



## ***Hornsby West Side Gateway***

Lyon Tanner Hornsby Pty Ltd

### ***Clause 4.6 Variation Request***

IA133101 | V3

August 2019



## Introduction

This is a written request to seek an exception to a development standard under *Clause 4.6 – Exception to Development Standard* of the *Hornsby Local Environmental Plan 2013* (HLEP 2013). The development standard for which the variation is being sought is *Clause 4.3 – Height of Buildings* under the HLEP 2013.

This application has been prepared in accordance with the NSW Department of Planning and Infrastructure (DP&I) guideline *Varying development standards: A Guide*, August 2011, and has incorporated relevant principles identified in NSW Land and Environment Court judgements:

The proposed development at Building B with a maximum height of 77.5m produces a 15.5m exceedance of the 62.5m development standard and Building A with a maximum height of 45.9m produces a 7.4m exceedance of the 38.5m development standard.

## Description of planning instrument, development standard and proposed variation

### What is the name of the environmental planning instrument that applies to the land?

*Hornsby Local Environmental Plan 2013* (HLEP 2013).

### What is the zoning of the land?

The land is zoned B4 Mixed Use.

### What are the objectives of the zone?

The objectives of the B4 Mixed Use zone are:

- *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.*

### What is the development standard being varied?

The development standard being varied is the height of buildings development standard.

### Under what clause is the development standard listed in the environmental planning instrument?

The relevant clause in the HLEP 2013 is Clause 4.3 – Height of Buildings.

### What are the objectives of the development standard?

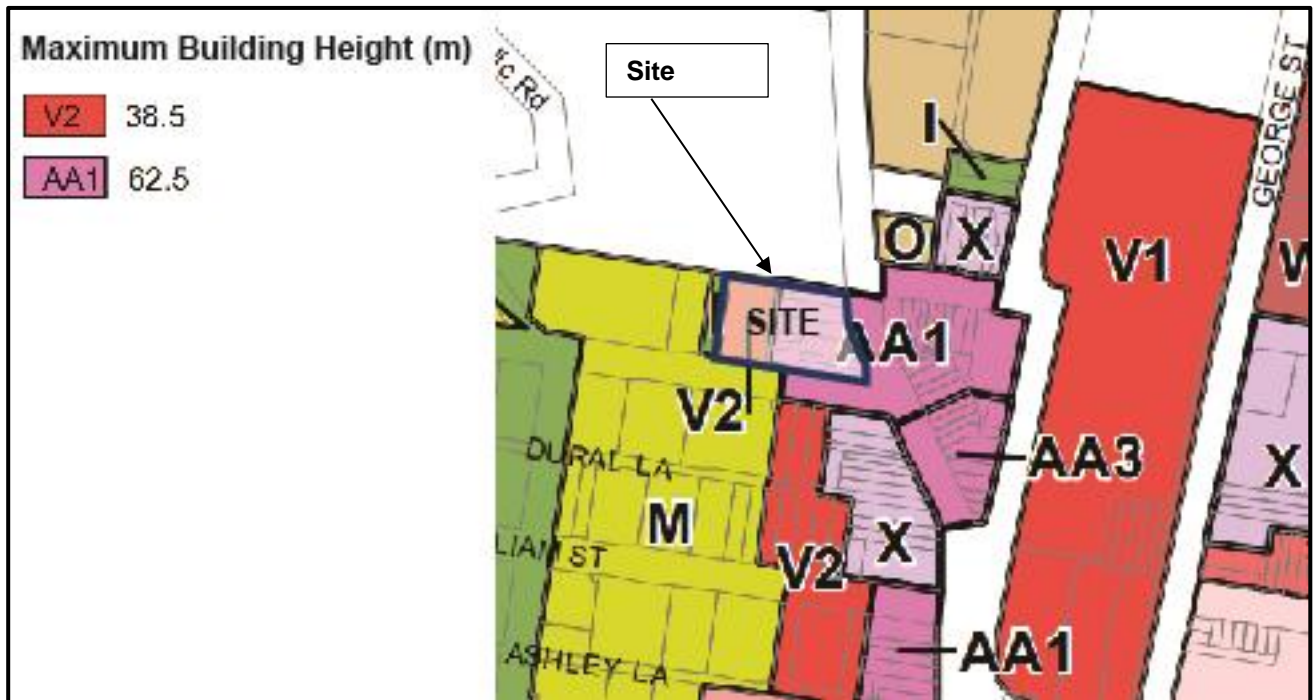
The objectives of Clause 4.3 – Height of Buildings is:

- (a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

**What is the numeric value of the development standard in the environmental planning instrument?**

Clause 4.2(2) establishes a maximum height of buildings for the site. The site has a maximum permissible height of 62.5m and 38.5m in accordance with the height of buildings map shown in Figure 1 below.

Figure 1: Height of Buildings Map (Hornsby LEP 2013)



**Is the development standard a performance based control?**

No.

