

34.8.08

NORTH ALLAN ARRA

4167

DP4167

A

Mac Cabé's Estate

CORRIMAL

Part of E. Underwoods 80 ac Grant.

Parish of Wonora County of Camden

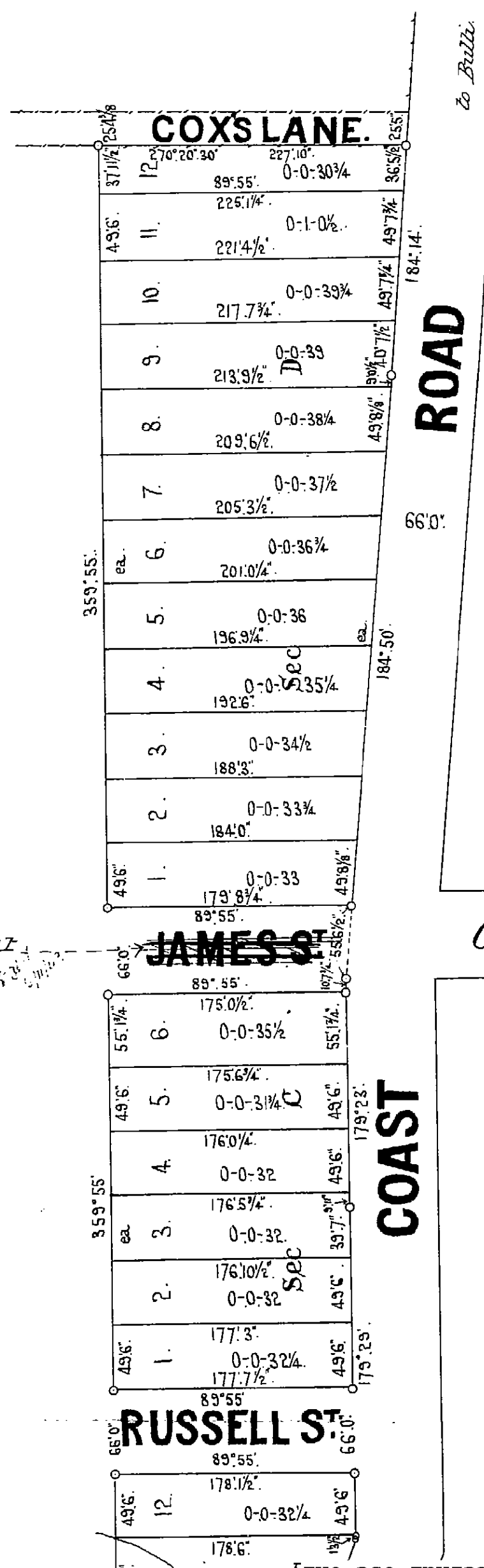
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CONVERSION TABLE ADDED IN REGISTRAR GENERAL'S DEPARTMENT

DP 4167

FEET INCHES METRES

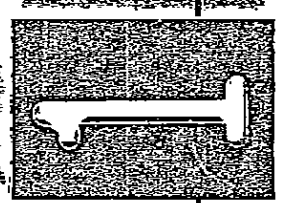
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15	9	4.8
15	11	4.85
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55	6 1/2	16.93
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65	0 1/4	19.82
65	-	20.115
66	11 1/4	20.4
68	9	20.955
70	1 1/2	21.375
70	11 3/4	21.635
107	10 3/4	32.885
122	10	37.44
131	7 1/4	40.115
148	11 1/2	45.4
155	3 1/2	47.335
168	6	51.36
175	0 1/2	53.35
175	6 3/4	53.51
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177	7 1/2	54.14
178	1 1/2	54.29
178	6	54.41
179	8 3/4	54.78
180	4 1/4	54.97
183	10 1/2	56.05
184	-	56.08
187	4 3/4	57.12
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190	11	58.19
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193	4	58.93
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195	4 1/2	59.55
195	4 3/4	59.56
196	4	59.84
196	9 1/4	59.98
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201	0 1/4	61.27
205	3 1/2	62.57
209	6 1/2	63.87
213	9 1/2	65.16
217	7 3/4	66.34
221	4 1/2	67.48



I, Bruce Richard Davies, Registrar General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 3rd day of September, 1979

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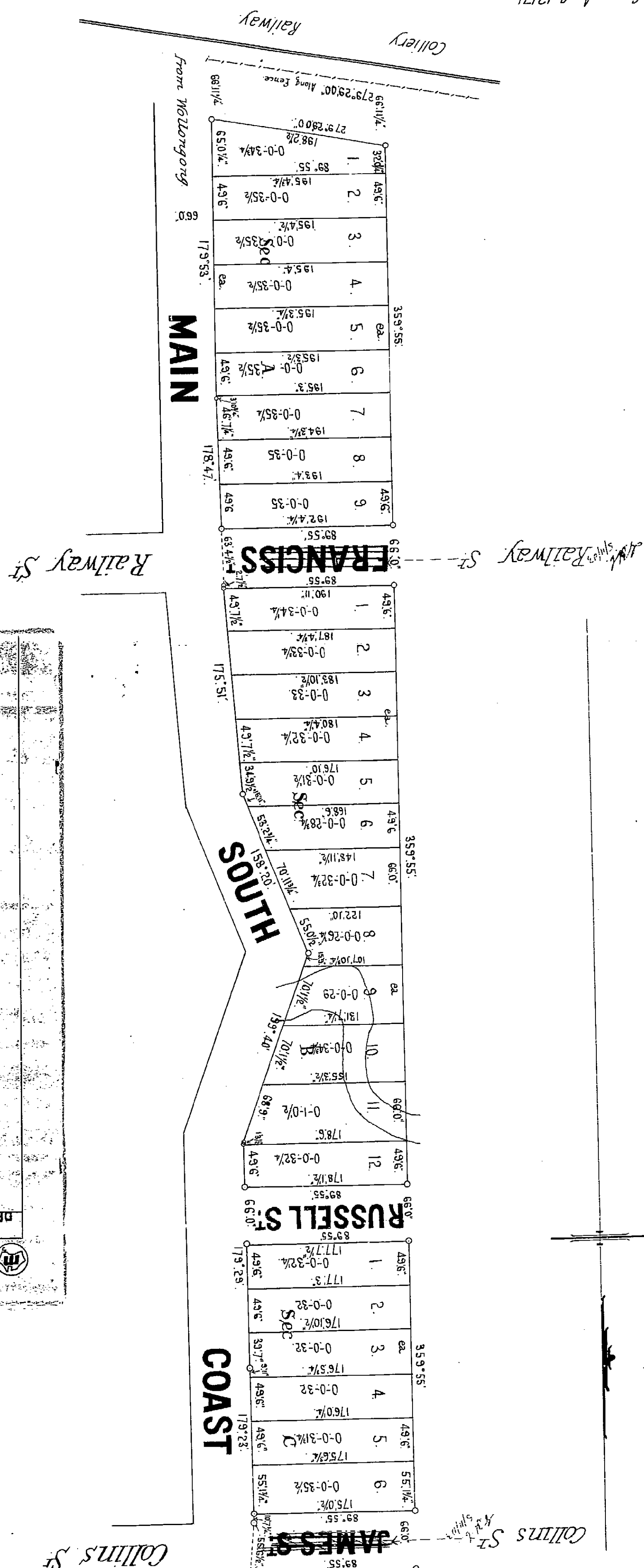
Note
Azimuth from Appⁿ 12171
Date of Survey Sept^r 1903

13/4/90
H. J. H.
5-11-3

D.P. 4167

E. H. Cowdery
Deceased Surveyor

This is the plan marked "A" referred
to in the annexed declaration of
E. H. Cowdery dated 16th Oct^r 1903.
C. J. Cowdery



CONVERSION TABLE ADDED IN REGISTRAR GENERAL'S DEPARTMENT	
FEET INCHES	METRES
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31 3/4	809.4
32 1/4	815.7
32 1/2	822
32 3/4	828.3
33	834.7
33 3/4	853.6
34 1/4	866.3
34 1/2	872.6
34 3/4	878.9
35	885.2
35 1/4	891.6
35 1/2	897.9
35 3/4	910.5
36 1/4	916.9
36 3/4	929.5
37 1/2	948.5
38 1/4	967.5
39 3/4	1005
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I, Bruce Richard Davies, Registrar General for New South Wales, certify
that this negative is a photograph made as a permanent record of a
document in my custody this 3rd day of September, 1979

B. R. Davies



* No alteration should be made by erasure. The words rejected should be scored through with the pen, and those entrusted written over them, the alteration being verified by signature or initials in the margin, or noticed in the attestation.

Doors should be designated, if the contingent interest will be noted on the new certificate. The Registrar should be asked to determine what accounts should accompany the application, and whether the Transferee be married, and, if so, the date of marriage. If before 1837 the wife must execute and acknowledge Release. A form for the latter purpose can be obtained at the Land Titles Office, or will be forwarded on application. If the marriage were since 1838 no deed is necessary.

Idle, Mathew Green of Cornwall Engineers
and Ervan Davies of Cornwall Underpound
Mining Manager

being registered as the proprietor of an Estate in *fee simple* in the land hereinafter described, subject, however, to such encumbrances, liens, and interests, as are notified by memorandum, underwritten or endorsed hereon,*—in consideration of 'Twenty Pounds

(301)

paid to ^{us} by *Amelia Jones* of *Corvinal Widow*
the receipt whereof ^{we} hereby acknowledge.

4286

583200

F.P. 908064

②

do hereby transfer to the said

Annelia Jones

ALL my Estate and Interest, as such registered proprietor, in ALL THAT piece of land containing

situate in the Municipal District of North Vancouver

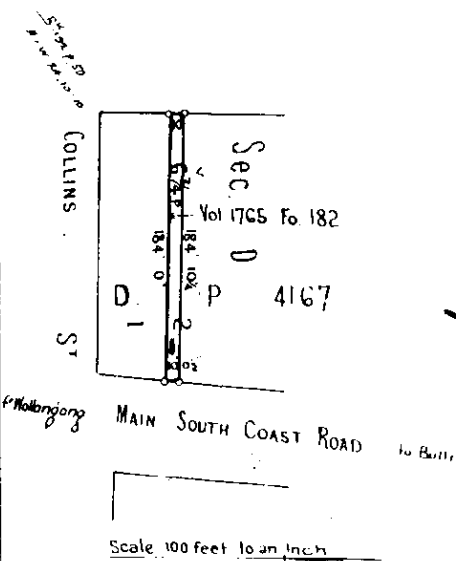
Parish of ~~the same~~ Bounty of Camden 908064

WONONAH

of the land comprised in: *Certificate of Title*

dated 26th March 1907 registered volume No. 1763

1872 as shown upon plan endorsed
Person and therein edged red



L.G.A WOLLONGONG
VOL.11029 FOL.50
LOT N° ADDED IN L.T.O 8.7.1994 *HT*

Sec. D

10 ft. 6 1/4 per. 184 ft 10 1/4 in 2 184 ft 10 ft 0 1/2 in

Princes Highway

CLAUSE 4.6 VARIATION REQUEST

145-149 PRINCES HIGHWAY, CORRIMAL BUILDING HEIGHT

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Murray Donaldson
Senior Consultant	Edward Green
Project Code	P1340
Report Number	Revised Final

TABLE OF CONTENTS

1.	Introduction	1
1.1.	Preliminary	1
2.	Site and Locality.....	2
2.1.	The Site.....	2
2.2.	Surrounding Context.....	3
3.	The Proposed Development.....	4
4.	Relevant Assessment Framework.....	5
4.1.	Wollongong Local Environmental Plan 2009.....	5
4.2.	NSW Land and Environment Court: Case Law (Tests).....	6
5.	Extent of Contravention	9
5.1.	Variation to Maximum Building Height.....	9
5.2.	Extent of Contravention	9
6.	Clause 4.3 – Building Height	11
6.1.	Consideration.....	11
7.	Conclusion	21
7.1.	Summary.....	21
7.2.	Is the objection well founded?	21
	Disclaimer	22

FIGURES:

Figure 1 – WLEP 2009 Height of Buildings Map	1
Figure 2 – Aerial Photograph of the Subject Site	2
Figure 3 – Site Location Plan	3
Figure 4 – Photomontage of the Proposed Development	4
Figure 5 – Volumetric Height Drawing.....	9
Figure 6 – Elevation Drawings.....	10
Figure 7 – Urban Design Analysis	12
Figure 8 – Shadow Diagrams illustrating solar impacts upon 151-153 Princes Highway, Corrimal	13
Figure 9 – Suns eye view	14
Figure 10 – View to Brokers Nose.....	15
Figure 11 – View from Sidewalk on Princes Highway.....	16
Figure 12 – South Elevation	16
Figure 13 – WLEP 2009 Land Use Zoning Map.....	19

TABLES:

Table 1 – Assessment of Compliance with Clause 4.3 Building Height Objectives	17
Table 2 – Assessment of Compliance with Land Use Zone Objectives.....	19

1. INTRODUCTION

1.1. PRELIMINARY

This Clause 4.6 variation request has been prepared by Urbis on behalf of Anglican Community Services in relation to the DA proposed development at 145-149 Princes Highway, Corimal. The request seeks to vary the maximum Building Height development standard prescribed for the subject site under Clause 4.3 of the *Wollongong Local Environmental Plan 2009* (WLEP 2009). The variation request is made pursuant to Clause 4.6 of the WLEP 2009.

The WLEP 2009 height of buildings map is reproduced below at Figure 1.

Figure 1 – WLEP 2009 Height of Buildings Map



Source: WLEP 2009

2. SITE AND LOCALITY

2.1. THE SITE

The subject site is known as 145-149 Princes Highway, Corrimal (on the corner of Princes Highway and Collins Street) and is legally described as Lot 100 in DP 230100 and Lot 1 in DP 908064. The site is rectangular, approximately 2,814 sqm in size and falls approximately 3.5m from east to west.

There is currently no built form on site, with only scant vegetation present (one mature palm tree and one other tree). Vehicular access in the form of a vehicle cross over currently exists towards the rear of the site on Collins Street.

An aerial photograph is provided at Figure 2.

Figure 2 – Aerial Photograph of the Subject Site



Source: Group GSA

2.2. SURROUNDING CONTEXT

The site is within Corrimal Town Centre and is 400m north of Corrimal Memorial Park and Memorial Park Bus Stop. It is also proximate to various medical centres, supermarkets, childcare centres and places of public worship. Figure 4 provides detailed on the site and its context. There are no items of heritage surrounding the site and the surrounds are largely low to medium density urban areas.

The location of the site is indicated at Figure 3.

Figure 3 – Site Location Plan



Source: Group GSA

A detailed description of the site is provided in the Statement of Environmental Effects accompanying the DA.

3. THE PROPOSED DEVELOPMENT

This Clause 4.6 Request is for an exception to the Building of Height standard and is prepared in support of a DA submitted to Council for a residential flat building comprising a retail premises together with 28 social and affordable housing units. The proposed development for which consent is sought are detailed in the Architectural drawings and accompanying reports, and comprises:

- Clearing of one existing tree, together with earthworks to facilitate a new building.
- Construction of a five-storey residential flat building, including:
 - 50 sqm retail tenancy fronting Princes Highway.
 - 28 social and affordable housing units, comprising both 'in-fill affordable housing' and 'boarding house' accommodation.
 - Car, motorcycle and bicycle parking associated with the residential units; and
 - Communal areas, both internal and external, for the tenants.

A photomontage of the proposal viewed from Collins Street is shown at Figure 4.

Figure 4 – Photomontage of the Proposed Development



Source: Group GSA

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 summary 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. WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 4.6 of WLEP 2009 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 2009, Clause 4.6 Exceptions to Development Standards.

4.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

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

Winten v North Sydney Council

The decision of Justice Lloyd in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. Initially this applied to State Environmental Planning Policy – Development Standards (SEPP 1) and was subsequently updated to address clause 4.6 of the *Standard Instrument templates*.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* (EP&A Act)?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case); and
- Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827

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

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

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

More recently in the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);

- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7* Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and
- Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the height standard and the FSR standard and the objectives for development within the R3 zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii)).

The consent authority does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matters in 4.6(3)(a) and (b). In this respect he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

Moskovich v Waverley Council [2016] NSWLEC 1015

Commissioner Tour reflected on the recent Four2Five decisions and said:

- Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in *Wehbe* at 42-43.
- Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in *Wehbe* at 70-76. Such as consideration of whether the proposed development would achieve the objectives of the standard to an equal or better degree than a development that complied with the standard.
- Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on “tests” 2-5 in *Wehbe* either instead of achieving the objectives of the standard (*Wehbe* test 1) or in addition to that test. The list in *Wehbe* is not exhaustive but is a summary of the case law as to how “unreasonable or unnecessary” has been addressed to the meet the requirements of SEPP 1.
- It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5).

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

Most recently, in reflecting upon recent case law regarding clause 4.6 variation requests, Commissioner Preston confirmed (in this judgement):

- The consent authority must, primarily, 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, in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole:
"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]
- 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 will 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 a new residential flat building which contravenes the height of building control at the eastern portion of the site (towards the low point). Selected DA drawings have been marked up by Group GSA to articulate the specific parts of the buildings which vary from the 15m development standard. The 15m building height control has been measured in accordance with the WLEP 2009 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.

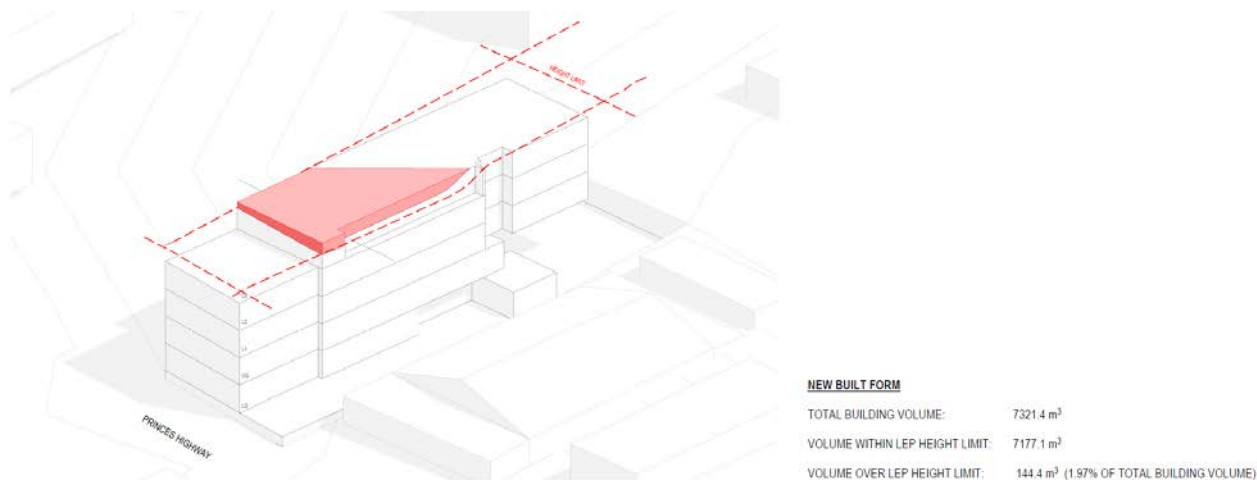
5.2. EXTENT OF CONTRAVENTION

The existing building contravenes the 15m height of building standard by 1.68m.

At the western boundary, the building is below the 15m height plane. As the site falls to the east, half of the top floor protrudes through the height plane (at the eastern boundary of the site) and includes the clerestory roof.

In volumetric terms, the proposal is only 1.97% above the permitted height plane, refer to Figure 5 below:

Figure 5 – Volumetric Height Drawing



Source: Group GSA

Extracts of the marked-up plans are provided in the figures on the following page in Figure 6.

15m LEP HOB Standard



10

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 2009. 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 Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents.

Is the Planning Control a Development Standard?

The maximum height of building control prescribed under Clause 4.3 of the WLEP 2009 is a development standard capable of being varied under Clause 4.6 of WLEP 2009.

What is the Underlying Object or Purpose of the Standard?

The objectives of the height standard as per WLEP 2009 are as follows:

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight.*

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.

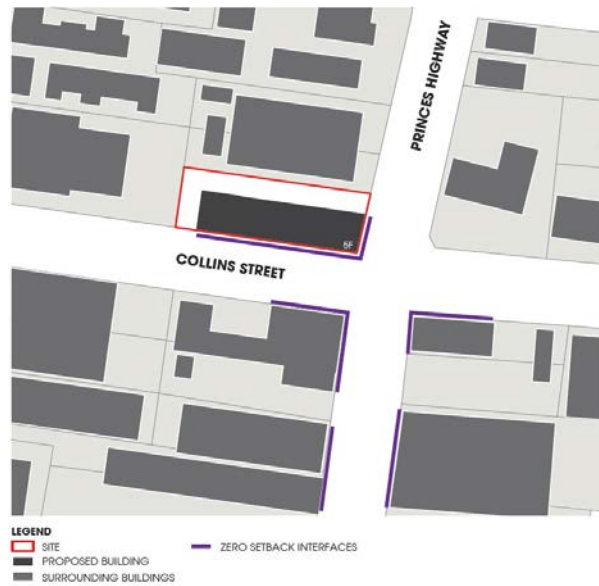
6.1. CONSIDERATION

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 building height development standard would be unreasonable and unnecessary having regard to the circumstances of the case.

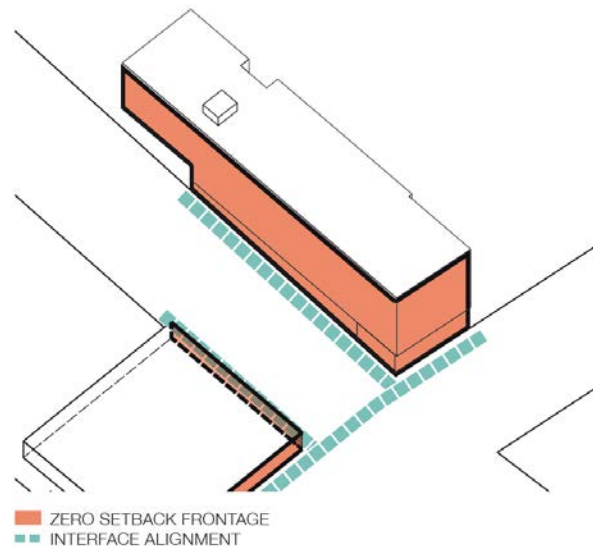
- The land slopes 3.5m from east to west. Providing a four-storey built form presentation to the street corner is appropriate, given the site's context (see below).
- The site is located on a prominent street corner at the northern gateway of Corrimal Town Centre. The proposal responds to its context by providing nil setbacks and a 4 storey, active interface with Princes Hwy (see Figure 6).
- The proposal provides social and affordable housing stock to meet latent demand in Wollongong LGA, as outlined in the *Illawarra Shoalhaven Regional Plan 2015* and *Wollongong 2022: Our Community Strategic Plan 2012-2022*.
- The environmental impacts of the non-compliance are negligible. The built form and shadowing analysis prepared by Group GSA confirms:
 - In relation to the DA currently afoot at 151-153 Princes Highway Corrimal:
 - The principal usable part of the proposed communal open space receives 4 hrs+ at midwinter (see drawing DA4001 and Figure 7).
 - All north facing windows receive at five hours of solar access at midwinter (see drawings DA4105 and DA4106 and Figure 9).
 - In relation to view loss, Group GSA has confirmed the building will not unreasonably obscure views to the Illawarra Escarpment (see Figure 10).

