

CLAUSE 4.6 VARIATION REQUEST BUILDING HEIGHT FORESTWAY SHOPPING CENTRE

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TABLE OF CONTENTS

1.	Introduction	1
2.	Site and Locality	2
3.	The proposed development	3
4.	Relevant Assessment Framework	5
5.	Extent of Contravention	7
6.	Clause 4.3 – Building Height	12
6.1.	Consideration	12
7.	Conclusion	21
7.1.	Summary.....	21
7.2.	Is the objection well founded?	21
	Disclaimer	23

Figures:

Figure 1 – Aerial image.....	2
Figure 2 – Forest Way and Russell Avenue Photomontage	3
Figure 3 – Sorlie Place Photomontage	4
Figure 4 – Areas of Non-compliances	8
Figure 5 – 12m Height Plane	10
Figure 6 – NBHSP – Proposed Height	14
Figure 7 – Shadowing Analysis	15
Figure 8 – WLEP 2011 Height of Buildings Map	17
Figure 9 – WLEP 2011 Land Use Zoning Map.....	19

PICTURES:

Picture 1 – Car park upstand	8
Picture 2 – Architectural roof pitch.....	8
Picture 3 – Lift overrun and lift lobby, Level 2	8
Picture 4 – Plant room Level 2	8
Picture 5 – Architectural pitch over gym on Forest Way	9
Picture 6 – Shade sails, roof car park.....	9
Picture 7 – View from Russell Avenue, looking south	10
Picture 8 – View from Sorlie Place, looking north east.....	11

Tables:

Table 1 – Assessment of Consistency with Development Standard Objectives	16
Table 2 – Assessment of Consistency with Zone Objectives.....	18

1. INTRODUCTION

This Clause 4.6 variation request has been prepared by Urbis on behalf of Invesco in relation to the DA at Lot 20 DP 1209801 as relevant to the Forestway Shopping Centre. The request seeks to vary the maximum building height development standard prescribed for the subject site under Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011). The variation request is made pursuant to Clause 4.6 of the WLEP 2011.

Pursuant to Clause 4.3 of the LEP, and the accompanying height map, a maximum height limit of 12m applies to the site. The proposed envelope has a variable height with the greatest exceedance proposing a maximum height of 16.89m.

With the exception of a lift lobby space, the building height of all GFA is within the height limit. The variable maximum height exceedances range from 1.97m to 4.98m above the 12m standard. It is a result of elements that:

- assist in architectural expression (such as the pitched roof forms)
- are essential building plant;
- facilitate the improvement in building entrances (such as the lift over run on Forest Way) and;
- provide shading and safety perimeter barriers to the car park.

It is stressed that a significant proportion the envelope is compliant with the 12 metre building height development standard as is demonstrated in envelope diagrams that are included in the assessment below.

2. SITE AND LOCALITY

The site is located in the suburb of Frenchs Forest in the Northern Beaches Local Government Area (LGA). Frenchs Forest is approximately 13kms from the Sydney CBD and is identified as a Planned health and education Precinct in the North District Plan.

The site is situated proximate to the junction of Warringah Road and Forest Way, which is undergoing significant roadwork infrastructure largely undertaken to service the new Northern Beaches Hospital and in the future a greater intensity of development including residential uplift. The existing character is however predominately low-density residential west of Forestway. The broader area is interspersed by National Park and public reserves as well as commercial development on Bantry Bay Road and Warringah Road.

The site is situated on a large irregularly shaped parcel of land with a legal description of Lot 20 DP1209801. The site is bound to the north by Russell Street and low-density housing further northwards, Grace Street to the west and a row of housing and bushland further westward, Frenchs Forest Primary School and Sorlie Place to the south and Forest Way to the east. The site area is approximately 2.041 hectares. The site is elevated with land falling away substantially on the western side of Grace Avenue.

The site has a gradual natural slope that falls to the east of the site by up to 2m and contains limited vegetation, with the only substantial planting located along the northern street frontages of the site. Two storey deck car parking is along Forest Way. Vehicle access to the site is currently available from the southern part of the site from Forest Way, from Russell Avenue and from Grace Avenue.

An aerial image of the site is provided at **Figure 2**.

Figure 1 – Aerial image



Source: Urbis

3. THE PROPOSED DEVELOPMENT

This Clause 4.6 Request is for an exception to the Building Height standard and is prepared in support of a DA submitted to Council for the redevelopment of the site, summarised as follows:

- Partial demolition of the existing retail centre
- 12,016m² additional GLA (net increase), including demolition and additions to the existing facility to enable the following new facilities:
 - Ground level retail including two x enlarged supermarkets, two x mini majors and speciality retail;
 - Level 1 retail level comprising restaurants, gymnasium, allied health, commercial offices and child care.
 - A passive recreation Skypark available to the community
- Two levels of basement car parking and one upper level of car parking at Level 2 providing 841 spaces (increase of 413spaces) and also including a car wash facility.
- Consolidated loading area from Grace Avenue for Aldi and specialty retail and Woolworths loading remaining in existing position. A light loading zone is located in the B2 basement.
- New signalised intersection and crossing on Forest Way
- Pedestrian access points include a centralised entrance generally aligning with the future green link to the Hospital precinct, new entry square near corner of Forest Way and Russell Street, access adjacent to Forestway vehicle entrance and access from Sorlie Place.
- Ancillary amenities, landscaping and infrastructure.

Photomontages of the proposal are shown in the Figures below.

Figure 2 – Forest Way and Russell Avenue Photomontage



Figure 3 – Sorlie Place Photomontage



4. RELEVANT ASSESSMENT FRAMEWORK

This section of the report outlines the environmental planning instruments relevant to the proposed development, including the aims and objectives, maximum building height control and the assessment framework for seeking a variation to a development standard.