### What is the numeric value of the development standard in your development application?

The proposed development will be built to a maximum height above ground level of the following:

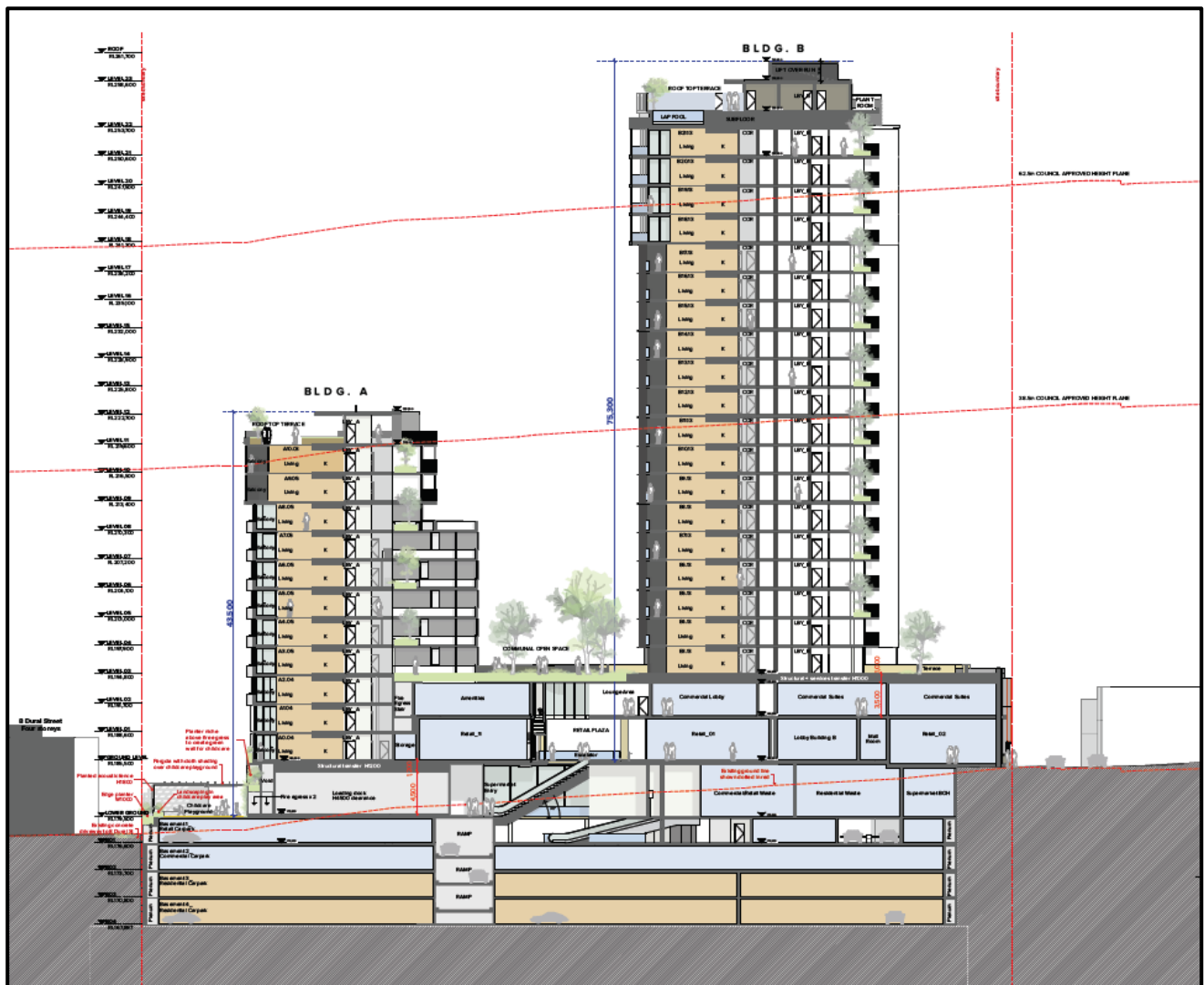
Building A:

- 45.9m to the top of the roof over the common open space amenities and roof top plant room (RL 223.4)
- 45.4m to the top of the lift overrun (RL 225); and
- 44.7m to the centre of the western edge of the rooftop balustrading (RL 221.1).

Building B:

- 77.5m to the top of the lift overrun (RL 261)
- 76m to the top of the roof over the common open space amenities and sunshade (RL 259); and
- 74.2m to the top of the roof plant room (RL 257.3).

Figure 2: Section view of the proposed development (Turner Architects, 2019)



**What is the percentage variation proposed?**

The proposed development at Building B with a maximum height of 77.5m produces a 15.5m exceedance of the 62.5m development standard, representing up to a 24% variation to the development standard.

The proposed development Building A with a maximum height of 45.9m produces a 7.4m exceedance of the 38.5m development standard, representing up to a 19% variation to the development standard.

