

BONDI JUNCTION RSL
CLAUSE 4.6 STATEMENT
HEIGHT OF BUILDING
1-9 GRAY STREET, BONDI
JUNCTION

SA6515
FOR LODGEMENT
PREPARED FOR CAPITAL BLUESTONE

URBIS

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1. REQUEST UNDER CLAUSE 4.6 TO VARY THE BUILDING HEIGHT STANDARD

This Clause 4.6 variation request has been prepared in support of a development for a mixed-use building at 1-9 Gray Street, Bondi Junction. The variation request has been prepared to address the proposed variation to the height of building development standard contained within Clause 4.3 of the *Waverley Local Environmental Plan 2012 (WLEP 2012)*.

1.1. HEIGHT OF BUILDING CONTROL

The relevant Height of Buildings Map within the WLEP 2012 identifies the site as being subject to a maximum height of building limit of 32 metres, as shown in Figure 1 below.

Figure 1 – Height of Buildings Map



1.2. CLAUSE 4.6 CONSIDERATIONS

The proposed development involves a departure from Height of Building standard in Clause 4.3 of the WLEP 2012. Development consent may, subject to Clause 4.6 of the WLEP 2012, be granted for development that exceeds the Height of Building standard under WLEP 2012.

The following considerations are to be addressed in the request to vary the building height imposed under Clause 4.3 of the WLEP 2012:

- *“that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *that there are sufficient environmental planning grounds to justify contravening the development standard;*

- 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 public benefit of maintaining the development standard; and
- any other matters required to be taken in consideration by the Director-General before granting concurrence”

1.3. THE PROPOSED VARIATION

Clause 4.3 (2) of the WLEP 2012 states:

(2) the height of a building on any land is not to exceed the maximum height shown on the land on the Height of Buildings Maps.

The Height of Building Maps sets a standard of 32 metres for the site, as illustrated in figure 2 below. The extent and location of the building height variation is illustrated in both figure 2 below and table 1 overleaf

