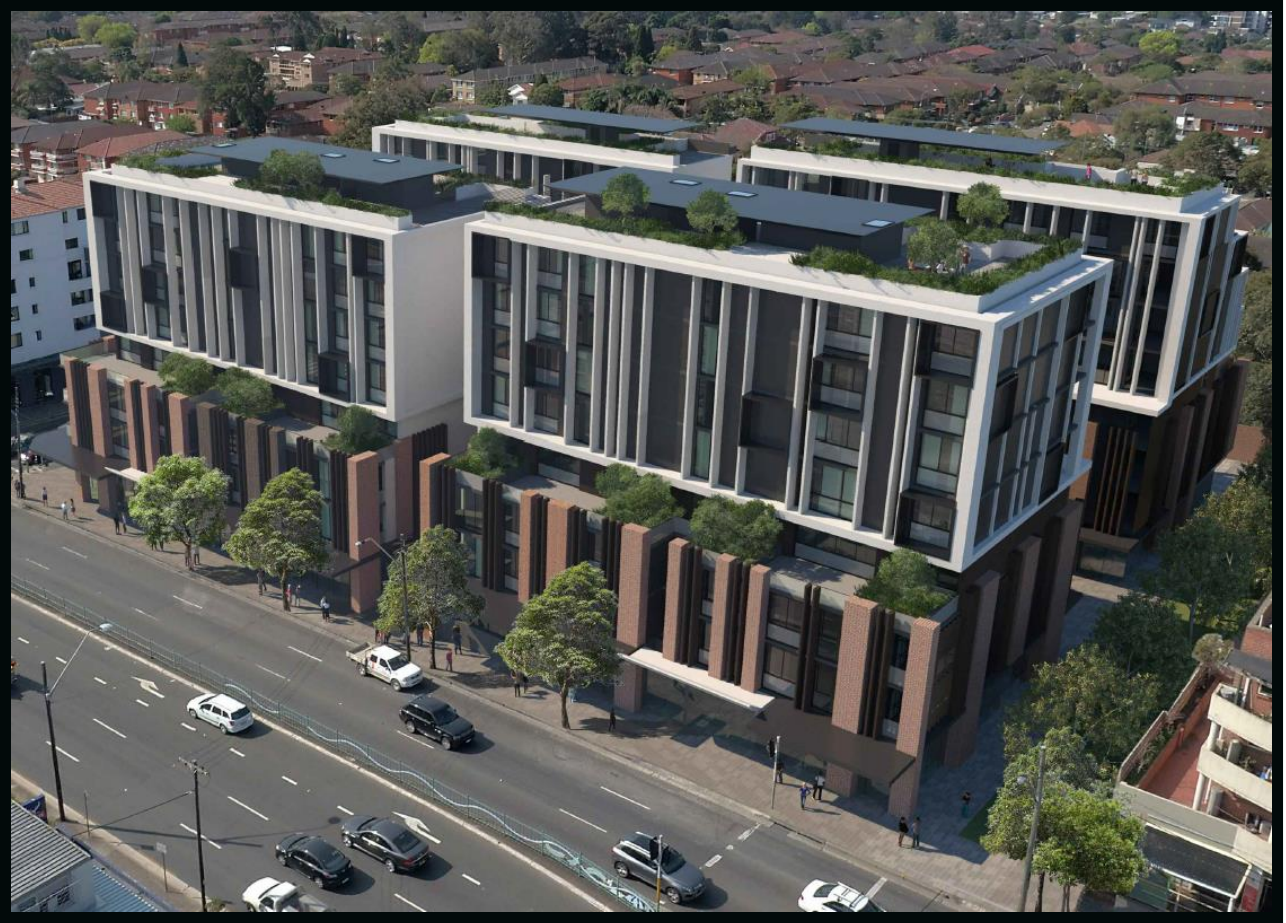
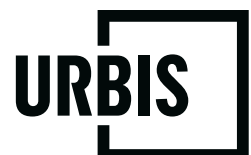