A list of relevant planning principles and judgements issued by the Land and Environment Court regarding the assessment of developments seeking exceptions to development standards is also provided.

4.1. WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

Clause 4.6 of WLEP 2011 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are listed within the LEP as:

- (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 provides flexibility in the application of planning provisions by allowing the Consent Authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the Consent Authority consider a written request from the applicant, which demonstrates that:

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

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

Furthermore, the Consent Authority must be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone, and the concurrence of the Secretary has been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

1. *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
2. *The public benefit of maintaining the development standard, and*
3. *Any other matters required to be taken into consideration by the Secretary before granting concurrence.*

[Note: We understand that concurrence is currently assumed]

This document forms a Clause 4.6 written request to justify the contravention of the Building Height development standard in Clause 4.3. The assessment of the proposed variation has been undertaken in accordance with the requirements of the WLEP 2011, Clause 4.6 Exceptions to Development Standards.

4.2. CLAUSE 4.6: GUIDING PRINCIPLES

In preparing this Clause 4.6 variation request, consideration has been given to the following matters:

- *Varying development standards: A Guide*, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court. The *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 court judgement is the most relevant of recent case law. This judgement essentially confirms:
 - The consent authority must be satisfied the applicant’s written request adequately addresses the ‘unreasonable and unnecessary’ and ‘sufficient environmental planning grounds’ tests:

“that the applicant’s written request ... 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 ... and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard ...” [15]
 - On the ‘Five Part Test’ established under *Wehbe v Pittwater Council* [2007] NSWLEC 827:

“The 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...” [22]
 - That clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development:

“Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.” [88]

This clause 4.6 variation has specifically responded to the matters outlined above and demonstrates that the request meets the relevant tests with regard to recent case law.

5. EXTENT OF CONTRAVENTION

5.1. VARIATION TO MAXIMUM BUILDING HEIGHT

The proposed development comprises redevelopment of the existing Forestway Shopping Centre and in doing so contravenes the height of building control at the roof top car park level and part of the uppermost level of the building.

The 12m building height control has been measured in accordance with the WLEP 2011 definition:

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

5.2. RELEVANT BACKGROUND AND EXTENT OF CONTRAVENTION

Pursuant to Clause 4.3 of the LEP, and the accompanying height map, a maximum height limit of 12m applies to the site. The proposed envelope has a variable height with the greatest exceedance proposing a maximum height of 16.89m.

With the exception of a lift lobby space, the building height of all GFA is within the height limit. The variable maximum height exceedances range from 1.97m to 4.98m above the 12m standard. It is a result of elements that:

- assist in architectural expression (such as the pitched roof forms);
- essential building plant;
- facilitate the improvement in building entrances (such as the lift over run on Forest Way) and;
- provide shading and safety perimeter barriers to the car park.

It is stressed that the majority of the envelope is compliant with the 12 metre building height development standard below Drawings show elevations and sections with the 12m height development standard (included in the architectural package). The areas of non-compliance and the amount of non-compliance is extracted in the figures below and are summarised as follows and are illustrated in a series of Pictures in Figure 4 below:

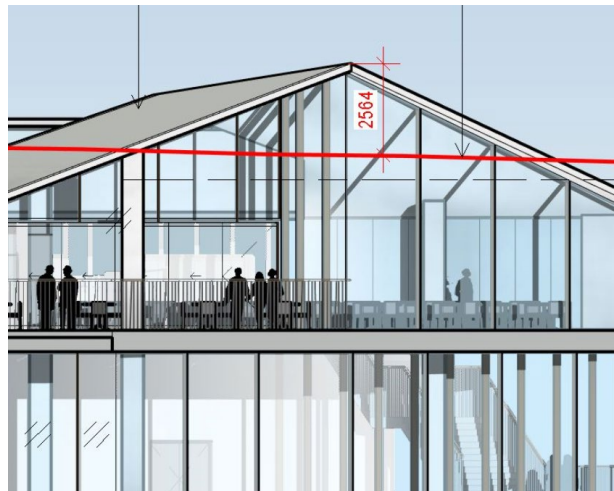
- 1.974m exceedance for the car park upstand (Picture 1)
- 2.3m exceedance for the pitched southern corner of the gymnasium on Forest Way (Picture 5)
- 2.560m exceedance for the pitched roof form on Russell Avenue, above the restaurant (Picture 2)
- 3.30m exceedance for the shade structures over the roof top car park (Picture 6)
- 3.52m exceedance for the architectural roof pitch on Forest Way
- 4.675m exceedance for the level 2 plant room, adjacent to the lift lobby (Picture 4)
- 4.89m exceedance for the lift overrun on Forest Way, aligning with the ground level entrance (Picture 3)