Figure 7 – Urban Design Analysis

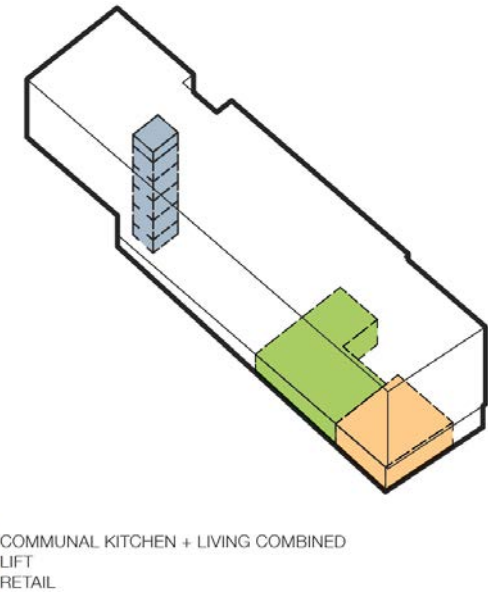


Picture 3 – Figure Ground

Source: Group GSA



Picture 4 – Zero Setback Analysis

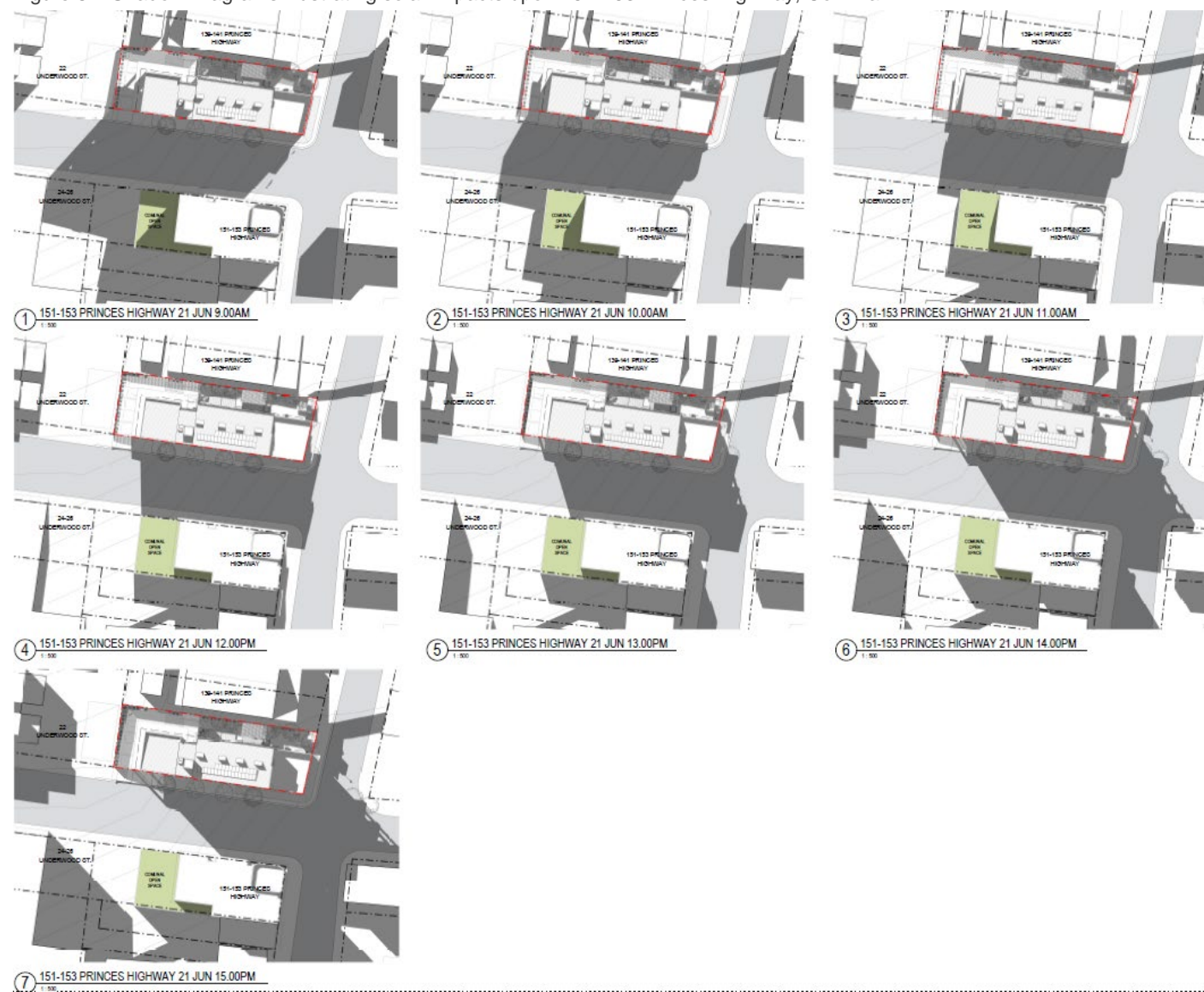


Picture 5 – High Level Space Planning Diagram

Key Insights:

- The built form and interface compliment the surrounding urban grain and character.
- The design response maximises the active frontage and direct relationship to the street level to create a pleasant streetscape.
- The retail use is located at the street level closest to the main street location along the narrower frontage to create a small shopfront with a fine grain scale.

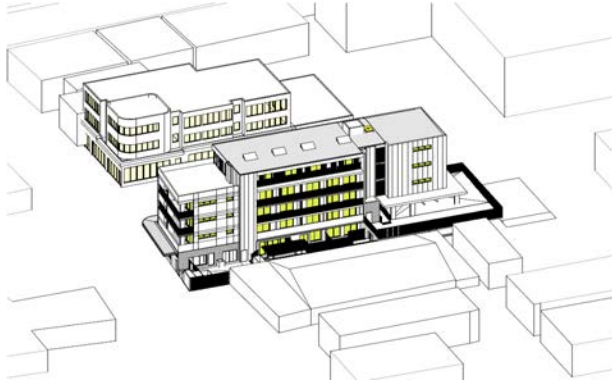
Figure 8 – Shadow Diagrams illustrating solar impacts upon 151-153 Princes Highway, Corrimal



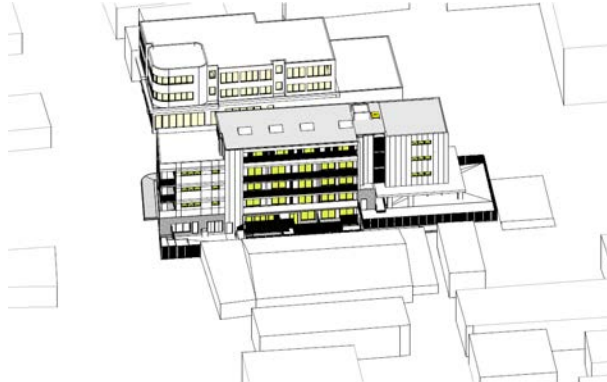
Source: Group GSA

Key insight: the principal usable part of the proposed communal open space at 151-153 Princes Highway, Corrimal will receive at least four hours of solar access at midwinter.

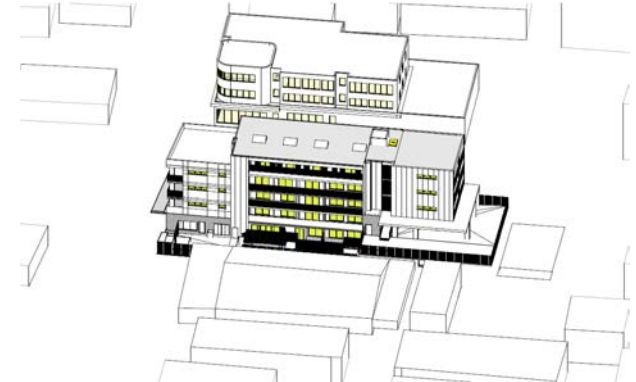
Figure 9 – Sun's eye view



Picture 6 – 10am



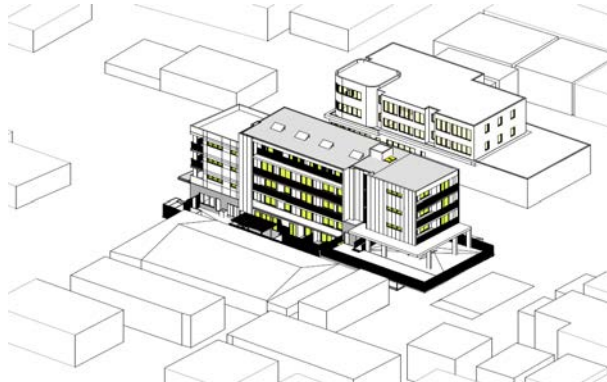
Picture 7 – 11am



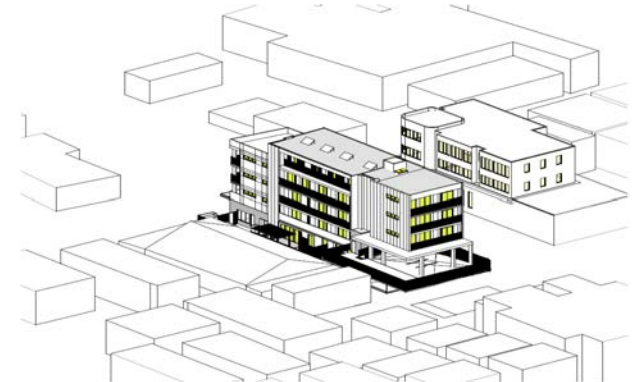
Picture 8 – 12 noon



Picture 9 – 1pm



Picture 10 – 2pm



Picture 11 – 3pm

Source: Group GSA

Key insight: These diagrams illustrate that the north facing windows of the proposed development at 151-153 Princes Highway, Corrimal will receive five hours of solar access at midwinter.

Figure 10 – View to Brokers Nose

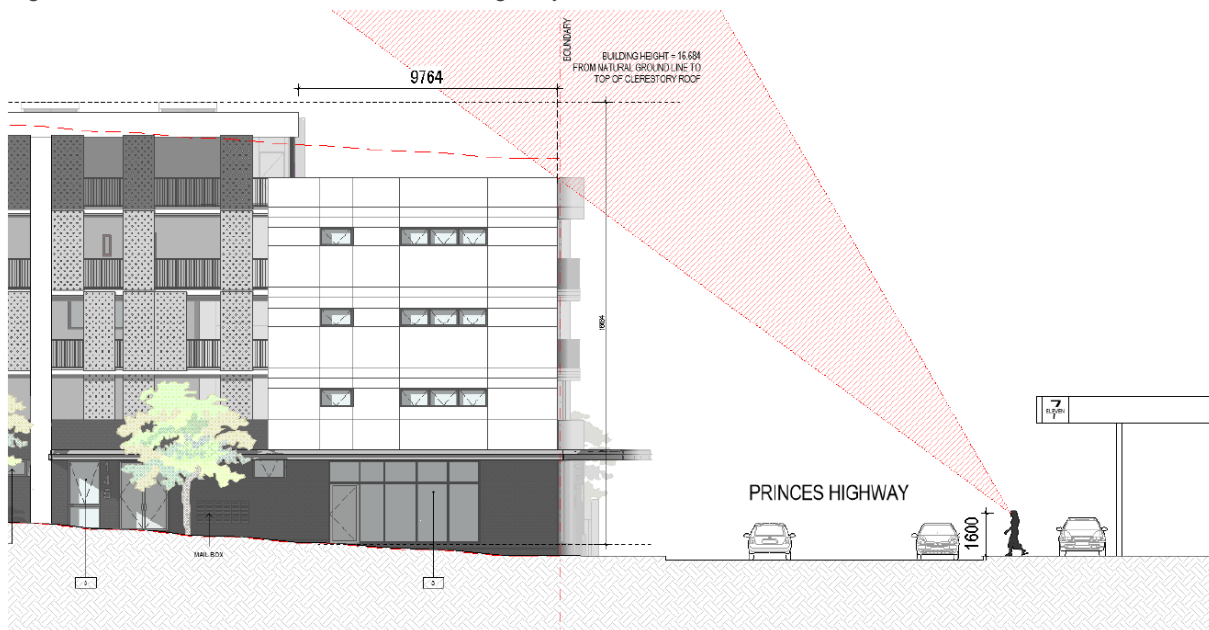


Source: Group GSA

Key Insight: the proposal will not impact views of the Illawarra Escarpment (particularly Brokers Nose) from key areas of the public domain.

- A stepped building form is provided at the top floor (Level 3). The setback of the top floor from the eastern elevation is approximately 10m, providing a clear relief in bulk as viewed from the Princes Highway/Collins Street intersection.

Figure 11 – View from Sidewalk on Princes Highway



Source: Group GSA

- On the southern façade, the perforated screens and wall behind are a darker grey colour. The number of perforated screens on this level has been minimised to increase the perception of depth within the corridor. This gives the perception of a recessed upper level, reducing the apparent bulk and scale (and creates further variety in the colour palette).

Figure 12 – South Elevation



Source: Group GSA

Overall, it is considered that strict compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case. The proposal will result in a positive social impact together with a contextual built form outcome for the site.

Strict compliance with the development standard would result in a sub-optimal design outcome. The variation will not result in any adverse environmental impacts on the site or the adjoining residential properties, and indeed the variation will facilitate positive streetscape outcome.

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 2009 have been achieved as summarised in Table 1 below:

Table 1 – Assessment of Compliance with Clause 4.3 Building Height Objectives

Objective	Assessment
Clause 4.3 Building Height	
<ul style="list-style-type: none"> To establish the maximum height limit in which buildings can be designed and floor space can be achieved. 	<ul style="list-style-type: none"> Noted. The FSR of the building is compliant with the applicable control of 2:1.
<ul style="list-style-type: none"> To permit building heights that encourage high quality urban form. 	<ul style="list-style-type: none"> The building form represents a site responsive design that frames the Gateway of Corrimal Town Centre. The building activates the Princes Highway frontage and provides a positive transition between the town centre and adjoining residential zone. As above, the proposal represents a superior outcome for the site.
<ul style="list-style-type: none"> To ensure buildings and public areas continue to have views of the sky and receive exposure to sunlight. 	<ul style="list-style-type: none"> Analysis prepared by Group GSA confirms: <ul style="list-style-type: none"> All adjoining buildings, including the proposed building (currently under assessment) at 151-153 Princes Highway, receive the required solar access per the ADG and WDCP 2009. The proposal will not impact views of the Illawarra Escarpment from key areas of the public domain.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

The objectives of the B2 Local Centre zone in WLEP 2009 are:

- 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.*
- To encourage employment opportunities in accessible locations.*
- To maximise public transport patronage and encourage walking and cycling.*
- To allow for residential accommodation and other uses while maintaining active retail, business or other non-residential uses at the street level.*

Strict compliance with the building height development standard would defeat or thwart the achievement of underlying objectives of the zone in that the proposal provides:

- Social / affordable housing and a retail premises, meeting a demonstrated demand (as outlined in the *Illawarra Shoalhaven Regional Plan 2015* and *Wollongong 2022: Our Community Strategic Plan 2012-2022*).
- Opportunities for employment in a town centre location that is well serviced by public transport.
- Additional bicycle parking to encourage active transport.
- An activated street frontage to Princes Highway, with residential accommodation above ground floor.

Strict compliance with the building height development standard would lessen the achievement of these objectives.

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

Wollongong Council has previously supported Clause 4.6 variations, where contraventions of the building height standard were demonstrated to be supportable.

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 intent for a gateway building at the northern end of Corrimal Town Centre.

6.1.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variation to the Height of Building development standard, including:

- The contravention of the development standard arises because of the steep grade of the site (3.5m fall from east to west).
- The works are largely within the height limit, only a portion of the top floor (at the worst extent) is above the height plane.
- The proposed development will facilitate social and affordable housing in line with the Strategic Planning intent for the area.
- There will be no unacceptable environmental impacts arising from the contravention, including shadow, views, perceived bulk or scale, or visual impact on the streetscape or neighbouring properties.

Based on the above, it is considered appropriate to relax the strict application of the development standard.

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 land use objectives that apply to the site under WLEP 2009. The site is located within B2 Local Centre zone as outlined within Table 2.

Figure 13 – WLEP 2009 Land Use Zoning Map



Source: WLEP

Table 2 – Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
B2 Local Centre	
<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> The proposal provides Social / affordable housing and a retail premises, meeting a demonstrated demand (as outlined in the <i>Illawarra Shoalhaven Regional Plan 2015</i> and <i>Wollongong 2022: Our Community Strategic Plan 2012-2022</i>).
<ul style="list-style-type: none"> To encourage employment opportunities in accessible locations. 	<ul style="list-style-type: none"> A 50 sqm retail premises has been included within the proposal, which will provide employment opportunities within a town centre location that is well serviced by public transport.
<ul style="list-style-type: none"> To maximise public transport patronage and encourage walking and cycling. 	<ul style="list-style-type: none"> The parking provision has been kept to a minimum (to comply) and the proposal includes additional bicycle parking spaces to encourage active transport.
<ul style="list-style-type: none"> To allow for residential accommodation and other uses while maintaining active retail, business or other non-residential uses at the street level. 	<ul style="list-style-type: none"> The proposal provides an active frontage to Princes Highway via a glazed shopfront and landscaping, while including the residential accommodation above (via separate entry).

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.

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 Planning Control Standard?

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

It has been demonstrated that the proposed variation arises from the slope of the land and will not result in an adverse environmental impact on the neighbourhood amenity and streetscape. Overall, it is considered that the provision of social and affordable housing and the design response to the site and its environs is in the public benefit and will result in a superior outcome for the site and the surrounding land. As such, there would be no public benefit in maintaining the development standard in this case.

6.1.6. 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

This request is made pursuant to Clause 4.6 of WLEP 2009 and seeks to vary the maximum building height development standard under Clause 4.3 of the WLEP 2009. This report has demonstrated that strict compliance with the numerical standard in this circumstance is both unreasonable and unnecessary for the following reasons:

- The planning controls expressed in the WLEP 2009 'isolate' the site at the northern 'gateway' of Corrimal Town Centre – i.e. the site is the only pocket of B2 land with a 15m height limit and 1.5:1 FSR control (see below). This suggests a taller, mixed-use building is anticipated in this corner/gateway location.
- The proposal addresses the desired future character of Corrimal Town Centre through providing a zero-setback design which provides street-level retail space, marking the northern end of the Town Centre and adding its legibility.
- The proposed development achieves the objectives of the building height development standard and the land use zoning objectives despite non-compliance.
- The land slopes 3.5m from east to west. The extent of breach is considered minor. Only a portion of the top floor (at the worst extent) is above the height plane (less than 2% when measured volumetrically).
- The proposal provides social and affordable housing stock to meet latent demand in Wollongong LGA, as outlined in the *Illawarra Shoalhaven Regional Plan 2015* and *Wollongong 2022: Our Community Strategic Plan 2012-2022*.
- There are no unacceptable environmental impacts arising from the contravention, including shadow, views, perceived bulk or scale, or visual impact on the streetscape or neighbouring properties (existing or proposed).
- The departure from the building height development standard is not considered to give rise to unreasonable precedent given the unique circumstances of the site and the limited environmental impacts resulting from the breach.

7.2. IS THE OBJECTION WELL FOUNDED?

Overall, it is considered that the proposed variation to the Height of Buildings development standard is considered appropriate and well founded and can be supported under the provisions of Clause 4.6 Exceptions to development standards.

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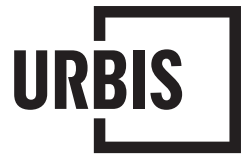
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CLAUSE 4.6 VARIATION REQUEST

**145-149 PRINCES
HIGHWAY, CORRIMAL**

**GROUND FLOOR
ACTIVATION**

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Murray Donaldson
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Project Code	P1340
Report Number	Revised Final

TABLE OF CONTENTS

1.	Introduction	1
1.1.	Preliminary	1
2.	Site and Locality.....	2
2.1.	The Site.....	2
2.2.	Surrounding Context.....	3
3.	The Proposed Development.....	4
4.	Relevant Assessment Framework.....	5
4.1.	Wollongong Local Environmental Plan 2009.....	5
4.2.	NSW Land and Environment Court: Case Law (Tests).....	6
5.	Assessment of Contravention.....	9
5.1.	Variation to Clause 30(1)(g) of the SEPP (ARH) 2009 and Clause 7.13 of the WLEP 2009.....	9
5.2.	Extent of Contravention	9
6.	SEPP (Affordable Rental Housing) 2009 CI 30(1)(g) and Wollongong LEP 2009 CI 7.13.....	10
6.1.	Consideration.....	10
7.	Conclusion	16
7.1.	Summary.....	16
7.2.	Is the objection well founded?	16
	Disclaimer	17

FIGURES:

Figure 1 – Aerial Photograph of the Subject Site	2
Figure 2 – Site Location Plan	3
Figure 3 – Photomontage of the Proposed Development	4
Figure 4 – WLEP 2009 Land Use Zoning Map.....	14

TABLES:

Table 1 – Assessment of Compliance with Objectives.....	11
Table 2 – Assessment of Compliance with Land Use Zone Objectives.....	15

1. INTRODUCTION

1.1. PRELIMINARY

This Clause 4.6 variation request has been prepared by Urbis on behalf of Anglican Community Services (Anglicare) in relation to the DA proposed development at 145-149 Princes Highway, Corrimal (DA-2018/1517). The request seeks to vary:

- Clause 30(1)(g) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)*.
- Clause 7.13 of the *Wollongong Local Environmental Plan 2009 (WLEP 2009)*.

The variation request is made pursuant to Clause 4.6 of the WLEP 2009; noting the operation of subclause (2):

*Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed **by this or any other environmental planning instrument**. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

[our emphasis]

For the reasons provided in the legal opinion provided to Anglicare by Allens dated 27 January 2019, Urbis considers that a clause 4.6 variation request is not required in respect of the above clauses. However, this variation request is made for an abundance of caution in the event that the consent authority forms a different view.

2. SITE AND LOCALITY

2.1. THE SITE

The subject site is known as 145-149 Princes Highway, Corrimal (on the corner of Princes Highway and Collins Street) and is legally described as Lot 100 in DP 230100 and Lot 1 in DP 908064. The site is rectangular, approximately 2,814 sqm in size and falls approximately 3.5m from east to west.

There is currently no built form on site, with only scant vegetation present (one mature palm tree and one other tree). Vehicular access in the form of a vehicle cross over currently exists towards the rear of the site on Collins Street.

An aerial photograph is provided at Figure 1.

Figure 1 – Aerial Photograph of the Subject Site



Source: Group GSA

2.2. SURROUNDING CONTEXT

The site is within Corrimal Town Centre and is 400m north of Corrimal Memorial Park and Memorial Park Bus Stop. It is also proximate to various medical centres, supermarkets, childcare centres and places of public worship. Figure 2 provides details on the site and its context. There are no items of heritage surrounding the site and the surrounds are largely low to medium density urban areas.

The location of the site is indicated at Figure 2.

Figure 2 – Site Location Plan



Source: Group GSA

A detailed description of the site is provided in the Statement of Environmental Effects accompanying the DA.

3. THE PROPOSED DEVELOPMENT

This Clause 4.6 Request is for an exception to Clause 30(1)(g) of the SEPP (ARH) 2009 and clause 7.13 of the WLEP 2009 and is prepared in support of the DA submitted to Council for:

- Clearing of one existing tree, together with earthworks to facilitate a new building.
- Construction of a five-storey residential flat building, including:
 - 50 sqm retail tenancy fronting Princes Highway.
 - 28 social and affordable housing units, comprising both 'in-fill affordable housing' and 'boarding house' accommodation.
 - Car, motorcycle and bicycle parking associated with the residential units; and
 - Communal areas, both internal and external, for the tenants.

A photomontage of the proposal viewed from Collins Street is shown at Figure 3.

Figure 3 – Photomontage of the Proposed Development



Source: Group GSA

4. RELEVANT ASSESSMENT FRAMEWORK

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

A summary 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. WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 4.6 of WLEP 2009 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 and the specific requirements of clause 4.6 are met.

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 seeks to justify the contravention of the development standard by demonstrating 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 applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and
- 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 clause 30(1)(g) of the SEPP (ARH) 2009 and clause 7.13 of the WLEP 2009.

The assessment of the proposed variation has been undertaken in accordance with the requirements of the WLEP 2009, Clause 4.6 Exceptions to Development Standards.

4.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

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

Winten v North Sydney Council

The decision of Justice Lloyd in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. Initially this applied to State Environmental Planning Policy – Development Standards (SEPP 1) and was subsequently updated to address clause 4.6 of the *Standard Instrument templates*.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* (EP&A Act)?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case); and
- Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827

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

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

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

More recently in the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);

- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7* Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and
- Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii)).

The consent authority does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matters in 4.6(3)(a) and (b). In this respect he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

Moskovich v Waverley Council [2016] NSWLEC 1015

Commissioner Tour reflected on the recent Four2Five decisions and said:

- Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in Wehbe at 42-43.
- Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76.
- Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on “tests” 2-5 in Wehbe either instead of achieving the objectives of the standard (Wehbe test 1) or in addition to that test. The list in Wehbe is not exhaustive but is a summary of the case law as to how “unreasonable or unnecessary” has been addressed to the meet the requirements of SEPP 1.
- It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5).

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

Most recently, in reflecting upon recent case law regarding clause 4.6 variation requests, Commissioner Preston confirmed (in this judgement):

- The consent authority must, primarily, 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, in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole:

"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]

- 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 will 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. ASSESSMENT OF CONTRAVENTION

5.1. VARIATION TO CLAUSE 30(1)(G) OF THE SEPP (ARH) 2009 AND CLAUSE 7.13 OF THE WLEP 2009

The proposed development comprises a new residential flat building and Council's assessing officer has indicated that it contravenes clause 30(1)(g) of the SEPP (ARH) 2009 and clause 7.13 of the WLEP 2009. The relevant parts of these clauses are copied below for reference:

State Environmental Planning Policy (Affordable Rental Housing) 2009

Clause 30 Standards for boarding houses

(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:

(g) if the boarding house is on land zoned primarily for commercial purposes, **no part of the ground floor of the boarding house that fronts a street will be used for residential purposes** unless another environmental planning instrument permits such a use,

[our emphasis]

Wollongong Local Environmental Plan 2009

Clause 7.13 Certain land within business zones

(2) This clause applies to land in Zone B1 Neighbourhood Centre, **Zone B2 Local Centre**, Zone B3 Commercial Core or Zone B4 Mixed Use, but does not apply to land to which clause 7.19 applies.