CLAUSE 4.6 VARIATION REQUEST - HEIGHT OF BUILDINGS STANDARD

280-300 Lakemba Street and 64-70 King
Georges Road, Wiley Park

Prepared for
LAKEMBA STREET DEVELOPMENT PTY LTD
2 October 2020



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1. INTRODUCTION

This Clause 4.6 Variation Request ('the Request') has been prepared on behalf of Lakemba Street Development Pty Ltd ('the applicant') and accompanies a Development Application ('DA') in support of shop top housing at 280-300 Lakemba Street and 64-70 King Georges Road, Wiley Park.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 2 October 2020.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site is located at 280-300 Lakemba Street and 64-70 King Georges Road, Wiley Park and comprises 11 individual lots. The legal descriptions of each lot are:

- Lot A, DP962951.
- Lot A, DP402053.
- Lot B, DP402053.
- Lot 1, DP 501587.
- Lot 2, DP 501587.
- Lot 3, DP 501587.
- Lot 2, DP6970.
- Lot 2, DP 206965.
- Lot 1, DP 124635.
- Lot 1, DP124613.
- Lot 1, DP 124636.

The site is within the Canterbury Bankstown Local Government Area (LGA) in the Wiley Park Station Precinct. The site is approximately 14km south-west from the Sydney CBD and 13km south-east of the Paramatta CBD.

The site is rectangular in shape with an area of 5,851sqm. Following the dedication of the laneway and the pedestrian footpath on Lakemba Street, the overall site area is reduced to 4,937sqm. It has frontage to King Georges Road to the south west and Lakemba Street to the north west, as illustrated in **Figure 1**.

A Survey Plan is included at **Appendix B**.

2.2. EXISTING DEVELOPMENT

The site is predominately developed. Vegetation is scattered across the site and includes 21 trees. The existing development comprises low scale single storey commercial developments fronting King Georges Road (vacant and operating tenancies) and five single storey dwelling houses.

2.2.1. Topography

The site falls moderately from its existing ground level of RL 42.78 at the southern portions of the site towards the Lakemba Street frontage at RL 38.65.

2.2.2. Site Access and Parking

The site currently contains three left-in, left-out crossovers onto Lakemba Street, to the residential dwellings on the site. The primary access point is via Lakemba Street and connects to an on-site bitumen car park in the centre of the site. A left-in, left-out crossover is provided to a vacant portion of the site onto King Georges Road.

Figure 1 – Subject site



2.3. LOCALITY CONTEXT

The site is located in Wiley Park, which provides a variety of housing types, commercial space, public transport connections and employment opportunities within the South District. The site benefits from excellent access to Wiley Park Station and is located approximately 70 metres from the station entrance. Wiley Park Station is currently undergoing upgrades in preparation for the Sydney Metro project, which will deliver fast and frequent train services between Bankstown and the CBD and north western Sydney making Wiley Park and the subject site more liveable, vibrant and connected.

Wiley Park is identified as a Village Centre under Council's recently adopted Local Strategic Planning Statement. The key characteristics of village centres under the LSPS are noted as follows:

- Village Centres are to be places designed for pedestrians.
- Village Centres are places designed for community life with high quality public, civic and community spaces.
- Village Centres are identified as potential areas for housing growth.
- The LSPS notes that Council will continue to work with Department of Planning, Industry and Environment (DPIE) to investigate opportunities for further growth in the centres located along the Sydenham to Bankstown Corridor.

Wiley Park is identified for urban renewal and transit orientated development within the 2018 revised *Sydenham to Bankstown Draft Urban Renewal Corridor Strategy* (the draft Strategy) and *A Metropolis of Three Cities* (Regional Plan). In January 2020, DPIE announced a new approach to precinct planning, whereby the Sydenham to Bankstown Urban Renewal Corridor was identified as a strategic project to be undertaken collaboratively between DPIE and Council. It is understood that DPIE and Council will be evolving the strategy to address the community's and Council's visions for the area.

The previous revised Strategy released in 2018 recommends significant uplift for Wiley Park (including a significant uplift for the site up to 12 storeys [approximately 35m] in height). This would see Wiley Park transition to facilitate greater mixed-use development and residential density adjacent to the rail line and addressing the context of King Georges Road.