## Assessment of the Proposed Variation

### Overview

Objectives Clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6(3)(a) and Clause 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- (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.*

Clause 4.6(4)(a)(i) and Clause 4.6(4)(a)(ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- (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, and*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence 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.*

### Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (cl. 4.6(3)(a))

The *Wehbe v Pittwater Council [2007] NSWLEC 827* case established the following 'five part test' to justify that a development is unreasonable or unnecessary pursuant to Clause 4.6(3)(a):

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

The objectives of clause 4.3- Height of Buildings is:

- (a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

*(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The site is constrained by existing heritage buildings, adjoining residential flat buildings, topography and the pool access road which is not a public road. The design accommodates these constraints by ensuring solar access to adjoining properties, restoration of the heritage building and underground car parking to respond to site slope while maintaining street presence.

The proposed height is appropriate for the context and character of the area as it reflects the modern transformation of the town centre embracing high density residential living as outlined in the North District Plan that reclassifies Hornsby Town Centre to be a District Centre, reflecting its role within the broader Northern District area as a retail and service centre.

The increased height would more accurately reflect the development potential of Hornsby Town Centre as a focus of high density residential, retail, and employment opportunities. The increased height in this location for this particular development, would provide a clear physical demarcation between the town centre core and surrounding suburban residential land uses, reinforcing the land use structure.

Local infrastructure has capacity to accommodate the increase water, sewer, traffic, parking and public transport requirements of the proposed population. Car parking on site has been minimised and a number of elements have been included in the design to promote public transport patronage, active transport use and reduced reliance on private vehicles. Better outcomes for and from the development are achieved by the flexible height by allowing additional car parking, improved visual design, protected heritage building. Service assessment has indicated that there is capacity in the network to provide services to the development.

The proposed development achieves the objectives of the development standard notwithstanding non-compliance with the standard. .

Council have applied a ground and first storey floor to floor of 3.3m and 0.3m (3.6m) and the remaining 18 storeys are residential floor levels that meet the minimum ceiling height of 2.7m and 0.3m (3.0m) for the slab and services, the overall height of the building would be 61.2m plus rooftop, lift and plant services.

The proposed development instead adopts the NSW Government Apartment Design Guidelines (ADG) (NSW Planning and Environment; 2015), which applies across the NSW to all shop-top housing developments. The ADG provides the minimum floor to ceiling height of spaces, outlined in Table 1 below.

**Table 1: Minimum Ceiling Height (Apartment Design Guide, Objective 4C-1)**

<b>SPACE</b>	<b>MINIMUM CEILING HEIGHT (for apartments and mixed-use buildings)</b>
Habitable Room	2.7m
Non-Habitable Room	2.4m
For apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic Spaces	1.8m at edge of room with a 30-degree minimum ceiling slope
Located in Mixed Use Areas	3.3m for ground and first floor to promote future flexibility of use 4m for Cafes



The ADG requires a minimum floor to ceiling height of 3.3m for ground (Storey 1) and first floor (Storey 2) levels in mixed use areas. Figure 4C.5 of the ADG identifies floor to ceiling heights as above with a 0.4m slab (allowing for floor and roof finishes) and an additional 0.3m for bulkhead provisions in non-habitable areas.

Should the provision for the slab and services meet the ADG suggested height of 0.4m, a 3.1m floor to floor height (2.7m + 0.4m) for residential floor levels and 3.7m floor to floor height (3.3m + 0.4m) for the ground and first floor of the building would be 63.2m excluding provisions for the roof and plant overruns.

For the purpose of determining the number of stories that will fit within the height limit as determined by the Hornsby LEP 2012, the ADG standard of 0.3m in addition to the floor to ceiling height has been assumed per level to allow for the slab and services. Assuming that the ground and first floor of a 20-storey building is 3.3m and 0.3m (3.6m) and the remaining 18 storeys are residential floor levels that meet the minimum ceiling height of 2.7m and 0.3m (3.0m) for the slab and services, the overall height of the building would be 61.2m. This would allow 1.3m for the roof and plant overruns and demonstrates that a 20-storey building can be achieved with a building height of approximately 62.5m as set out in the LEP. This assumption is illustrated in Figure 3, Table 2 and Table 3 below in contrast to the proposed development.

This assumption identifies that using the minimum requirements of the ADG instead of those recommended by Council, the height standard LEP may be achieved with the exception of roof plant or rooftop open space provisions.

### Building A

Table 2: Summary of Floor to Floor Heights at Building A

<b>DEVELOPMENT SCENARIO</b>	<b>PROPOSED HEIGHT</b>	<b>MINIMUM ADG REQUIREMENT</b>	<b>DIFFERENCE</b>
Lower Ground (LG)	5.7m	3.6m	2.1 m
Residential – Ground (G) to 10	34.1m	33m	1.1m
Rooftop (inclusive of services)	3.6m		1.5m
Topographical variance	1.9m		
<b>TOTAL</b>	45.9m		7.4m inc topographically variance

