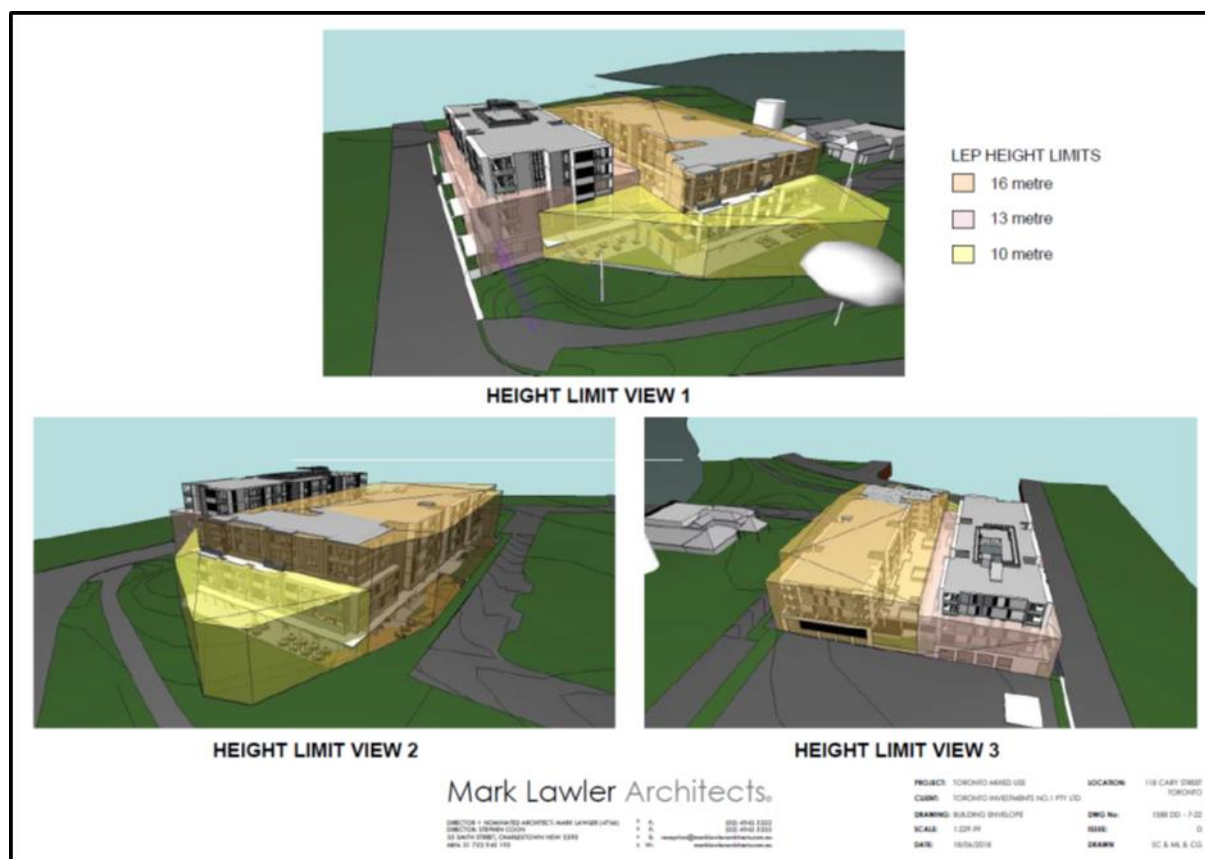


Figure 5 – 3D Height Plane Renders

1.3 Unreasonable and Unnecessary

'In *Wehbe*, the now Chief Judge Preston summarised five different ways in which compliance with a development standard might be shown as unreasonable or unnecessary and these are as follows:

1. compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. the underlying objective or purpose is not relevant to the development with the consequence that

compliance is unnecessary;

3. the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that 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; and
5. that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary."

Satisfactorily demonstrating that compliance with a development standard is unreasonable or unnecessary in any one of these ways is sufficient for meeting the requirement in clause 4.6(3)(a) of the LEP.

The following demonstrates that compliance with the building height development standard in the LEP is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding the non-compliance with the standard. In this regard and as was held in *Intial Action* at [87], it is not necessary that a development should have a neutral or beneficial impact relative to a compliant development, only that the objectives of the particular development standard have been achieved despite the contravention.