(3) Development consent must not be granted for development for the purpose of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building:

(a) **will not be used for the purpose of residential accommodation, and**

(b) will have at least one entrance and at least one other door or window on the front of the building facing the street other than a service lane.

[our emphasis]

5.2. EXTENT OF CONTRAVENTION

The proposal (as amended) includes various uses with a street frontage at ground floor that are ancillary to the boarding house component of the development. These include:

Lower Ground Floor

- Communal open space fronting Princes Highway (including access ramp).
- Entrance portal on Collins Street.
- Access corridor to/from the carpark and the internal communal space.

Upper Ground Floor

- Car parking located at upper ground floor.

6. SEPP (AFFORDABLE RENTAL HOUSING) 2009 CL 30(1)(G) AND WOLLONGONG LEP 2009 CL 7.13

The following sections of the report provide an assessment of the request to vary clause 30(1)(g) of the SEPP (ARH) 2009 and clause 7.13 of the WLEP in accordance with Clause 4.6 of WLEP 2009. 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 Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents.

Is the Planning Control a Development Standard?

Clause 30(1)(g) of the SEPP (ARH) and Clause 7.13 of the WLEP 2009 are development standards capable of being varied under Clause 4.6 of WLEP 2009.

What is the Underlying Object or Purpose of the Standard?

The SEPP (ARH) is silent on the objectives of Clause 30(1)(g); however, the aims of the SEPP (ARH) overall are as follows:

- (a) *to provide a consistent planning regime for the provision of affordable rental housing,*
- (b) *to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*
- (c) *to facilitate the retention and mitigate the loss of existing affordable rental housing,*
- (d) *to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*
- (e) *to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*
- (f) *to support local business centres by providing affordable rental housing for workers close to places of work,*
- (g) *to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

The objective of clause 7.13 of the WLEP 2009 is as follows:

The objective of this clause is to ensure active uses are provided at the street level to encourage the presence and movement of people.

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 development standard is unreasonable and unnecessary in the circumstances of the application based on the following:

- The proposal is consistent with the objectives of the B2 zone (see Table 2).
- The proposed ground floor residential units cannot be seen from the street and are located behind the retail space, which has a direct frontage to Princes Highway. The ground floor residential units are not expected to result in any impact on the operation of the retail space, or the activation of the street.
- The retail use (which includes a high proportion of glazing) is expected to encourage the presence and movement of people along Princes Highway.

- Access to the main lobby and communal space is gained via an entry portal on Collins Street (a request of the DRP); this improves the entry presence of the building.
- Notwithstanding the site constraints, additional measures have been taken (incorporating DRP comments) to include a greater level of streetscape activation on Collins Street (additional fenestration; creation of entry portal; relocation of garbage room).
- The support of the exception request would not set an unreasonable precedent.

Strict compliance with the development standard would result in a sub-optimal design outcome. The variation will not result in any adverse environmental impacts on the site or the adjoining residential properties, and indeed the variation will facilitate a positive streetscape outcome.

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 controls have been achieved as summarised in Table 1 below:

Table 1 – Assessment of Compliance with Objectives

Objective	Assessment
Aims of the SEPP (ARH)	
<ul style="list-style-type: none"> • <i>to provide a consistent planning regime for the provision of affordable rental housing,</i> • <i>to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,</i> • <i>to facilitate the retention and mitigate the loss of existing affordable rental housing,</i> • <i>to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,</i> • <i>to facilitate an expanded role for not-for-profit-providers of affordable rental housing,</i> • <i>to support local business centres by providing affordable rental housing for workers close to places of work,</i> • <i>to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.</i> 	<p>The proposal meets the aims of the SEPP (ARH) in that it will deliver:</p> <ul style="list-style-type: none"> • Social / affordable housing and a retail premises, meeting a demonstrated demand (as outlined in the <i>Illawarra Shoalhaven Regional Plan 2015</i> and <i>Wollongong 2022: Our Community Strategic Plan 2012-2022</i>). • Opportunities for employment in a town centre location that is well serviced by public transport. • Facilitate the development of housing for the homeless and other disadvantaged people; in accordance with the Social and Affordable Housing Fund (SAHF).
WLEP 2009 clause 7.13	
<ul style="list-style-type: none"> • <i>The objective of this clause is to ensure active uses are provided at the street level to encourage the presence and movement of people.</i> 	<ul style="list-style-type: none"> • The proposal provides a 50 sqm retail space with direct frontage and presentation to Princes Highway at the intersection with Collins Street.

Objective	Assessment
	<ul style="list-style-type: none"> • The ground floor residential units have been designed to sit behind the retail space, and at a level above the street level, facing to the northern boundary and away from the street frontages and are not expected to result in any impact on the operation of the retail space, or the activation of the street frontages. • As noted elsewhere in this Clause 4.6 variation request, the slope of the land (3.5m fall) makes it impractical to provide viable retail/commercial spaces on the Collins Street frontage. • Notwithstanding the site constraints, additional measures have been taken (incorporating DRP comments) to include a greater level of streetscape activation on Collins Street (additional fenestration; creation of entry portal; and relocation of bin room). • The retail use (which includes a high proportion of glazing) is expected to encourage the presence and movement of people along Princes Highway. • It is noted that the site is located at a zone transition (between B2 Local Centre and R2 Low Density Residential – refer to Figure 4). The proposed treatment is considered acceptable as a transition between the ‘Gateway’ corner of the town centre and the neighbouring residential zone.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

The objectives of the B2 Local Centre zone in WLEP 2009 are:

- *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.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To allow for residential accommodation and other uses while maintaining active retail, business or other non-residential uses at the street level.*

Strict compliance with the Clause 7.13 development standard would defeat or thwart the achievement of underlying objectives of the zone in that the proposal provides:

- A mixture of compatible and permissible land uses; specifically:
 - Social and affordable housing, meeting a demonstrated demand (as outlined in the relevant Strategic Planning guidance); and
 - A retail premises.
- An activated street frontage to Princes Highway, which is not impacted by the presence of residential on part of the ground floor.
- Opportunities for employment in a town centre location that is well serviced by public transport; noting that due to the slope of the land, it would not be practical to provide further retail on the ground floor.

Strict compliance with clause 30(1)(g) of the SEPP (ARH) and Clause 7.13 of the WLEP 2009 would lessen the achievement of these objectives.

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

This test is not applicable in the circumstances of the case.

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.

6.1.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variation to the controls restricting ground floor residential, including:

- The irregularity of the site, specifically the slope (3.5m) and the narrow north-south frontage, has resulted in a unique and site-specific design response. The ground floor retail space clearly fronts Princes Highway, and the ground floor residential units are not visible from the street.
- The position of the site (at the transition between B2 Local Centre and R2 Low Density Residential zones – refer to Figure 4); together with its proximity to the Town Centre and Railway Station (refer to Figure 2) provide acceptable conditions for the additional residential units at ground floor.
- Due to the slope of the land (3.5 fall), it would not be practical or viable to provide further retail space at ground floor, as it would be partially 'buried' by the slope of the land. Such a spatial arrangement is not considered to provide a suitable retail environment/tenancy for this site at the northern edge of the Corrimal Town Centre.
- The proposal has been the subject of a Design Review Panel process. The entry portal on Collins Street has been provided in direct response to DRP feedback and (along with additional fenestration and internal replanning) provides a more active streetscape frontage.
- The residential units are located at a higher level and separate from the retail tenancy proposed fronting Princes Highway. The residential units face away from street frontages. Only the residential entry to the common residential lobby and meeting space has a frontage to, and is accessible to, a street.
- Exceptions to this development standard have been granted in other instances across the LGA, and these other instances indicate that Council has abandoned the strict application of the control, in favour of a more flexible approach promoted by Clause 4.6 of the LEP.

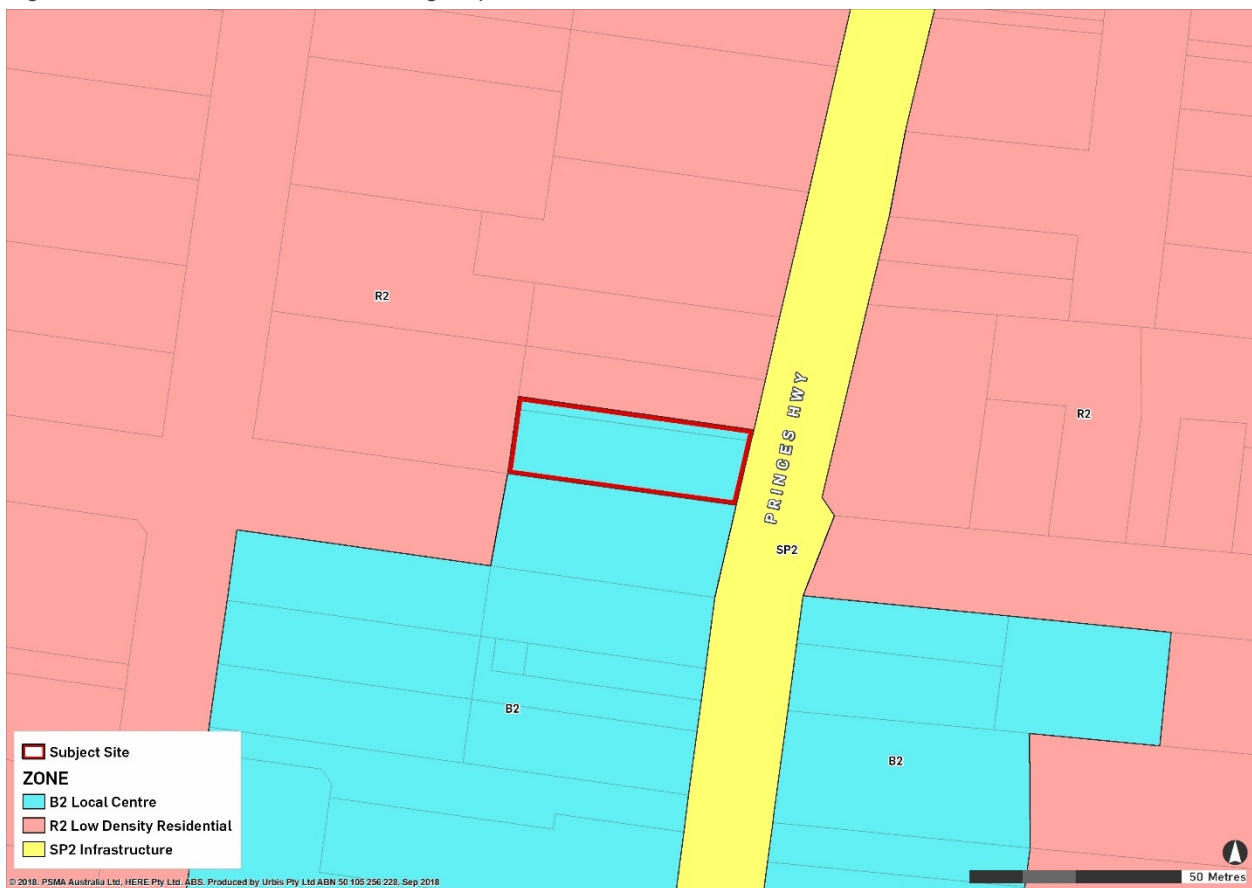
Based on the above, it is considered appropriate to relax the strict application of the development standard.

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 land use objectives that apply to the site under WLEP 2009. The site is located within B2 Local Centre zone as outlined within Table 2.

Figure 4 – WLEP 2009 Land Use Zoning Map



Source: Urbis

Table 2 – Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
B2 Local Centre	
<ul style="list-style-type: none"> 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. To encourage employment opportunities in accessible locations. To maximise public transport patronage and encourage walking and cycling. To allow for residential accommodation and other uses while maintaining active retail, business or other non-residential uses at the street level. 	<ul style="list-style-type: none"> A mixture of compatible and permissible land uses; specifically: <ul style="list-style-type: none"> Social and affordable housing, meeting a demonstrated demand (as outlined in the relevant Strategic Planning guidance); and A retail premises. An activated street frontage to Princes Highway, which is not impacted by the presence of residential on part of the ground floor. Opportunities for employment in a town centre location that is well serviced by public transport; noting that due to the slope of the land, it would not be practical to provide further retail on the ground floor.

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.

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 clause 30(1)(g) of the SEPP (ARH) 2009 and clause 7.13 of the WLEP 2009 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 Planning Control Standard?

The proposed development achieves the objectives of the controls and the land use zoning objectives despite the non-compliance.

It has been demonstrated that the proposed variation will not result in an adverse environmental impact on the neighbourhood amenity and streetscape.

Overall, it is considered that the provision of social and affordable housing and the design response to the site and its environs is in the public benefit and will result in a superior outcome for the site and the surrounding land. As such, there would be no public benefit in maintaining the development standard in this case.

6.1.6. 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

This request is made pursuant to Clause 4.6 of WLEP 2009 and seeks to vary Clause 30(1)(g) of the SEPP (ARH) and Clause 7.13 of the WLEP 2009. This report has demonstrated that strict compliance with the development standard in this circumstance is both unreasonable and unnecessary for the following reasons:

- The proposed development achieves the objectives of the development standards and the land use zoning objectives despite non-compliance.
- The proposed ground floor residential units cannot be seen from the street and are located behind the retail space, which has a direct frontage to Princes Highway. The ground floor residential units are not expected to result in any impact on the operation of the retail space, or the activation of the street.
- The retail use (which includes a high proportion of glazing) is expected to encourage the presence and movement of people along Princes Highway.
- It is noted that the site is located at a zone transition (between B2 Local Centre and R2 Low Density Residential – refer to Figure 4). The proposed treatment is considered acceptable as a transition between the 'Gateway' corner of the town centre and the neighbouring residential zone.
- As noted elsewhere in this Clause 4.6 variation request, the slope of the land (3.5m fall) makes it impractical to provide viable retail/commercial spaces on the Collins Street frontage.
- Notwithstanding the site constraints, additional measures have been taken (incorporating DRP comments) to include a greater level of streetscape activation on Collins Street (additional fenestration; creation of entry portal; relocation of garbage room).
- The proposal has been the subject of a Design Review Panel process.
- Exceptions to this development standard have been granted in other instances across the LGA.

7.2. IS THE OBJECTION WELL FOUNDED?

Overall, it is considered that the proposed variation to the above development standards is appropriate and well founded and can be supported under the provisions of Clause 4.6 Exceptions to development standards.

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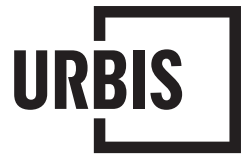
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CLAUSE 4.6 VARIATION REQUEST

**145-149 PRINCES
HIGHWAY, CORRIMAL
SITE WIDTH**

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Murray Donaldson
Senior Consultant	Edward Green
Project Code	P1340
Report Number	Revised Final

TABLE OF CONTENTS

1.	Introduction	1
1.1.	Preliminary	1
2.	Site and Locality.....	2
2.1.	The Site.....	2
2.2.	Surrounding Context.....	3
3.	The Proposed Development.....	4
4.	Relevant Assessment Framework.....	5
4.1.	Wollongong Local Environmental Plan 2009.....	5
4.2.	NSW Land and Environment Court: Case Law (Tests).....	6
5.	Assessment of Contravention.....	9
5.1.	Variation to Minimum Site Width Control.....	9
5.2.	Extent of Contravention	9
6.	Clause 7.14 Minimum Site Width.....	10
6.1.	Consideration.....	10
7.	Conclusion	15
7.1.	Summary.....	15
7.2.	Is the objection well founded?	15
	Disclaimer	16

FIGURES:

Figure 1 – Aerial Photograph of the Subject Site	2
Figure 2 – Site Location Plan	3
Figure 3 – Photomontage of the Proposed Development	4
Figure 4 – Site Plan	9
Figure 5 – WLEP 2009 Land Use Zoning Map.....	13

TABLES:

Table 1 – Assessment of Compliance with Objectives.....	11
Table 2 – Assessment of Compliance with Land Use Zone Objectives.....	14

1. INTRODUCTION

1.1. PRELIMINARY

This Clause 4.6 variation request has been prepared by Urbis on behalf of Anglican Community Services (Anglicare) in relation to the DA proposed development at 145-149 Princes Highway, Corrimal (DA-2018/1517). The request seeks to vary Clause 7.14(2) of the *Wollongong Local Environmental Plan 2009* (WLEP 2009). The variation request is made pursuant to Clause 4.6 of the WLEP 2009.

For the reasons provided in the legal opinion provided to Anglicare by Allens dated 27 February 2019, Urbis considers that the DA is compliant with clause 7.14(2) of the WLEP 2009. However, this variation request is made for an abundance of caution in the event that the consent authority forms a different view in respect of the DA's compliance with clause 7.14(2).

2. SITE AND LOCALITY

2.1. THE SITE

The subject site is known as 145-149 Princes Highway, Corrimal (on the corner of Princes Highway and Collins Street) and is legally described as Lot 100 in DP 230100 and Lot 1 in DP 908064. The site is rectangular, approximately 2,814 sqm in size and falls approximately 3.5m from east to west.

There is currently no built form on site, with only scant vegetation present (one mature palm tree and one other tree). Vehicular access in the form of a vehicle cross over currently exists towards the rear of the site on Collins Street.

An aerial photograph is provided at Figure 1.

Figure 1 – Aerial Photograph of the Subject Site



Source: Group GSA

2.2. SURROUNDING CONTEXT

The site is within Corrimal Town Centre and is 400m north of Corrimal Memorial Park and Memorial Park Bus Stop. It is also proximate to various medical centres, supermarkets, childcare centres and places of public worship. Figure 2 provides details on the site and its context. There are no items of heritage surrounding the site and the surrounds are largely low to medium density urban areas.

The location of the site is indicated at Figure 2.

Figure 2 – Site Location Plan



Source: Group GSA

A detailed description of the site is provided in the Statement of Environmental Effects accompanying the DA.

3. THE PROPOSED DEVELOPMENT

This Clause 4.6 Request is for an exception to the 'minimum site width control' contained within the WLEP 2009 (clause 7.14(2)) and is prepared in support of the DA submitted to Council for:

- Clearing of one existing tree, together with earthworks to facilitate a new building.
- Construction of a five-storey residential flat building, including:
 - 50 sqm retail tenancy fronting Princes Highway.
 - 28 social and affordable housing units, comprising both 'in-fill affordable housing' and 'boarding house' accommodation.
 - Car, motorcycle and bicycle parking associated with the residential units; and
 - Communal areas, both internal and external, for the tenants.

A photomontage of the proposal viewed from Collins Street is shown at Figure 3.

Figure 3 – Photomontage of the Proposed Development



Source: Group GSA

4. RELEVANT ASSESSMENT FRAMEWORK

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

A summary 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. WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Clause 4.6 of WLEP 2009 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 and the specific requirements of clause 4.6 are met.

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 seeks to justify the contravention of the development standard by demonstrating 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 applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3); and
- 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 Minimum site width control contained within clause 7.14(2) of the WLEP 2009.

The assessment of the proposed variation has been undertaken in accordance with the requirements of the WLEP 2009, Clause 4.6 Exceptions to Development Standards.

4.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

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

Winten v North Sydney Council

The decision of Justice Lloyd in *Winten v North Sydney Council* established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. Initially this applied to State Environmental Planning Policy – Development Standards (SEPP 1) and was subsequently updated to address clause 4.6 of the *Standard Instrument templates*.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979* (EP&A Act)?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case); and
- Is the objection well founded?

Wehbe v Pittwater [2007] NSW LEC 827

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

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

Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC

More recently in the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater [2007] NSW LEC 827* and demonstrate the following:

- Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);

- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs; and
- All three elements of clause 4.6 have to be met and it is best to have different reasons for each, but it is not essential.

Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSW LEC 7* Preston CJ noted at paragraph 7 that development consent cannot be granted for development that contravenes a development standard unless the consent authority:

- Considers the cl 4.6 objections (the requirement in cl 4.6(3)); and
- Was satisfied that, first, the cl 4.6 objections adequately addressed the matters required to be demonstrated by cl 4.6(3) (the requirement in cl 4.6(4)(a)(i)) and, second, the development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out (the requirement in cl 4.6(4)(a)(ii)).

The consent authority does not have to be directly satisfied that compliance with each development standard is unreasonable or unnecessary in the circumstances of case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matters in 4.6(3)(a) and (b). In this respect he also noted that in assessing whether compliance with the development standards was unreasonable or unnecessary an established test is consistency with the objectives of the standard and the absence of environmental harm.

Moskovich v Waverley Council [2016] NSWLEC 1015

Commissioner Tour reflected on the recent Four2Five decisions and said:

- Clause 4.6(3)(a) is similar to clause 6 of SEPP 1 and the Wehbe ways of establishing compliance are equally appropriate [at 50]. One of the most common ways is because the objectives of the development standard are achieved – as per Preston CJ in Wehbe at 42-43.
- Whereas clause 4.6(4)(a)(ii) has different wording and is focused on consistency with objectives of a standard. One is achieving, the other is consistency. Consequently, a consideration of consistency with the objectives of the standard required under clause 4.6(4)(a)(ii) to determine whether non-compliance with the standard would be in the public interest is different to consideration of achievement of the objectives of the standard under clause 4.6(3). The latter being more onerous requires additional considerations such as the matters outlined in Wehbe at 70-76.
- Establishing compliance with the standard is unnecessary or unreasonable in 4.6(3)(a) may also be based on “tests” 2-5 in Wehbe either instead of achieving the objectives of the standard (Wehbe test 1) or in addition to that test. The list in Wehbe is not exhaustive but is a summary of the case law as to how “unreasonable or unnecessary” has been addressed to the meet the requirements of SEPP 1.
- It is best if the written request also addresses the considerations in the granting of concurrence under clause 4.6(5).

Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

Most recently, in reflecting upon recent case law regarding clause 4.6 variation requests, Commissioner Preston confirmed (in this judgement):

- The consent authority must, primarily, 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, in establishing 'sufficient environmental planning grounds', the focus must be on the contravention and not the development as a whole:
"The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole" [26]
- 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 will 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. ASSESSMENT OF CONTRAVENTION

5.1. VARIATION TO MINIMUM SITE WIDTH CONTROL

The proposed development comprises a new residential flat building and Council's assessing officer has indicated that it contravenes the Minimum site width control under the WLEP 2009 (clause 7.14(2)). The relevant clause is copied below for reference:

Wollongong Local Environmental Plan 2009

Clause 7.14 Minimum site width

(2) Development consent must not be granted for development for the purposes of a residential flat building unless the site area on which the development is to be carried out has a dimension of at least 24 metres.

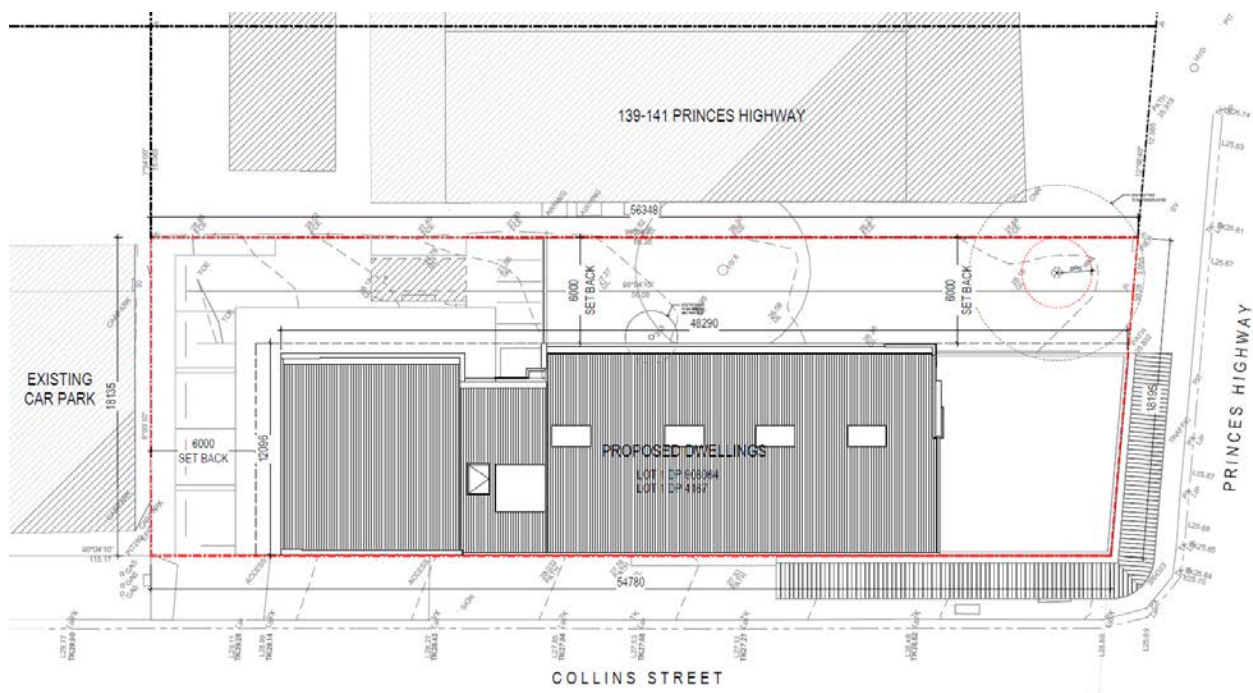
Explanation: while the clause would appear to require the development site to have a minimum dimension of 24m (the subject site does); Wollongong Council have provided correspondence indicating that the correct way of measuring compliance with this LEP control is found within the Wollongong DCP where it states [the] *'width of the site is to be measured for the full length of the building envelope and perpendicular to the side boundary'*.