The Wiley Park Local Centre is dissected by the six lane arterial King Georges Road, which has limited successful commercial frontages due to the poor pedestrian environment along the main road. The local centre is surrounded by an area of medium density housing which is predominately strata titled apartment buildings and single detached residential dwellings. Wiley Park is generally rundown, with older strata development and vacant commercial tenancies. Significant investment is needed to maximise the potential of the local centre given its proximity to Wiley Park Railway Station.

The site has high visibility on the corner of King Georges Road and Lakemba Street, in the heart of the local centre. The site presents a significant opportunity to deliver a high quality mixed-use development and publicly accessible spaces within Wiley Park. This is supported by **Figure 1**, which illustrates the relevant size of the site and its strategic positioning within the centre.

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for shop-top housing.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 2 October 2020. The proposal is also detailed within the architectural, engineering and landscape drawings that form part of the DA.

A summary of the key features of the proposed development is provided below:

- Demolition of the existing buildings on site and the removal of 18 trees, which includes 8 trees classified as exempt species which do not require approval for removal.
- Construction of a shop top housing development comprising four buildings with a maximum building height of 29.65 (RL 70.35) including:
 - Part 3, part 4 basement levels accommodating a supermarket, car parking for 251 cars, storage, loading areas, substation and waste facilities.
 - 4 x eight storey buildings, with communal rooftop open space for residents.
 - 2,437 sqm of retail floor space (including a 1,044sqm supermarket), 150 residential units, and communal facilities.
 - Communal open space and associated landscaping at level 8 (Rooftop Terrace).
- A central public plaza at ground level, providing opportunity for public art, community access and pedestrian connections. Associated landscaping of the plaza.
- Construction of an 8.475m wide laneway (comprising 6.675 metre wide access lane and 1.8 metre footpath) along the eastern side of the site, extending from Lakemba Street to the southern boundary of the property. Dedication of this laneway to Council.
- Construction of an additional traffic lane on Lakemba Street along the northern frontage of the site, facilitating the westbound left turn movement into King Georges Road.
- Construction of a 3 metre wide footpath along the site's Lakemba Street frontage. Dedication of this footpath to Council.
- Relocation of in-ground services from within the current footpath alignment to the proposed footpath alignment.
- Torrens Title subdivision of land to enable dedication of the laneway and footpath areas to Council and result in amalgamation of the remaining land into a single lot.

4. VARIATION OF HEIGHT OF BUILDINGS STANDARD

This section of the request identifies the development standard which is proposed to be varied and the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 4** of the request.

4.1. DEVELOPMENT STANDARD

Clause 4.3(2) of CLEP sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 27 metres as illustrated in **Figure 2**.

The objectives of clause 4.3 as set out in clause 4.3(1) of the CLEP are:

- (a) to establish and maintain the desirable attributes and character of an area,
- (b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,
- (c) to support building design that contributes positively to the streetscape and visual amenity of an area,
- (d) to reinforce important road frontages in specific localities.

The definition of building height under clause 4.3 of CLEP is:

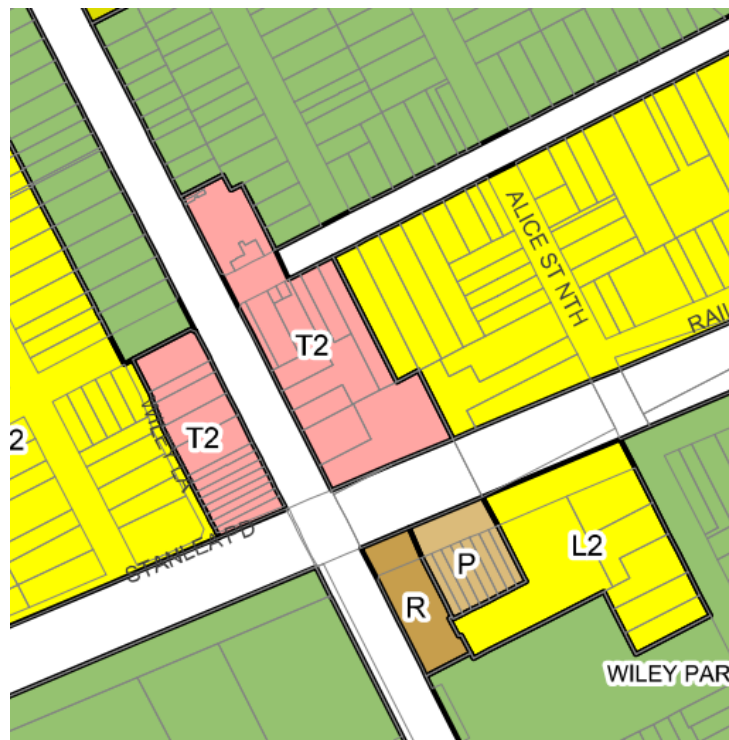
building height (or height of building) means—