Figure 4 – Areas of Non-compliances



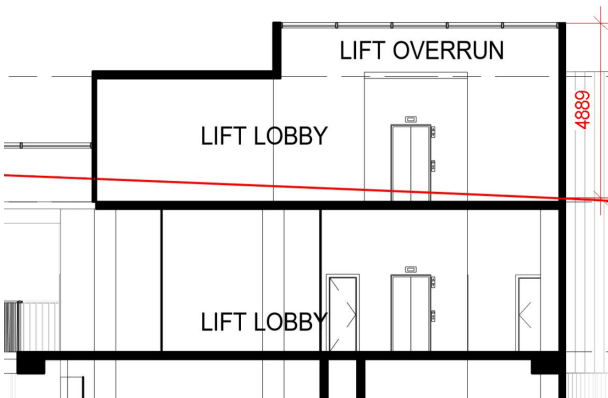
Picture 1 – Car park upstand

Source: Buchan



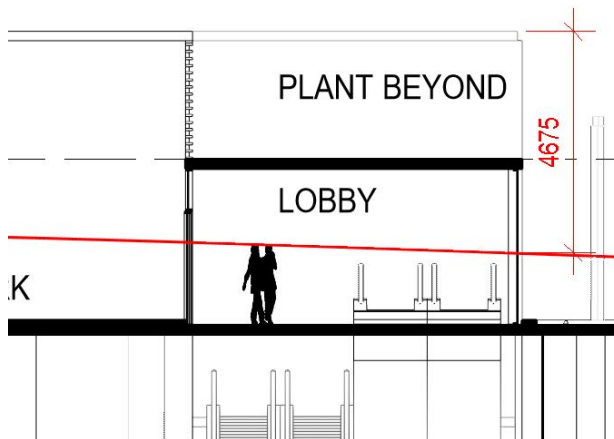
Picture 2 – Architectural roof pitch

Source: Buchan



Picture 3 – Lift overrun and lift lobby, Level 2

Source: Buchan

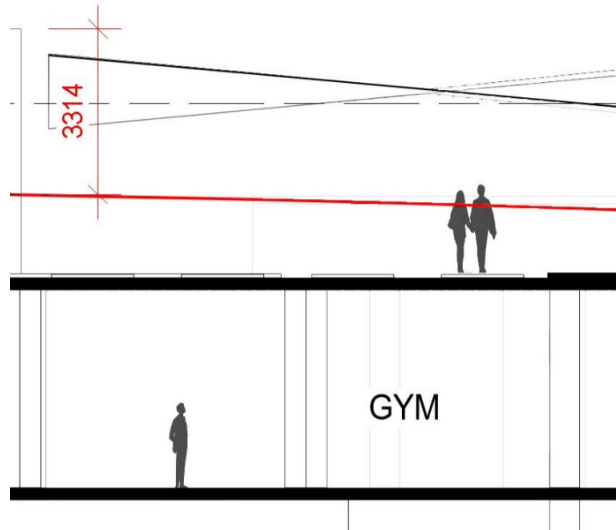


Picture 4 – Plant room Level 2

Source: Buchan



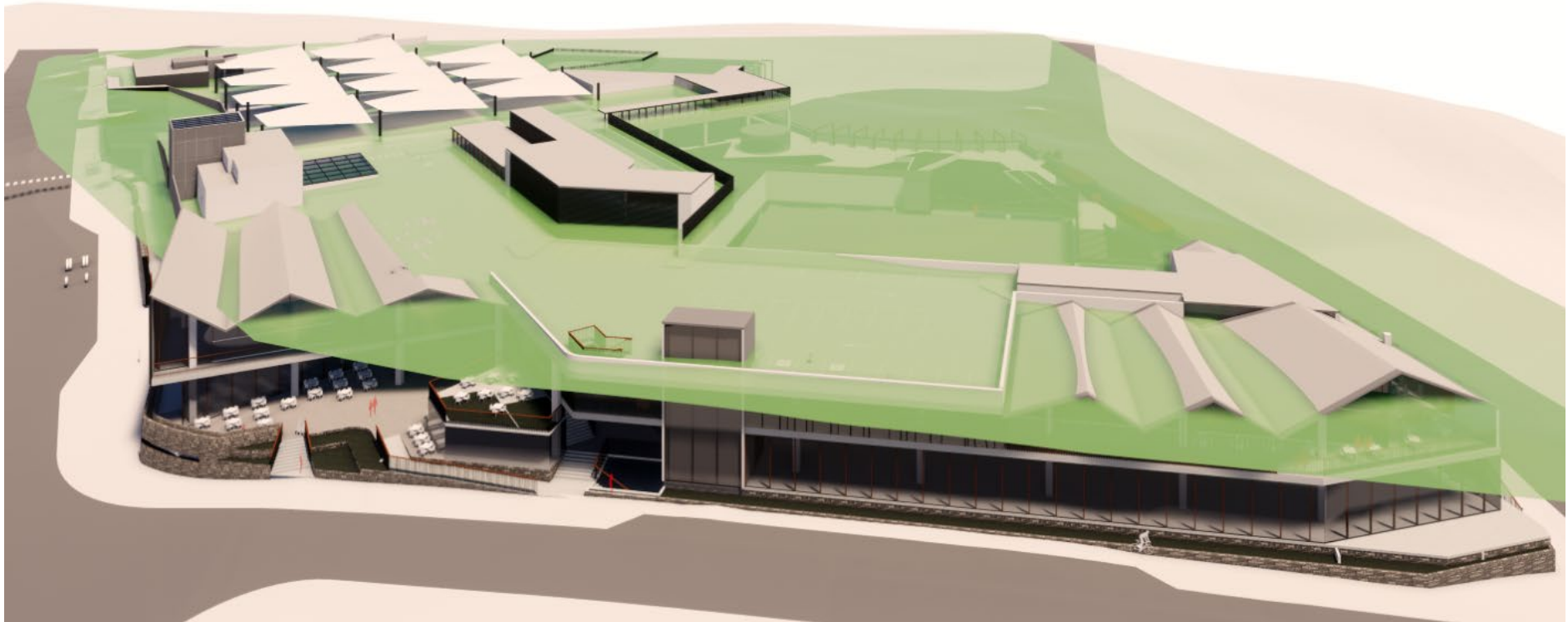
Picture 5 – Architectural pitch over gym on Forest Way
Source: Buchan



