URBIS

AMENDED VARIATION TO HEIGHT OF BUILDING DEVELOPMENT STANDARD

The amended proposal as now submitted results in a limited breach of the maximum height of building control contained within the Botany Bay Local Environmental Plan 2013 (BBLEP 2013). This is due to the reconfiguration the apartments to ensure an increased set-back along the southern boundary adjacent, to the lower scale properties on Miles Street and increased setbacks along the northern boundary of Tower B to comply with building separation controls opposite the neighbouring approved development at 563 Gardener's Road. The elements of the scheme which breach the control do not contribute to the overall gross floor area, as they constitute the lift overrun, facade articulation and lightweight rooftop garden structures.

Clause 4.6 of BBLEP 2013 allows Council to grant consent to a development application notwithstanding a breach of development standards relating to a site. The variation can be exercised where a written request is made by the applicant justifying the contravention of the standards. This document therefore constitutes a written request to vary the height of building development standard.

The Development Standard

Clause 4.3 (2) of BBLEP 2013 specifies the following:

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

Building height is defined by BBLEP 2013 as follows:

> *"building height (or height of building) means:*
>
> *(a) 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."*

In response to the above, the proposal demonstrates that compliance with the height standard is unreasonable and unnecessary under the circumstances; has sufficient grounds to justify the variation; is consistent with the objectives of the development standard; and is in the public interest.

Furthermore, the proposed variation is not excluded from the operation of Clause 4.6 as it does not comprise any of the matters listed within Clause 4.6 (6), (7) or (8) of the BBLEP 2013.

The submission to vary the development standard has been prepared with regard to the following considerations:

- Clause 4.6 of Botany Bay Local Environmental Plan 2013;
- The objectives of Clause 4.3, being the development standard to which a variation is sought;
- The considerations for assessing development standards set out by Preston CJ Wehbe v Pittwater Council (2007) NSWLEC 827 and *Initial Action Pty Ltd v Woolahra Municipal Council* [2018] NSWLEC 118; and
- 'Varying development standards: A Guide', published by the Department of Planning and

Infrastructure in August 2011.

Proposed Height Variation

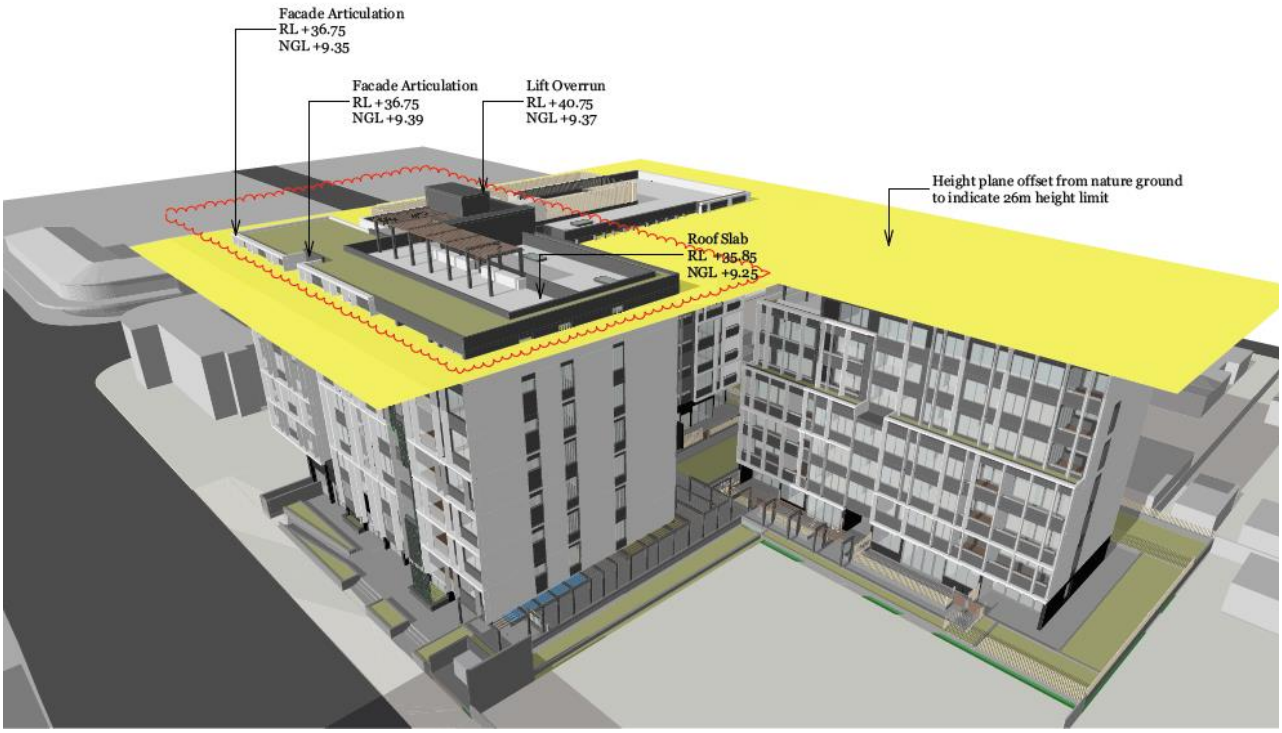
Clause 4.3 of BBLEP 2013 specifies a maximum building height standard of 26 metres for the subject site.