This written variation request proceeds upon the basis of the comments from Wollongong Council, notwithstanding the legal opinion provided by Allens dated 27 February 2019, in the event that the consent authority agrees with the Council's interpretation of the relevant control.

5.2. EXTENT OF CONTRAVENTION

The site width, measured perpendicular to the site boundary, is 18.135m leading to a 5.865m contravention of Clause 7.14(2).

Figure 4 – Site Plan



Source: Group GSA

6. CLAUSE 7.14 MINIMUM SITE WIDTH

The following sections of the report provide an assessment of the request to vary the development standard relating to Minimum site width in accordance with Clause 4.6 of WLEP 2009. 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 Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents.

Is the Planning Control a Development Standard?

The minimum site width control prescribed under Clause 7.14(2) of the WLEP 2009 is a development standard capable of being varied under Clause 4.6 of WLEP 2009.

What is the Underlying Object or Purpose of the Standard?

The minimum site width development standard does not have any specific objectives; however, WDCP 2009 contains the following objectives in relation to the separate site width control contained within the WDCP 2009:

- *To allow for development of sites which are of sufficient size to accommodate the required building envelope, car parking and landscaping requirements*
- *To encourage amalgamation of allotments to provide for improved design outcomes*

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 development standard is unreasonable and unnecessary in the circumstances of the application based on the following:

- Strict compliance with the development standard would restrict the opportunity to provide an appropriate built form response to the Gateway of Corrimal Town Centre (i.e. strict compliance inhibits the development of a residential flat building development), and it has been demonstrated that social and affordable housing in the form proposed is in demand in this locality.
- As above, strict compliance would result in a non-residential building. This is not considered an appropriate use of the site, as a transition to a low density (R2) zone. Residential-to-residential is considered more appropriate to manage and mitigate environmental impacts at the zone interface.
- Despite non-compliance with WLEP 2009 Clause 7.14(2), the development appropriately addresses the design principles contained within the NSW ADG.
- The proposal reasonably satisfies the design criteria of the ADG, including compliance with the Visual Privacy (setback) guidance.
- The proposal has been reviewed by the DRP; who raised no objection to siting a residential flat building on the site. The DRP were also satisfied of the street presentation, bulk and scale of the development.
- The proposal is consistent with the objectives of the B2 zone (see Table 2).
- The development provides the required amount of parking (for residential purposes), private open space and deep soil planting.
- The supporting guidance within the Wollongong DCP states: *“Exceptions will only be considered for social housing developments”*. In this respect, the proposal will deliver social and affordable housing (provided by a social housing provider) that meets a demonstrated demand, per relevant Strategic Planning guidance and the State Government’s Social and Affordable Housing Fund (SAHF).

- The support of the exception request would not set an unreasonable precedent.
- The variation will not result in any adverse environmental impacts on the site or the adjoining residential properties.

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 controls have been achieved as summarised in Table 1 below:

Table 1 – Assessment of Compliance with Objectives

Objective	Assessment
WDCP 2009 – Objectives	
<ul style="list-style-type: none"> • <i>To allow for development of sites which are of sufficient size to accommodate the required building envelope, car parking and landscaping requirements.</i> • <i>To allow for development of sites only where the land is not significantly constrained by flood, geotechnical or other environmental hazards.</i> • <i>To promote the efficient utilisation of land.</i> • <i>To encourage amalgamation of allotments to provide for improved design outcomes.</i> 	<ul style="list-style-type: none"> • The subject site can accommodate the proposed building, together with compliant (residential) car parking and ADG deep soil landscaped areas. • The site has a minor flood affectation; however, the FFLs have been designed in compliance with flood planning requirements. • The proposal will provide an efficient land-use that achieves high levels of compliance with Council's statutory and strategic intent for the area. • It is considered unreasonable and unnecessary to request the Applicant pursue site amalgamation, having regard to the above – and because: <ul style="list-style-type: none"> – The site is positioned at a zone transition. Lots directly north and west are zoned R2 Low Density Residential (see Figure 5). – Those adjoining lots are built out to the permissible built form controls and represent an orderly and efficient use of the land. – Having regard to the above, the proposal will not result in an isolated lot. – Council have not indicated a desire to expand the Corrimal Town Centre to the North to accommodate more B2 zoned land in any known strategic planning studies. The <i>Corrimal Town Centre Plan 2015-2025</i> (p. 29) states an intention not to expand the Town Centre boundary.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

The objectives of the B2 Local Centre zone in WLEP 2009 are:

- *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.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To allow for residential accommodation and other uses while maintaining active retail, business or other non-residential uses at the street level.*

Strict compliance with the minimum lot width development standard would defeat or thwart the achievement of underlying objectives of the zone in that the proposal provides:

- A mixture of compatible and permissible land uses; specifically:
 - Social and affordable housing, meeting a demonstrated demand (as outlined in the relevant Strategic Planning guidance); and
 - A retail premises.
- Opportunities for employment in a town centre location that is well serviced by public transport.
- An activated street frontage to Princes Highway; and
- An appropriate built form outcome for the Gateway to Corrimal Town Centre, noting that strict compliance with this clause would require a different building typology (i.e. not a residential flat building).

Strict compliance with the control regarding minimum site width would lessen the achievement of these objectives.

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

Wollongong Council has previously supported Clause 4.6 variations, where contraventions of clause 7.14 were demonstrated to be supportable.

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 intent for a gateway building at the northern end of Corrimal Town Centre.

6.1.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variation to the minimum site width development standard, including:

- The irregularity of the site (small/narrow and within the Town Centre at a zone transition) has resulted in a design solution that provides a high-quality building.
- The building design has overcome the unique characteristics of the site (i.e. dimensions/frontages) to provide an appropriate street presentation at the gateway to Corrimal Town Centre.

- The design has been developed in conjunction with the DRP who have provided support for the development. Site width has not been raised as an issue throughout the DRP process.
- The development results in an appropriate amenity, built form/visual presentation and scale in the context of the Town Centre location, despite the unique aspects of the site.
- Exceptions to this development standard have been granted in other instances across the LGA.

Based on the above, it is considered appropriate to relax the strict application of the development standard.

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 land use objectives that apply to the site under WLEP 2009. The site is located within B2 Local Centre zone as outlined within Table 2.

Figure 5 – WLEP 2009 Land Use Zoning Map



Source: WLEP

Table 2 – Assessment of Compliance with Land Use Zone Objectives

Objective	Assessment
B2 Local Centre	
<ul style="list-style-type: none"> 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. To encourage employment opportunities in accessible locations. To maximise public transport patronage and encourage walking and cycling. To allow for residential accommodation and other uses while maintaining active retail, business or other non-residential uses at the street level. 	<ul style="list-style-type: none"> A mixture of compatible and permissible land uses; specifically: <ul style="list-style-type: none"> Social and affordable housing, meeting a demonstrated demand (as outlined in the relevant Strategic Planning guidance); and A retail premises. Opportunities for employment in a town centre location that is well serviced by public transport. An activated street frontage to Princes Highway; and An appropriate built form outcome for the Gateway to Corrimal Town Centre, noting that strict compliance with this clause would require a different building typology (i.e. not a residential flat building).

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.

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 Minimum site width control (clause 7.14(2)) 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 Planning Control Standard?

The proposed development achieves the objectives of the controls and the land use zoning objectives despite the non-compliance.

It has been demonstrated that the proposed variation will not result in an adverse environmental impact on the neighbourhood amenity and streetscape.

Overall, it is considered that the provision of social and affordable housing and the design response to the site and its environs is in the public benefit and will result in a superior outcome for the site and the surrounding land. As such, there would be no public benefit in maintaining the development standard in this case.

6.1.6. 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

This request is made pursuant to Clause 4.6 of WLEP 2009 and seeks to vary Clause 7.14(2) of the WLEP 2009. This report has demonstrated that strict compliance with the development standard in this circumstance is both unreasonable and unnecessary for the following reasons:

- The proposed development achieves the objectives of the development standards and the land use zoning objectives despite non-compliance.
- Strict compliance with the development standard would restrict the opportunity to provide an appropriate built form response to the Gateway of Corrimal Town Centre (i.e. strict compliance prohibits residential flat building development).
- Strict compliance would result in a non-residential building. This is not considered an appropriate use of the site, as a transition to a low density (R2) zone. Residential-to-residential is considered more appropriate to manage and mitigate environmental impacts at the zone interface.
- Despite non-compliance with WLEP 2009 Clause 7.14(2), the development appropriately addresses the design principles contained within the NSW ADG.
- The proposal has been reviewed by the DRP; who raised no objection to siting a residential flat building on the site. The DRP were also satisfied of the street presentation, bulk and scale of the development.
- The supporting guidance within the Wollongong DCP states: *"Exceptions will only be considered for social housing developments"*. In this respect, the proposal will deliver social and affordable housing by a social housing provider that meets a demonstrated demand, per relevant Strategic Planning guidance and the State Government's Social and Affordable Housing Fund (SAHF).
- The development results in an appropriate amenity, built form/visual presentation and scale in the context of the Town Centre location, despite the unique aspects of the site.
- Exceptions to this development standard have been granted in other instances across the LGA. The support of the exception request would not set an unreasonable precedent.

7.2. IS THE OBJECTION WELL FOUNDED?

Overall, it is considered that the proposed variation to the minimum site width development standard in clause 7.14(2) is appropriate and well founded and can be supported under the provisions of Clause 4.6 Exceptions to development standards.

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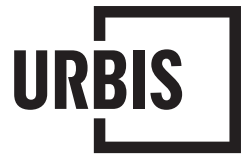
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7 May 2019

The Panel Secretariat
Southern Regional Planning Panel
Sent via email: cs_planning_applications@wollongong.nsw.gov.au

To whom it may concern,

2018STH032 DA - RESPONSE TO RECORD OF PANEL BRIEFING

This letter outlines a response to the matters raised by the Southern Regional Planning in the Record of Panel Briefing dated 11 March 2019 regarding 2018STH032 DA at 145-149 Princes Highway, Corrimal. After receiving the Record of Panel Briefing, the Applicant has presented to the Wollongong Design Review Panel (DRP) on 24 April and prepared revised Architectural Plans to address the comments raised. The following amendments have been made to the architectural and landscape drawings:

- Replanning of Lower Ground Floor (changes to the communal space with additional space located on the roof level). SAH 1-bed provided in place of studio. Entry portal coordinated with services cupboard to create view to communal space.
- FFLs reduced to 3.05m on Upper Ground to Level 3, reducing the overall building height by 200mm, whilst achieving a minimum 2.7m floor to ceiling height throughout the residential units.
- Replanning of Level 3 to provide:
 - Additional building setback to the north (7.07m setback provided from property boundary to balconies of north-facing studios and 8.2 metres provided from the property boundary to the glazing line).
 - Providing a setback of approximately 10m metres from the Princes Highway boundary, resulting from the removal of 2 units, and introducing a communal open space, providing a 'step down' in height following the slope of the site to the Princes Highway frontage.
- Provision of further balcony screening on the northern elevation for visual privacy.
- Amending the architectural finishes of the southern elevation facing Collins Street, to positively assist to articulate the top most floor of the building. On the southern elevation, the perforated screens and wall behind have been changed to a darker grey colour. The number of perforated screens on this level has also been reduced to increase the perception of depth within the corridor. This gives the perception of a recessed upper level, reducing the perceived bulk and scale (and creates further variety in the colour palette).

Group GSA have prepared a separate letter, which addresses each of the DRP comments in more detail. In summary, we provide a brief response to each item raised by the Regional Panel is provided below:

1. The proposal appears to be ‘cherry picking’ statutory controls to support the development.

Notwithstanding the unique planning environment relating to the proposed mix of residential accommodation, the Application has been clear on its relationship to the relevant EPIs:

- The DA is made pursuant to the Wollongong LEP 2009 (WLEP 2009). The uses proposed are permitted with development consent. Variations are sought to via Clause 4.6 of the WLEP 2009 to Clause 4.3 (Building Height); Clause 7.13 (Certain land within business zones) and Clause 7.14 (Minimum site width).
- State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH 2009) also applies to the DA. Division 1 of the SEPP (ARH) applies to the in-fill affordable housing component; and Division 3 applies to the boarding house component. Both divisions apply a 0.5:1 FSR bonus to the site.
- The SEPP (ARH) sets separate amenity controls for the in-fill affordable housing (Division 1) and boarding houses (Division 3). To ensure a consistent and holistic building design, the architectural team has sought to achieve compliance with the key amenity criteria of the NSW Apartment Design Guide (ADG) – i.e. communal open space, deep soil planting, solar access, dwelling size. It is noted that Clause 15 of the SEPP (ARH) requires the application of SEPP 65/ADG to the in-fill affordable housing component.
- This approach has meant that various ‘standards which cannot be used to refuse consent’ in Divisions 1 and 3 of the SEPP (ARH) are essentially superseded by the ADG design criteria. Notwithstanding this approach (i.e. ADG taking precedence over the SEPP ARH controls), the DA (as amended) achieves consistency with the relevant SEPP ARH boarding house controls set out in Clause 30, except Clause 30(1)(g), where a variation has been sought via Clause 4.6 of the WLEP 2009.

2. Clause 5.3 Development near zone boundaries of the Wollongong Local Environmental Plan 2009 is designed for permissibility matters and not to avoid compliance with a development standard. Hence a clause 4.6 exception request will be required to be provided to justify the proposed ground floor residential uses.

The Applicant maintains the position presented by Allens in the legal advice dated 27 February 2019 that:

- A clause 4.6 variation request would not be required to vary clause 7.13 of the WLEP because clause 8 of the SEPP (ARH) provides that the SEPP (ARH) prevails over the WLEP to the extent of any inconsistency.
- A clause 4.6 variation request would not be required to vary clause 30(1)(g) of the SEPP (ARH) because the WLEP 2009 permits the proposed development, subject to the consent authority being satisfied of the matters set out in clause 5.3(4) of the WLEP 2009.
- Urbis have prepared an assessment against WLEP 2009 clause 5.3(4), which confirms the requirements of that clause are met by the proposal.

Notwithstanding this, if the consent authority forms a different view, Clause 4.6 variations have been prepared by Urbis.

3. The Panel noted that the character of the area did not support buildings of the height proposed.

The impacts of the revised proposal upon the character of the area has been assessed against the Land and Environment Court Principle relating to height, bulk and scale – **Veloshin v Randwick Council [2007] NSWLEC 428**.

The relevant planning principles from this judgement are addressed in turn below:

Are the impacts consistent with the impacts that might be reasonably expected under the controls? It is noted that for a non-complying development the question cannot be answered unless the difference between the impacts of a complying and non-complying development is quantified.

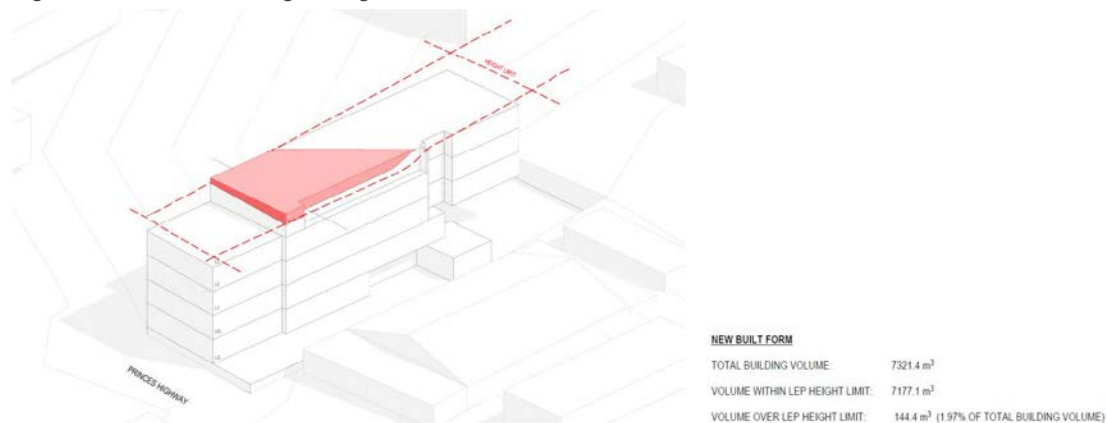
- As demonstrated through the Clause 4.6 variation requests prepared for the DA, the non-compliances with development standards have not resulted in any consequential shadow, view or visual impacts, nor does it significantly alter the perceived bulk and scale of the building (as a whole) compared with a compliant scheme.
 - The maximum building height is 16.68m, 1.68m above the permitted height limit at the worst extent (see below):

Figure 1 – North Elevation



- Volumetrically, the building is only 1.9% over the LEP height limit (see below):

Figure 2 – Volumetric Height Diagram



- As illustrated in Figures 1 and 2, there also locations on the site where the proposed development does not reach the full 15 metres height of building standard permitted under Clause 4.3 of the Wollongong LEP 2009.
- The area of contravention, noting the scheme is FSR compliant, does not give rise to consequential adverse environmental impacts and the built form is generally consistent with what could be expected under the planning controls.

How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?

- The height and floor space ratio of the proposal is generally consistent with the height and bulk anticipated under WLEP 2009 and SEPP (ARH):
 - The proposed FSR of 1.6:1 is compliant with the base WLEP 2009 FSR (1.5:1) and the 0.5:1 FSR bonus permitted under the SEPP (ARH).
 - The building height, as mentioned above, is slightly non-compliant with the WLEP 2009 control of 15m, however the area of contravention is located centrally on the site, equates to 1.9% of the building mass, and does not result in consequential adverse environmental impacts.
- In summary, the built form is consistent with the applicable planning controls that apply to the site.

Is the proposal consistent with the bulk and character intended by the planning controls?

- The *Corrimal Town Centre Plan 2015-2025* has reviewed the existing Corrimal Town Centre condition and sets directions relating to planning control amendments, infrastructure design and delivery et cetera. There are various shortcomings of the Town Centre that are expressed in the Plan including busy roads, missing and dilapidated footpaths, steep slopes and dull/inactive street appearances.
- The planning controls expressed in the WLEP 2009 'isolate' the site at the northern 'gateway' of Corrimal Town Centre – i.e. the site is the only pocket of B2 land with a 15m height limit and 1.5:1 FSR control (see Figure 5 below). This suggests a taller, mixed-use building is anticipated in this corner/gateway location.
- The proposal addresses the desired future character of Corrimal Town Centre through providing a zero-setback design which provides street-level retail space, marking the northern end of the Town Centre and adding its legibility.
- The proposal comprises land uses permitted with consent under the WLEP and is compliant with the FSR control. The building includes a 'stepped' design on the eastern elevation which is consistent with other recent development in the locality (on Princes Highway).
- The DA seeks a minor exceedance of the building height control, although this is justified by a clause 4.6 variation and does not give rise to any consequential adverse environmental impacts.
- Group GSA has undertaken urban design analysis of future built outcomes for the site, specifically looking at the interface with the Northern interface with the R2 (Low Density Residential) zone. The analysis demonstrates that:

- The topography rises north along Princes Highway. The (future) RLs of buildings further north of the site (despite a lower, 9m LEP height control) would be similar to the proposal (see Streetscape Section and Render below). This condition will reduce the proposal's apparent bulk and assist in the building meeting the desired future character for the locality.
- It is also noted that future development in the R2 zone is likely to have residential amenity (private/communal open space, orientation) facing north, away from the site – with services/secondary 'defensive' frontage to the south, facing the site.

Figure 3 – Streetscape Section



Figure 4 – Render of Proposal (view from Princes Highway looking South)

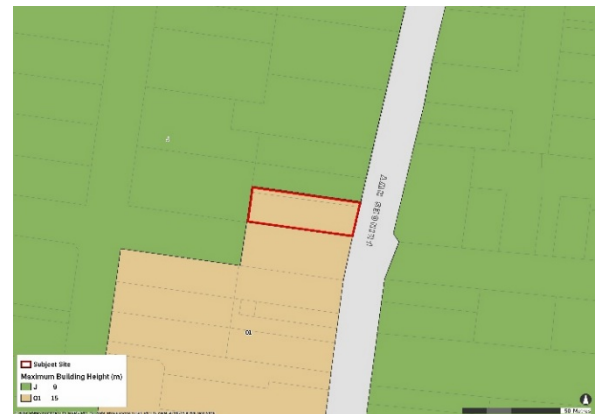


- Overall, the proposal is considered to meet the desired future character of Corrimal Town Centre as expressed through the *Corrimal Town Centre Plan 2015-2025* and the WLEP 2009.

Figure 5 – Wollongong LEP Maps



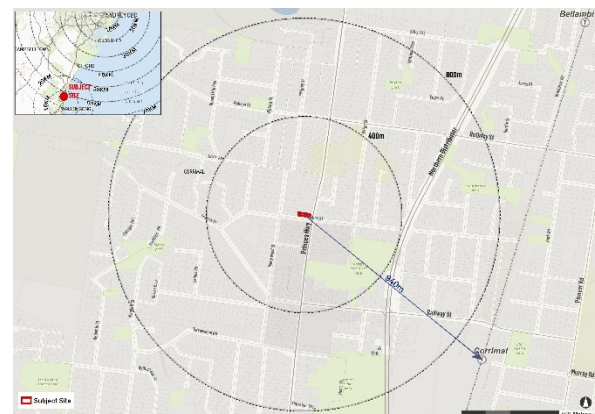
WLEP Land Use Zoning Map



WLEP Height of Buildings Map



WLEP Floor Space Ratio Map



Locality Map

4. All recent developments in the immediate locality have complied with the height standard.

- There are buildings in the locality that are taller than the permitted building heights under the WLEP 2009. This analysis was presented as part of the DA package in the Urban Design Report.
- We note the Southern Regional Panel recently approved a development at 36-44 Underwood Street, which was supported by a clause 4.6 variation for building height contravention.
- The departure from the building height development standard is not considered to give rise to unreasonable precedent given the unique circumstances of the site and the limited environmental impacts resulting from the breach.

5. Given the context of the site there may be arguments to support variation to the site width.

- Noted.

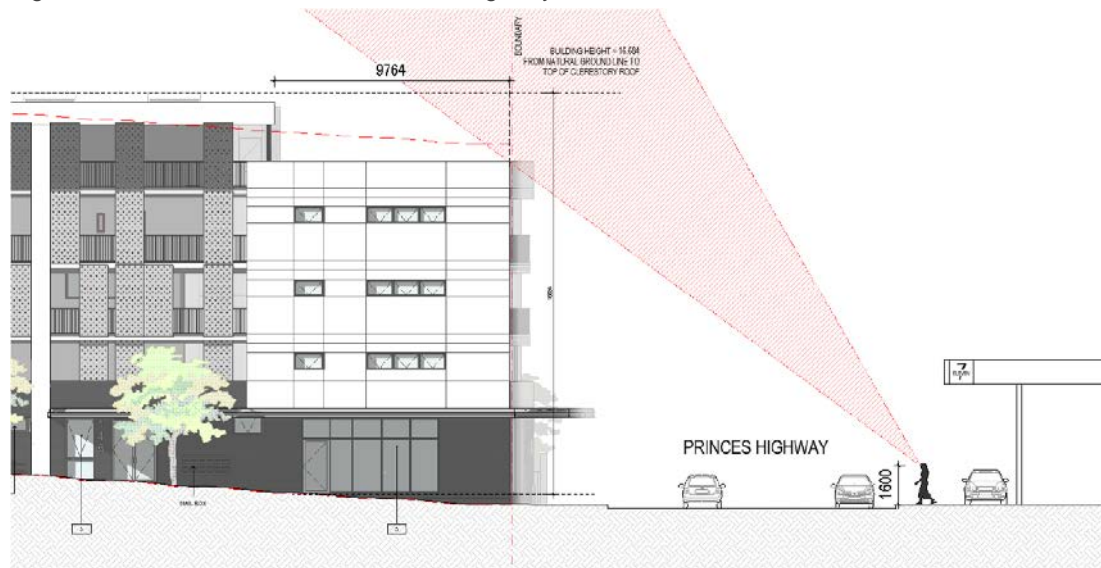
6. The Panel noted that a 9m setback is required for the upper floor, pursuant to section 3F of the Apartment Design Guide.