Figure 2 – Proposed Building Height, illustrating proposed variation to LEP 32m

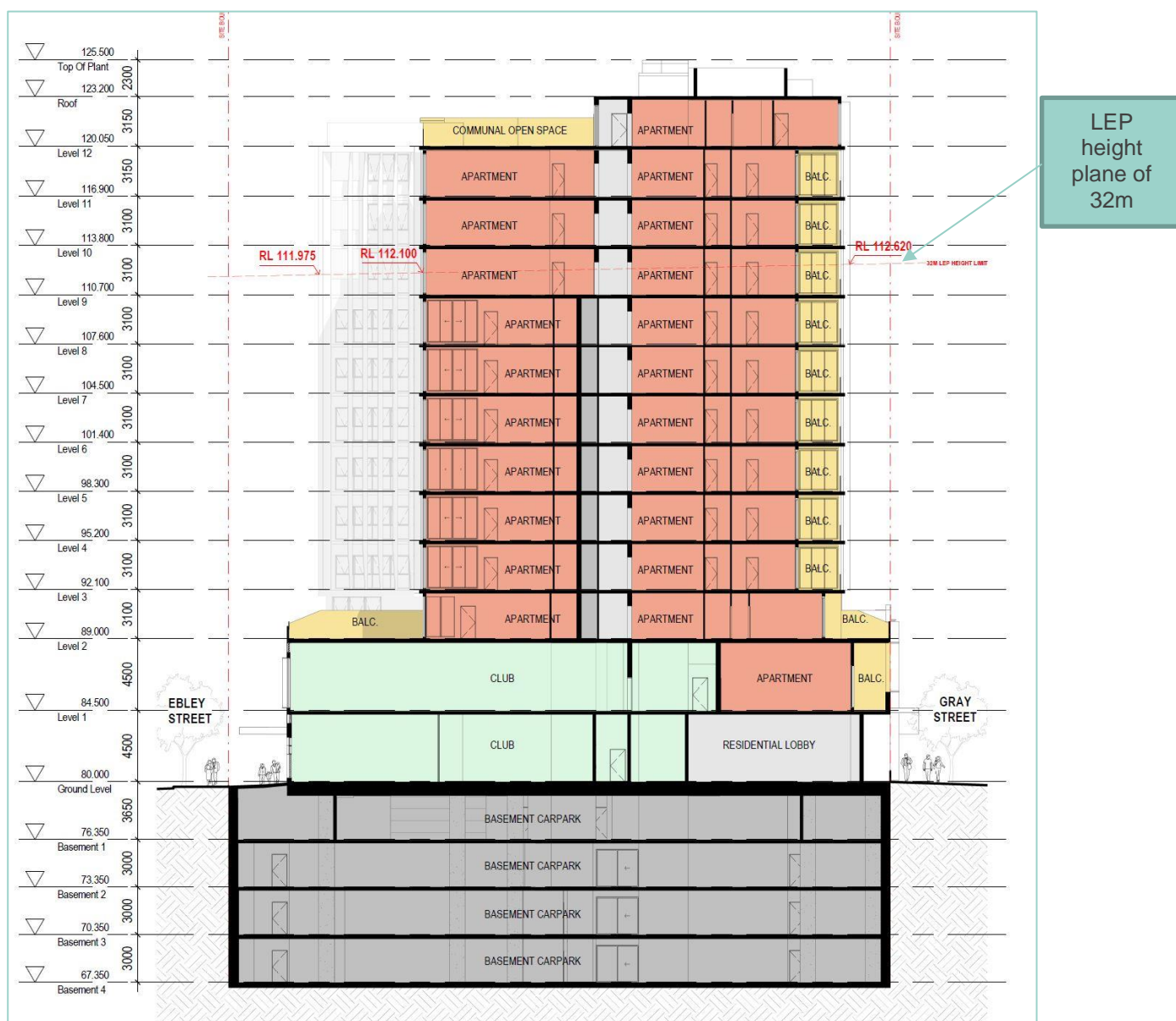


Table 1 – Summary Table of Building Height.

Location	LEP (32m)	FFL	Extent of variation
Bronte Road (section 1)	111.00m	125.50m (to plant) 123.20m (to roof)	14.50m 12.20m
Eastern boundary (section 1)	113.15m	125.50m (to plant) 123.20m (to roof)	12.35m 10.05m
Ebley Street (Section 2)	111.975m	120.05m (to level 11)	8.075m
Gray Street (Section 2)	112.620m	125.50m (to plant) 123.20m (to roof)	10.58m 12.88m

As illustrated in Figure 1 and Table 2 above, the following may be noted:

- The land naturally slopes from North/Gray Street to South/Ebley Street, with the development setback from Ebley Street, consistent with the existing building line;
- The proposed built form similarly seeks to 'step down' toward Ebley Street, with the tallest part of the building located to the North including both apartments and roof-top.

1.3.1. Site Context

The site when viewed in its broader context within Bondi Junction is illustrated in figure 3 below. This context is important when assessing the reasonableness of the variation to the building height standard.



From an analysis of the site context, the following is noted:

- The Bondi Junction Centre has a highly varied building height character, creating a skyline characterised by a mix of traditional small scale attached stop-top developments to larger development with towers sitting above podium forms.
- Owing to the historical evolution of the development of Bondi Junction, many existing buildings are greater in height than the current controls – in part resulting from changing planning controls over time. Conversely, several buildings, such as the Westfield Shopping centre site (with 60m height allowance) have yet to take up all of their allowable building envelope under the current controls.
- Notwithstanding the 32m LEP height control along Ebley Street, the existing character is only partly representative of the LEP control, being rather much more varied built urban form – refer to pictures 1,2, and 3 below.
- Careful consideration is required to be given to the architectural merit of any proposal, in terms of overall built form and the relationship to streetscapes/public realm;

It is in this site context that a massing strategy has informed the proposed development.