- (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.*

Figure 2 – Height of Buildings Map

Maximum Building Height (m)

B	4
I	8.5
J	9.5
K	10
L1	11
L2	11.5
M	12
N1	13.5
N2	14
P	18
Q	20
R	21
S	24
T1	26
T2	27
U1	30



Source: Canterbury LEP 2012

4.2. PROPOSED VARIATION TO HEIGHT OF BUILDING STANDARD

The proposed development comprises four shop top housing buildings across the site with a maximum height of 8 storeys. The proposed building massing has been designed to ensure the form and separation of the buildings across the site contributes to a high quality urban environment and design excellence in Wiley Park. Compared to the original scheme, the amended scheme prepared by Marchese Partners, proposes the following amendments to improve the built form of the development to meet the Council's RFI comments from 13 August 2020:

- The relocation of vehicular access for residential and commercial parking via the public laneway which is to be dedicated to Council.
- The implementation of a full 7m wide building break to the eastern building, creating two separate buildings at the rear of the site. The building break reduces the bulk of the building and facilitates greater pedestrian connections to the publicly accessible plaza at ground level.
- Increased upper level setbacks (from the fourth storey and above) to the eastern boundary to ensure compliance with the Canterbury Development Control Plan (CDCP) setback control to other residential zones.
- Amended layout for rooftop communal open space to reduce the perceived bulk of lift overrun and improve the overall amenity of rooftop space across the four buildings.
- Revision of apartment layouts to improve the overall amenity of apartments including natural ventilation and solar access of the development.

Figure 3 – Roof Plan with buildings numbered



Source: Marchese Partners

As a result of the amended design development of the site, the proposed maximum height of each respective building across the site is identified in Table 1 below.

Table 1 – Maximum Building Height

Building	Maximum RL	Maximum Height from Ground Level	Exceedance
Building 2A	68.80	28.7m	1.7m (6.3%)
Building 2B	70.35	29.65m	2.65m (9.8%)
Building 1A	68.80	28.4m	1.4m (5.2%)
Building 1B	70.35	29.25m	2.25m (8.3%)

The height non-compliances across the buildings relate to built elements on the Level 08 rooftop, comprising predominantly the rooftop awnings, planter boxes, parapets and lift overruns. This accessible Level 08 rooftop terrace provides 686sqm of landscaped communal open space over the four separate buildings on site.

It is noted that the amended scheme has reduced the height of the lift overruns from previous schemes, resulting in a less visible form from the surrounding streetscape as shown in **Figure 4**.