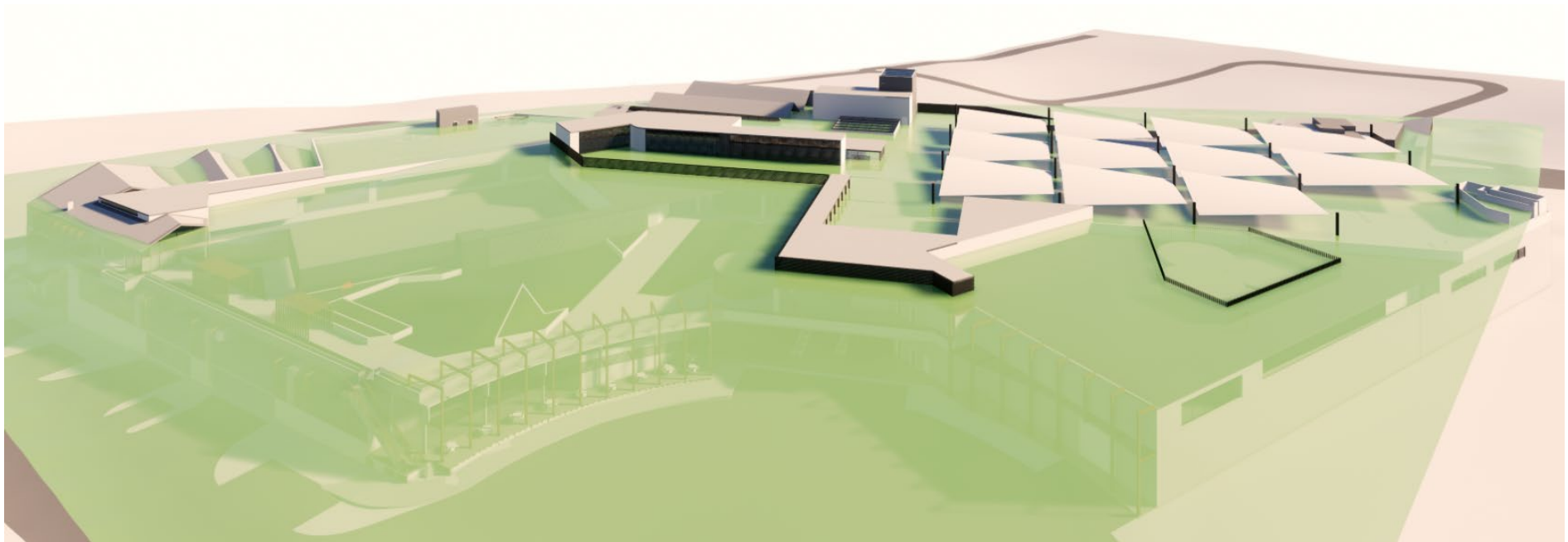
Picture 6 – Shade sails, roof car park
Source: Buchan

Buchan have prepared axonometric drawings to demonstrate the specific parts of the building that vary from the 12m development standard (**Figure 5**) and projecting above the 12m height plane coloured in green. These axonometric drawings confirm that approximately 43% of the roof level footprint (at L02) projects beyond the 12m height plane. This is reduced to 26% when the shade sails are excluded.

Figure 5 – 12m Height Plane



Picture 7 – View from Russell Avenue, looking south



Picture 8 – View from Sorlie Place, looking north east

6. CLAUSE 4.3 – BUILDING HEIGHT

The following sections of the report provide an assessment of the request to vary the development standards relating to the maximum building height in accordance with Clause 4.6 of WLEP 2011. The following sections provides detailed responses to the key questions required to be addressed within in accordance with the guiding principles identified in Section 4.2 above.

Is the Planning Control a Development Standard?

The maximum height of building control prescribed under Clause 4.3 of the WLEP 2011 is a development standard capable of being varied under Clause 4.6 of WLEP 2011.

What is the Underlying Object or Purpose of the Standard?

The objectives of the height standard as per WLEP 2011 are as follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities*

The underlying object or purpose of the development standard is therefore to provide a built form that is compatible with the site, the scale and character of surrounding development and avoids detrimental impacts on the amenity of the locality.

6.1. CONSIDERATION

6.1.1. Clause 4.6(3)(a) – Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Strict compliance with the maximum height of building standard is unreasonable and unnecessary in the circumstances of the application based on the following:

- The proposal is consistent with the objectives of the development standard as provided in clause 4.3 of the WLEP 2011 – refer to Table 1 below.
- With the exception of the lift lobby space, the exceedances in height are not GFA attributable. The majority of the building envelope that accommodates actual uses ensures an appropriate bulk and scale. The height variation does not seek to provide any additional density or gross floor area (GFA) that generates impact considerations beyond visual and amenity matters.
- The proposal is consistent with the intent of Clause 4.3 which is to maintain the character of the area and maintain existing views. The proposal achieves this outcome, notwithstanding the proposed numeric variation. The existing centre is positioned on a ridgeline that provides outlook to the west. Adjacent residential development to the north and west is typically oriented towards the street, however due to their low-density nature, typically sited in generous building blocks provides for an amenity that is not singularly dependent upon views and outlook towards the centre. There are no views of significance or view obstruction as a result of the non-compliant aspects of the proposal.
- In this instance, it is considered that removal of the non-complying elements to achieve strict compliance would not result in an improved planning outcome – the additional height does not cause any material impact in terms of privacy or view loss to neighbouring residential areas, or adverse overshadowing to residential properties or the public domain. The proposed variation in height (from 1.97m to 4.89m) contributes to improvement in building articulation and overall street presence, utilising pitched rooves, architectural elements that define entrances and increase light within the retail floor. Perimeter elements such as the car park overruns are essentially car park parapet features that perform a safety function as well as low level screening of parked vehicles that would otherwise be largely visible from the Forest Way footpath. Provision of shade structures over part of the roof top car park is a common feature in

shopping centre car parks, providing a significant enhancement to shopper amenity. The location of the shade structures is well away from the more sensitive residential edges of the property, but have the effect of “breaking up” a large expanse of roof space that are typical of shopping centre developments. Further the provision of the shaded car spaces assist in making the roof car park more desirable for shoppers which in turn assist in the sharing of the distribution of access (from Grace and Forest Way) and traffic movements across the site.