- The upper floor (Level 3) setback has been increased in response to the Regional Panel's comment. The setback is now 7.07m from the property boundary to the balconies of the north-facing studios (and 8.2m to the glass line of those studios).
- Privacy screens have been provided to those top floor balconies to mitigate visual privacy impacts.
- Overall the revised development is considered to successfully mitigate future visual privacy impacts to the potential future uses of the northern adjoining R2 site, noting the adjoining site is currently used as a theatre and has a low susceptibility to change (due to being built close to the Wollongong LEP built form controls).
- Should the northern adjoining R2 site redevelop, as illustrated by Group GSA, its likely to have a 'defensive' frontage to the subject site, with the northern aspect (facing away from the proposal) used for residential amenity (private, communal open space) and orientation of habitable spaces for solar access and views.

7. Building siting, height and the need to step in the upper storey and reduce overall height.

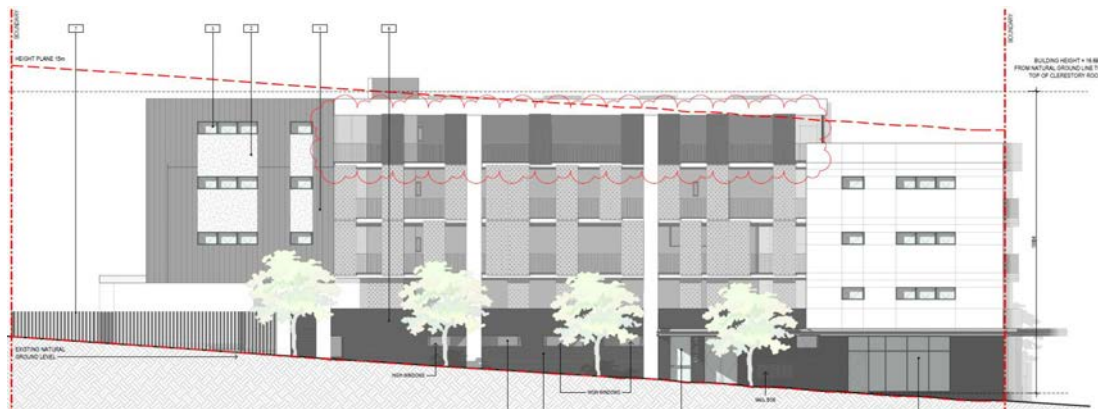
- A stepped building form is now provided at the top floor (Level 3). The setback of the top floor from the eastern elevation is approximately 10m, providing a clear relief in bulk as viewed from the Princes Highway/Collins Street intersection. As mentioned above, further setbacks have also been provided on the northern elevation.

Figure 6 – View from Sidewalk on Princes Highway



- On the southern façade, the perforated screens and wall behind have been changed to a darker grey colour. The number of perforated screens on this level has also been reduced to increase the perception of depth within the corridor. This gives the perception of a recessed upper level, reducing the apparent bulk and scale (and creates further variety in the colour palette).

Figure 7 – South Elevation



- The height non-compliance measured volumetrically has been reduced from 4.7% to 1.9% (see drawing DA9000).
- 8. As each boarding room has the capacity to accommodate more than a single person, an on-site manager's residence is required.**
- Anglicare has received legal advice that confirms an on-site manager's room is not required, which is provided as an appendix to this correspondence.
 - The building will be managed by an 'off-site' manager, who will be the primary contact for residents and non-residents (i.e. neighbours). The off-site manager will be responsible for coordinating the appropriate resources to respond to any issues or problems.
- 9. Any redesigned proposal should be referred to the Design Review Panel again, being particularly mindful of the relationship of the site with the adjoining R2 land.**
- Noted, the Applicant has met with the DRP on 24 April 2019. Group GSA have provided a detailed response to the DRP minutes under separate cover.

If you have any questions, please don't hesitate to contact me at (02) 8233 9953 or mdonaldson@urbis.com.au.

Yours sincerely,



Murray Donaldson
Director



Enclosed: Revised Architectural Plans prepared by Group GSA
 Response to DRP Comments prepared by Group GSA
 Updated Design Verification Statement / ADG Assessment prepared by Group GSA
 Revised Landscape Package prepared by Group GSA
 Legal Advice prepared by Allens

Our reference: 180350
Your reference: DA-2018/1517

Thursday, 28 February 2019

Attention: Jessica Saunders
Senior Development Project Officer
Wollongong City Council
Telephone (02) 4227 7111

re: Response to Design Review Panel Dated 28 February 2019
Site: 145-149 Princes Highway, CORRIMAL NSW 2518

Dear Jessica,

Please find below our comments in relation to the Design Review Panel minutes:

Context and Neighbourhood Character

DRP Comments:

SEPP65 is applicable because of the proposed mix of one-bedroom residential flats with boarding house accommodation.

The Princes Hwy corner site is at the northern extremity of the Corrimal B2 Local Centre zone. Adjacent properties are Low Density Residential zoned, with two storey non-residential uses (Theatre, Health Care, car park). Re-development/change of use of these adjoining sites is considered unlikely in the foreseeable future.

Obscure Address and Entry presence:

The proposed primary pedestrian access and address is from the Highway. It is not obviously to the building and there is no indication of 'front door' from the street. The entry journey is through an uncovered open space. The building 'front door' is through a covered porch flanked by a DPT and service cupboard directly into the Communal Space. Once inside there is no sense of 'entry' or obvious vertical circulation options. See also 'Amenity' Street Interface.

The small corner shop alone contributes to an interesting and active street front. The extent of services, garbage rooms dominating the corner and main road is excessive.

*The Collins Street facade is effectively a blank wall.
In design development the panel recommend the following be considered:*

- A more direct and obvious building entry, ideally at grade off Collins Street.*
- Removal of non-critical garbage, plant, services and perhaps*

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bike store to less intrusive locations.

- *Lower retail floor to street level, splay shopfront and substitute a less intrusive corner support structure than blade wall as drawn.*
- *Introduction of some fenestration to access corridor for light and ventilation relieving the blank facade.*

Response:

The Lower Ground floor layout has been redesigned in response to and consideration of the Design Review Panel comments. A new glazed double door is introduced along the Collin Street frontage on the Lower Ground Floor. This will provide a clear building entrance for residents and visitors. The awning above the retail is extended along Collins Street above the new building entrance providing weather protection and improved amenity. Once inside, visitors have a direct line of site to the lift on the left. The communal space directly opposite the building entrance provides passive surveillance to the lobby and vice versa. This new entrance also helps further activate the Collins Street façade.

The Garbage room has been relocated away from the Collins Street façade and is now accessible via an airlock from the main lobby. By moving this services space away from the streetscape activation of Collins Street is further enhanced.

To further activate the Collins Street façades, additional windows have been introduced. The Residential Lobby doors, adjacent vertical window and 4 highlight windows provide natural light to the corridor on Lower Ground Floor. An additional high-level window provides natural light to the accessible communal bathroom. On the upper floors windows have been introduced where possible to apartment bathrooms.

The corner of Princes Highway and Collins Street is a topographical high point of the Corrimal Town Centre as well as a 'gateway' site, enhancing the importance of the intersection. The existing development at 148 Princess Highway, the Ray White building, and the new proposed mixed-use development at 159 Princes Highway both establish a strong corner treatment without a corner splay. It is therefore appropriate that the proposed corner treatment holds the urban edge firmly as well as respond to and follow the already established and future context at the corner of Princes Highway and Collins Street without a splayed corner.

Built Form and Scale

DRP Comments:

The 5 storey recta-lineal massing is clearly driven by economic and construction pragmatism. The building will be the highest on the Princes Hwy main street. It will be the dominant 'gateway' statement from the northern approaches to the Corrimal centre. The proposal should demonstrate the visual impact from this approach and an appropriate relationship to the retail streetscape has been addressed.

Response:

The bulk and scale of the development is appropriate because it maintains significant views and does not cause unreasonable overshadowing to the Southern neighbour. The escarpment is a key visual feature of the Corrimal area. The Corrimal Town Centre Plan regards the connection to brokers nose from Memorial Park as a key view of significant value. The site is situated North-West of Memorial Park, well clear of views to Brokers Point

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and so will not impede on this sightline. Diagrams in the Urban Design report support and illustrate this.

The development being situated North of Collins Street maintains reasonable separation from the Southern neighbour, minimising any impact from overshadowing. Diagrams in the DA illustrate that the proposal maintain 3-hour solar access to private open spaces and habitable areas of the new proposed residential development to the South, in line with ADG controls.

The Northern elevation provides an active and articulated frontage with balcony openings, recessed in building form and a diverse palate of materials. This active façade will provide a positive contribution to the town centre and the 'gateway' entrance from the North. Additional bathroom windows on the north will help enhance the articulation of this façade, Axonometric views in the DA application illustrate this.

The bulk and scale of the proposed development is therefore appropriate not only in providing a 'gateway' statement to the Corrimal Town Centre but by maintaining reasonable amenity to the public and its neighbours.

Density

DRP Comments:

The proposed density (FSR) is noted as being some 300sqm less than permitted when the SEPP(ARH) bonus is applied. The opportunity exists to address issues raised elsewhere without involving additional mass or bulk to the building.

Response:

While it is recognised that the total allowable FSR is not utilised, in our view the play of light and dark and open and closed areas helps create an active and interesting façade which adds character to the streetscape while still working within tight budget constraints. The material selection is robust and of high quality, providing a reasonable level of amenity to resident without being too uniform or providing a hard edge to Collins Street. For this reason we believe the semi-open breezeway to be a positive contribution to the streetscape and propose that it is retained.

Sustainability

DRP Comments:

Rainwater Harvesting is recommended, engineered in conjunction with OSD tank for use in landscape irrigation and WC flushing.

Bathrooms located on external walls should have windows for natural light and ventilation

Roof mounted PV power for daytime use of lighting, lift and any mechanical ventilation of communal areas is recommended with space

for future battery storage.

Solar pre-heating for hot water should be considered for the hot water system.

Response:

The proposed development includes several sustainability initiatives. A Rainwater tank is proposed at Lower Ground Floor adjacent the Fire Sprinkler Hydrant Pump Room. This tank is 5000L and will provide connection to irrigate communal landscape areas within the site.

Taking onboard advice from the DRP, amended plans show additional windows to all apartment bathrooms with an external façade.

Solar panels have been proposed on the roof in accordance with BASIX requirements.

Landscape

DRP Comments:

Street Planting

The success of the proposed street tree planting to Collins Street depends on under-grounding remnant over-head power.

Smoothed bark species are recommended preferable to / 'paper-barked' in close pedestrian environments

On Site

On site landscape should suitably reflect any re-planning changes in response to comments elsewhere.

Currently the landscape space appears designed in response to the constraints of the circulation from the Princes Hwy. As landscape is of vital importance for a development such as this, the landscape should be high in amenity and connection to the internal communal facilities. If the circulation can be rationalised as it is suggested, the landscape can be better developed to provide maximum amenity and program suitable for future residents.

Response:

The proposed landscape has been amended to address DRP comments. Accessible entry is provided through the new Residential lobby from Collins Street to the communal space and communal outdoor space. The shape of the Indoor and outdoor Communal Space is rationalised and the ramp to the North of the communal outdoor space has been removed, providing more usable space within the outdoor area.

Location of street trees will take into account the overhead powerlines and underground services and be placed at 5-10m spacings to avoid any conflicts with services.

Tristanopsis laurina – Water Gum a smooth barked small to medium size street tree has been selected for Collins Street. This tree selection will reinforce the character of the street

and tie into the recently completed development at 75 Collins Street which has used Water Gums.

Amenity

DRP Comments:

Vertical Circulation

The panel is of the view that the primary vertical access system (Lift and Stair 2) should relate to the primary pedestrian access, entry and address of the building, not the 'rear' car park. It is strongly recommended that the planning be re-configured to achieve this.

'Breezeway' access

The proposal relies on open corridor breezeway' access to meet ADG cross ventilation standards. The panel expressed serious concerns in relation the 'breezeway' exposure to frequent severe weather from the south. Some form of adjustable weather protection (eg louvre windows) is recommended to south.

Ground Floor Issues

The difficulty in designing for the slope of the site is acknowledged. Refer to Issues relating to the entry and address in 'Context and Neighbourhood Character'. It should be noted that survey levels suggested a successful entry point could be achieved along Collins St in the approximate location of the communal room currently.

Cycles & garbage room location and access

The rationality of the garbage room and cycle store locations is questioned. Internal access to the bin store is recommended. A local flooding issue is acknowledged, but a shop not at street level has dubious accessibility, and hence feasibility. It is recommended options be considered (materials, finishes, services) allowing the shop to endure the minimal flooding projected.

Communal Space / open space interface

The Communal Space access and exposure to the court and northern sun is unnecessarily constrained by the DPT and plant room. The only exposure is via the front door. It is recommended re-planning to address this.

Undercover access from street to entry

Wherever located it is recommended the entrance to the building be, at least, under cover. Intercom access invariably involves delay.

No internal access to a stair from entry levels

Refer 'Safety'

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Apartment Layouts

Solar access standards are deliverable. Cross-ventilation standards are also deliverable even with adequate weather protection to the breezeways.

The re-location of entry doors to one bed apartments to maximise privacy should be explored.

Response:

The lower Ground Floor has been replanned to address DRP comments and improve resident amenity. The new residential entrance provides level entry from Collins Street. A clear and well-defined entry for resident and visitors improves wayfinding within the development. The awning from the shopfront has been extended along Collins Street to allow undercover access into the residential lobby. Once inside the lobby the lift is a short distance away from the entrance with clear and direct sightlines, again enabling clarity in wayfinding. Lift shafts as well as lift lobbies can be a source of excess noise and vibration transfer to apartments. To provide a high level of amenity within apartments it is proposed that the lift is retained in its location, sharing minimal wall interface with the apartments as well as providing reasonable separation between apartment doors and lift.

The garbage room has been relocated away from the street and provided with internal access via an airlock in the lobby. In addition to mechanical ventilation, the airlock will help control odours and enhance amenity. The garbage room has also been enlarged to accommodate bulky waste within a caged area.

The retail space has been extended West along Collins Street, allowing level access without ramping. The retail floor level has been maintained 500mm above the 1 in 100 year flood levels as required by Council's engineer.

The communal space has been replanned and rationalized with the outer glazing aligned with the structure above and the bathroom and services cupboards moved towards the centre of the floor plate and away from the facades. This has freed the northern façade of the Communal space to become fully glazed, improving solar access and daylight.

The breezeway incorporates open balustrade with high quality and robust perforated screens strategically placed in front of apartment entry doors and lift to improve amenity. This is seen as an appropriate solution to consolidate the requirement for amenity to residents with the desire to improve and articulate the public interface along Collins Street. The breezeway provides a transitional space, the strategic location of fixed perforated panels helps improve privacy where it is required while the open nature of the breezeway allows passive surveillance of the street and vice versa improving safety. The movement of people along the corridor also provides for a dynamic and interesting street elevation.

Safety

DRP Comments:

On-site manager

The proposal states its accommodation is restricted to single occupancy boarding house rooms. The SEPP (ARH) requires manager accommodation when the 'capacity' is for 20 or more lodgers. The

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panel has no expertise in this, however notes the mixed residential flat/boarding room 'capacity' of the proposal far exceeds 20, it is a secure facility, it is for single, perhaps vulnerable, women. The inclusion of an on-site manager appears highly advisable.

Entry Security

A primary pedestrian entry in an obvious well trafficked, publicly visible 24/7, under-cover area would seem a pre-requisite for this development.

Stair 1 appears to discharge under the building, not a required defined 'open space'. Both fire stairs are inaccessible from inside the building. Both these issues must be addressed in any re-configuration of the layout.

Internal safe access to the garbage room should be provided for residents without venturing onto the street.

Response:

The plan of management details the operation of the development and Anglicare's management strategy.

The redesign of the Lower Ground floor plan has led to considerable improvement in safety provisions. The primary pedestrian entry is highly visible from Collins Street with passive surveillance from the communal space and open breezeway further improving safety. The reconfiguration of the garbage room also allows safe internal access to residents without venturing onto the street.

The discharge from fire Stair 1 has been assessed by the project BCA consultant (Blackett Maguire + Goldsmith) and Fire Engineer (Olsson Fire & Risk). The fire engineer has prepared a fire engineering statement with proposed performance solutions to address this non-compliance. The BCA consultant is in support of the performance solutions proposed. The non-compliance can be addressed as a fire engineered solution. Fire stairs used as circulation space are undesirable for this size development as it compromises the efficacy for these stairs to operate as emergency egress points.

Housing Diversity and Social Interaction

DRP Comments:

The density and nature of the proposed building population, mix of secure residential flats and boarding house accommodation demands careful consideration of the management required.

Response:

The plan of management details the operation of the development and Anglicare's management strategy.

Aesthetics

DRP Comments:

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The panel has no issue with the simple direct and minimal palette approach to this proposal. It of the view that a considered response to the issues raised will involve finessing the aesthetic presentation of the building and demonstrate a significant improvement to the development.

Response:

The building façades have been maintained with improved articulation to the Southern facade on Collins Street through additional windows to bathrooms and the Lower Ground floor corridor as well as a clearly defined residential lobby. Additional bathrooms windows to the Northern façade also enhance building articulation.

Key issues, further Comments & Recommendations

DRP Comments:

The panel's response to the location and context of this proposal is favourable.

However, it is of the view that an extensive review of the street presence, and thereby as a result the internal planning configuration and landscape, is necessary to ensure a sound fit with the Corrimal Centre, and meet acceptable standards of safety and amenity to its occupants.

Response:

The proposed changes to planning on the Lower Ground Floor result in considerable improvement to both the public interface as well as increased resident and visitor amenity. The new resident entry lobby from Collins Street provides a clear and prominent building entry while the extension of the awning over the new residential lobby offers protection from the weather. By relocating the bathroom and Garbage room towards the centre of the floor plan the façade becomes clear of services, improving articulation and amenity. Resident are provided with internal and universal access to the garbage room. Access to the retail space is provided on grade without ramping while maintaining flood freeboard levels by extending the shop further west along Collins Street. The layout of the indoor and outdoor communal space is rationalised with north facing glazing maximised to improve solar access, daylighting and amenity. Additional windows to the Lower Ground Floor corridor and apartment bathrooms increase natural lighting to internal spaces, improving resident amenity and façade articulation.

Sincerely,
GroupGSA



Maryam Boroumand
Associate | Sydney Architecture

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Our reference: 180350
Your reference: DA-2018/1517

Monday, 06 May 2019

Attention: Jessica Saunders
Senior Development Project Officer
Wollongong City Council
Telephone (02) 4227 7111

re: Response to Design Review Panel Dated 24 April 2019 (new comments)
Site: 145-149 Princes Highway, CORRIMAL NSW 2518

Dear Jessica,

Please find below our comments in relation to the Design Review Panel minutes:

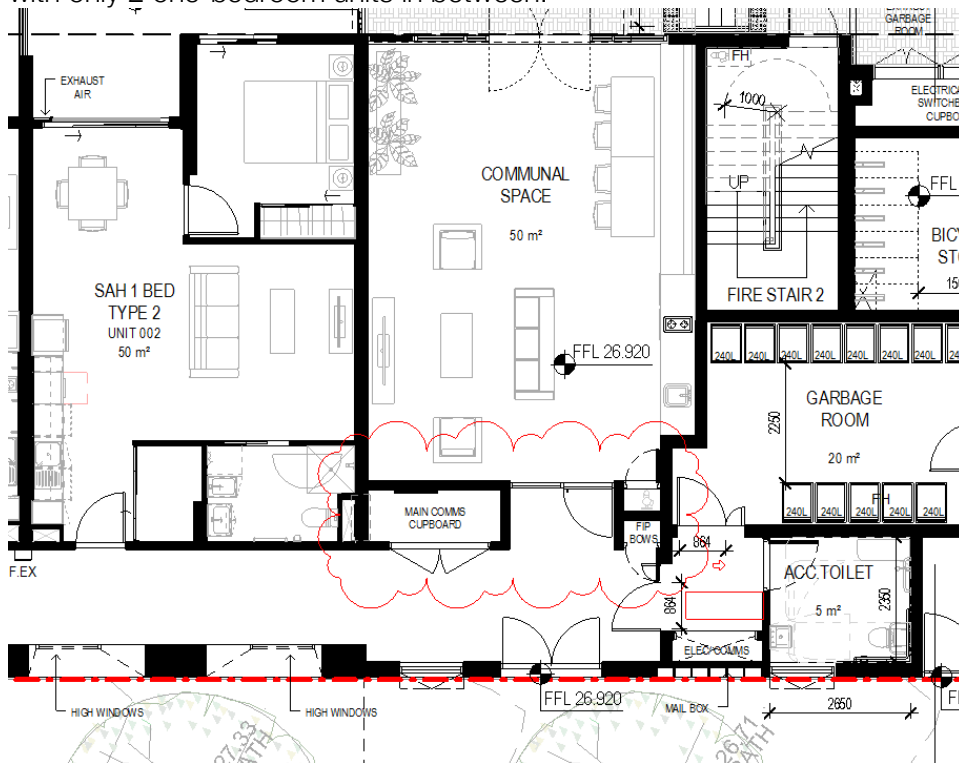
Context and Neighbourhood Character

DRP Comments:

The entry has been relocated to Collins Street as suggested by the panel. However, when entering the building residents are faced with a bank of service cupboards, no lift or stair are visible from the point of entry, as the lift is located at the end of dead-end corridor approximately 16m west of the entry. Fundamental issues with the circulation strategy of the building remain unresolved (refer detail comments below, Amenity).

Response:

The services cupboard and Communal Space entry have been swapped creating views from the Residential entrance to the communal space and through to the communal Open Space. The lift is positioned at the high point of site minimising breach in the 15m height plane. The position of building lobby allows activation of the Communal Space as well as Passive Surveillance of the main access point while the lift is a short distance to the left with only 2 one-bedroom units in between.



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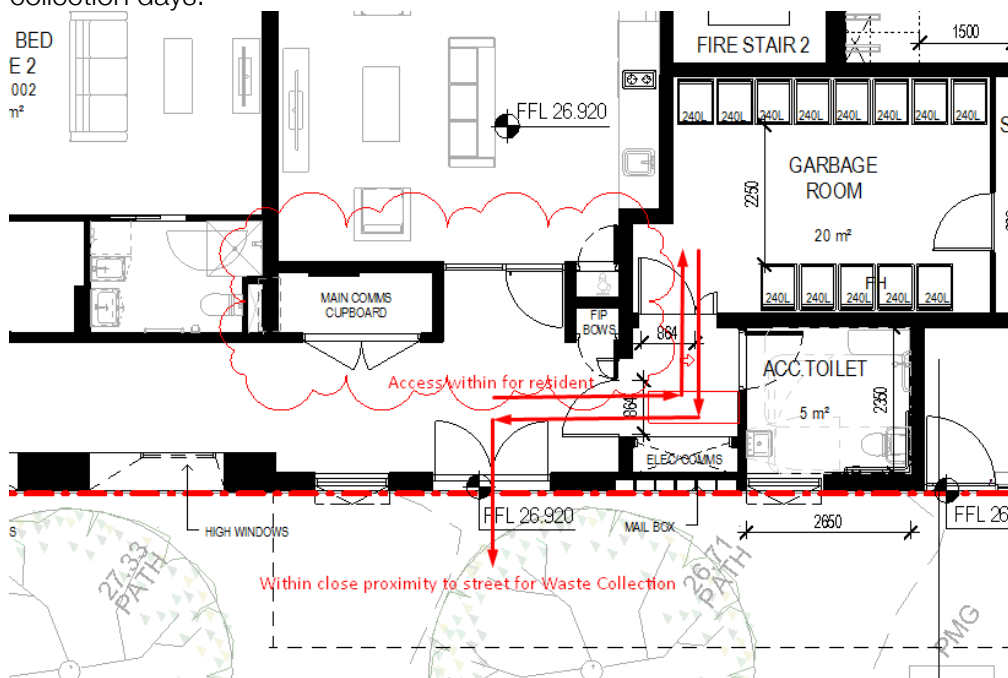


DRP Comments:

The extent of retail proposed remains modest, an alternative servicing strategy for the building could seek to relocate the garbage room further to the west allowing it to be accessed from the carpark at upper ground floor level. This would avoid garbage bins being wheeled through the entry lobby, as currently proposed and create more space for retail.

Response:

The position of the Garbage Room allows safe and equitable access to residents within the development without having to go through the carpark or the street. It is also positioned in close proximity to Collins Street allowing easy transfer of bins to kerbside on waste collection days.



DRP Comments:

Windows have now been provided to lower ground floor corridor, helping to articulate the building at street level. The applicant should also include existing, anticipated as well as recently approved built form as part of its locality analysis plans in order to demonstrate how the proposal could achieve integration. This should include streetscape images, perspective images as well as axonometric images. As previously outlined by the Panel, the view of proposal when approaching from the northern end of Princes Highway is particularly important. As this view will demonstrate how the proposal will relate to the adjoining lower scale building forms as well as establishing a gateway to Corrimal town centre.

Response:

A new photomontage from the North of Princes Highway looking towards the development has been provided. This image shows the proposed development as well as allowable building envelope of neighbouring development which will form the future character of the streetscape. The development is of appropriate form and scale, defining the edge of the B2 zone as well as providing a stepped form to the 9m allowable building heights to the North.