The two objectives under Clause 4.3(1) of the LEP are:

- (a) to ensure the height of buildings are appropriate for their location,
- (b) to permit building heights that encourage high quality urban form.

Objective 4.3(1)(a) of the LEP - to ensure the height of buildings are appropriate for their location

The SEPP 65 Urban Design Review Panel state "...the Panel formed the view that a building of five or possibly six levels above ground would be the maximum appropriate for the western part of the site. A roof garden above this level was considered to potentially be a positive provision...". The design has adopted the Panel's recommendation of a six storey building height from the originally proposed seven storey building.

Building heights are varied as follows:

- land mapped as 16m limit – to provide additional storeys as the land slopes towards Lake Macquarie. This was confirmed by the Panel to not be an appropriate design response to the site;
- land mapped as 13m limit – to provide similar building heights based on slope of the land. This was confirmed by the Panel to not be an appropriate design response to the site. The Panel state "...It was also agreed that it was preferable that the two residential blocks not be equal in height, and that a differentiation of one to two storeys was desirable, with the eastern, Arnott Street section of the site preferably being the lower..."; and
- land mapped as 13m limit – to provide reduced height to the heritage item. This was confirmed by the Panel to not be an appropriate design response to the site. The Panel state "...The opening of the southern end of the development has successfully reduced the earlier visual bulk of the scheme, which now offers a more sympathetic background to the heritage area accommodating the former rail line, to the site's south..."

Note that the building has been 'skilfully' designed (as required in the view loss test set out in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* at 25-29) as the height is commensurate with the height of the surrounding tree canopy and as such the portions of the development that exceed the building height control do not result in any significant loss of views. A building design that complied with the height standard would not have similar options as presented in this proposal and would potentially therefore result in a building design that is less of a statement as the entry to Toronto.

The development site is an amalgamated land holding comprising ten allotments and therefore represents an opportunity for a holistic built form and urban design outcome. Due to the large area and amalgamated nature of the site it encompasses the junction of three different building height zones that do not facilitate a consistent or holistic built form response to the site. Strict compliance with the individual building height zones is not appropriate or necessary in this instance as the development provides an opportunity for a built form response that is specific to the site, rather than the arbitrary application of the building height zone boundaries. The Urban Design peer

review demonstrates that the proposal is a suitable response to the site.

Various building forms were explored as part of the Concept Design Stage such as a building that spread across the site as a lower, “fatter” block form within the height limits. Concerns were made about filling in across the site as it would have less opportunity for; outlook; outward facing external walls facilitating natural light and ventilation; privacy; distance separation and circulation.

As a result of the Concept analysis to make best use of the site dimensions, the proposal creates two long buildings separated to enable maximum perimeter walls for windows, decks and outlook. The separation in the middle allows creation of a podium level communal outdoor space that is 11 metres lower than the height limit.

A built form that would be allowable within the height limit in this central area would create various amenity and architectural problems as abovementioned. Therefore, instead of built form in the middle of the site, built form is transposed to the Cary St building to maximise natural light, ventilation, outlook, general amenity to all apartments and reinforce the Architectural design. The Cary St building exceeding the height limit by 8 metres to the top apartment level and 11 metres to the roof garden is juxtaposed by the 11 metre height reduction of the central podium.

This transposition to create the height is made possible by a couple of primary factors:

- there are no FSR constraints
- the number of apartments accommodated by the height is supported by the respective car parking numerical requirement being satisfied fully on site with the two levels of basement carparks.

This transposition, whilst creating height, also creates open space and separation between built forms, maximising amenity whilst reducing building mass and bulk and provides a better outcome than a lower, singular large mass spread across the site within the height limit.

The design facilitates appropriate development of the site with encroachment into the maximum permissible building height justified on the basis of a better design outcome and improved amenity for occupants, which is considered to be a positive outcome within the context of the B2 Local Centre Zone. Significance of surrounding heritage items such as the Toronto Hotel is visually maintained and not affected by the proposed building. Furthermore, the proposed development creates a Gateway to Toronto to indicate entry into the Toronto Town Centre to achieve its gateway significance. Approaching the Toronto CBD down from the north along Cary Street presents the site in a low part of the approach that allows for the proposed height without dominating the streetscape. Rather, the approach encapsulates the Anglican Care building at the southern end of the CBD which the proposal responds to, completing the town centre ‘bookends’.