- Despite the additional height, the scale of development along Sorlie Place and Grace Avenue will be comparable. It reinforces unified scale in this part of the locality, yet includes components that are substantially setback, most notably the plant room, meaning that a number of non-compliant elements, such as the plant rooms, would not be perceptible at the ground plane.
- The non-compliance does not result in additional storeys, noting the proposed floor to ceiling heights are 4-5m, being typical of retail buildings. The pitched roof elements provide natural light into the centre of the building and articulates the form. This will further enhance the experience and overall enjoyment of the building for occupants and visual improve the streetscape.
- The height difference has an inconsequential shadowing impact at mid-winter (refer to **Figure 6** below) in that:
 - Shadow drawings are show there is a negligible impact on the playing fields of the school and the front gardens of the residential properties on Grace Avenue. The diagrams show that the dwellings on Grace Avenue will experience additional overshadowing in the morning period, however the private open space of the residential dwellings only experience the shadow for approximately 45minutes and by 10am will be unaffected.
 - Therefore, the private open spaces of dwellings will continue receive the required sunlight to their private open space areas between midday and 3pm as required in part D6 of WDCP. The amenity of adjoining properties is not significantly impacted on by the non-compliance.

Having regard to the changing nature of the locality, the proposal represents an appropriate transition and follows the form set by the surrounding buildings. The structure plan of the Frenchs Forest Planned Precinct acknowledges greater height on the subject land to 40m in height. Whilst there is no certainty that the Structure Plan will be translated into development controls, the Structure Plan was based on an urban design exercise that included public consultation and has since been adopted as policy of Council. An extract of the proposed height in the Structure Plan is below in Figure 6.

It is appropriate NOT to attribute any great weighting to this in the assessment of the merits of this clause 4.6 variation request, however, the Structure Plan does provide a sense of direction of the evolution of built form envisaged for the area. Considering the above, in the circumstances of this application, it is neither reasonable or necessary to require compliance with the height of building standard.

Figure 6 – NBHSP – Proposed Height

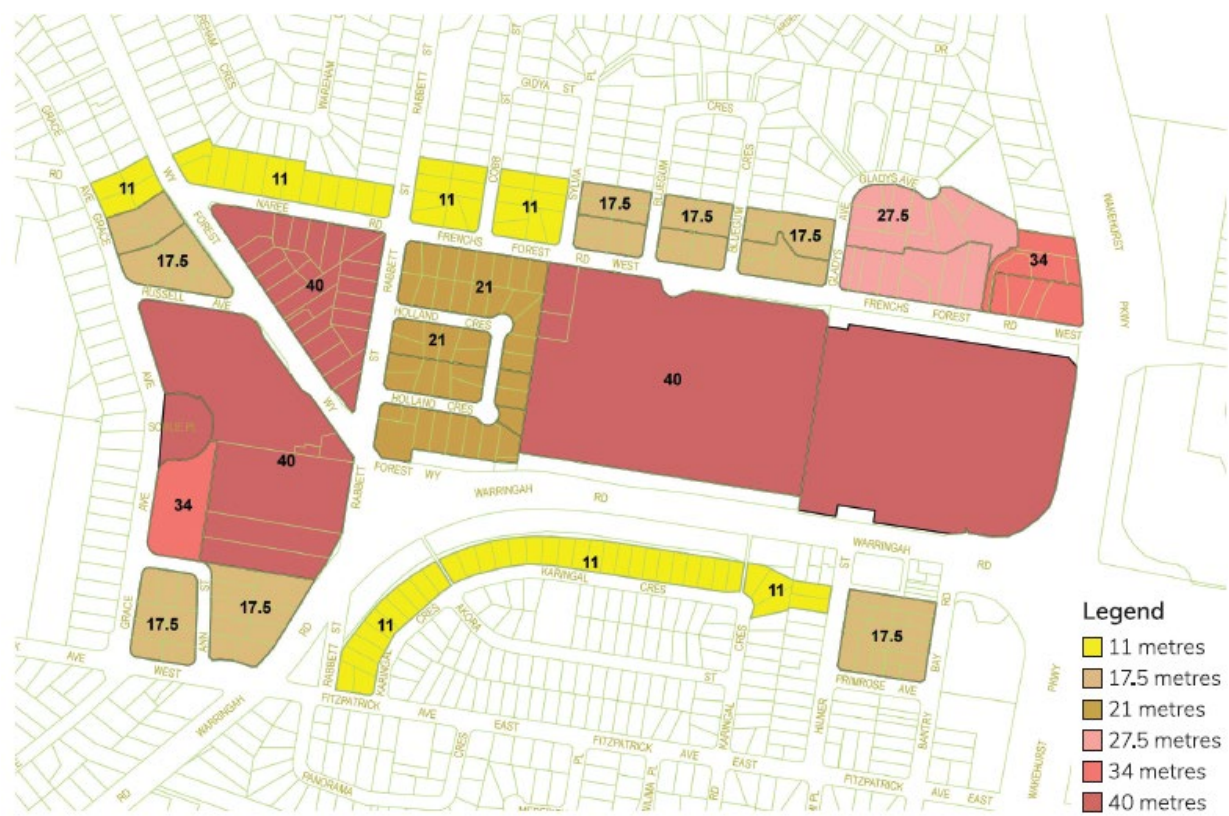
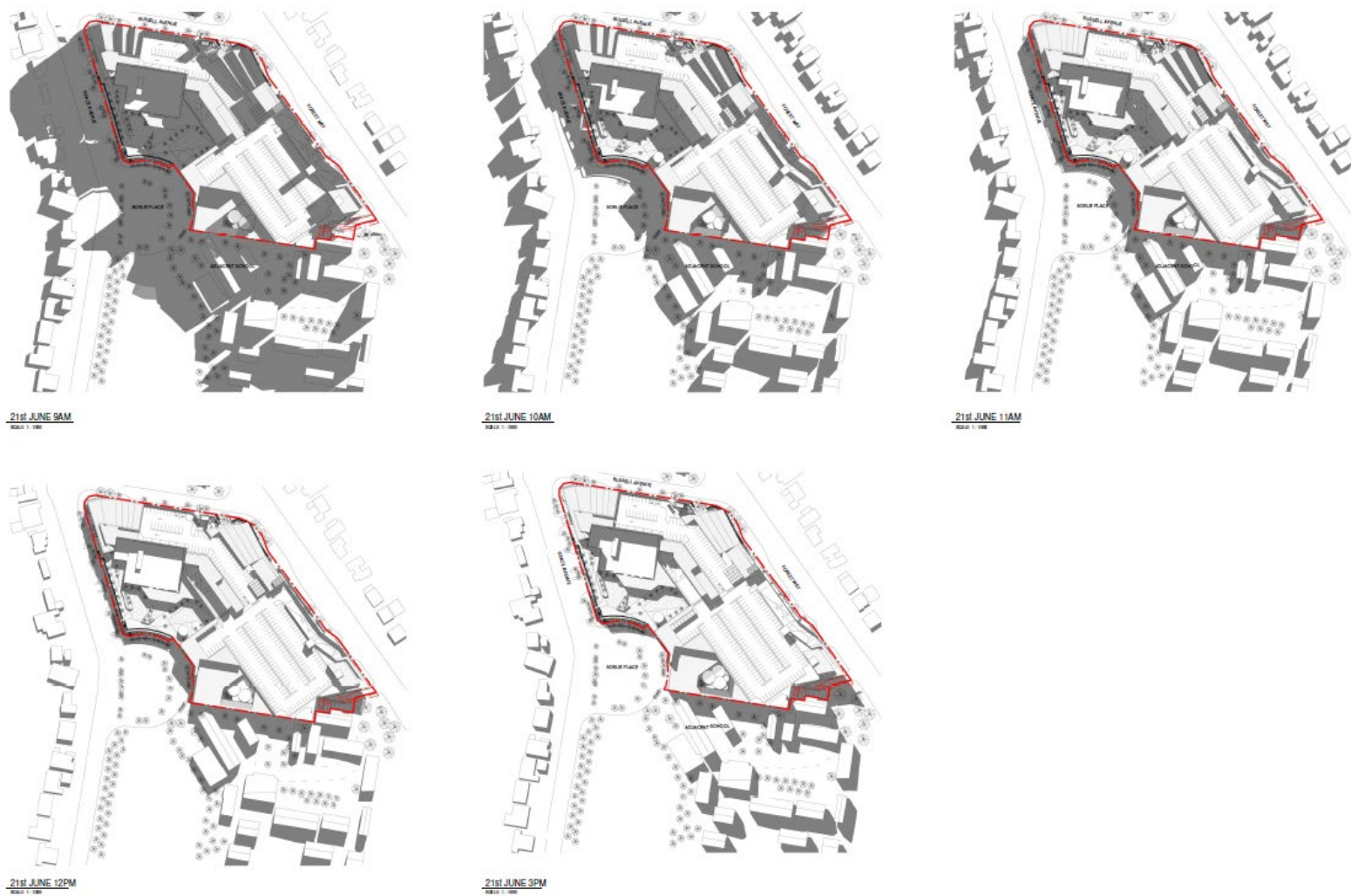