The maximum height of the proposed development is within the control of 26m, with the exception of the lift overrun, partial roof intrusion and façade articulation with a maximum height of 30.86m when measured from the existing ground level to the proposed buildings highest point (i.e. to the top of the lift overrun).

The additional breach in height responds to recommended changes by Council to the proposed rear setbacks of both towers, resulting the placement of additional apartments on the southern section of Tower A and the increase setback of Tower B to the northern boundary. As a result, the proposed rooftop communal open space has been relocated to the rooftop of Tower A. This reconfiguration was supported in principle by Council officers during the meeting in May 2019 and also the Bayside Design Review Panel in December 2018.

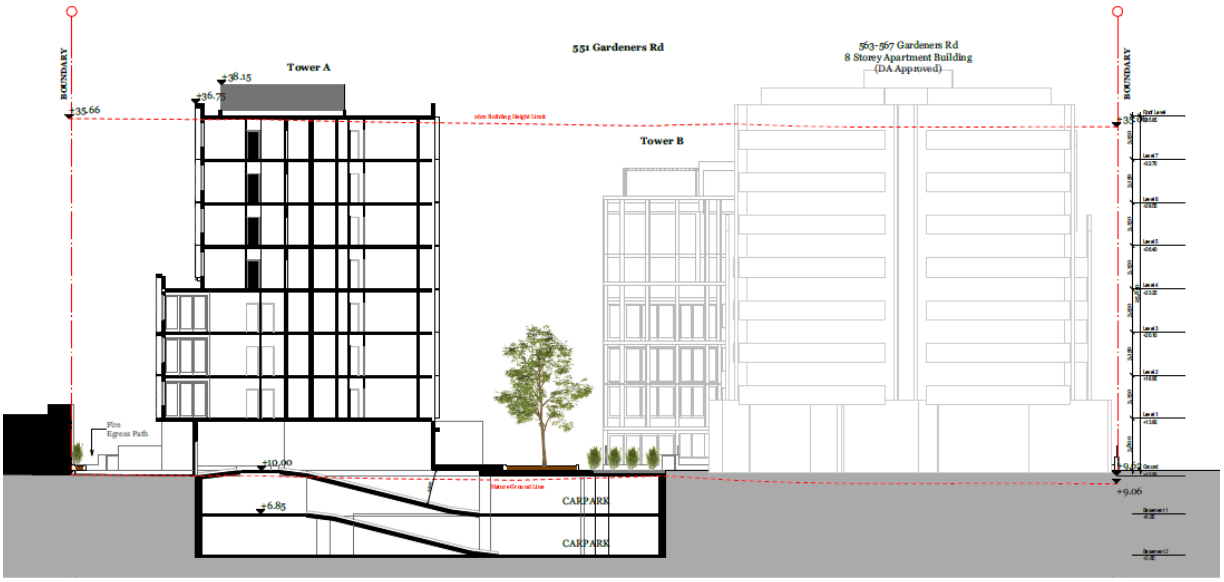
The height non-compliance at the highest point is therefore 4.86 metres. This is illustrated further in **Figure 1** and **2** below.