### Building B

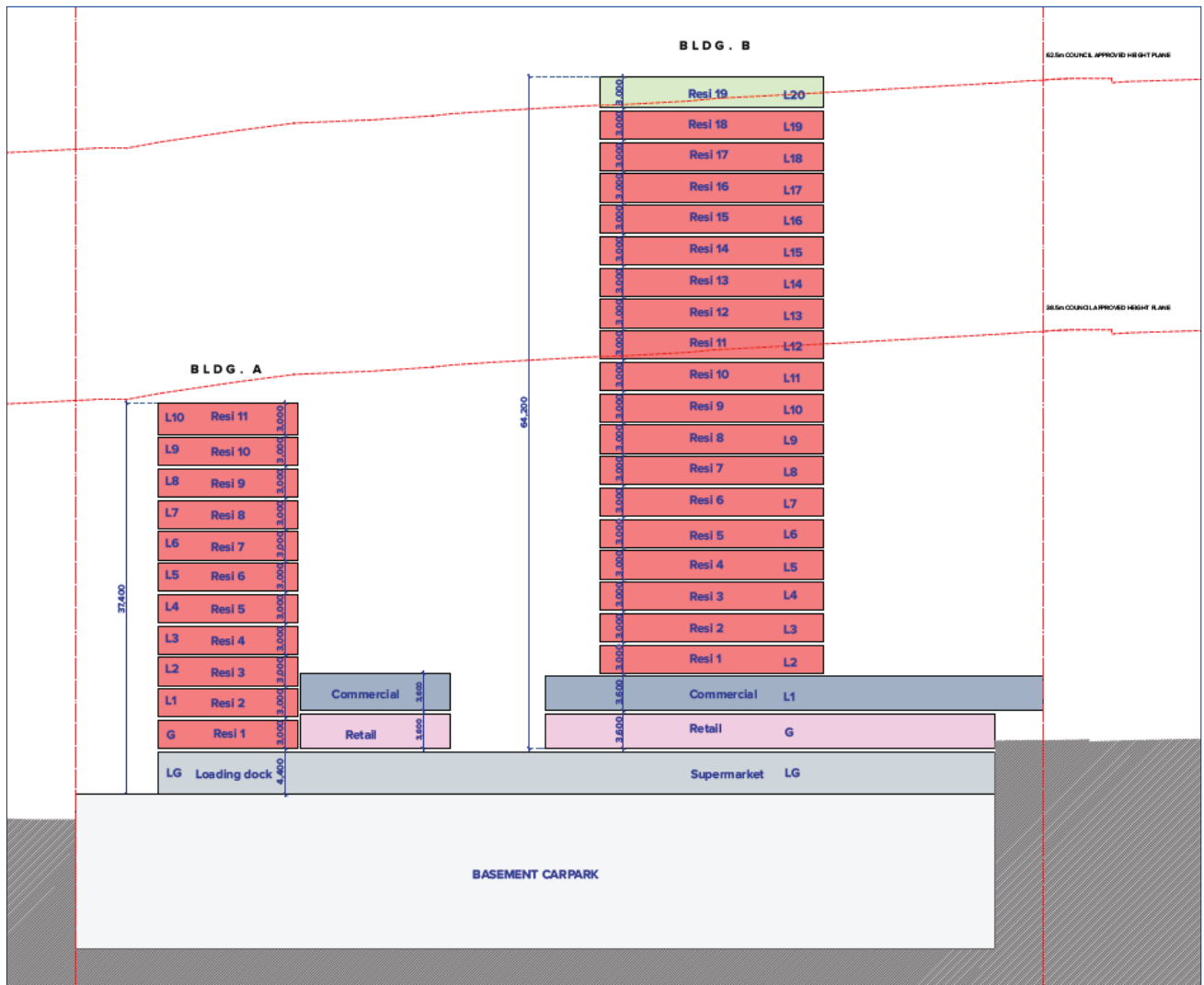
Table 3: Summary of Floor to Floor Heights at Building Building B

<b>DEVELOPMENT SCENARIO</b>	<b>PROPOSED HEIGHT</b>	<b>MINIMUM ADG REQUIREMENT</b>	<b>DIFFERENCE</b>
Lower Ground (LG) – Supermarket and Loading Dock	4.8m	3.6m	1.2m
1 <sup>st</sup> Floor Commercial	4.5m	3.6m	0.9m
Residential – Floor 3 to 21	55.8m	54m	1.8m



DEVELOPMENT SCENARIO	PROPOSED HEIGHT	MINIMUM ADG REQUIREMENT	DIFFERENCE
FSR Transfer	3.1	N/A	3.1m
Rooftop (inclusive of services)	5.3		4.8m
Topographical variance	2.2m		
<b>TOTAL</b>	77.5m		15.5m inc topographically variance

Figure 3: Council minimum slab to slab height illustration (LEP Assumption)



### **Rooftop Plant and Open Space**

The rooftop open space includes opaque balustrades that successfully reduce any perceived bulk and scale created by the rooftop open space.

The plant areas on both Buildings have been reduced to the minimum based on advice from the relevant technical specialists and building services consultants. The Building B plant has been setback from the building edges so as to reduce its visibility from the street level. The plant areas are screened and cladded so as to appear as part of the building and not service infrastructure.