Figure 7 – Shadowing Analysis



Each of the matters listed within the ‘five-part test’ outlined in *Wehbe v Pittwater [2007] NSWLEC 827* and *Varying development standards: A Guide* is listed and responded to as follows:

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

The underlying objectives of the building height control as listed within Clause 4.3 of the WLEP 2011 have been achieved as summarised in Table 1 below:

Table 1 – Assessment of Consistency with Development Standard Objectives

Objectives	Comment
<i>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i>	<p>The proposed minor additional height reflects the gentle slope on site (a 1:79 westerly fall on Russell, 1:77 northerly fall on Grace towards Russell and 1:89 fall from Forestway to the west in the centre of the site), as well as provides architectural expression, improves vehicle safety and shading. The built form does not substantially depart from the prevailing character of the locality. The architectural design provides pitched roof forms drawing reference to the pitched forms of the residential context and to provide interest to retail centre.</p> <p>See WLEP 2011 height of buildings map in Figure 8 below.</p>
<i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i>	<p>The site does not form part of any view lines of significance. The Grace Avenue dwellings are partially below the level of the road, consists of a single row of houses whose amenity is significantly influenced by outlook directly across Gadigal National Park that extends to their rear boundaries. The area of the greatest non-compliance is concentrated centrally and extending towards Forest Way, away from the more sensitive interface to the north and west.</p> <p>Shadow drawings are submitted with the DA submission, particularly showing there is a negligible impact on the playing fields of the school and the front gardens of the residential properties on Grace Avenue. The private open space of the residential dwellings only experience the shadow for approximately 45minutes between 9am and 10am.</p>
<i>(c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,</i>	<p>There will be no impact on the scenic quality of the area, including views from surrounding residential developments to the west towards the National Park as a result of the proposal.</p>
<i>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i>	<p>The variation in height is primarily concentrated centrally and extending towards Forest Way, i.e. the eastern portion away from the residential interface and the school land. The non-compliances will not have an adverse impact when viewed from public places.</p> <p>This additional height is proposed to be incorporated into the built form and would be consistent with the LEP objective.</p>

Figure 8 – WLEP 2011 Height of Buildings Map



Source: WLEP 2011 and Urbis

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

This test is not applicable in the circumstances of the case. The objectives of the development standard are relevant to the development.