FIGURE 1 – HEIGHT PLANE



Source: DKO Architects

FIGURE 2 – SECTION PLAN



Source: DKO Architects

The paragraphs below assess the proposed variation and considers whether compliance with the Height of Building standard can be considered unreasonable or unnecessary in this case; along with whether there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6 Exceptions to Development Standards

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure. Clause 4.6 states the following:

> *"(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument…*
>
> *(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
>
> > *(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
> >
> > *(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
>
> *(4) Development consent must not be granted for development that contravenes a development standard unless:*
>
> > *(a) the consent authority is satisfied that:*
> >
> > > *(i) the applicant's written request has adequately addressed the matters*

required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out…"

Accordingly, the following assessment outlines the justification for the departure from the height control applicable under the LEP. The purpose of the information provided is to demonstrate that strict compliance with the height standard under the LEP is unreasonable or unnecessary in the circumstances of this particular case. There are also sufficient environmental planning grounds to justify the departure from the height controls specified in the LEP.

Considerations of NSW Land and Environment Case Law

Several key Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached. The key findings and directions of each of these matters are outlined below.

The following section addresses the local provisions of clause 4.6 of BBLEP 2013 together with principles of Winten v North Sydney Council as expanded by the five (5) part test established by *Wehbe V Pittwater* [2007] NSW LEC 827 and refined by the judgement of Preston CJ in *Initial Action Pty Ltd v Woollahara Municipal Council* [2018] NSWLEC 118.

Wehbe v. Pittwater Council [2007] NSWLEC 827 establishes a number of ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary, namely that:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*

2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

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

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

Whilst *Wehbe* was a decision of the Court dealing with SEPP 1, it has been also found to be applicable in the consideration and assessment of Clause 4.6.

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

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

14. *The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see Corporation of the City of Enfield v Development Assessment Commission (2000) 199 CLR 135; [2000] HCA 5 at [28]; Winten Property Group Limited v North Sydney Council (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].*

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

16. *As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.*

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*

18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*

20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*

21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of*

establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.*

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

25. *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in Randwick City Council v Micaul Holdings Pty Ltd at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant's written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see Wehbe v Pittwater Council at [38].*

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

of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in cl 4.6(4)(a)(ii).

27. *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*
28. *The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.*

29. *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: Fast Buck$ v Byron Shire Council (1999) 103 LGERA 94 at 100; Wehbe v Pittwater Council at [41].*

This Cl4.6 variation follows the above approach to considering the relevant matters required for variations to development standards.

Is the Planning Control in question a development standard?

Yes. The planning control in question is clause 4.3 of the BBLEP 2013. Clause 4.3 nominates a maximum Height of Buildings of 26m for the site. The planning control as a numerical control is a development standard capable of being varied under the provisions of Clause 4.6 of the BBLEP 2013.

What is the underlying objective of the standard?

The objectives for Height of Buildings development standard provided at subclause 4.3(1) of BBLEP 2013 state the following:

(a) to ensure that the built form of Botany Bay develops in a coordinated and cohesive manner,

(b) to ensure that taller buildings are appropriately located,

(c) to ensure that building height is consistent with the desired future character of an area,

(d) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

(e) to ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.

The proposed development is considered consistent with the relevant objectives of the control for the reasons outlined in Table **1** below.