Picture 1: Ebley Street/Bronte Road intersection – view to North-West



Picture 2: Gray Street, with interface to Westfield site



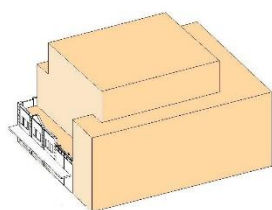
Picture 3: Ebley Street, view to East

1.3.2. Massing Strategy

The proposed development reflects the developed massing strategy for the site – as illustrated below. The massing strategy has specifically sought to:

- Achieve a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings;
- Achieve an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of buildings; and
- Deliver appropriate built form which defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

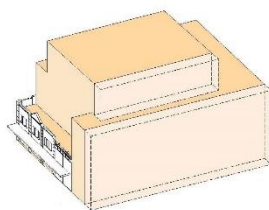
Importantly, the proposed development continues to not exceed the assigned maximum FSR of 6:1. The above massing strategy has been carefully undertaken within that framework, to achieve the best possible design outcome specific to this site, without exceeding the density anticipated for the site under the applicable controls.



DCP & LEP INFORMED ENVELOPE

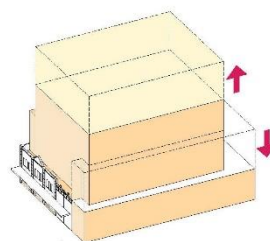
The 'complying' building envelope, as derived from the LEP & DCP controls, comprises:

- Six storey streetwall to Ebley & Gray Streets and partially to Bronte Road
- A 6m setback is applied above the heritage facades and results in an incomplete streetwall concept along Bronte Road
- The upper levels are set back 6m from the streetwall



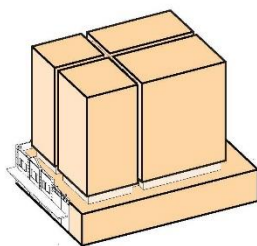
SITE COVENANT REDUCTION

- The building envelope is reduced, as result of providing Council with the proposed 3.65m wide site covenant area along the Ebley Street boundary.



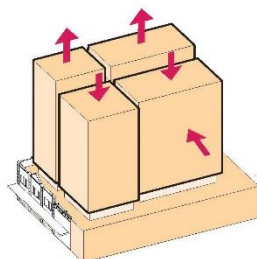
HERITAGE SENSITIVITY

- The incomplete six storey street-wall is rationalised down to a clear two storey podium expression, providing an appropriate response to the retained heritage.
- Lost GFA is transferred above in a clear tower form.



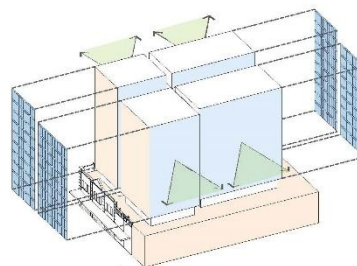
ARTICULATION

- Vertical slots help to reduce bulk & scale.
- Further articulation is applied by means of a 'recessed' level, separating the tower from the podium.



VERTICAL MODULATION

- The heights are varied, to provide vertical modulation and to step the form as response to solar access.
- Further shifting of form towards the North, assists with reducing shadow impact.



RESPOND TO ORIENTATION

- Apply a uniform facade treatment to E & W facades as a calming backdrop to the heritage facade and as an environmental response. North & South to have a 'glassy' expression, for increased amenity of views to the North & South.

2. OBJECTIVES OF THE DEVELOPMENT STANDARD AND B4 – MIXED USE ZONE

Clause 4.6 (a)(a)(ii) states that a request for exemption from a development standard must establish that the proposed contravention is consistent with both the objectives of the standard and of the zone. The objectives of the development standard are set out in **Table 1** below with an assessment of the proposal's consistency provided.