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

As demonstrated above and below, this test is satisfied. The objectives of the development standard and zone objectives remain satisfied.

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

Northern Beaches Council has previously supported Clause 4.6 variations, where contraventions of the building height standard were demonstrated to be supportable on individual merit.

5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

This test is not applicable in the circumstances of the case. It's assumed the site's land use and built form controls reflect Council's planning intent for the area and as demonstrated consistency with the zone objectives in Table 2 below.

The WLEP 2011 includes objectives for the B2 Local Centre Zone. This table demonstrates that the variation is consistent with the objectives of the zone. Strict compliance with the building height development standard would thwart the achievement of these objectives.

Table 2 – Assessment of Consistency with Zone Objectives

Objective	Comment
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The expanded centre will provide a broader range of retail convenience, food and lifestyle offerings to serve the needs of the Frenchs Forest community.
<i>To encourage employment opportunities in accessible locations.</i>	As a consequence, the proposal generates approximately 459 direct and indirect jobs. This includes a number of youth employment opportunities with retail developments generally employing a large number of younger staff. Additional height does not derogate from this objective noting again the point that the additional height does not give rise to additional floor area that would contribute to job generation
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The site is well located on a major bus routes on Forest Way. The additional height does not derogate from this objective.
<i>To provide an environment for pedestrians that is safe, comfortable and interesting.</i>	The design of the centre enhances areas of natural surveillance through glazing and enhanced activation on all three frontages of the development.
<i>To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.</i>	The built form is designed as a series of individual buildings to reduce mass and with pitched roof forms, both assisting in the compatibility of the surrounding residential area. The design also provides increased activation to all frontages to engage with the adjoining development.
<i>To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses</i>	The height exceedances are largely contained within the site. The most notable exceedances that are closest to street boundaries are largely architectural features that provide a significant enhancement in streetscape presentation and overall visual appeal

6.1.2. Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed development is supportable on environmental planning grounds for the following reasons:

- As stated above, the site falls marginally from north-east to south-west and (in part) causes the breach. Providing a chamfered building design or alternate roof at the corner of Russell Ave and Grace adds to the architectural interest that is embodied in the development plans
- The breach in building height of the car park upstand and shade sails provide essential safety and amenity elements for visitors to the centre. The lift overrun and plant are also vital part of any development and readily seen at the roofline of retail developments. Importantly the lift overrun assists in facilitating the identification the building entrance on Forest Way.
- A lowering of the development to meet compliance would likely mean reduced floor to floor heights of the retail levels which would not facilitate a superior retail centre with a sense of openness and air. An alternative would be to adopt a flat roof form which would otherwise result in a more monolithic build

form and mass. It is noted that there is no FSR control and the scale of the centre is supportable on economic grounds.

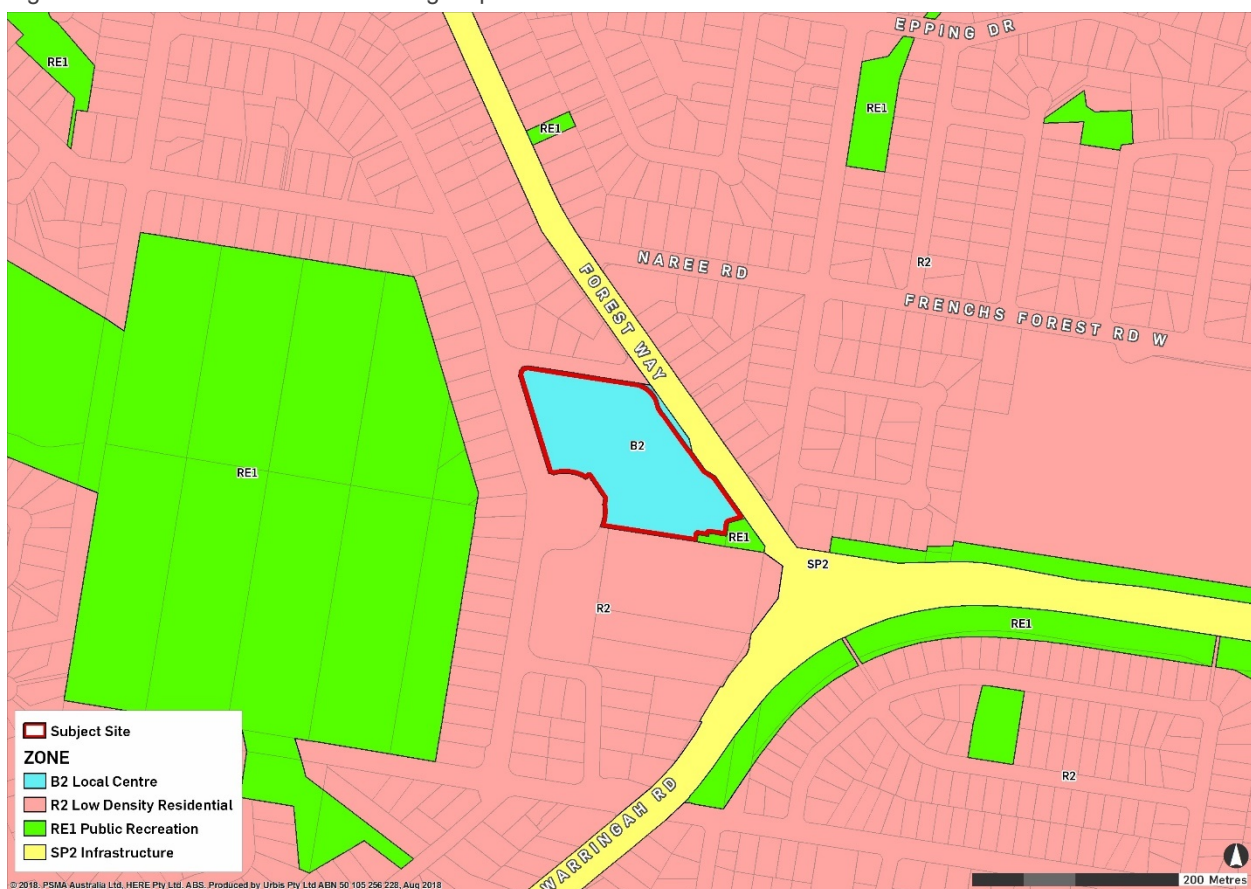
- The current design, including the height breaches make a positive contribution to the streetscape, providing a superior planning outcome that would otherwise be seen if a flat, long elevation was proposed for the centre elevations. The varying heights proposed and the design of individual building blocks, particularly at the corners assist in breaking up and modulating the facades and increasing the compatibility of the established residential pattern surrounding the site.
- There is not attributable GFA resulting from the beaches, with the exception of the lift lobby, meaning the exceedances do not increase the intensity of the development.
- The addition of up to a maximum of 4.8m (from the WLEP 2011 control of 12m) does not give rise to any consequential environmental impacts (e.g. shadowing, view loss or visual impacts).