Figure 4 – Former and Amended Scheme



Picture 1 Former Scheme



Picture 2 Former Scheme



Picture 3 Amended Scheme



Picture 4 Amended Scheme

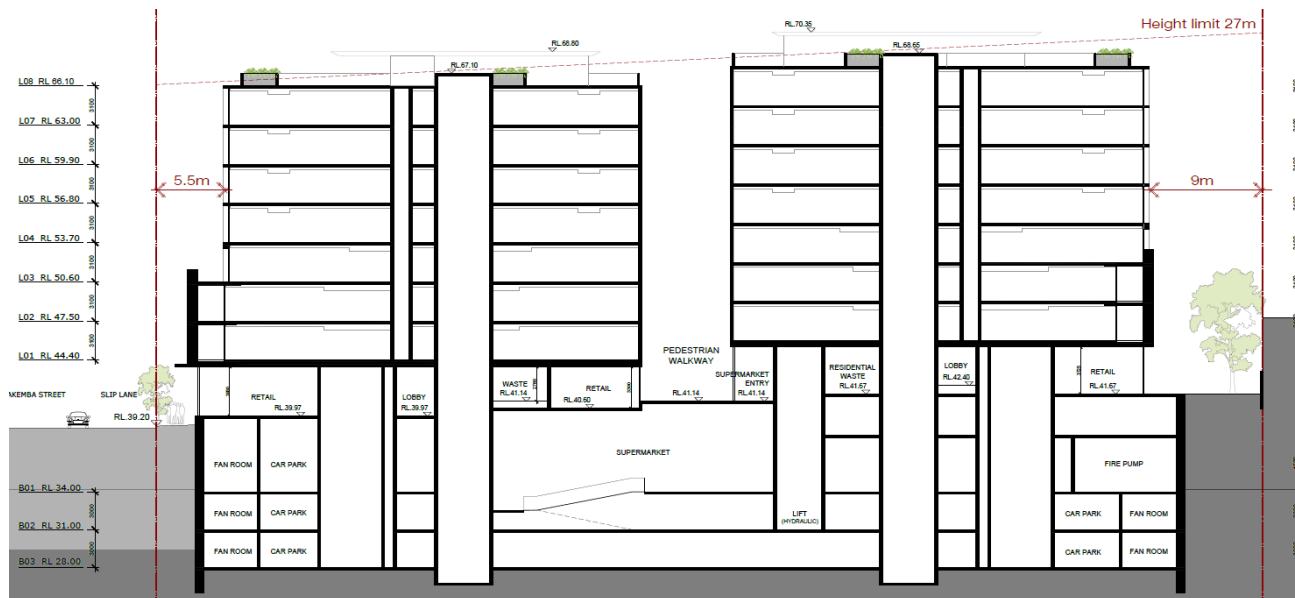
Source: Marchese Partners

The maximum exceedance occurs on Building 2B, with a maximum building height of 29.65 metres, resulting in a minor non-compliance of 2.65 metres (9.8%). This is measured from the top of the rooftop awning on Building 2B to the RL of the ground floor level below.

The slope of the land results in a slightly taller exceedance for the two southern buildings (buildings 2B and 1B), falling approximately 4m from the southern boundary (RL 42.78) to the northern boundary at Lakemba Street (RL 38.65m), as illustrated in **Figure 5**.

Figure 6 identifies that the exceedance in height does not comprise GFA, rather it relates to the rooftop elements which provide the lift access, overruns and plant required for equitable access to the rooftop communal open space.

Figure 5 – Proposed Section



Source: Marchese Partners

Figure 6 – Height Plan identifying the portion of the proposed development above the height plane



Source: Marchese Partners

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of CLEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of CLEP are:

- (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 DA 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(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- (c) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (d) the public benefit of maintaining the development standard, and*
- (e) any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of building prescribed for the site in Clause 4.3 of CLEP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of building standard be varied.

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of building standard in accordance with Clause 4.3 of CLEP.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the NSW Land and Environment Court.

The following sections of the report provide detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of building prescribed by Clause 4.3 of CLEP is a development standard capable of being varied under clause 4.6(2) of CLEP.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of CLEP.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Mical Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- **The objectives of the standard are achieved notwithstanding non-compliance with the standard** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standard as specified in clause 4.3 of CLEP are detailed in **Table 2** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 2 – Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
(a) <i>to establish and maintain the desirable attributes and character of an area,</i>	The height of the proposal is less than one storey above the height limit to accommodate lift overrun, parapet, roof awning and communal roof terrace elements. The bulk of the building complies with the development standard and is consistent with the desired character of the area. The additional height provides communal facilities expected for high quality developments and will provide improved amenity for residents. The Wiley Park Station Precinct will undergo a transition to a high density mixed-use precinct anchored by the Wiley Park Metro Station. This has resulted in the identification of several sites in the Sydenham to Bankstown Urban Renewal Corridor for significant uplift. The site has been identified for significant uplift and high rise/mixed use development up to 12 storeys in height (35m). Wiley Park is also identified as a Village Centre under the Canterbury Bankstown LSPS and an Urban Renewal Area under the District Plan. The objective for Village Centres includes creating pedestrian friendly environments and civic spaces. The proposal delivers on this directive by providing a publicly accessible plaza space at the ground level which removes any opportunity to provide communal open space on the site, other than on the roofs of the buildings. The proposal is consistent with this strategic direction for the area.
(b) <i>to minimise overshadowing and ensure there is a desired level of solar access and public open space,</i>	Marchese Partners have undertaken an overshadowing analysis which is enclosed in the Architectural Plans (Appendix C). The plaza within the site achieves good levels of solar access at midwinter and the proposed height variation results in no additional overshadowing impacts beyond that of a compliant development. The rooftop awning has been designed to ensure that the roof space is useable and provides sun shading and weather-proof coverage for residents without overshadowing the public plaza below or neighbouring sites. Useable communal open spaces (in particular rooftops of apartment buildings) have become valuable assets to residents and will remain a critical element of design as people continue to transform the way they work and live, as well as seeking better use of both public and private spaces. The lift overrun structure has been relocated from its previous integration with the building parapet, as illustrated in