2.1. HEIGHT OF BUILDING DEVELOPMENT STANDARD

Table 1 – Waverley LEP 2012 Height Control Objectives

Objective	Assessment
<i>To establish limits on the overall height of development to preserve the environmental amenity of neighbouring properties</i>	<p>Clause 4.6 of WLEP 2012 permits applications to vary the built form limits, such as building height, provided the requirements of the clause are satisfied. The consideration of environmental amenity is a relevant consideration and minimising potential amenity impacts for nearby properties has been a key design driver for the proposal.</p> <p>As outlined in Section 1.5, in the interests of preserving the amenity of nearby properties, the building design and massing has been developed through detailed shadow analysis, which resulted in focussing building mass to the north of the site, with an increased setback for level 03 and above from Ebley Street; and incorporated only a partial level at the 13th storey to reduce shadow impact.</p> <p>In accordance with the planning principles established through the <i>Land and Environment Court of NSW</i> (in particular, <i>Davies v Penrith City Council</i> (2013)), the following questions are relevant to the assessment of impacts on neighbouring properties (ie preserving the amenity of neighbouring properties as per the objective of the development standard in this instance):</p> <ul style="list-style-type: none"> • <i>How does the impact change the amenity of the affected property?</i> • <i>How much sunlight, view or privacy is lost as well as how much is retained?</i> • <i>How reasonable....is the proposal causing the impact?</i> • <i>How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?</i> • <i>Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?</i> • <i>Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?</i> <p>In the context of the above questions, the following may be noted:</p>

Objective	Assessment
	<ol style="list-style-type: none"> 1. A detailed shadow analysis has been completed in respect of each property, identifying the current level of solar access at 21 June and the potential impacts from the proposed development, relative to the current situation and also relative to a development at 32m (per the LEP height control) 2. The solar analysis findings include the following: <ul style="list-style-type: none"> • For all 17 identified properties on Brisbane and McKenzie Streets, the properties currently achieve compliance with the DCP (3 hrs) and ADG (2 hrs) recommendations for solar and will continue to achieve compliance with the proposed development proceeding, notwithstanding reductions in solar access at 21 June (ie the worst-case scenario) ranging from 0 to 37 minutes. An appropriate level of amenity preservation is demonstrated for these particular properties. • 95 Ebley Street – Compliance with DCP and ADG recommendations is currently achieved and will continue to be achieved. An appropriate level of amenity preservation is demonstrated for this particular property • 99, 103 Ebley Street, 4 Allens Parade – Compliance with DCP recommendations is not currently achieved, however ADG (2hrs) is achieved and will continue to be achieved. An appropriate level of amenity preservation is demonstrated for these particular properties • 2,6 Allens Parade – the properties currently achieve compliance with both the DCP (3 hrs) and ADG (2 hrs) recommendations for solar and will continue to achieve compliance with the proposed development proceeding. An appropriate level of amenity preservation is demonstrated for these particular properties. • 91 Ebley Street – the property currently receives in excess of 3hrs (DCP) and 2 hrs (ADG). A 32m ‘compliant’ development would result in both the DCP and ADG recommendations not being achieved in terms of solar access – similarly, the proposed development results in the DCP and ADG recommendations not being achieved. Further detailed consideration is required, as set out below. • 93 Ebley Street - the property currently receives in excess of 3hrs (DCP) and 2 hrs (ADG). A 32m ‘compliant’ development would result in the ADG recommendations continuing to be achieved in terms of solar access – however, the proposed development results in the ADG recommendations not being achieved. Again further detailed consideration is required, as set out below.

Objective	Assessment
	<p>The above analysis has identified the ‘worst-case’ scenarios, being at the winter solstice.</p> <p>3. The following may be noted in respect of 91 and 93 Ebley Street:</p> <ul style="list-style-type: none"> • The two properties are <u>not</u> included in the identified heritage conservation area. • The zoning of the properties is R3 – Residential Zone with an additional permitted use of office, allowing for a range of different development/land uses opportunities into the future. The properties have previously been included in the B4 - Mixed Use Zone – similarly providing historical flexibility for land uses beyond solely residential activities. • The Height of Building control for these properties at 15m provides development opportunities over and above the current two-storey utilisation of the site, presenting opportunities for better access to sunlight as part of a site reconfiguration. <p>4. To design the development to avoid any shadow impacts on 91 and 93 Ebley Street would unreasonably constrain the proposed development – result in a failure to effectively deliver the broader public benefits arising from the development (employment and recreation opportunities, future financial sustainability of the club, streetscape activation, effective development in the Bondi Junction Strategic Centre etc). As noted previously, even a compliant 32m development would result in an impact on 91 Ebley Street such that it would not achieve the ADG recommendations for solar access.</p> <p>5. The impacts from the development do not arise out of poor design. The building design has been specifically designed in a site responsive manner in order to minimise potential impacts, as outlined in point 1. above. It should be remembered that the design also complies with the FSR control for the site and has sought to distribute that massing in the most appropriate manner possible, taking into account surrounding properties and the site context generally</p> <p>6. Achievement with the design objective set out in the ADG (3b-2 overshadowing of neighbouring properties) is demonstrated, with:</p> <ul style="list-style-type: none"> • Detailed analysis being completed for not only building but also private open space areas • The identified reduction 20% threshold is not relevant, as this only relates to properties that not currently receive the required the hours. • An increased effective building separation has been achieved, through the increased setback to Ebley Street to the upper floors and in particular the top floor being a partial level only.