The plant on Building A is larger as it incorporates the condensers for each unit on the roof and avoids them being located on the balconies of each unit. The roof plant is incorporated into the building form. The roof plant and open space have a minimal contribution to the perceived height of the development.

The rooftop of Building B is proposed to have communal open space, which is desirable in the urban core of Hornsby and was previously supported by Council and the independent Urban Design Panel. This feature is also considered to be a decorative element on the uppermost portion of the building, will not include advertising structures, and will cause minimal additional overshadowing. The rooftop features of Building B will include an outdoor lap pool and associated amenities, and a barbeque area within a landscaped outdoor space.

Where a rooftop communal open space is desired, the following is outlined for consideration in the ADG:

*“Where rooftop communal open space is desired, ensure adequate maximum height is provided and consider secondary height controls for lift/stair access and shade structures”*

The height of the proposed development takes into consideration the requirements for additional lift and stair access, the plant room, and shade structures within the communal open spaces. The additional height of the proposed communal open space that contribute to the rooftop elements are unlikely to be seen from ground level. The rooftop elements will only be visible from the public domain at a significant distance and the additional height as a result of requirements for services on the rooftop would be unnoticeable. The rooftop features will improve the appearance of the Building when viewed from afar as they will complement the slim design of the building façade.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

N/A

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

The objective of achieving better outcomes for and from the development is defeated if strict compliance with the height standard is applied. The proposed height variance will provide better outcomes with regard to design excellence, slope of the land, heritage retention and development potential.

### **Design Excellence**

The minimum ceiling heights shown in Table 1 are key to the beginnings of achieving design excellence where ceiling height contributes to the amenity within an apartment and the perception of space. The additional height provisioned for the ground and first floor of mixed-use buildings promotes the flexibility of uses within such buildings.

First floor commercial has been provided in the development to accommodate Clause 4.5.4(j) of the Hornsby Development Control Plan 2012 (HDCP) that requires development within the west precinct to

accommodate a podium of between 2 and 5 storeys. The subject site is nominated to have a 2 storey podium.

Some ground floor uses require more than the minimum 3.3m ceiling height outlined in the ADG. Ground floor uses such as cafes and restaurants require upwards of 4m of floor to ceiling height to allow for additional servicing needs. Providing a ceiling height exceeding these minimum provisions are in the development's best interest in promoting flexibility and encouraging varied uses at the ground level.

The proposed development provides for 3.1m floor to floor for all residential floor levels to increase the amenity of the apartments taking into consideration the locality which is characterised by wide open spaces and the significant natural environment surrounding the locality. The increase of 0.1m from the minimum floor to floor reduces the need for bulkheads and allows for the 2.7 floor to ceiling height to be maintained throughout the apartments.

The floor to ceiling height has been considered to facilitate the maintained heritage façade scale created by the 2 heritage buildings on site as well as the conservation area. The first floor commercial maintains a floor to floor height of 4.5 which includes a 0.9m transfer slab. This therefore results in a floor to ceiling height of 3.6m. The increased floor to ceiling height is provided to promote the flexibility of the commercial podium level and facilitate high amenity commercial suites. The floor to ceiling heights in retail areas have also been designed in consultation with Angela Bonnefin, retail consultant, to ensure the flexibility of retail spaces. There is an additional 0.3m provided above the 3.3m minimum requirement for the floor to ceiling to maintain a level podium open space without the need for ramps. This also facilitates the residential levels matching up for both Buildings and reduces the potential for perceived overlooking.

Ground floor retail has a floor to floor of 4.8m allows for flexible uses including cafes (and the required service infrastructure). The additional 0.5m facilitates design excellence by promoting natural light penetration through the public spaces in addition to an open and spacious feel throughout these spaces. The 0.5m of additional height is combined with the 0.3m of additional height in the commercial level above to create the level podium open space. The finished floor level of the ground floor has been designed so as to reduce the level changes between the two entries on Peats Ferry Road.

The lower ground loading dock level is determined by a number of factors including truck heights, truck entry requirements and ramps, a 1.5m transfer slab is located above the turn circle in the loading dock to span the distance to allow the trucks to manoeuvre safely within the building and enter and exit in a forward direction. The ceiling height is set from the finished floor level of the ground floor and the floor level is set by the loading dock requirements and access points on Dural Street as the only vehicle access point for the site.

### **The Slope of the land**

The fall in the land from front to rear of the property is 8.82m to the top of the retaining wall adjacent to 6 Dural Street, which is retained as part of the site. There is an additional fall of approximately 2m to the driveway of 8 Dural Street. The development has been designed to achieve the objectives of Clause 4.3, by providing a high-quality urban form, that maintains sky exposure and daylight to the future residents and public domain and nominates building heights that will provide an appropriate transition in built form relative to the surrounding area.