Objectives	Assessment
	Figure 3 above, to reduce the perceived bulk of the height exceedance and reduce any risk of overshadowing impacts. Overall, the non-compliance with height does not result in any additional overshadowing impacts.
(c) <i>to support building design that contributes positively to the streetscape and visual amenity of an area,</i>	The elements on the rooftop provide for a usable and accessible communal open space for residents which then frees up ground level space for public access. This ground level plaza will contribute to the streetscape and site activation, encouraging pedestrian activity around and through the site. The rooftop elements will not detract from the visual amenity of the buildings and will provide for a high quality aesthetic and a usable area of benefit to the site's residents.
(d) <i>to reinforce important road frontages in specific localities.</i>	Ground Level to Level 04 of the proposed development addresses both Lakemba Street and King Georges Road frontages and provides activation at the ground plane as required in Canterbury Development Control Plan 2012 (CDCP 2012). All buildings are appropriately setback from Level 4 along Lakemba Street and King Georges Road to minimise bulk and massing and ensure an appropriate human scale and adjacent residential areas. The elements which exceed the building height control will not detract from the development's ability to reinforce the road frontages to Lakemba Street and King Georges Road.

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

The additional height comprises a variation of less than one storey and does not contribute material bulk and scale to the development. The upper levels of the building are setback and consistent with DCP controls to minimise the perceived bulk. The non-compliance predominantly relates to the rooftop awning and lift overrun which provides access to the rooftop communal space. The design has been amended to reduce any of the perceived bulk previously identified by Council from the lift overrun adjacent to the roof parapet.

The proposal is consistent with the objectives of the development standard and objectives of the B2 Local Centre zone further described in **Table 3** below. The proposal is a high quality shop top housing development which is of a scale entirely compatible with the strategic direction of the Wiley Park Station Precinct.

The site is not subject to a maximum FSR under CLEP 2012. The area of variation to the height of buildings standard results from the redistribution floor space to achieve the most favourable outcome for the site,

including a central public plaza protected from the main roads. If strict numerical compliance were required, the building would need to redistribute GFA to lower levels. This would compromise the building separation provided to surrounding lower density areas. This would also compromise the effectiveness of the central public plaza.

- **The burden placed on the community (by requiring strict compliance with the Height of Buildings standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf Botany Bay City Council v Saab Corp [2011] NSWCA 308 at [15]).

The proposed development provides an activated ground floor with a range of retail and commercial tenancies and a new public plaza. The proposed plaza, while providing a high level of street activation with the B2 Local Centre zone, does not provide communal open space specifically for residents of the site. To ensure that there is communal open space specifically for residents, and which is maximised to ensure recreational amenity for those residents, the roof top open space has been proposed. The variation in height relates predominantly to the rooftop awning and lift overrun for the rooftop communal open space, providing access and weather protection for those residents. While it would be possible to provide communal roof top space within the height control, this would further reduce the amenity of the space and the overall area available to residents. Further, if the rooftop space was reduced, communal open space would need to be provided at the ground level which would reduce the area available for public use.

Given that the elements exceeding the height limit do not cause amenity impacts to surrounding neighbours, nor do they contribute to the building's overall bulk and scale, it would be unreasonable to require strict compliance with the development standard. Strict compliance would unnecessarily diminish the quality of the rooftop space and would require the reduction in publicly accessible plaza space at the ground level in order to provide an adequate area of communal open space on the site.