Objective	Assessment
	<p>Both at an individual property level and more generally reviewing the overall surrounding area, an appropriate level of amenity preservation has been demonstrated in accordance with the objective of the height of building standard.</p> <p>It should also be remembered that in the context of clause 4.6, it is not necessary for the increased height to have no impacts. There are always likely to be some impacts, which need to be balanced against any other positive attributes of a development proposal. This was confirmed by the Land and Environment Court in <i>Lane Cove Council v Orca Partners Management Pty Ltd (No 2)</i> [2015] NSWLEC 52. In that matter acceptance of a clause 4.6 variation by the consent authority was held to have been valid even though the approved non-complying building envelope did cast some additional shadows when compared with a complying development. It was relevant that these additional shadows were 'more than offset' by other positive design attributes. This was also relevant to showing there were 'sufficient environmental planning grounds' to justify the non-compliance and its impacts.</p>
<i>To increase development capacity within the Bondi Junction Centre to accommodate future retail and commercial floor space growth</i>	<p>The proposed development is consistent with this objective of the LEP, delivering increased development capacity within Bondi Junction through the effective redevelopment of the site by achieving the intensity of development envisaged under the floor space ratio (FSR) of 6:1. The proposal also enables the intensification of employment on the site by facilitating retail shop activity as well as a re-modelled club facility.</p>
<i>To accommodate taller buildings on land in Zone B3 Commercial Core of the Bondi Junction Centre and provide an appropriate transition in building heights surrounding that land</i>	<p>The site acts as a transition point between two very different building height controls. Land immediately to the north of the subject site is located within the B3 Commercial Core zone and with an LEP height limit of 60m – as illustrated in Section 1.3.1. Land to the south of Ebley Street has identified LEP building heights of predominantly between 9.5 and 15 metres.</p> <p>The proposal comprises a stepped form design with the rear half of the building mass comprising a height of 46.5m at the B3 zone interface, then stepping down to 40.05m for the main front mass of the building, sitting above a 9m street height podium. Importantly, the tower form is setback a further 3m from the DCP setback control (away from the low density area on the opposite side of Ebley Street) which will further reinforce the gradation of building heights from the centre core.</p> <p>Given this, the proposed development delivers an effective transition by virtue of a building height still remaining 'within' the height and low points of building heights in the locality. The additional height will not result in an overbearing relationship to the lower height area given the stepped form approach and tower setback.</p>
<i>To ensure that buildings are compatible with the height, bulk and scale of the existing character of the locality and</i>	<p>The surrounding built form character consists of commercial development built to the street alignment, with tower forms generally setback above a podium. To the south of the site across Ebley Street is a mix of residential and commercial land uses, with medium density development along</p>

Objective	Assessment
<i>positively contribute to the physical definition of the street network and public space</i>	<p>Ebley Street and down Bronte Road. This forms part of the character of the locality.</p> <p>The compatibility of the proposed development is demonstrated through:</p> <ul style="list-style-type: none"> • A building height that provides a transition from the commercial core. • A heritage façade along the northern and western façade that is maintained and incorporated into the development, effectively being ‘showcased’. • A built form that is built to the street alignment, maintains a consistent street wall and a setback of the tower above the podium. The proposed form seeks to maintain a human scale along the adjoining streetscapes • A positive contribution to the streetscapes, including for example a level activation of Gray Street. <p>In an urban design context, it is well known that compatibility does not require ‘sameness’ – rather a response to the essential elements that make up the character of the surrounding urban environment (<i>Project Venture Development v Pittwater Council</i> [2005]). This is demonstrated with the proposed development.</p>

As outlined in Table 2, Notwithstanding the numerical non-compliance with the height of building development standard, the proposal demonstrates consistency with the relevant LEP objectives of the height control.