### **Heritage Retention**

The development site includes a local heritage item ("Norwood") at 6 Dural Street, Hornsby. This is a building which housed the first pre-school in NSW. The proposal includes the retention and upgrade of this item by:

- Removing the non-original components of the development which detract from the heritage significance of the structure;
- Temporarily removing the building from the site during construction;
- Relocating the building forward of its current position on the site following the completion of development. This will provide the heritage item with an improved street frontage as viewed from the public domain as agreed with Council heritage officers and Council's Urban Design Panel;
- Refurbishment of the building (subject to a separate development application) in coordination with the child care operator; and
- Facilitating its ongoing use in a manner consistent with its heritage significance by providing additional child care floor space.
- The proposed treatment of Norwood is supported by a Statement of Heritage Impact by Heritage 21. Heritage 21 have been involved from an early stage to inform the project design from a heritage perspective. Given that Norwood is proposed to be retained, this request proposes to transfer the floor space that may have otherwise been achieved by developing 6 Dural Street to other portions of the site.
- The retention of Norwood is considered to be of significant public benefit as the preschool is consistently well occupied and provides an essential service to young families in the local community.

Retention of the heritage building reduces the development potential of the site. Clause 5.3 of the HELP 2012 describes where development that is within 20m of a zone boundary, development consent may be carried out in the adjoining zone, but only if the consent authority is satisfied that:

- (a) the development is not inconsistent with the objectives for development in both zones, and*
- (b) the carrying out of the development is desirable due to compatible land use planning, infrastructure capacity and other planning principles relating to the efficient and timely development of land.*

Clause 5.3 of the HELP 2012 facilitates the application of the R4 zone to 4 and 6 Dural Street therefore permitting residential flat buildings within 20m of the western boundary of the site.

The true development potential of the site would be achieved by removal of the heritage preschool building and developing a residential flat building. An alternative development concept is provided that incorporates a residential flat building on 4 and 6 Dual Street and is attached in Appendix B.

The proposal instead includes retention of the heritage building and a transfer of the floor space development potential from the heritage building to other portions of the site.

Table 4 below outlines the alternative development concept with the zone objectives for the purposes of calculating the floor space that is proposed to be transferred to Building B.

Table 4: Objectives of the R4 – High Density Residential and B4 – Mixed Use zones

<b>OBJECTIVES OF THE ZONE</b>	<b>COMMENT</b>
<b>B4 Mixed Use</b>	
To provide a mixture of compatible land uses.	The proposal seeks to provide for a mix of residential, commercial, and retail within the podium level that includes an anchor large format retail store with 14 number of specialty shops and food and beverage opportunities. Commercial suites are provided on the first floor that may facilitate the provision of medical or professional services directly to the community. Both Buildings include residential uses with separated entries and open space.
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.	<p>The proposed development incorporates a mix of town centre living opportunities as well as retail and commercial tenancies. The high density mixed use development is in close proximity to the train station, open space and local services. The development facilitates and promotes public transport and active transports options with the following elements.</p> <p>The development provides additional cycle parking over and above the minimum for all user groups of the site reducing the number of vehicle trips required for local services.</p> <p>The on-site open space both on the Building rooftops as well as the podium level will be envisaged to reduce the need for trips to external recreation infrastructure.</p> <p>The commercial floorspace on site is provided to encourage employment opportunities for residents within the building as well as for residents in the existing local community. The facilitation of a possible child care facility on site may reduce trips required for local residents and employees for child care purposes.</p> <p>Inclusion of car chare within the development to reduce the reliance on privately owned vehicles.</p>
<b>R4 High Density Residential</b>	
To provide for the housing needs of the community within a high-density residential environment.	The proposed development seeks to provide for the housing needs envisaged for the growth of the Hornsby Town Centre.
To provide a variety of housing types within a high-density residential environment.	The proposal seeks to provide a range of studio, one, two, and three-bedroom apartments of varying sizes and aspects within a high density residential environment adjacent to a town centre.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The development proposed is a mixed use development with retail and commercial uses orientated towards Peats Ferry Road and transitional urban uses oriented to the western boundary.

**Proposed floor space transfer from 6 Dural Street to Building B**

The plans in Appendix B separate the areas within the proposed concept for the purposes of the calculations. The following breakdown area of the preschool building that is being retaining and slightly relocated on 6 Dural Street is 96sqm. Therefore the total area achieved with the development concept minus the pre school building is 562sqm.

<b>LABEL</b>	<b>NET SELLABLE AREA</b>
1A (ground floor 6 Dural Street)	205m <sup>2</sup>
1B (ground floor 4 Dural Street)	184m <sup>2</sup>
2A (first floor 6 Dural Street)	185m <sup>2</sup>
2B (first floor 4 Dural Street)	84m <sup>2</sup>
2C (first floor back of 4 Dural Street)	(114m <sup>2</sup> )
<b>Total</b>	<b>658m<sup>2</sup></b>

The total net sellable area of the top floor of Building B is 609sqm resulting in a 49sqm difference between what is proposed compared to the concept scheme. Area 2C has been excluded from the calculation of net sellable area for floor space transfer as it is outside of the provisions of Clause 5.3 – Development Near Zone Boundaries.