Built Form and Scale

DRP Comments:

The building form has now been developed with a reduced mass (now 4 storeys) fronting Princess Highway. This is a noted improvement which will reduce the perceived bulk of the building. However, it is noted that the proposal continues to breach the height development standard in some sections. The panel remains as to whether the proposal achieves suitable bulk and scale integration with the immediate context, particularly given the adjoining northern property is zoned R2 and adopts a notably lower building height standard. Whilst the panel recommends reviewing the proposed height in order to address this, the panel is not relying on this, solely, to address the matter. Further articulation throughout the envelope, and in particular the top floor, could resolve the matter. Based on discussions at the DRP meeting, it would appear as though a setback in the top floor, and most likely from the southern elevation, would go some way in addressing the matter.

The southern (Corrimal Street) elevation appears abrupt and lacking in relief. The panel has concerns this results in an inappropriate presentation to the centre, particularly given this is the last lot at the northern end of the centre zoned B2, and all subsequent northern lots are R2 and will be expected to adopt a substantially lower scale. Further, it is noted that Part B of the Wollongong DCP encourages a recessive upper level.

The applicant is encouraged to investigate the scale of the top floor, so as to lessen its bulk as perceived from Corrimal Street. It is acknowledged the site's limited width may offer few options, but the applicant is nevertheless encouraged to reduce the perception of the top floor's scale and the 0m setback which has been adopted for the entire southern elevation.

Response:

The Level 3 perforated screens and wall behind have been changed to a darker grey colour. The number of perforated panels on this level have also been reduced to increase the perception of depth within the corridor. This helps create variety in the colour palate



along the Southern façade as well as give the perception of recessed upper level reducing the apparent bulk and scale.

DRP Comments:

It must be noted that the proposal is adjoined by sites zoned R2 on its northern and western boundaries. The ADG requires building set-backs to be increased by 3m when adjoining a lower scaled zone. This would require a 9m setback to the northern and western boundaries for the first four levels and 12m set-backs for the levels above. It is acknowledged by the panel that if these set backs were strictly applied to this isolated there would be little space available for a functional built form, rendering the site undevelopable.

However, if the reduce set backs are to be accepted, it must be demonstrated that the proposal meets the objectives of part 3F of the ADG. A more robust contextual study must demonstrate that potential privacy issues have been addressed in the buildings existing and potential future context.

Response:

As is noted above, Part 3F of the ADG recommends an additional 3m separation where the development is adjacent a different zone that permits a lower density residential development. This is stipulated under Design Guideline and not Design Criteria. The objective of Visual Privacy is as follows:

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

The proposed development is reasonable and meets the objectives of Visual Privacy by

- Habitable spaces in the proposed development have been oriented towards the North to maximize solar access as well as views to the escarpment. Given the Long and narrow subdivision of land along Princes Highway to the North of the site any future residential development seeking to maximize resident amenity as well as meet solar access would be similarly oriented towards the north with services positioned to the south facing the site.
- The existing theatre building to the North of the site does nor comprise any windows facing the proposed site
- All first floor balcony balustrades are solid enhancing privacy
- Setbacks to the upper floor (Level 3) have been increased to 7.072m with 8.2m to the glass line. Fixed privacy screens have been provided on this level. This helps enhance privacy from the top-most level
- An increased setback of 7.44m has been provided to the West
- To the West the development faces the newly completed Douglas Hanley Moir Pathology building. This building comprises a 16m setback to the East with on grade carparking and no habitable windows facing the proposed development's Western boundary



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View to the West

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View to the Northern neighbour showing no existing windows

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The applicant advised that the form and scale was also driven by locating the lift core and associated over run in a position which minimises the height breach. This is a concern to the panel as it suggests the design, in particular form, scale and circulation space have not been suitably integrated. For example, the location of the lift core to the west of the site, in order to minimise the height breach, results in disconnected circulation spaces and elements. The lift is located a substantial distance from both the main and secondary pedestrian entries, resulting in a long, dead end corridor to the lift core. In addition to the disconnected nature, the length of the core may be a safety risk.

The applicant is encouraged to relate the lift core to the main entry, the secondary entry, as well as the ground floor communal spaces. This is likely to reposition the lift further to the site's eastern boundary, and potentially contribute to the current height control breach. Despite a potential height control breach, the applicant is encouraged to consider this option particularly as the lift over run is likely to be located towards the centre of the roof floor plate, and, therefore, avoid excessive visual impact from either the street or surrounding properties.

Response:

Please refer above for comments on Lift core.

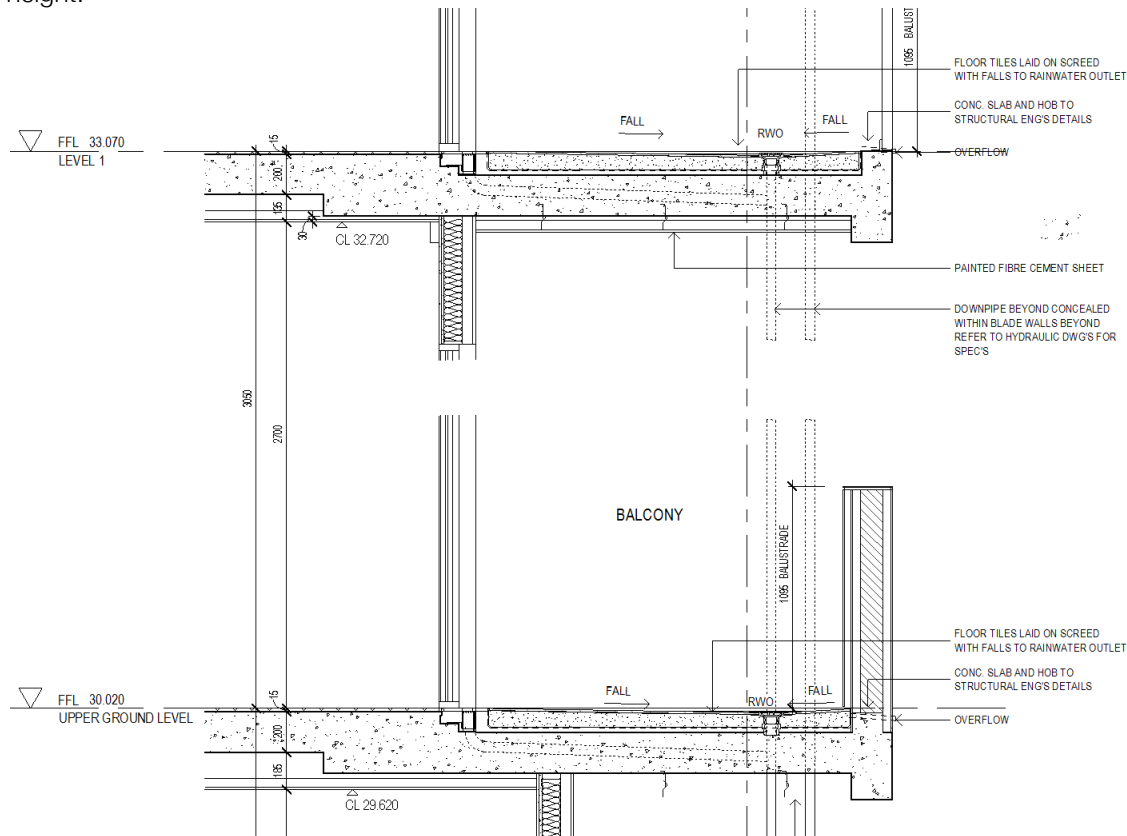
Furthermore, the residential entry is proposed to be locked with intercom and CCTV providing controlled access point to the internal residential corridors providing safety to residents and visitors.

Documents show a typical floor to floor height and floor to roof height of 3050mm. The typical floor to floor height is less than the 3100mm generally used to achieve the 2.7m floor to ceiling height required by the ADG. The floor to roof height appears inadequate to accommodate adequate space for structure, insulation and

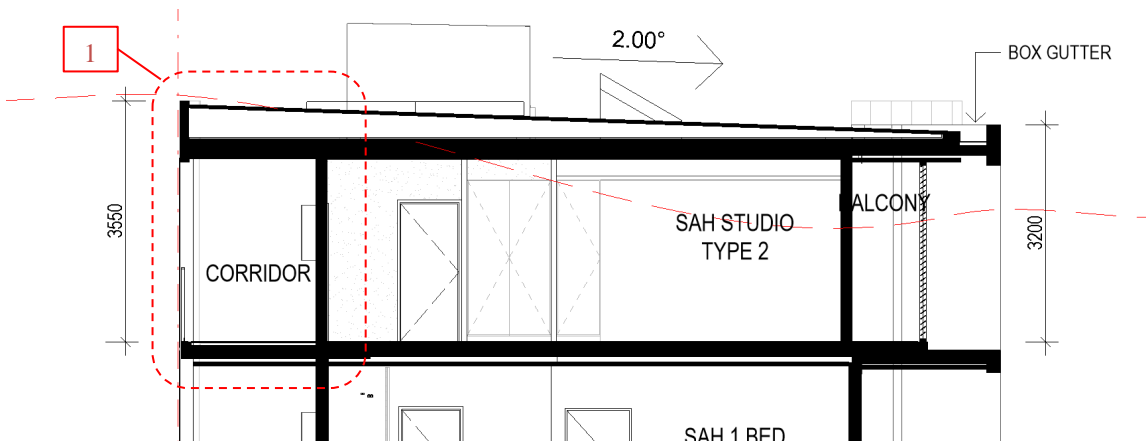
roof fall to provide drainage. A detailed section should be provided to demonstrate how minimum ceiling heights are being achieved and how the roof is detailed. This issue may impact the overall height of the building.

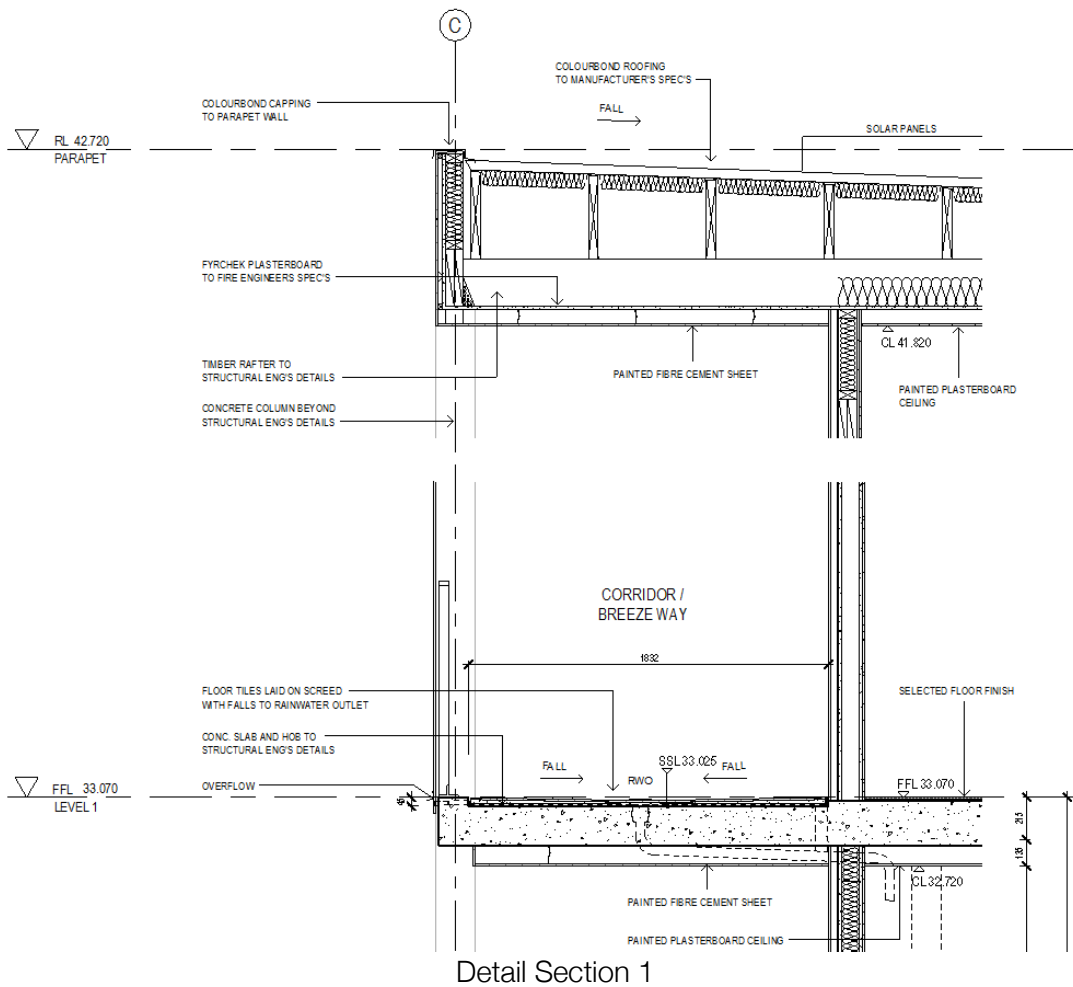
Response:

Proposed floor to floor on Lower Ground Floor is 3100 to allow for a small transfer over the communal space. There are no transfer structure required on Upper Ground floor, Level 1 and Level 2 allowing a 3050mm floor to floor height. Detail sections have been provided demonstrating ceiling heights complying with ADG controls are readily achievable with the proposed 3050mm floor to floor height.



The Roof has a 2° pitch with lower parapet along the north face 3.2m above Level 3 Floor level and higher parapet along the South 3.55m above Level 3 floor level. The Roof levels has been adjusted on the documentation for clarity but there has been no change to building height. Detail section shows the roof layers including roof sheet, rafters and insulation.





Detail Section 1

Density

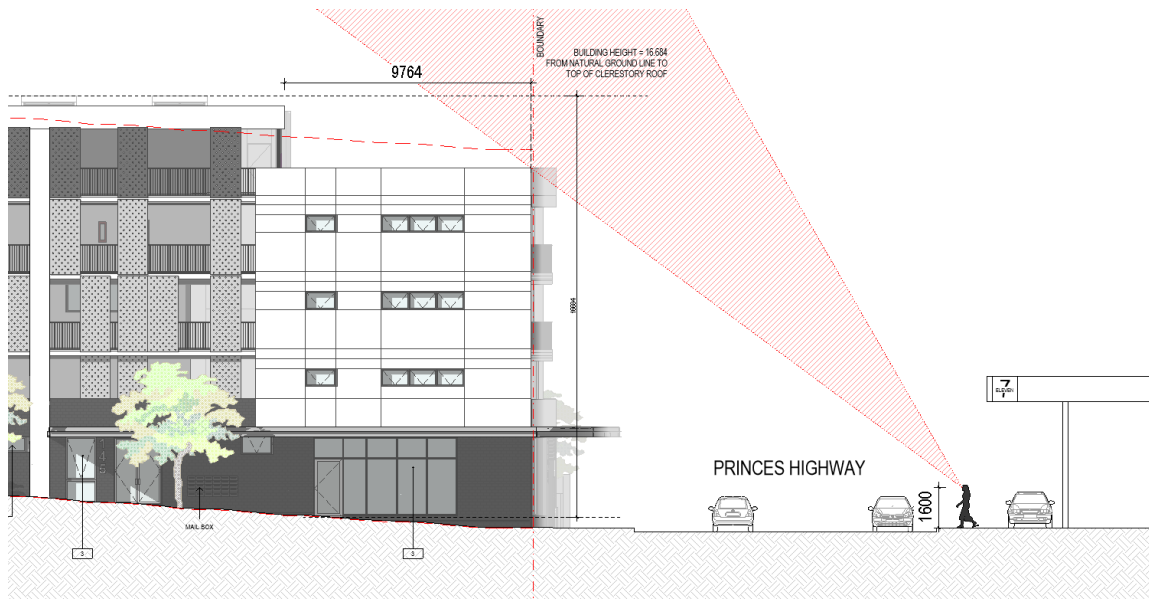
DRP Comments:

Further development of the building form and contextual analysis is required to demonstrate that the proposal is not an over development of this very constrained site.

Response:

The density of the proposed development is reasonable because:

- The allowable FSR for the site is 2:1 including a 0.5 affordable housing bonus. The proposed FSR is 1.6:1 which is considerably below the FSR controls.
- The height limit of the site is 15m. The building is only marginally above the height control with maximum height of 16.684m for po-up ventilation louvres.
- Due to the steep topography of the site with a 3m fall from West to East there is a balance in building height with part of building below the height plane.
- 2 units have been removed from the Eastern frontage at the low point of the site. The diagram below shows that at eye height the setback to the upper level of the proposed built form assists in concealing from view the part of building which breaches the height limit reducing perception of bulk and mass from Princes Highway.



View from the sidewalk on Princes Highway

- The site is located at a topographical low point along Prince Highway. The height limit within the B2 Zone is 15m. The height limit within the R2 Zone is 9m. The elevation below shows the proposed building within the future streetscape massing enabled by Wollongong DCP and LEP Envelope controls. The proposed building will be of suitable bulk and scale, continuing the building height line within the B2 zone. As the topography rises along the R2 zone, Building RL's will step up along Prince Highway meeting with and exceeding the proposed building RLs. The proposed building will therefore sit comfortably within the future envision character of the area.



Existing view from Princes Highway North towards the site

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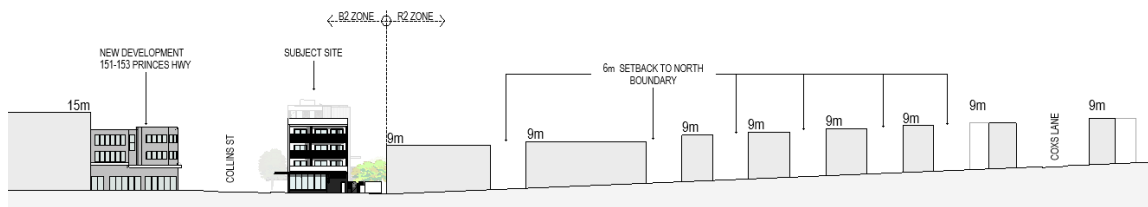
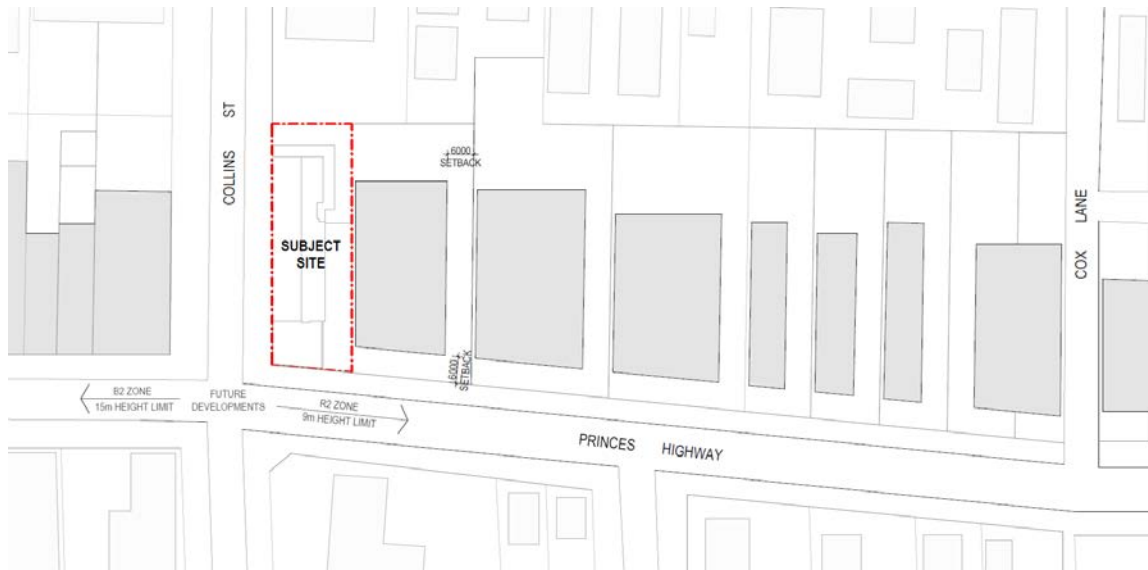
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Future streetscape along Princes Highway

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Sustainability

DRP Comments:

No change to these issues.

Landscape

DRP Comments:

- Overall the precedents used to create the character of the landscape are inspiring and highlight the potential of the outdoor spaces within this development. However, the plans presented do not reflect the imagery and do not create the same quality of space or reflect the quality of detailing shown within these precedents.

- The continued collocation of the GF outdoor COS and indoor communal space is seen as an important design move within the scheme and should be prioritised and retained in all future iterations. A visual connection upon entry off Collins Street to the external space would help to elevate the arrival experience for residents. A focal point at the end of this view should be considered.

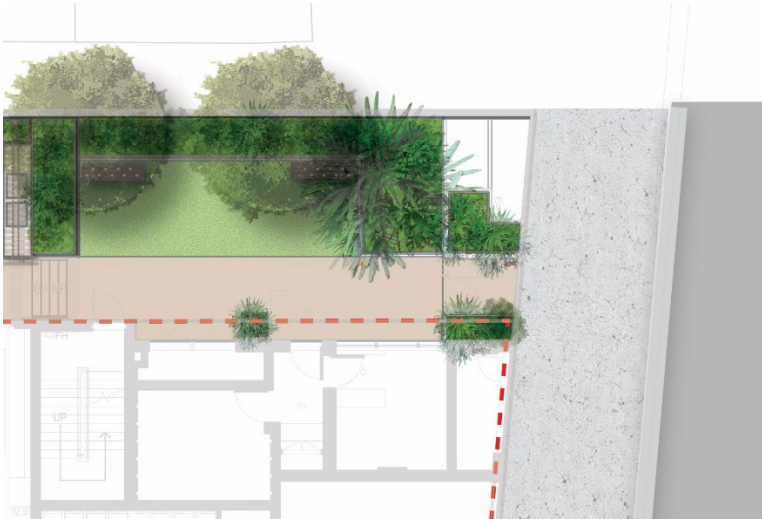
- The panel questions whether the need for a second entry off the Princes Hwy frontage is required beyond the egress from the fire stair. The usability of this space suffers due to the dominance of the circulation. If the internal circulation can be addressed as per comments above, and it becomes possible to do so by exiting the fire stair elsewhere, the 2nd entry may be removed and the COS in this area could become a larger, more usable and more valuable space accessed from the centre only.



- The landscape in the NE on the ground floor should be treated in such a way that it helps with the transition between the B2 and R2 zones, particularly with regards to setbacks abruptly changing from 0 to 6m. This may include pulling the fence line and services back from the boundary and letting the landscape form part of the streetscape.

Response

- Requirements of the fire booster being located within 8m of the roadway and having unimpeded access for the fire brigade has been a factor in determining the location of the front setback.
- The secondary entry off Princess Highway allows level access to the bike storage facilities for residents who are using cycling as a mode of transport. This eliminates any conflict with bicycles being taken through either the internal or external communal spaces.
- Having a dense green planting buffer along the northern boundary with a mix of shrubs and features tree along with the transplanted *Livistona australis* (Cabbage Tree Palm) within the adjacent 6m setback will assist with the transition between the B2 and R2 zones.



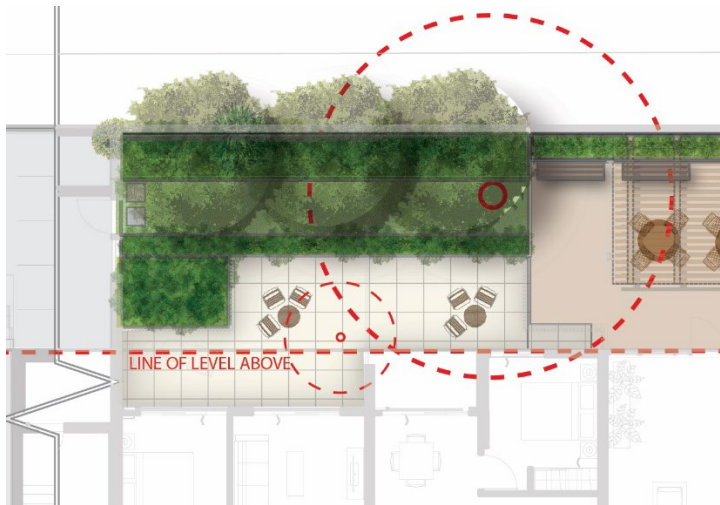
- The current fencing/landscape arrangement on the western side of the GF COS provides very poor privacy to the GF 1- bedroom units. Only a fence separates the COS for POS and the alignment is poor. It is suggested a better buffer is provided between these areas.

- The COS area directly to the north of these GF units forms very poor space given it essentially serves only as an access path to the pump room. It forms a poor linear space with potential CPTED concerns and again offers no privacy buffer to the residents in the GF apartments.

Response

- Additional screen planting has been provided between the GF residential apartments along the privacy fence. This creates an additional buffer between the residents and the service access to the pump room. The turf area has been

maintained to reduce the hardstand and allow the service access to blend into the surrounding landscape, but ease of access is maintained.