B4 – MIXED USE ZONE

The site is zoned B4 Mixed Use under WLEP 2012. The proposed variation to the development standard does not hinder the proposal’s ability to satisfy the objectives of the B4 Mixed Use Zone, for the reasons set out in table 3 below.

Table 2 – Waverly LEP 2012 Zone Objectives

Objective	Assessment
<i>To provide a mixture of compatible land uses.</i>	<p>The proposal incorporates a range of retail, club and residential land uses integrated on the site. The proposed uses are intended to provide for the needs of the local and wider community.</p> <p>The existing Bondi Junction RSL Club is an established, well-known destination and the retention and upgrades to the existing Club will directly benefit both existing members and new patrons, within the local and broader community. The redevelopment of the club presents an opportunity to re-imagine the club offering to appeal to a wider market. The purpose is to establish a positive long-term financial position in the area, to enable continued employment opportunities as well as support for charitable organisations. The incorporation of retail uses will enable the site to offer a diversity of uses to serve the community.</p>

Objective	Assessment
	<p>The proposed development will effectively deliver residential accommodation in an area of high accessibility and amenity, as part of an overall mix of complementary land uses.</p> <p>The proposal will facilitate on-going employment opportunities within the club and retail tenancy component, with improved financial sustainability achieved through the proposed redevelopment of the site. It is an ideal site for the uses proposed, which through redevelopment will create the opportunity for a revitalisation of Gray Street into a more active public space.</p>
<p><i>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.</i></p>	<p>The proposed mixed-use development effectively represents both ‘trip origins’ and ‘trip destinations’ in an area of high accessibility. The Bondi Junction railway and bus interchange is located within 300m of the site, as well as general proximity to the Bondi Junction Town Centre – providing a high level of accessibility and suitability for further development.</p> <p>The proposed development seeks to contribute to attractive streetscapes, providing opportunity for walking and cycling. End of trip facilities are proposed within the proposed development, in order to meet the needs of cyclists.</p> <p>A building height compliant development would result in an underutilisation of a valuable site, well below the anticipated FSR for the site. Optimising the allowable density on this strategically located site in the town centre, would fulfil the objective of ‘maximising’ public transport patronage and encourage walking and cycling. This is a preferred scenario compared with other sites in the B4 Mixed Use zone that are not within easy walking distance to a train station and high frequency regional bus services.</p>
<p><i>To encourage commercial uses within existing heritage buildings and within other existing buildings surrounding the land zoned B3 Commercial Core.</i></p>	<p>The proposed development seeks to provide on-going commercial activities on the site, including a revitalised club environment and new retail tenancy opportunities. The proposal retains the desired historical building elements of the shopfront facing Bronte Road, and the space behind the retained heritage fabric will be used for club purposes. The proposed building represents a direct design response to the identified heritage values of the site – as outlined in the Heritage Impact Statement (John Oultram Heritage & Design) and illustrated in Picture 4 overleaf.</p>



Picture 4 – identified heritage façade to be retained in the proposed redevelopment.

3. COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Clause 4.6(3)(a) of the *WLEP 2012* states that a proposed variation to the development standard must demonstrate that compliance with the development standard is ‘*unreasonable and unnecessary in the circumstances of the case*’.

The decision of Justice Preston in *Wehbe V Pittwater [2007] NSW LEC 827* expanded on the finding of *Winten v North Sydney Council* and established the five (5) part test to determine whether compliance with a development standard is unreasonable or unnecessary based on the following:

- *Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives?*
- *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- *Has Council by its own actions, abandoned or destroyed the development standard, by granting consents that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- *Is the “zoning of particular land” unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land? Consequently, compliance with that development standard is unnecessary and unreasonable.*

In *Wehbe*, the Court held that it was only necessary to satisfy **any one** of those five tests outlined above.

The Land and Environment Court has recently confirmed that the *Wehbe* test (which applied to SEPP 1 objections) was still equally relevant to a clause 4.6 (Standard Instrument LEP) variation: *Four2Five Pty Ltd v Ashfield Council* (2015).