It is not realistic to consider the development of 77% of a floor as this would result in an irregular built form and likely result in a less than desirable outcome urban outcome.

The proposed scheme is considered to result in the most appropriate urban outcome for the development with the retention of the heritage listed preschool on the site with the intention for the use of the preschool to continue. The transferred floor space does not represent an increase in the number of apartments achieved in the development and incorporates a number of larger apartments to increase the apartment mix provided in the development within the town centre.

The objective of achieving better outcomes for and from the development is defeated if strict compliance with the height standard is applied. The proposed height variance will provide better outcomes with regard to design excellence, slope of the land, heritage retention and development potential.

4. *Development standard being virtually abandoned or destroyed by the Council's own actions in granting consent departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

N/A

5. *The zoning of particular land is 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".*

N/A



## Are there sufficient environmental planning grounds to justify contravening the development standard? (cl. 4.6(3)(b))

The objective of Clause 4.3 Height of Buildings is:

*(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The increased height would reflect the role of the development as a contributor to the growth of the Hornsby town centre as the focus for accessible retail, commercial, and residential opportunities that encourage walking and cycling in the locality. The floor space transfer from 6 Dural Street will ensure that the development potential of the site is maximised and in ensuring the continued protection and operation of “Norwood” that provides essential community services to young families in the Hornsby area.

In order to reflect and reinforce the hierarchy of centres and land use structure in the Hornsby town centre, the proposed development is considered appropriate. The proposed development achieves the objective of the development standard and therefore compliance with the standard is unnecessary in this case.

The decision of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 established that justification pursuant to Clause 4.6(3)(b) requires identification of grounds “*particular to the circumstance of the proposed development*” and not merely grounds that would apply to any similar development on the site or in the vicinity.

In accordance with the above, the environmental planning grounds for the variations to the height standard are provided below.

- Those portions of the building exceeding the maximum building height, are generally elements of the top of the pergola in the communal open space, lift overrun and exhaust vents. These elements have been designed as a considered integrated design response to the upper elements of the building and to accentuate the tall and slender features of the development. The integrated design of the communal pool and pergola structure contributes to both the provision of and usability of the open space for residents.
- The lift over-run and plant located on the roof ensures it will have limited access for building maintenance and has been incorporated in to the façade to be a corner feature of the gateway development to further elongate the vertical lines of the building form.
- The additional height of the proposed roof elements, communal garden and habitable apartments will not be readily perceptible from public domain spaces in the immediate vicinity of the site, thus providing an appropriate transition in built form and land use intensity. The rooftop elements will only be visible from the public domain at a significant distance such that the additional height would be imperceptible. The features will, however, improve the appearance of the buildings when viewed from afar as they will complement the building façade and the Green Gateway. The extent of the variation is small relative to the scale of the development such that there will be no impact on the building’s visual relationship with site topography.
- The variations would have negligible adverse effect in terms of visual impacts and overshadowing.

### Provision of Amenity and the Public Interest of “Norwood”

The provision of additional floor space at Building B as a result of the retention of the locally listed heritage item “Norwood” at 6 Dural Street, Hornsby will ensure that the existing street character and public domain at the existing child care centre/pre-school is retained and celebrated. The retention of “Norwood” and the proposed public domain improvement works (subject to a separate development application) following the relocation of the building will be sympathetic to the existing street character.

The additional height of Building B will enable the delivery of “high-end” finishes and premium inclusions to attract permanent residents to the town centre and to stimulate economic growth. As the proposal covers a sizeable footprint within the Hornsby town centre, the development is expected to generate interest and create a sense of opportunity and renewal.



The table below provides a summary of the environmental planning grounds to justify contravening the development standard.

**Table 5: Environmental Planning Implications**

<b>ASPECT</b>	<b>IMPACT</b>	<b>JUSTIFICATION</b>
<b>Social</b>		
Visual	Positive	The additional height will not obstruct any view corridors and will enable a slim line built form to increase permeability.
Noise	Positive	The additional height from the transfer of floor space is not expected to create any demonstratable impact on the acoustic amenity of neighbouring properties.
Overshadowing	Positive	The additional height of one floor is not expected to result in significant changes to the overshadowing impact on neighbouring properties.
Privacy	Positive	The additional height at this relative level is expected to have minimal to no privacy impacts on adjoining properties.
Bulk and Scale	Positive	The residential Buildings are located atop a retail and commercial podium with a compliant set back to the street. The additional height to Building B from the transfer of floor space from 6 Dural Street is expected to have minimal to no impact on the bulk and scale of the development at street level.
Public Interest	Positive	The variation to the height standard will enable the retention of the heritage listed item "Norwood" at 6 Dural Street whilst retaining and expanding the outdoor space utilised by the child care centre/pre school. This recognises "Norwood" as an essential community service and it will be able to continue serving the Hornsby local community. The transfer of potential floor space at 6 Dural Street ensures the economic viability of the development and maximises the development potential of the site as it seeks to be a catalyst for change in the Hornsby town centre area.
<b>Environment</b>		
Stormwater	N/A	The height resulting from the floor space transfer is expected to have no impact to the proposed storm water provisions.
Ecology	N/A	The additional height of the development will not require any vegetation clearing.
Bushfire	N/A	The additional height of the development does not present a bushfire hazard.
Soils	N/A	The additional height of the development will not cause additional impacts to the acid sulphate soils, result in land slip or sedimentation.
Urban Planning	Positive	The additional height of the development optimises the capacity of the site, and further cements the proposed development as one that reflects the hierarchy of the Hornsby town centre and land use structure.
Transport	Positive	The additional height of the development provides increased dwelling density within the Hornsby town centre, which in turn is able to encourage residents to walk, cycle, and utilise public transport due to its proximity to services.