- The fixed seating shown on both the GF and roof should be reconsidered to be movable to allow more flexibility for residents to use the spaces as they choose.
- The creation of a roof terrace on L3 is commended. Given its potential for views over the neighbourhood, presumably to the ocean and the escarpment, it is questioned whether this is the best location for a productive community garden and would not be better served as a space that takes advantage of these views by providing seating, great planting and spaces residents could use to socialise. Currently it is a space dominated by circulation with a very inward focus which feels counterintuitive to the location and potential value of this space.
- The benefits of a community garden to such a development are clear, however perhaps it is better rationalised as a smaller proportion of the roof terrace or could be collocated with the BBQ area on the GF.
- The use of a parapet surrounding the roof terrace offset with an internal fence is questioned. The edge could form a planter with some areas being visually open (glass or balustrade) to take advantage of views.

Response:

- Fixed seating has been used for the level 3 communal space due safety standards and having climbable objects adjacent 1000mm high balustrades. These seating opportunities still allow residents to sit while working within the productive garden or take advantage of the views out.
- The inclusion of a BBQ facility and picnic style seating has now been located on the Level 3 Communal Space which allows residents to take advantage of the productive garden while cooking and increases social interactions and gatherings
- A large communal / flexible artificial turf has also been provided to the Lvl 3 communal space. This can be used for residents to lay and relax, play with children that come and visit or for classes and programs that will be run such as yoga or pilates.



Amenity

DRP Comments:

- The reliance of the breezeway to meet ADG cross ventilation, appears to rely upon doors / windows opening on to a communal circulation area, this will create potential privacy issues. Further development / detail information is required to address this issue.

Response:

One unit only relies on the breezeway corridor for cross ventilation. This unit is positioned on the second level away from the sidewalk beyond. Openings are positioned with a sill height of 1.5m with frosted glazing providing visual privacy from the corridor.



DRP Comments:

- Some amendments have been made which responded to the matters raised above, such as the inclusion of a pedestrian entry point, inclusive of entry awning, along Collins Street. Should this remain, the applicant is encouraged to relocate the communication cupboard between the new entry and the ground floor communal open space so as to improve the sense of entry. In particular, it would create a view from the new entry through the communal open space, towards the landscaping along the northern boundary.

Response:

Refer 'Context and Neighbourhood Character'

DRP Comments:

- Despite amendments, the panel remains concerned with ground floor circulation space, as discussed under 'Built Form & Scale'.

Response:

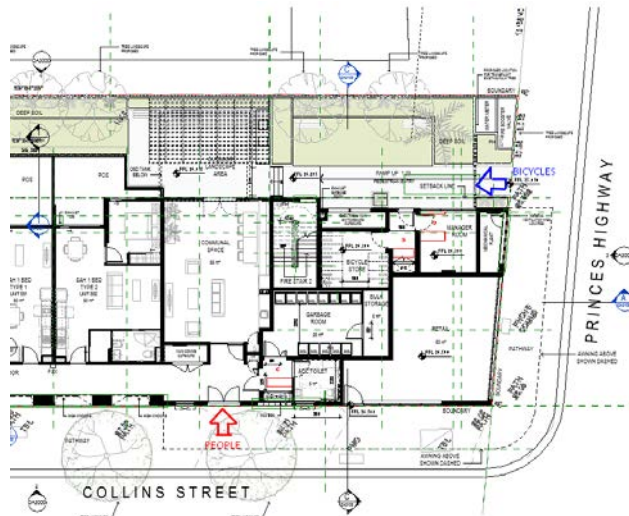
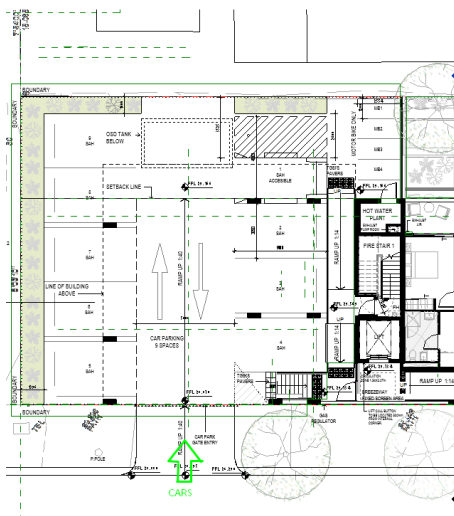
Refer 'Built Form & Scale'

DRP Comments:

- Further, if the new Collins Street entry is expected to be the main pedestrian entry for the development, it is disconnected from the bicycle storage room. It would necessitate bicycle users having to walk through the ground floor communal open space with their bikes. Alternatively, the Princes Highway entry may become the main entry by default, which would then undermine the character of the new Collins Street entry.

Response:

Bicycle users will use the Princes Highway gate to access the Bicycle storage area. This will help separate pedestrians from Bicycle users creating clear access points for people, bicycles and cars, helping to reduce congestion and improve safety.



Access points

Safety

DRP Comments:

The dead-end corridor / disconnect between the building entry and vertical circulation core creates CPTED issues, that must be addressed by further design development.

Internal access has been provided, it is recommended that the garbage room is relocated to allow bins to be wheeled out through the carpark, rather than the main entry lobby.

Response:

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Refer 'Context and Neighbourhood Character'

Housing Diversity and Social Interaction

DRP Comments:

No change to these issues.

Aesthetics

DRP Comments:

No change to these issues.

Sincerely,
GroupGSA



Maryam Boroumand
Associate | Sydney Architecture

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CORRIMAL URBAN DESIGN REPORT

Anglicare
01/11/2018

Corrimal Urban Design Report

Anglicare

01/11/2018

Issue	Title	Date	Prepared	Checked
1	CORRIMAL URBAN DESIGN REPORT	01.11.2018	CL, JD, EA	EA, DJ
2				
3				
4				
5				
6				
7				
8				

CONTENTS

1.1	THE LOCATION AND ITS PEOPLE	6
1.2	LOCAL CONTEXT	7
1.3	THE SITE	8
1.4	THE STREETScape	9
1.5	PLANNING CONTROLS SUMMARY	10
1.6	LEP CONTROLS	11
1.7	SITE ANALYSIS	12
1.8	SURROUNDING HEIGHTS	13
1.9	VIEWS	14
1.10	RESPONSE TO CORRIMAL TOWN CENTRE PLAN	15





1.0 SITE & CONTEXT ANALYSIS

1.1 THE LOCATION AND ITS PEOPLE

Group GSA has been appointed by Anglicare to provide architectural services for the development of a site at 145-149 Princes Highway, Corrimal into social affordable housing with a retail component. The purpose of this report is to present the urban design analysis undertaken for the site.

Corrimal is a small town of approximately 6,700 residents located approximately:

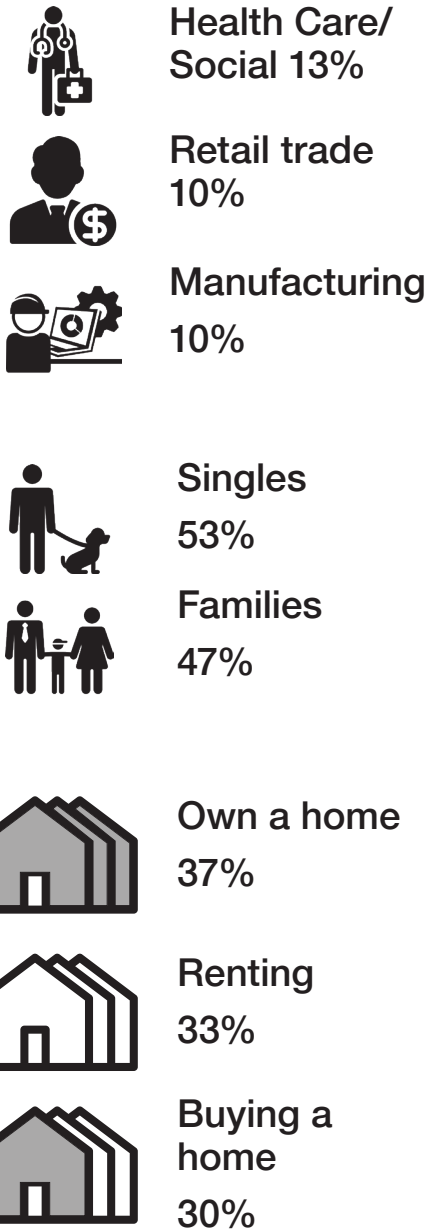
- 7 km (12 minutes drive) north of Wollongong
- 75km (1 hour and 20 minutes drive) south of Sydney.

The town is serviced by a small town centre, which has been the focus for a revitalisation strategy and the recently released Corrimal Town Centre Plan.

Corrimal Town Centre:

- is located on both sides of the Princess Highway;
- sits on the western side the rail link; and
- is located approximately 2km west of the ocean.

The site is located within the Corrimal Town Centre boundary.



Site Location Plan



1.2 LOCAL CONTEXT

The site is located at the northern edge of the Corrimal Town Centre Plan boundary and within 3 minutes walk from the main street and its retail strip. Its location marks the entry into the town centre from the north.

Although the site is approximately 1km away from the station, there is a bus stop on its doorstep, making it well connected to bus services. The site is also strategically located in proximity to medical, social, recreational, educational and community facilities.



1.3 THE SITE

The site is currently vacant with an area of 1,007sqm. It falls within the jurisdiction of Wollongong City Council.

The site is bounded by Collins Street to the south and Princes Highway to its east. It abuts a theatre and healthcare facility, as well as being surrounded by a number of different activities including a church, shops and Centrelink.

There is currently a Development Application to redevelop a lot on the other side of Collins Street, opposite the site. The DA proposes a three storey mixed use residential building.

Heritage Item	None (LEP)
Bushfire Hazard	None (LEP)
Permitted GFA	1,510.5 sqm (2,014 sqm with FSR bonus)

1,007
sqm

SITE AREA

 B2

LAND ZONING

LOCAL CENTRE

1.5:1

FSR (LEP)

 15m

HEIGHT (LEP)



1.4 THE STREETScape



The site as existing



Intersection of Collins Street and Princes Highway



Retail strip along Princes Highway



Existing health / commercial buildings and carparks to the immediate west of the site



Site frontage to Princes Highway (site on the left)



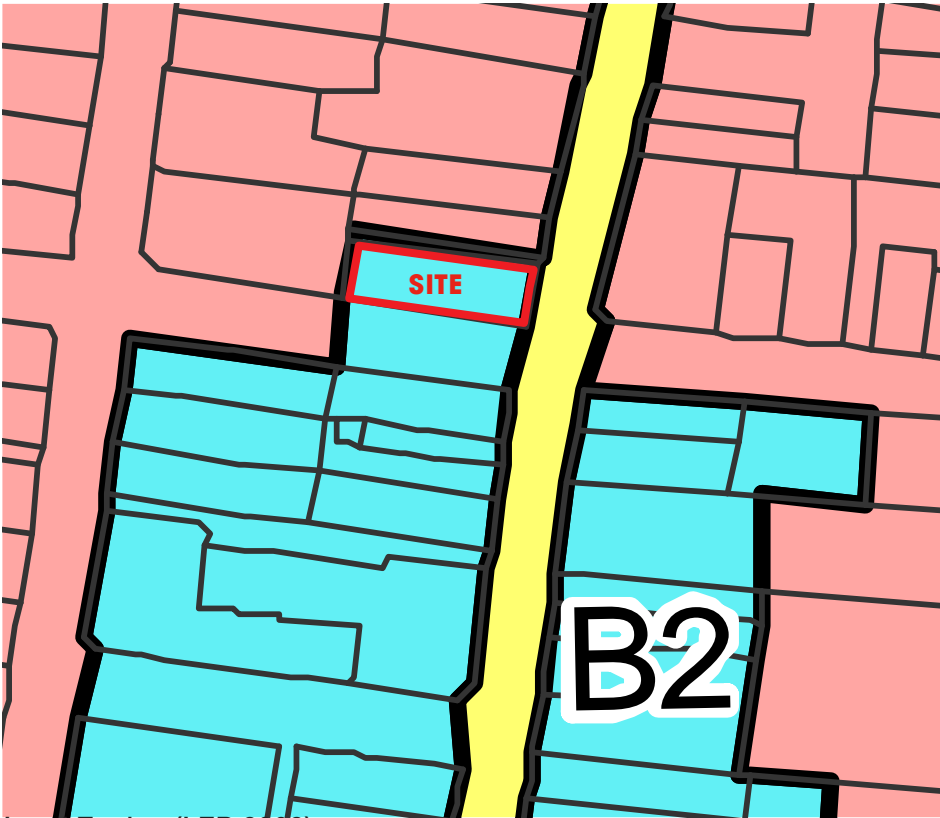
Key Plan

1.5 PLANNING CONTROLS SUMMARY

FSR	1.5: 1 (LEP)
FSR Bonus (Affordable Rental Housing (ARH) SEPP)	0.5:1 Additional
PERMITTED GFA	1,510.5 sqm <i>2,014 sqm with FSR bonus</i>
LAND USE ZONING	B2 Local Centre
MAX. BUILDING HEIGHT	15m
FLOOD PLANNING LEVEL	1% AEP + 500mm freeboard (DCP)
HERITAGE ITEM	No
BUSHFIRE HAZARD	N/A
SETBACKS	FRONT: 0m SIDE: 6m(up to 4 storeys) SIDE: 9m(up to 5-8 storeys) REAR: 6m(up to 4 storeys) SIDE: 9m(up to 5-8 storeys)
DEEP SOIL ZONES	7% OF SITE AREA (ADG) 3m MINIMUM DIMENSION
COMMUNAL OPEN SPACE	25% OF SITE AREA (ADG) 3m MINIMUM DIMENSION



1.6 LEP CONTROLS



Land Zoning (LEP 2009)

- Legend
- B2 Local Centre
 - R2 Low Density Residential



Height of Buildings (LEP 2009)

- Legend
- J 9
 - O1 15



Floor Space Ratio (LEP 2009)

- Legend
- D 0.5
 - S 1.5

1.7 SITE ANALYSIS

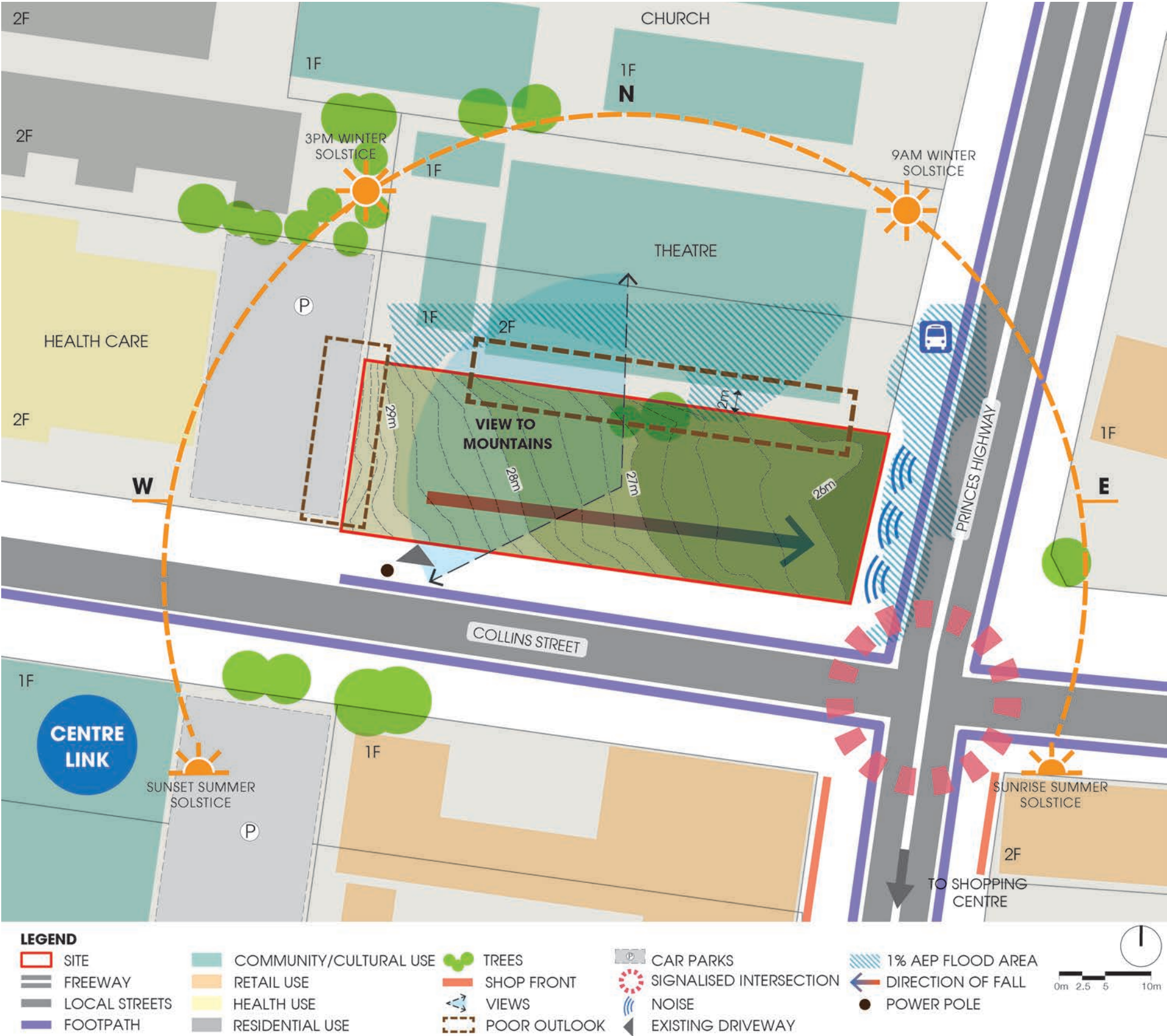
The site is relatively narrow, rectangular, and oriented east-west. It defines the corner of Collins Street and Princes Highway.

The site falls approximately 3m from its western boundary to the eastern boundary fronting the Princes Highway. To the north, the site abuts a theatre, and to the west, a health care facility.

Minimal areas along the edge of the site are partially affected by 1% AEP floods, based on information supplied by Council.

The northern and western interfaces of the site have a poor outlook. The site faces a blank facade to the north and a car park to the west.

A key opportunity for the site is to benefit from westward views to the escarpment from the western part of the site.



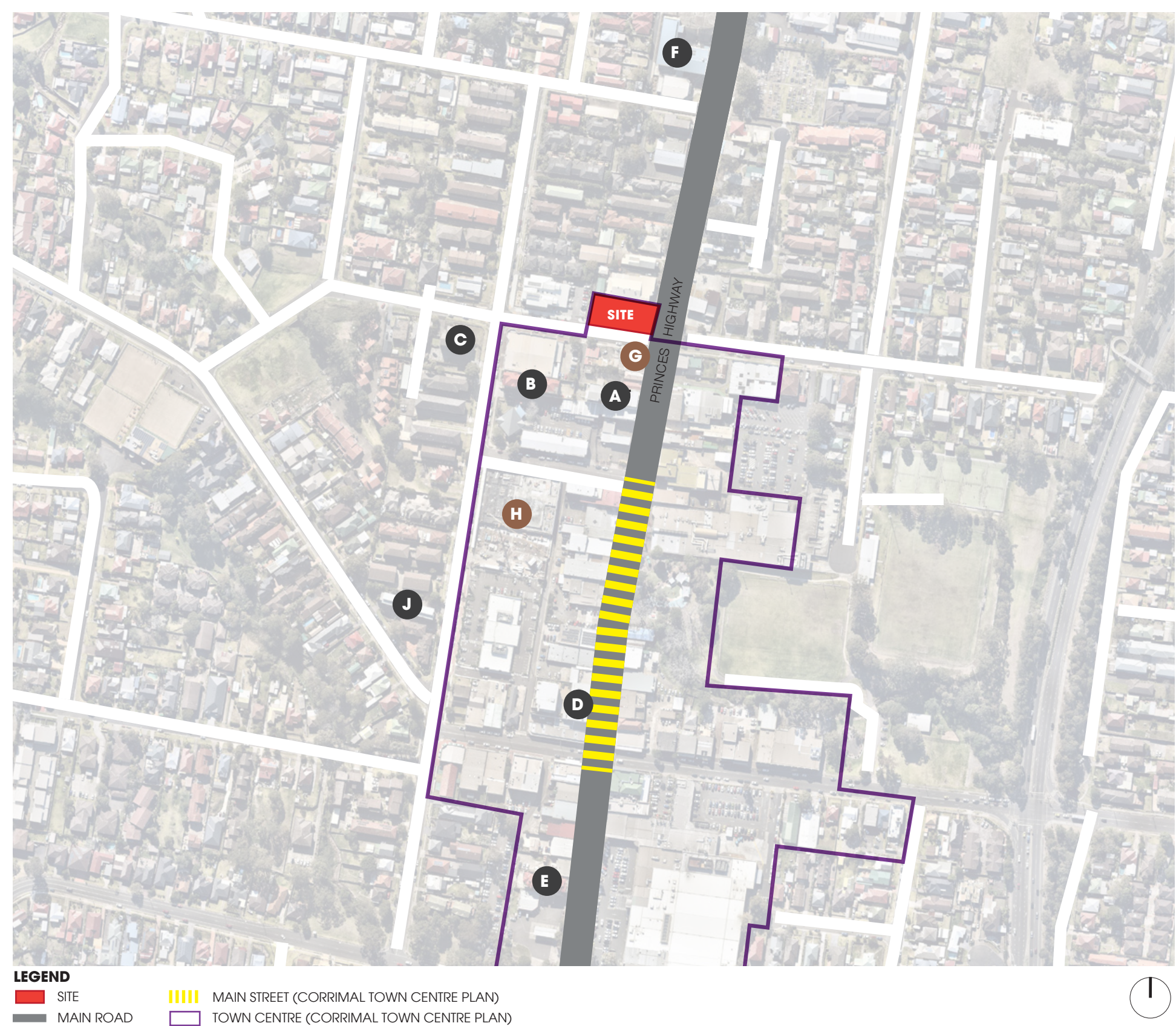
1.8 SURROUNDING HEIGHTS

Recent redevelopment within a 500m radius of the Corrimal Town Centre and around the subject site exhibit instances where the prescribed building height controls are surpassed. Although the architectural style and quality is quite diverse, these redevelopments help to revitalise the Corrimal Town Centre and draw more people into the town. Considering the subject site is also within 3 minutes walking distance to the Town Centre main street, there is a social and economic benefit in promoting housing choice to achieve a diverse community.

The map on this page shows the site in relation to current redevelopment in the vicinity. The table below compares the maximum height controls under the Wollongong LEP and the actual heights (approximated based on storey heights / Nearmap information) of existing and proposed redevelopment. Buildings that exceed the height controls have been highlighted. It can be seen that the proposed exceedance of height controls on the site is proportionally less than other examples of height exceedance.

	BUILDING HEIGHT (STOREY)	LEP HEIGHT LIMIT	APPROXIMATE BUILDING HEIGHT (m)
A	4.5	15m	14.5m
B	4	15m	13.5m
C	4	9m	13.5m (50%)
D	4	15m	15m
E	4	15m	14.5m
F (SCHOOL)	4	9m	15m (66%)
G (PROPOSED)	3	15m	12.5m
H (PROPOSED)	4	15m	13.5m
J	3.5	9m	12m (33%)
SITE	5	15m	17.405m(16%)

*The percentage represents the extent a building exceeds the height limit



1.9 VIEWS

The escarpment forms a striking visual backdrop to the site and is an important local feature that is visible from many streets, opens spaces and residences around the site. The site has sweeping views to the western escarpment including Brokers Nose.

The site also has the potential for ocean views to the east from the upper storeys of the development.



1.10 RESPONSE TO THE CORRIMAL TOWN CENTRE PLAN

1.10.1 Corrimal Town Centre Plan

The *Corrimal Town Centre Plan 2015-2025* is a strategic framework intended to guide the development of the Corrimal Town Centre. The role of the Plan is to impart direction relating to planning control amendments, infrastructure design and delivery, stakeholder partnerships and community projects.

The Plan builds on the strategies of the *Corrimal Revitalisation Strategy* (2009) and its consultation themes. It is accompanied by an Implementation Plan that focusses on delivering the actions set out in the Corrimal Town Centre Plan.