As outlined in Section 2 of this Clause 4.6 variation assessment, our assessment demonstrates that the proposed development is consistent with the first test of ‘*Wehbe*’ being that the underlying objectives of the Height of Building standard are met by the proposed development.

In addition to this, the application of the relevant development standard is also a relevant matter to consider. Whilst the development standard has not been abandoned by Council, there is a history and regular pattern of Council, and the relevant consent authority, supporting development proposals that vary the building height control in Bondi Junction. Some examples are set out in the table below.

Table 3 – Project examples with varied building heights

Bondi Junction Site's	Approved Variation	Date
362-374 Oxford Street	38m LEP 47.30m (parapet wall top) 52.05m (lift overrun)	August 2017
109-119 Oxford Street, 34-42 Spring Street	38m LEP 43.5m	November 2016
59-69 Oxford Street	38m LEP 41.72m	September 2016

Bondi Junction Site's	Approved Variation	Date
304 Oxford Street	38m LEP 48.65m	July 2015
241-245 Oxford Street	60m LEP 71.87m	November 2013

4. JUSTIFICATION

Clause 4.6 (3)(b) of the WLEP 2012 states that a proposed variation to a development standard must demonstrate that there are '*sufficient environmental planning grounds to justify contravening the development standard*'.

As outlined in Section 2, the proposed development demonstrates consistency with both the height of building development standard and the objectives of the B4 – Mixed Use zone, delivering an effective redevelopment of the site, which is appropriate given its strategic location. As outlined in Section 2.1, the preservation of the amenity for nearby residents remains a key consideration.

At a high level, it is important to consider that if the height of building standard is strictly applied on this site, the objectives of the FSR standard will not be met, as this key site will be significantly underutilised in a manner that is inconsistent with the planned density for the site. In particular, the development would then not meet the following objectives of the FSR development standard in clause 4.4 of the WLEP:

- (a) *to ensure sufficient floor space can be accommodated within the Bondi Junction Centre to meet foreseeable future needs,*
- (b) *to provide an appropriate correlation between maximum building heights and density controls,*

Failure to achieve planned densities is a significant issue, as recently held by the Land and Environment Court in *Greenpark Projects 2 Pty Ltd v Canterbury Bankstown Council*, where a DA was refused because it failed to demonstrate that a very similar FSR objective (to achieved sufficient density) would be met by the proposal. In this instance, a design which achieves the FSR standard and objectives for this important site is of itself a '*sufficient environmental planning ground to justify contravening the development standard*'.

In addition, a comprehensive solar access analysis has been undertaken, as provided in the Architectural Design Statement for the project, with the shadow attributed to the component above the height standard identified. This demonstrates that there is limited adverse solar impact associated with the additional height.

A qualitative assessment addressing the principles of *The Benevolent Society v Waverley Council* [2010] NSWLEC 1082 has also been undertaken to effectively address the cumulative impact of the principle. The proposal is considered to fulfil these principles as follows:

- The Bondi Junction Centre is a Strategic Centre, that is envisaged for high density development with tall tower forms. The co-location of services, amenities and access to public transport has encouraged development which optimises the development opportunities on each site. As a result, extensive sunlight for all residents is unreasonable, as the continued intensification of the centre will naturally have an impact on the solar access achieved by all buildings. As stated in the Planning Principle, the "*claim to retain*" solar access is not as strong, and as such it is considered the proposal has acceptable level of impact given its location within the Strategic Centre.
- The proposal has been specifically designed to minimise the loss of solar access to properties to the south. Development on Levels 12 and 13 have been sited to the north, in order to minimise shadow impacts to these properties and to provide the best outcome for the site and surrounds. It is considered the proposed configuration is the most ideal approach to the redevelopment of the site, with the smallest possible cumulative impact on the properties to the south-west.
- The two properties that arguably receive the greatest shadow impact from the proposed development do have further development potential for increased height and a range of uses not limited to solely residential.

The detailed assessment of potential shadow impacts from the proposed development, together with the other positive benefits of the proposal as mentioned above, demonstrates *sufficient environmental planning* justification.