As such, given the high level of compliance with other key development standards, the alignment with the desired future character of the area (both in terms of built form and land use) and the appropriate mitigation of environmental impacts, the variation to the development standard is supportable on environmental planning grounds.

6.1.3. 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 standard and objectives for development within the zone in which the development is proposed to be carried out?

The consistency of the development with the objectives of the development standard is demonstrated in section 6.1.1 above. The proposal is also consistent with the B2 Local Centre zone objectives that apply to the site under WLEP 2011 – as outlined within Table 2. The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

Figure 9 – WLEP 2011 Land Use Zoning Map



Source: WLEP 2011 and Urbis

6.1.4. Clause 4.6(5)(a) – Would non-compliance raise any matter of significance for State or regional planning?

The proposed non-compliance with the maximum height of building development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

6.1.5. Clause 4.6(5)(b) – Is there a public benefit of maintaining the development standard?

Forest Way Shopping Centre is currently characterised by a blandness and built form that lacks any real merit or inspiration. The retail facilities are largely hidden behind an imposing decked parking structure that extends virtually the full length of its primary Forest Way street frontage. The proposed redevelopment scheme proposes to address this and represents a significant enhancement in the architectural contribution and resultant positive relationship to the public realm on all three street frontages.

In delivering this design outcome, some relatively minor breaches to the height limit are proposed that through the design and assessment process have been found to be supportable as they do not create adverse impacts, especially overshadowing, but perhaps more importantly actually contribute to the overall enhancement of the centre.

The variation is therefore considered to be acceptable particularly when balanced against the benefits of the project which are:

- Provide expanded convenience retail shops connecting to an established shopping centre and use. The breaches in height do not contribute to building GLFA.
- Visual improvements to Forest Way, Russell and Grace Avenue through a high-quality building that includes added design articulation and contemporary finishes.
- Activation of the Russell Avenue and Forest Way corner through the inclusion of a plaza with food and beverage tenancies that addresses the streetscape and engages with the public domain.
- Allowance for connectivity of centre to the future green spine that leads to the proposed Frenchs Forest town centre.
- Inclusion of an elevated green space (Skypark) that can be accessed by the public, independently of the retail centre increasing the public recreational space in the immediate area.
- The additional required building height will not reduce privacy, increase overshadowing or present visual impact to surrounding properties. The shadow diagrams accompanying the application demonstrate that appropriate solar access will be retained to the adjoining properties.
- It is considered that the proposed height variation will not be contrary to the public interest.

Overall it is considered that the strict maintenance of the standard in this instance is not in the public interest as the current proposal will result in the delivery of a much-needed refurbishment and additions to the Forestway Shopping Centre. As such, there would be no public benefit in maintaining the development standard in this case.

6.1.3. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Concurrence can be assumed. Nevertheless, there are no additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

7. CONCLUSION

7.1. SUMMARY

Strict compliance with the height development standard is unreasonable and/or unnecessary in the circumstances of the case for the following reasons:

- The proposal is consistent with the objectives of the building height standard.
- The variation enables the provision of some 459 jobs provided both directly and indirectly as a result of the proposed development consistent with the current zoning of the land.
- The centre has been designed to allow for the future strategic direction of the land as envisaged in the NBHSP (which could see residential development above the centre). The endorsed structure plan for the area proposes building height of 40m for the subject site.
- The variation allows for a strong architectural design statement through pitched roof forms and entry statement as well as functional centre attributes (shaded car park, lift overrun and services) and will assist in attracting visitors to the centre by providing an enhanced retail offering.
- The proposed increase in height is acceptable when assessed in the context of the existing development onsite and that of the surrounding current and future built form.
- The proposed variation is predominately internalised in the broader site and allows for the development in keeping with scale and context of surrounding development and of that envisaged by the WDCP.
- With the exception of a lift lobby, the exceedances in height are not GFA attributable and the proposal complies with FSR to ensure an appropriate bulk and scale.
- The non-compliance with the height standard does not result in any loss of view, over-shadowing or privacy impacts on any surrounding or adjoining development or from the public domain.
- The variation to the development standard is supportable by environmental planning grounds including the limited environmental impact resulting from the breach to the standard, and benefits to the proposal resulting from the breach.
- Maintaining strict compliance with the development standard is not considered to be in the public interest.

7.2. IS THE OBJECTION WELL FOUNDED?

Based on the reasons outlined above, it is concluded that the request is well founded and that the circumstances of the case warrant flexibility in the application of the development standard under the provisions of Clause 4.6 of the WLEP 2011.

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