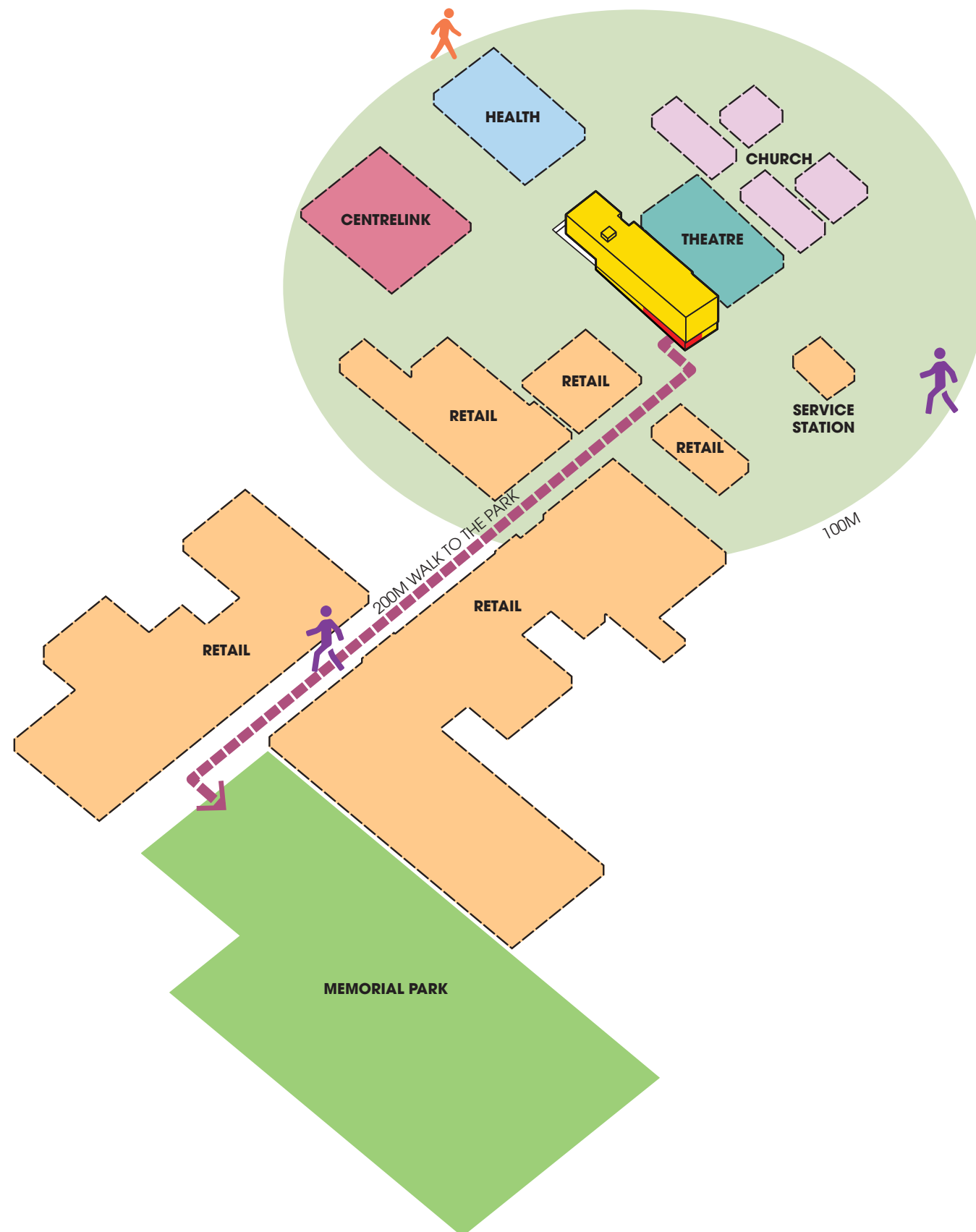
The proposed design takes into consideration Corrimal's strengths and opportunities by addressing 4 key themes identified in the Corrimal Town Centre Plan that are relevant to the site, including:

- The importance of Memorial Park as a central green community space
- The visual connection from Memorial Park to Brokers Nose
- Walkability and transport opportunities
- The quality of buildings at street level.

1.10.2 Memorial Park is emerging as the community heart of Corrimal

The Corrimal Town Centre Plan recognises Memorial Park as a significant feature of the Corrimal community that provides important recreational and sporting amenity.

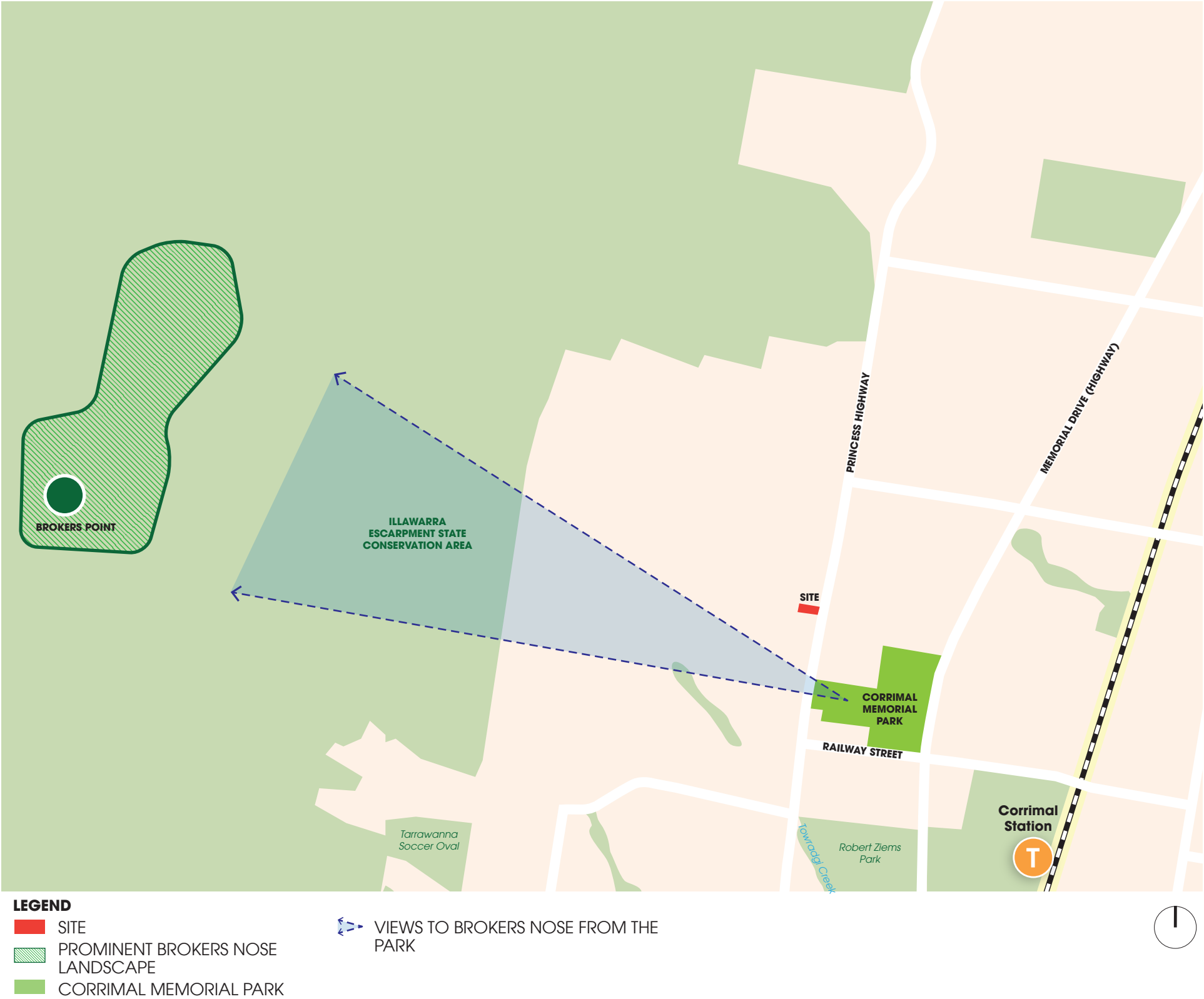
The site is conveniently located, being less than 5 minute walking distance from Memorial Park. Proximity to the park provides future residents of the development with good recreational amenity, as well as giving them an opportunity to engage with the community in this emerging heart for Corrimal. Being easily walkable, the proximity of the park encourages future residents to access the park on foot, adding to pedestrian foot traffic along the main street.



1.10.3 A beautiful natural setting creates a sense of place

The escarpment is a key visual feature of the Corrimal area and provides a stunning backdrop to the town centre. It plays an important role in defining the local character and contributing to its sense of place.

The Corrimal Town Centre Plan regards the visual connection to Brokers Nose from Memorial Park as a key view of significant value. The site is situated north-west of Memorial Park, staying clear of the view corridor towards Brokers Point as illustrated in the adjacent diagram. This means that the proposed development will not impede views from the park to Brokers Point.

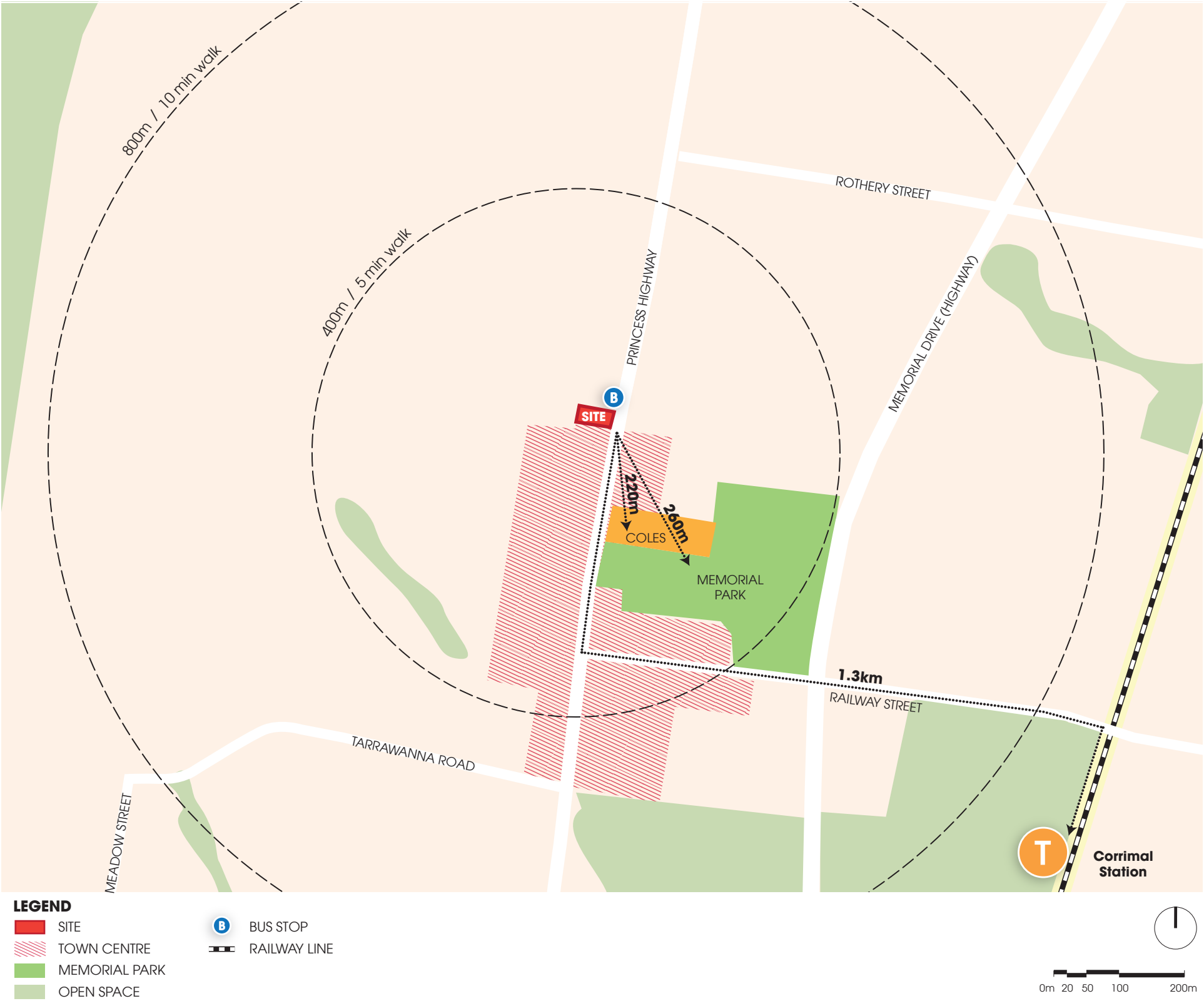


View to Brokers Nose

1.10.4 A walkable centre structure

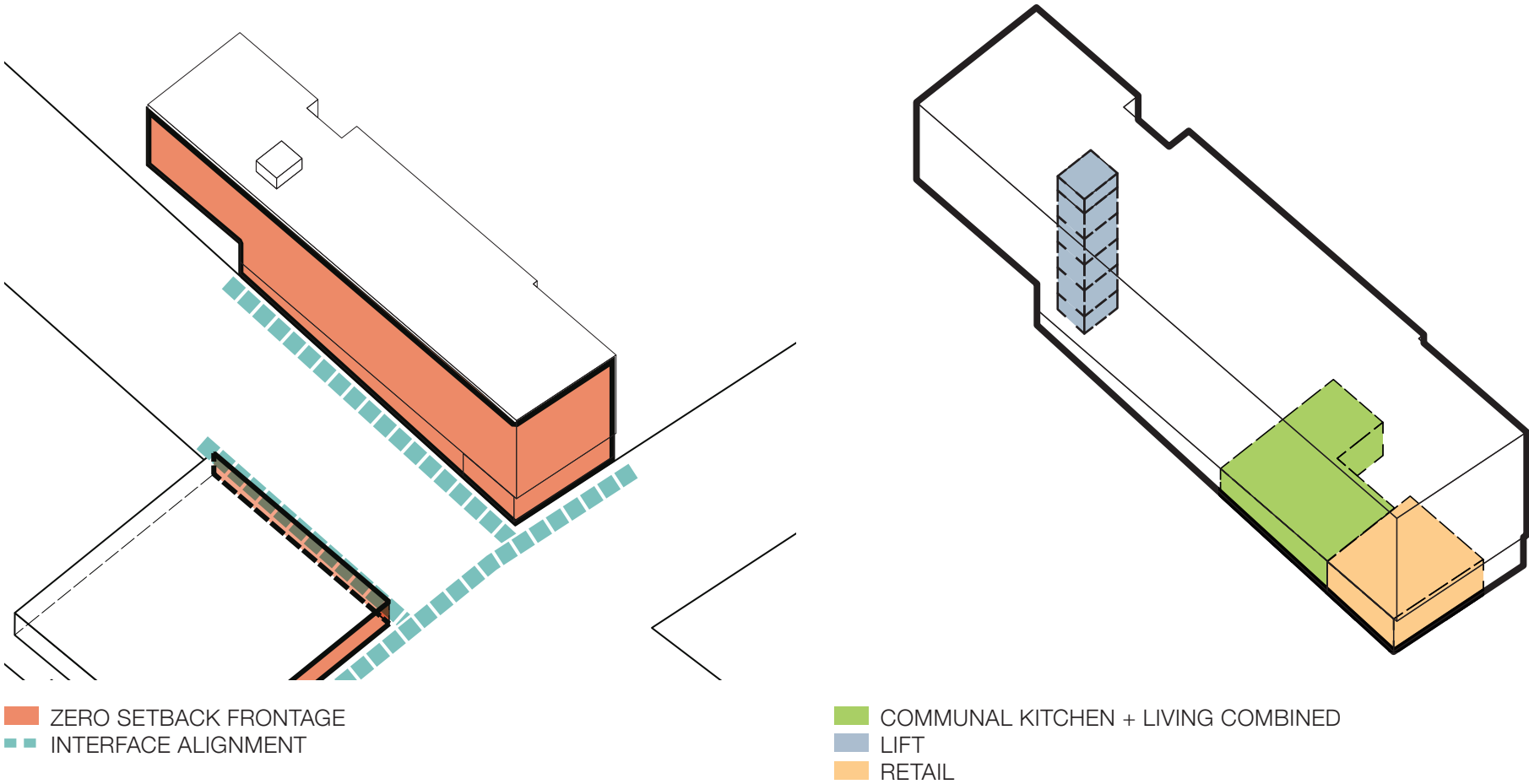
The Town Centre encompasses a pedestrian catchment compromised by unfavourable street connections and conditions. The Corrimal Town Centre Plan lists a number of factors contributing to the above situation including busy roads, missing and dilapidated footpaths, steep slopes and unattractive street appearances.

The proposed development aims to make a positive contribution to the existing condition. It locates a street-level retail space that marks the northern end of the Town Centre, adding to the legibility of the Town Centre. It also activates the streetscape at a corner location. These two outcomes assist in improving the walkability of the Town Centre, in concert with any other initiatives to improve walkability that may be planned or being implemented.



1.10.5 The centre’s small shopfronts add character to the streetscape

The proposed development is in alignment with the intent of the Corrimal Town Centre Plan’s vision to create active building frontages. The Plan emphasises the importance of high quality ground-level shopfronts that play a vital part in the street environment. This has been reflected in the proposed development by creating active ground level uses that actively engages with the public streetscape in order to promote a vibrant retail corridor.

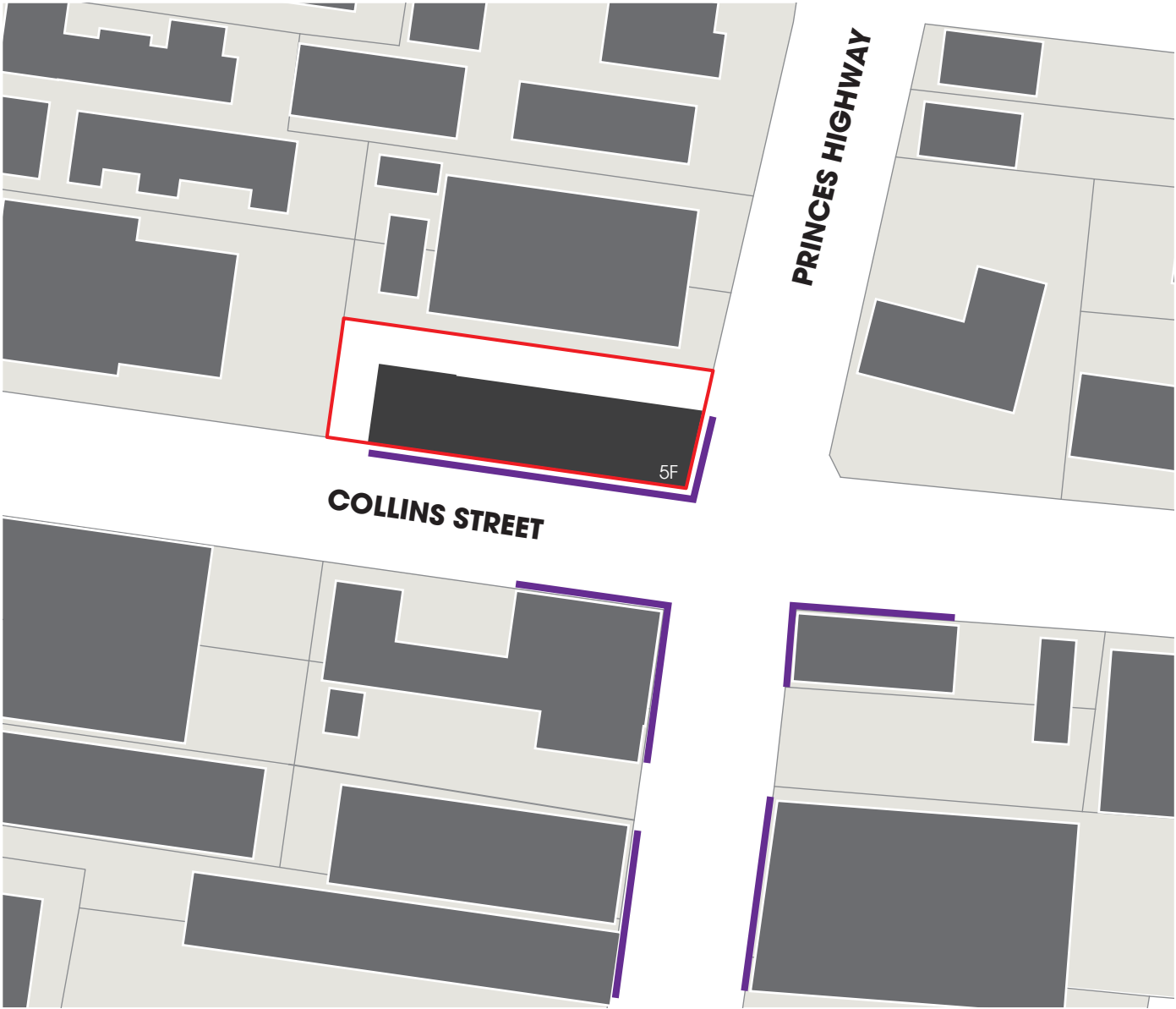


The design response maximises the active frontage and direct relationship to the street level to create a pleasant streetscape.

The retail use is located at the street level closest to the main street location along the narrower frontage to create a small shopfront with a fine grain scale.

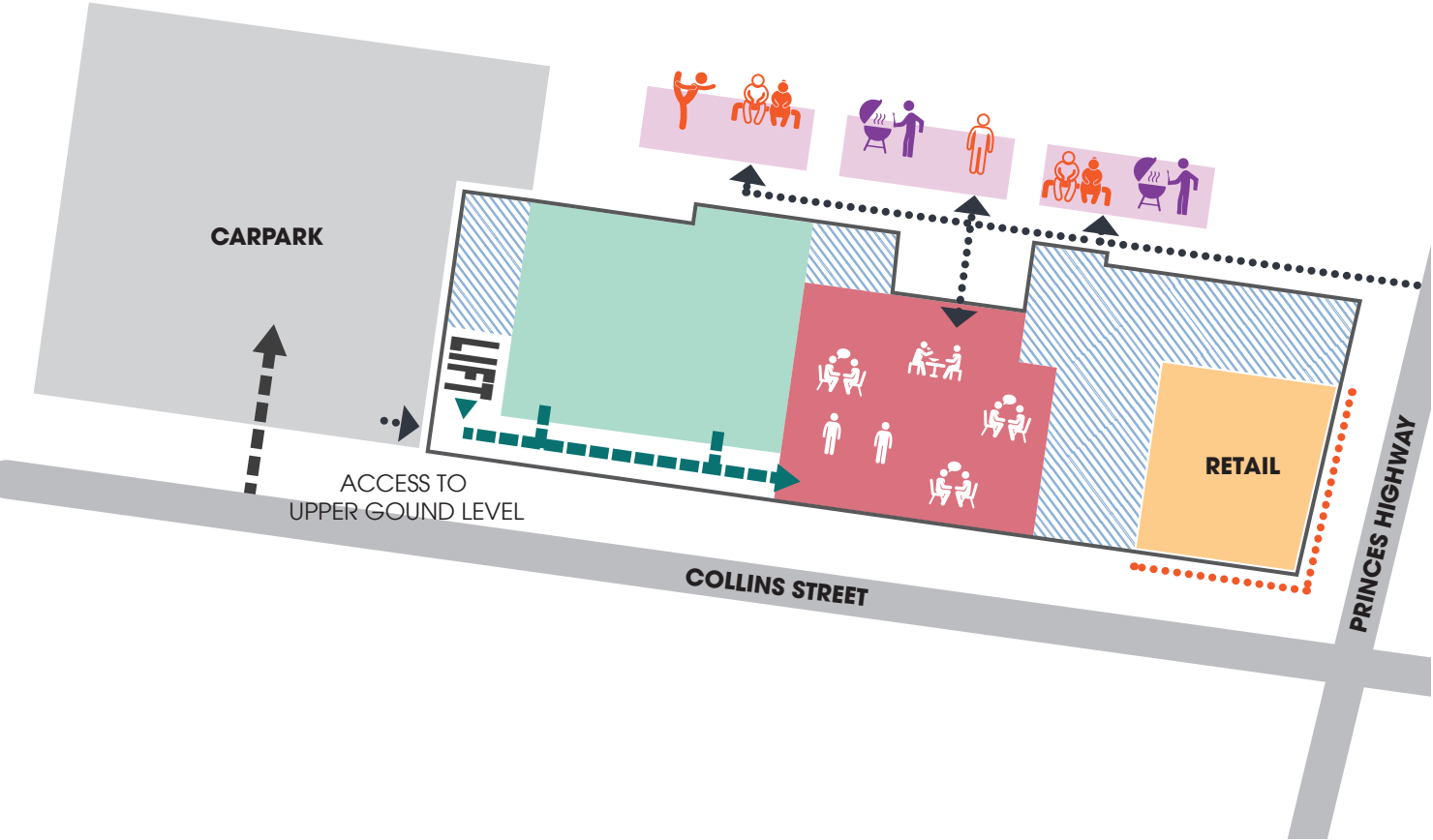


Built form and interface complementing the surrounding urban grain and character



- LEGEND**
- SITE
 - PROPOSED BUILDING
 - SURROUNDING BUILDINGS
 - ZERO SETBACK INTERFACES

A vibrant mix of ground-level uses enhancing the vitality of the public realm



- LEGEND**
- EXTERNAL CIRCULATION
 - INTERNAL CIRCULATION
 - CARPARK ENTRY
 - ACTIVATED FRONTAGE
 - STAIRCASES / SERVICES
 - COMMUNAL SPACES
 - RESIDENTIAL UNITS
 - RECREATION AREAS
 - RETAIL



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