ASPECT	IMPACT	JUSTIFICATION
Economic		
Short term	Positive	Construction employment and the resulting construction staff expenditure in the local area.
Long term	Positive	The development is expected to attract investment and additional development to the Hornsby town centre. The provision of retail and commercial floor space within the proposed development will bring about more local employment opportunities.

**Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone? (cl. 4.6(4)(a)(ii))**

**Consistent with the objectives of the height of building standard?**

The objectives of Clause 4.3 – Height of Buildings is:

- (a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

The development provides for a high quality and carefully considered built form that will contribute significantly to the major centre status of the Hornsby town centre. The proposed development has been through a design process that has also reviewed the necessary services required to ensure that the retail and commercial possibilities at the ground and first floor remains feasible, exceeding minimum requirements.

The proposed variations to the limit do not impede the attainment of the proposal as a significant contributor to the Hornsby town centre. The proposed variations to the height limit will have no adverse environmental impacts in terms of visual impacts, privacy or overshadowing. The development has been through a thorough design process that has reviewed all aspects of the site, existing locality and desired future character of Hornsby West Side. The desired future character of Hornsby West Side is tall slender buildings with sympathetic heritage podium. The building heights are consistent with the vision which is the backbone of the now implemented height provisions.

**Consistent with the objectives of the B4 Mixed Use zone?**

The objectives of the B4 Mixed Use zone are:

- 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 development will provide for a compatible mix of residential and commercial uses, and the proposed variations will facilitate the attainment of this objective. The development will provide for retail and residential uses in an accessible location in close proximity to public transport and within walking and cycling distance to community facilities, schools and potential employment opportunities. The development will activate the development at street level with a retail plaza and facilitate employment generation with the commercial level on the first floor of the development that is easily accessible with onsite car parking and access to public transport.

A number of elements have been included in the development to reduce reliance on private vehicles, increase public transport patronage and increase active transport usage including:

- Provision of employment opportunities on site in retail, business and office facilities

- Provision of bicycle parking above and beyond what's required for all user groups
- Varies open space and active recreation facilities provided on site
- Facilitation of car share scheme opportunities
- The retention of "Norwood" as a child care centre/pre-school will ensure the continued provision of early childhood services to the Hornsby local community.

The proposed development provides for the revitalisation of the Hornsby West Side Town Centre in providing high quality residential, retail, and commercial development within the town centre to attract new permanent residents.

The proposed development provides a new 'high end' apartment housing option not currently available in the area. The development is consistent with the objective of the zone by integrating suitable land uses. The proposed variation will not impede the attainment of the zone objectives.

### **Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning? (cl. 4.6(5)(a))**

The contravention of the development standard in this case does not raise an issue of state or regional planning significance as it relates to local and contextual conditions.

### **How would strict compliance hinder the attainment of the objects specific in Section 5(a)(i) and 5(a)(ii) of the Act?**

The objects set down in Section 5(a)(i) and 5(a)(ii) are as follows:

*"to encourage*

*(i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*

*(ii) The promotion and coordination of the orderly and economic use and development of land..."*

A strictly complying development would result in a poorer urban design response to the overall site and the area generally and in that sense it may be said that compliance with the standard would hinder the attainment of the objects of section 5(a)(i) and (ii) of the Act.

The development as proposed is consistent with the provisions of orderly and economic development and would not hinder the objects of the Act in Section 5(a)(i) and (ii).

### **Is there public benefit in maintaining the development standard? (cl. 4.6(5)(b))**

No. The current development standard is not appropriate to the location.

## Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the standard.

The proposed development height of 45.9m at Building A and 77.5m at Building B is complementary to the likely future scale of development within the Hornsby Town Centre. The building height is considered appropriate to the context and circumstances of the site, not inhibiting any additional view corridors being the gateway of the town centre.

A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses and would not result in an appropriate design response to the site. In the context of the locality it would be unreasonable for strict compliance to be enforced.

As demonstrated in this submission, it would be unreasonable for strict compliance with the height control to be enforced. It is concluded that the variation to the height development standard is well founded as compliance with the standard is both unnecessary and unreasonable in the circumstances of this case.