In summary, the proposed non-compliance is inconsequential and will not result in any adverse impacts on residents or neighbouring properties.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, assists in considering whether there are sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits will arise from the proposed development. These include:

- The proposal is consistent with the objectives of the development standard and objectives of the B2 Local Centre zone.
- The site is not subject to a maximum FSR under CLEP 2012. The area of variation to the height of buildings standard results from the redistribution floor space to achieve the most favourable outcome for the site, including provision of a public plaza which improves ground floor activation for the Wiley Park Local Centre.
- The elements exceeding the height standard do not comprise any gross floor area, rather they comprise rooftop elements which ensure that lift access, overruns and plant required for equitable access are provided to the rooftop communal open space. Without these elements the space would be less usable

for residents. These elements improve the overall accessibility and amenity of rooftop communal space without impacting on the amenity of the proposed development or neighbouring sites.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of building non-compliance in this instance.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the subclause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also establishes that there are sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

Consistency of the development with the objectives of the development standard is demonstrated in **Table 2** above. The proposal is also consistent with the land use objectives that apply to the site under CLEP. The site is located within the B2 Local Centre zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 3** below.

Table 3 – Assessment of compliance with land use zone objectives

Objectives	Assessment
<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 proposal provides a mix of retail and residential uses that are appropriate for the site and the Wiley Park Station Precinct. The retail will serve the needs of the residents of the development and the surrounding community. The ground floor commercial and public domain improvements will create a vibrant, active and safe environment for the benefit of the greater community as well as for residents. Location of the communal open space on the roof assists in the delivery of ground floor public domain to support the community functions on and around the site.
<i>To encourage employment opportunities in accessible locations.</i>	The site is close to Wiley Park Railway Station. The public plaza provides pedestrian through links to from Lakemba Street to King Georges Road and the station, which improves access. The proposal co-locates retail jobs with residential dwellings, improving local employment.

Objectives	Assessment
	The rail line and future Metro Station will provide to connections to employment throughout Sydney.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	Wiley Park Railway Station and bus interchange services connect to the site. The proposal encourages pedestrian movement via the through-site links of the central public plaza. Bicycle storage is provided as part of the proposal and is encouraged.
<i>To facilitate and support investment, economic growth and development for active, diverse and well-designed centres.</i>	The development supports the revitalisation and economic growth of the Wiley Park local centre, which has a number of vacant commercial uses. The proposal is a significant investment in the town centre and will be a catalyst for future redevelopment.

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height of building standard as 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.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of building 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.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of building standard and the land use zone objectives despite the technical non-compliance.

The rooftop terrace areas have been proposed to allow for private communal open space while still providing a public domain improvements on site including a publicly accessible public plaza which will support street level activation within the Wiley Park Local Centre (**Figure 2**). A more generic development scheme could provide communal open space at ground level for residents but would not provide the same level of street activation.

Proposed street furniture, a potential location for a sculpture, trees, shade structures and a potential children’s play area will make this a place for the community to gather. Restaurants and shops line the plaza and will activate the site and the Wiley Park Local Centre. This provides an opportunity for residents to

interact with the public domain and introduces multiple site links to connect with the surrounding street network. The plaza provides an alternative accessible route for pedestrians to the railway station which is protected from noise and the car dominated environment of King Georges Road.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **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, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of building standard contained within Clause 4.3 of CLEP is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of building standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal is consistent with the objectives of the development standard and objectives of the B2 Local Centre zone.
- The site is not subject to a maximum FSR under CLEP 2012. The area the subject of the of variation to the height of buildings standard results from the redistribution floor space to achieve the most favourable outcome for the site, including provision of a public plaza which improves ground floor activation for the Wiley Park Local Centre.
- The exceedance in height does not comprise any gross floor area, rather it relates to the rooftop elements which ensure lift access, overruns and plant required for equitable access to the rooftop communal open space. These elements improve the overall accessibility and amenity of rooftop communal space without impacting on the overall amenity of the proposed development and neighbouring sites.
- The proposed non-compliance is inconsequential and will not result in any adverse impacts on residents or neighbouring properties. No additional shadow impacts will result from the subject building elements nor do they contribute to building bulk when viewed from the public domain.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of building standard should be applied.

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