It is appropriate to focus the development on the busy Cary Street side of the site with higher built form in that location rather than on the quieter Arnott Avenue side. The building utilises the topography of the land by positioning lower building height sloping toward the lake and recreation allowing for appropriate density in a design that considered surrounding slope of the land.

A scheme that achieves strict compliance with the building height controls would squash the same building envelopes into lower forms that would result in reduced building separation, reduced access to sunlight, reduced area of ground floor communal open space and deeper apartments. Rather, the proposal improves all of these aspects by creating taller building envelopes at the appropriate locations. Internal and external amenity is provided in the design by access to space, light and ventilation that is encouraged through high quality design within the taller building envelopes. Interaction between commercial, residential and recreation space is enhanced by the podium level, walking paths and landscaping that consolidates uses and embeds the building into the environment.

The proposal generally achieves setback requirements. The following setbacks are proposed:

- 6 metres to Arnott Avenue
- varied setback to Victory Parade and up to 21.268 metres
- varied setback to Cary Street of 3.028 metres to 3.429 metres
- varied setback to the northern boundary of 6.08 metres to 12.01 metres.

Recreation space and interaction to the reserve to the south provides separation from Victory Parade and allows for interaction from the commercial area. The front setback of around 3 metres is appropriate for the site, nature of the development and proposed commercial space to integrate with the street. Setbacks accentuate building

form where more prominent parts of the building facing Cary Street are closer to the street than other areas of the site. The Cary Street frontage seeks to accentuate the built form, encourage interaction with the community and adjoining activities and further promote the landmark statement of the building.

Further justification for the proposed height is presented below:

- the proposed development is of appropriate height and scale to avoid undesirable impacts on the scenic quality of the township, especially as viewed from the Lake
 - low visual impact of the proposed development from and to the Lake as the building seeks to follow contours of the land while making a statement at the entry to Toronto
 - low impact on views as the proposed building will be set within the business zone and with similar height to surrounding crowns of trees.
- the site is positioned in a low section of Cary Street that allows for extra height that does not dominate streetscape or lake views while making a statement with a landmark building in a key site
- view corridors are retained and not impacted by the additional height
- additional height is ameliorated by the central podium communal outdoor level being 11 metres lower than the development standard. The podium provides visual and spatial relief to the built form and reduces overall encroachment into the building height
- urban design has provided an appropriate outcome rather than uniform mass block in accord with the development standard. The proposed development appears as two buildings and provides extensive visual relief at the podium level
- higher parts of the building are facing the major road of Cary Street with lower built form facing more sensitive yacht club and residential neighbours. Providing an alternate building form to that identified in the Area Plan will achieve a more appropriate built form with focus of building towards Cary Street to reinforce the gateway significance
- retention of dominance of surrounding heritage items over the site. Due consideration has been given to heritage components through advice from the heritage consultant in consultation with the project architects
- retention of Solar Access due to two building forms with 18 metre separation. The extra height allows for increased solar access to higher apartments with no additional overshadowing to any residential neighbours beyond a compliant scheme.

The proposed development is located on a prominent site that allows for consolidated lots to achieve a good quality design with appropriate densities and uses. The development presents an opportunity for the site specific design response proposed that signifies entry to the Toronto town centre. In this regard, the LEP building height zones do not envisage a single development opportunity (because there are multiple allotments) and strict compliance with them would not facilitate the best urban design outcome for the site. The development scheme has been the subject of an iterative Urban Design process including a peer review that has supported the scheme on the following grounds.

The proposed buildings are appropriate for the site as the siting and design results in minimal privacy impacts to neighbours. Courtyards are generally located on the ground floor and are oriented around the building and internal on the podium level. In this regard the additional height proposed will not increase the potential for overlooking of neighbouring properties, particularly as the building is adjacent to a public reserve and commercial premise. Proposed height is commensurate with the height of the surrounding tree canopy and as such the portions of the development that exceed the building height control do not result in any significant loss of views.

A portion of the development extends into the 10 metre height zone. While this results in the largest numerical non-compliance with the standard, it will not result in any significant perceived non-compliance as it only arises as a result of the encroachment of the building into the lower height zone as presented in Figure 4. The combination of sloping land and lower height limit combine to limit potential design options for the site that reduce options for high quality built form. The proposed design has considered site attributes and incorporated these attributes into design opportunities throughout the entire site that is more appropriate than strict compliance with height controls.