TABLE 1 – CLAUSE 4.6 ASSESSMENT

Objective	**Assessment**
Clause 4.3 (1) (a) - To ensure that the built form of Botany Bay develops in a coordinated and cohesive manner	The additional height is considered appropriate for the condition of the site given its topography and to improve the amenity of the building for future occupiers. In relation to the surrounding area, the development is consistent with the surrounding area and the envisaged future character.
Clause 4.3 (1) (b) - To ensure that taller buildings are appropriately located	The proposed development is located adjacent to a heritage listed item, however is separated by a Right of Way of 9m width, which assists in minimising any impacts on the heritage item. As mentioned within the Heritage Impact Statement, the surrounding area has seen an increase in the number of approved residential flat buildings in the locality. As such, the lower density heritage items will increasingly be situated in the context of the greater scale development that is being developed.
Clause 4.3 (1) (c) - To ensure that building height is consistent with the desired future character of an area	The proposal is consistent with the changing character of the area, and recent development approvals. The amended proposal does not seek to introduce additional GFA above the height control, rather the limited breaches of the height control are from façade articulation, rooftop communal space and the lift overrun which provides access to this level.
Clause 4.3 (1) (d) - To minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development	The proposed development will not create visual impacts on the surrounding area nor will it result in unreasonable loss of views from existing developments. The amended proposal does not create any additional shadow impacts beyond the originally proposed scheme, as the elements above the height control merely result in self-shadowing effects for the remainder of the rooftop at the site.

Clause 4.3 (1) (e) - To ensure that buildings do not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities.	Due to the neighbouring developments which have been developed or in the pipeline along Gardeners Road, the proposal is considered to have a positive impact on the streetscape and will help transform the area to the desired future character. The site is not located within close proximity to any parks or community facilities where it could have a major impact in terms of view loss or overshadowing.

Despite the non-compliance with the development standard, the amended proposal remains consistent with the objectives of the control.

Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 (a), (c) and (g) of the EP&A Act?

The proposed development is considered consistent with the relevant aims of the BBLEP 2013.

Section 1.3 of the Environmental Planning and Assessment Act 1979 (the Act) sets out the objects of the Act, which include:

> *(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,*
>
> *(c) to promote the orderly and economic use and development of land,*
>
> *(g) to promote good design and amenity of the built environment,*

The development is consistent with the objects of the Act, as follows:

- The proposed development is consistent with the statutory significance of development envisaged for the site under BBLEP 2013 and BBDCP 2013.
- The proposed development is consistent with the land use envisaged for the site as outlined in the *Greater Sydney Region Plan* and *Eastern City District Plan,* by providing additional housing within a strategic centre and within close proximity to public transport. This will serve to build upon and support the existing community in the locality.
- The variation in height does not result in additional overshadowing on neighbouring properties, and results in a positive design outcome.
- The variation in height allows for the development to reach its full potential and promotes the orderly and economic use of land, without having any unreasonable impacts on the streetscape or surrounding areas.
- The site is located within an established urban environment and is zoned for the intended use. The redevelopment of the site for higher density residential uses is consistent with State, Regional and Local planning policy.

The proposal promotes the orderly and economic development of the site and promotes a good design with a high amenity outcome.

Clause 4.6 (3) (A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of this application based on the following:

- The proposal is consistent with the objectives of the development standard as provided in Clause 4.3 of the BBLEP 2013, as referred to in the above section of this Cl 4.6 request.
- An FSR of 2.5:1, the proposal is fully compliant with the FSR development standard that applies to the site. Therefore, the height variation does not seek to provide any gross floor area above the existing maximum building height.
- The predominant building height is 26m, with the rooftop communal open space, lift overrun and façade articulation being a very minor exception to this, 4.86m exceedance.
- The height variation is attributed to building design fronting Gardeners Road, along with rooftop elements such as the lift overrun, façade articulation and landscape structures. These do not cause additional overshadowing on neighbouring sites to the rear. It is noted that the neighbouring site at No.563 Gardeners Road has a DA approval for a scheme which breaches this height limit, which provides a precedent for the area.
- The proposed height variation allows for the scheme to fulfil its development potential, given the constraints of the site, including flood levels and the requirement to achieve a 9m setback at the rear of the property and sufficient building separation with the approved development at No. 563 Gardeners Road.
- Council officer support in principle for the variation has been provided given the merits of the case.