Aside from shadow impacts, the Statement of Environmental Effects provides a comprehensive assessment of the proposed development and planning justification, supported by relevant technical assessments/reports. The following provides a summary:

- **Floor Space Ratio** – As stated above, the proposed development is consistent and achieves an effective realisation of the maximum FSR for the site. A development consistent with the LEP height control of 32m would result in a significant reduction in the potential floor space - contrary to the objectives of Cl 4.4, ensuring sufficient floor spaces can be accommodated within the Centre to meet foreseeable future needs
- **High level of consistency with Waverley Development Control Plan 2012** – the proposed development demonstrates a high level of consistency with the DCP. Where minor variations to numerical standards are proposed, consistency with the relevant objectives have been demonstrated.
- **High level of compliance with the requirements set out in the Apartment Design Guide** – the proposed development demonstrates a high level of consistency with the Apartment Design Guide. Where minor variations to numerical standards are proposed, consistency with the relevant objectives have been demonstrated.
- **Amenity for residents** – the proposed development, incorporating a roof-top pool, delivers a level of additional amenity opportunity for residents not commonly offer in developments in Bondi Junction – appealing to wide household demographic and encouraging active living.
- **Benefits of the proposal** - refer to section 5 below, which benefits are also relevant environmental planning grounds for the purposes of clause 4.6 (3)(b) of the WLEP

Therefore, having regard to the consideration of off-site impacts (solar and view loss) together with the environmental performance and compliance of the proposal, in our opinion, the proposal has sufficient environmental justification to support the technical building height non-compliance.

5. PUBLIC BENEFIT OF THE MAINTAINING THE DEVELOPMENT STANDARD

Under Clause 4.6 (5)(b) the consent authority must consider if there is public benefit associated with maintaining the development standard. Given the nature of the proposed variation and the justification of the impacts providing within this report and the SEE, there would be no public benefit in applying it strictly.

The proposed development demonstrates consistency with the underlying objectives of Clause 4.3 Height of Buildings and B4 Mixed Use Zone, as outlined in this variation request.

Strict compliance would lead to an inferior residential amenity and underdevelopment of a strategic and valuable site in the centre and therefore the proposed massing solution is regarded as an appropriate contextual response to the character of the site.

The proposal will deliver the following positive benefits:

- Removal of a driveway crossing on Ebley Street- that will improve pedestrian safety and street activation and amenity;
- A new purpose-built club facility designed to better service the local community and create improved street activation to each street frontage;
- Ensuring the future financial sustainability of the club;
- New housing stock to meet the Central District Plan housing targets and the provision of new active retail tenancies which will further the offer in Bondi Junction;
- Increased housing stock within close proximity to public transport and public amenity;
- Provision of high quality communal facilities (comprising roof top space and swimming pool) that will appeal to a wide demographic and enable the site to meet a key desirable recreation pursuit;
- Retention of important heritage fabric in a sensitive and appropriate manner as recommended by John Oultram Heritage.

As such, approval of the proposal is in the public interest. Strict compliance with the height control is not, as these public benefits would then not be likely to be delivered.

6. ANY OTHER MATTERS

Under Clause 4.6 (5)(c) the consent authority must consider if the proposal raises any other matters for consideration.

The decision in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEP 90* indicates that to justify there are sufficient environmental planning grounds for the variation may well require identification of grounds *particular to the circumstances of the proposed development*. There is a particular circumstance that applies to this development. It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide.

Therefore, it does not mean that clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Nevertheless, there are a range of site-specific constraints and considerations worth noting on this site, including:

- Existing heritage item to incorporate;
- A covenant area along the Southern boundary; and
- The need to accommodate a similar scale of club operations to that existing on the site

Whilst these circumstances alone have not solely informed the extent of the height variation, they are relevant factors that have contributed towards the final design.

7. CONCLUSION

A variation to the strict application of Council's Height of Building development standard is considered appropriate for the subject site at 1-9 Gray Street.

The proposed height results in an optimum outcome for the site and is considered to have negligible impacts above those caused by a compliant height. The proposal meets the intent of Council's Height of Building development standard and in accordance with Clause 4.6, demonstrates that the development standard is unreasonable and unnecessary in this case.

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