As illustrated in the Architectural Site Section diagrams (Figure 2-4) the site is located in a lower topographical area within the locality and as such is suitable to accommodate additional building height without compromising

any significant views or resulting in a building form that is visually prominent throughout the locality.

The height of the development has been designed to ensure it is commensurate with the canopy height of the trees in the surrounding area.

The site has a sloping topography that results in a level change of approximately 2.5 metres across the site. As illustrated in the LEP Height Limit Diagram (Figure 1), the non-compliance with the 13 metre height control is a direct result of the sloping topography of the site. In this regard the non-compliance with the 13 metre height control is attributed to a circumstance specific to the site.

Site Coverage and Landscaping

Continuation of the existing North East landscape characteristic is proposed to be extended along Arnott Ave with *Auracaria* spp. Street trees and new landscaping are included along Cary Street.

Landscape species will draw heavily from the existing mix of exotics and natives as massed planting. A feature tree of *Quercus robusta* (English Oak) will be planted in the Reserve in recognition of the ageing Oak tree that is to be removed from site.

Transition of landscape from private to public domain is planned to integrate existing landscapes and historic elements with new proposed elements.

Proposed landscaping includes on site deep soil zones connecting with the reserve and Arnott Avenue. These deep soil zones are 6 metres wide, 440m², equivalent to 7% of the site area which satisfies the SEPP 65 Apartment Design Guide. In addition to the ground level deep soil zones, a 1,000m² podium level communal open space for residents and rooftop garden of 300m².

The extra height allows the site to realise its development potential while allowing for significant landscaping and communal areas.

Objective 4.3(1)(b) of the LEP - To permit building heights that encourage high quality built form

Compliance with the development standard is unreasonable and unnecessary as the proposed development provides for high quality built form, high levels of solar access and excellent internal living spaces.

The design facilitates appropriate development of the site with encroachment into the maximum permissible building height justified on the basis of a better design outcome and improved amenity for occupants, which is considered to be a positive outcome within the context of the B2 Local Centre Zone. The proposed building complies with the height objectives as it is appropriate for the site and has high quality, built form.

As the proposed development is across a number of lots with varying height limits the design has been undertaken in a manner which enables the building to be viewed as a single development albeit articulated across the site rather than uniformly breaking the massing up to comply with the prescribed height limits which would result in disjointed building elements. Instead, the built form steps down appropriately to the more sensitive surrounding context. The proposed encroachments result in better design outcomes for the building as a whole.

As shown in Figures 2-5 a number of design features are included in the building to improve overall building design and internal living space such as:

- the DCP Town Centre Plan Block Section building separation is achieved through the shared podium level that reduces building bulk and improves liveability of the building
- exceedance in height is partially for architectural roof forms permissible under Clause 5.6 which create interest and better internal living space for residents
- space not utilised in the middle of the site should allow for greater building heights as it results in a higher quality built form
- the intended form of the building is to provide a statement that is a gateway to the northern end of Toronto. The high quality built form and greater height allow for increased design options that achieve a high quality built form. As stated earlier the SEPP 65 Urban Design Review Panel stated "...The Panel was of the view that the consultants' arguments in support of a building of greater height facing Cary Street had merit, and potentially offered a better urban outcome than the previously approved low-scale development proposal, which was considered to be a rather understated response, and at a scale that did not fulfil the aim stated of the Town Centre Plan for the site to be a northern gateway site to the Toronto business area

- the roof garden, lift and stairs occupy approximately 7% of the Cary Street building footprint and is centrally located within the footprint to be set back at least 5 metres from the building edges for most of the roof garden and is an open structure with a single flat plane with no solids.

The design achieving a better planning outcome is confirmed in the SEPP 65 Urban Design Review Panel Recommendations dated 10 May 2017 that stated "...The Panel was of the view that the consultants' arguments in support of a building of greater height facing Cary Street had merit, and potentially offered a better urban outcome than the previously approved low-scale development proposal, which was considered to be a rather understated response, and at a scale that did not fulfil the aim stated of the Town Centre Plan for the site to be a northern gateway site to the Toronto business area. Further, the suggestion that this site could readily "bookend" the recently completed Anglican Care seniors-living development located just under the ridge to the southern end of the township, was considered sound..."