Taking into account the above, the particular circumstances of this application warrant a variation of the development standard to facilitate a superior outcome than would be achieved from a compliant scheme. As such, it is considered that a complying development is neither reasonable or necessary in circumstances of the case.

Clause 4.6 (3) (B) - Are there sufficient environmental planning grounds to justify contravening the development standard?

The original proposed breach of height was a result of the need to increase the ground floor height due to the prevalence of flooding on the site, as well as to allow building façade articulation.

This subsequent amended scheme requires an additional setback of 3m at the rear of the site and 3 metres at the northern boundary of Tower B, which has resulted in the reconfiguration of both Level 7 of Tower A and Levels 4-6 of Tower B, which has relocated the proposed rooftop communal open space to the rooftop of Tower A.

An alternative option would be to lower the height of the overall development, which would ensure there is no breach in height. However, this would impact on the number of units to be delivered and the scheme fulfilling its development potential, particularly as the amended proposal does not accommodate any gross floor area above the height control. This approach also follows other new developments in the locality.

Due to this, the communal open space, lift overrun, facade articulation and part of the roof has breached the BBLEP height limit by a maximum of 4.86m, which is considered a minimal increase given the overall height of the building and the limited environmental impacts as a consequence.

Clause 4.6 (4) (A) (II) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out?

It is considered that the proposed height variation is well-founded given the motivation of the variation is to provide an efficient scheme, which contributes to housing supply and has suitable façade articulation to Gardeners Road. The predominant building height and parapet will largely be maintained at 26m.

The proposed exception to the Height of Building development standard will not result in a higher density compared to a compliant scheme. This is demonstrated through the compliant FSR. As such, the variation will not result in additional density, or intensification above what is envisaged under the planning controls.

It is considered that the proposal will remain consistent with the objectives of the B4 Mixed Use zone, being:

- *To provide a mixture of compatible land uses.*
- *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 proposed development would also not result in any unreasonable or significant adverse environmental (social, economic or ecological) impacts. In particular, the variation does not diminish the redevelopment potential or amenity of any adjoining land.

It is our view that to force compliance in the circumstances would be antipathetic to the inherent flexibility provided by clause 4.6, thereby hindering the attainment of its objectives.

Clause 4.6 (5) (A) - Would non-compliance raise any matter of significance for State or Regional Planning?

The non-compliance will not raise any matter of State or Regional Significance.

Clause 4.6 (5) (B) - Is there a public benefit of maintaining the planning control standard?

The driver for the variation in supporting the public interest is delivering new residential accommodation at a location which is appropriately zoned for additional density and growth. Accordingly, there can be no quantifiable or perceived public benefit in maintaining the standard.

Summary

Taking into account the significance of the site, its context, and the vision for the locality, strict compliance with the numerical standard in this instance is both unreasonable and unnecessary owing to the following key points:

- The proposed variation is consistent with the objectives of the building height standard and complies with flooding controls.
- The key reason for seeking flexibility with the building height standard is to allow the site to be fully developed to its potential, whilst also enabling lift access to the communal roof space, with predominant height of the building 26m in accordance with the height standard.
- Flexibility is also sought to allow façade articulation at the front of the building which improves the overall design and improved streetscape as a result of the proposed development.

- The overall site is subject to flood controls and therefore the need to increase floor levels has occurred, raising the overall development.
- There is no additional density (beyond the maximum FSR) sought within the proposed height variation, given many of the features above the height plans are lightweight structures and do not result in additional gross floor area.
- There are no unreasonable environmental impacts as a result of this amended proposal.
- Based on the reasons outlined, it is concluded the request is well founded and the particular circumstances of the case warrant flexibility in the application of the development standard.