The site has a 75 metre frontage to Cary Street and is located at the junction of Cary Street and Victory Parade that signifies the northern entry to Toronto. As such, it forms a prominent location within the locality that is suitable for a prominent built form response. The proposal increases the building height along the Cary Street frontage to reinforce the hierarchy of this corridor and the site's prominent location at the junction of two major roads. The desire to create a statement that will be considered a landmark to bookend the northern entry to Toronto with the southern entry to Toronto is evident in the overall design outcome. The ability to consolidate the lots and achieve a different building design to that proposed in the Area Plan provides for additional high quality and visually interesting architectural features and options that would not be available with a compliant building. The objective of the clause would be defeated or thwarted with greater height to Arnott Avenue as the buildings would not be appropriate for the site and would not have high quality urban form.

1.4 Sufficient Environmental Planning Grounds to Justify Contravention

In accordance with Clause 4.6(3)(b), there are sufficient environmental and planning grounds to justify contravening the development standard due to the following:

- proposed development meets the zone objectives as set out below and the height control objectives above
- Council confirmed sufficient environmental planning grounds for a six level building on the Council owned site on the foreshore of Lake Macquarie that is consistent with the proposed scheme. In its meeting of 23 April 2018 Council sought to progress concept development of a six level scheme on Council owned Operational Land located at 4 Bath Street and 1B Victory Row, Toronto. That concept is similar to the current proposed development with both sites within 20 metres of each other
- the site located as the Gateway to Toronto Town Centre and increased height and associated density is warranted to provide access to existing transportation, services and facilities. These efficiencies would not be achieved as effectively with a compliant scheme
- the proposed development creates appropriate built form outcomes for the zone and is compatible with existing buildings including heritage. The Panel and heritage consultants have confirmed that the height is compatible with heritage issues. The Statement of Heritage Impact states the development site maintains visual prominence of the Toronto Hotel and the bluff, as viewed from the lake and lake foreshore
- the proposed height creates amenity on the site without an adverse impact on the surrounding sites such as preserving privacy and solar access. The height creates a development with sufficient population to create a community feel that can interact in formal and informal situations in open space and recreation areas across and adjacent to the site that would not occur with a development of lower height and density.

The above demonstrates that there are sufficient environmental and planning grounds to justify the proposed contravention of the building height development standard and that the objectives of the development standard are achieved. The additional height sought by the proposal will not result in unreasonable impacts to the physical environment, is permitted under Clause 4.6, and will not adversely impact views or visual quality of the site or the amenity of neighbours. The proposal seeks to create a significant development that provides a northern gateway to Toronto that accentuates and enhances use and built form of surrounding development and will make a significant positive contribution to the streetscape. In this regard, there are sufficient environmental planning grounds to justify the proposal.

It is considered that the degree of flexibility being sought to the height standard in this request is appropriate in that:

- The site is unique in its potential built and urban form contribution and role to the Toronto Town Centre as a

gateway, activator and link.

- The variation is a measured urban design response to the specific characteristics to the site and its context in achieving a better planning outcome that satisfies the objectives of the standard and the zone.
- The height controls applying to the site are out of keeping with the general approach to massing in the LEP provisions to the Toronto Town Centre as well as the means to achieve a better planning outcome and accordingly, cannot be used as a precedent.

In particular, the variation to the height limit represents an appropriate degree of flexibility as the site is:

- connected to the same B2 Local Centre zoning in Toronto central business district (with the exception of the recreation land for the heritage rail corridor) that confirms the critical role of the site of connecting residential land uses with the core business district of Toronto
- able to accommodate a high quality development that signals the entry to Toronto while integrating with the site and surrounds
- appropriate for a building that exceeds mapped permissible building heights as it slopes towards the lake and this allows the building to express the local topography while setting a statement of design excellence
- able to accommodate a numerical exceedance of permissible building height and achieve the objectives of the standard and zone especially as it is
 - located in a local centre zone that has been considered appropriate for a range of residential and commercial land uses
 - ideally positioned to high demand for residential accommodation in close proximity to existing amenities and commercial centre of Toronto thereby reducing need for vehicle travel
 - able to supply appropriate car parking in accordance with Council's DCP
 - within close distance of a number of complimentary zones that integrate well with the proposed development including residential, business, infrastructure and recreational
- large enough to allow a built form to meet height limits on the majority of the site while also allowing for denser development on that portion of the site that has least impact to neighbours, heritage and open space.

Orderly and Economic Development of Land

The development promotes the proper and orderly development of land as contemplated by the controls applicable to the zone, which is an objective of the Act (s 5(a)(ii)) and which it can be assumed is within the scope of the "environmental planning grounds" referred to in cl 4.6(4)(a)(i) of the LEP.

The development represents a use that is permissible with consent in the zone and is consistent with the zone objectives. It is located within an area that is serviced by existing roads and other essential infrastructure. In this regard, the proposal represents the orderly and economic development of land.

The analysis presented in this document demonstrates that the development achieves the objectives of the height control and also objectives of the zone.

1.5 The Proposed Development is in the Public Interest.

As detailed above, clause 4.6(4)(a)(ii) of the LEP requires demonstration that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consistency with the objectives of the height standard is demonstrated in Section 1.3 above.

Constancy with the Objectives of the B2 Local Centre Zone in the LEP

The proposed development is consistent with the objectives of the B2 Local Centre zone. Each objective is addressed as follows:

- *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.*

The site is ideally situated at the northern entry to Toronto at the interface between residential, business and recreational land uses. The land uses that are proposed by this proposed development will provide for a wide

range of commercial and retail uses on the ground floor. The mixed use development provides for a significant opportunity for future commercial activities in the building that directly satisfy and meet with the objectives of the zone. The proposed commercial uses that are coupled with a high density residential component will provide for further retail, business and community uses for the proposed residential occupants, the existing residents and the broader community.

- *To encourage employment opportunities in accessible locations.*

There will be further intensification of existing commercial activity with the ground floor consisting of shop, office and restaurant areas within the proposal. This will increase employment opportunities and when consideration is given to the availability of public transport in close proximity to the proposal it can then be concluded that this proposal meets with the stated objectives of the zone.

- *To maximise public transport patronage and encourage walking and cycling.*

The site located as the Gateway to Toronto Town Centre, and the increased density is warranted as it provides access to transportation, services and facilities. The bus network that traverses Cary Street and the nearby Toronto centre provides access to and within Lake Macquarie and further to Newcastle and connections to rail transport. Furthermore, facilities and services within the Toronto Town Centre are readily accessible by walking and cycling.

- *To create spaces that are accessible and are a central focus for the community.*

The proposal represents a land mark building in its unique location and its aesthetically pleasing architectural expression. Proposed ground level commercial and retail uses directly front the adjacent Toronto to Fassifern former rail line now used for pedestrians and bicycles. The site is set back behind the Yacht Club that is located at the end of the Toronto foreshore stretching along the Town Centre. The arrangement of the built form supports active frontages and will provide a focus for the local and broad community.

The opportunity to access commercial, residential and recreational spaces and interact with the lake and the broader natural and built environment further enhances the proposal's central focus for the community.

- *To provide for housing as part of mixed use developments.*

This proposal does meet with this objective as it proposes higher residential densities and a variety of housing accommodation in the form of a residential tower as part of a mixed use development. It challenges Council to adopt tall buildings within a consolidated large site that interact with the community and the environment with full and adequate respect for each other. It will provide ongoing housing accommodation and a variety of dwellings for local residents and the broader community.

1.6 Secretary's Concurrence.

Under Clause 4.6(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.

It is understood the proposal will be considered by the Joint Regional Planning Panel that may assume concurrence from the Secretary for the proposed variation.

1.7 Conclusion

As demonstrated in this document and submission to Council there are sufficient planning grounds to justify and allow for a variation to the maximum permissible building height development standard. Such justifications include but are not limited to a stronger presence facing Cary Street, lower building heights to Arnott Avenue and the southern public reserve, creation of a podium level communal outdoor and associated landscaping and connection to recreation areas for both public and private amenity at various levels from the ground to the podium to the roof.

The proposal provides for a high quality design that achieves Council's objectives for the site while creating a landmark building for the northern entry to Toronto that will form a bench mark for future developments. The proposed development will provide an attractive and significant entry to Toronto and encourage appropriate ongoing growth in Toronto and Lake Macquarie.

It is considered that the consent authority may be satisfied that the objectives of Clause 4.6 are achieved in permitting the variation as it is of an appropriate degree of flexibility for this specific site and will achieve a better outcome for and from development by allowing flexibility in this particular circumstance.

The consent authority may also be satisfied that this request has adequately addressed the matters required to be demonstrated, and that the proposed development will be in the public interest because it is consistent with the objectives of the height standard and the objectives of the B2 Local Centre Zone applying to the site.

Town Planner

Mark Maund