

**KEYLAN consulting pty ltd**

Level 2, 37-39 The Corso MANLY NSW 2095  
ABN: 51 45 22 11 892 | ACN: 613 590 775

**Clause 4.6**  
**Exception to Development Standard**  
**657-661 Victoria Road**  
**Melrose Park**



submitted to the *City of Parramatta Council*  
on behalf of:  
PAYCE BS 2 P/L & SH Melrose Development 2 P/L

**December 2016**

## Contact

This report has been prepared by:

Matthew Rosel BUPD

for

### **KEYLAN consulting pty ltd**

Level 2, 37-39 The Corso MANLY NSW 2095  
ABN: 51 45 22 11 892 | ACN: 613 590 775

**Dan Keary**

**Director**

P: 0429 565 291

E: [dan@keylan.com.au](mailto:dan@keylan.com.au)

**Michael Woodland**

**Director**

P: 0448 726 214

E: [michael@keylan.com.au](mailto:michael@keylan.com.au)

Cover image: the site (Source: AJC)

All Rights Reserved. No material may be reproduced without prior permission of KEYLAN Consulting Pty Ltd. While KEYLAN Consulting Pty Ltd working on this project has tried to ensure the accuracy of the information in this publication, it accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damages arising from reliance in the information in this publication.

## Table of Contents

1. Introduction .....	4
2. Planning Overview .....	4
3. Proposed Development.....	7
4. Legislative Context.....	8
4.1. Clause 4.6 Exceptions to Development Standards.....	8
4.1.1. Clause 4.6(3) .....	8
4.1.2. Clause 4.6(4) .....	8
4.1.3. Clause 4.6(5) .....	9
4.2. Relevant Judgements - NSW Land and Environment Court.....	9
4.2.1. Winten Property Group Limited v North Sydney Council (2001) .....	9
4.2.2. Wehbe v Pittwater Council (2007) .....	10
4.2.3. Four2Five Pty Ltd v Ashfield Council (2015) .....	10
5. Assessment of the Variation to Building Height Development Control .....	11
5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary .....	11
5.2. Clause 4.6(3)(b) – Grounds to Justify Contravening Development Standard .....	14
5.3. Wehbe Tests .....	19
5.4. Clause 4.6(4) – Consistency with Objectives .....	20
5.5. Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning .....	22
5.6. Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard .....	23
5.7. How Would Compliance Hinder Attainment of Objectives Specified in Act .....	23
5.8. Is the Objection Well Founded .....	24
6. Conclusion .....	25

## List of Figures

Figure 1: PLEP 2011 Zoning Map Excerpt (Source: PLEP 2011) .....	6
Figure 2: PLEP 2011 Building Height Map Excerpt (Source: PLEP 2011) .....	6
Figure 3: Proposed Scheme With LEP 2011 Height Plane (Shown In Red) (Source: AJC).....	7
Figure 4: Proposal's Relationship To Neighbouring Sites (Source: AJC).....	13
Figure 5: Reduction Of Building Height And Improved Built Form Transition (Source: AJC) ..	13
Figure 6: Shadows Cast By The Development At 3pm During Mid-Winter (Source: AJC).....	14
Figure 7: Improved Site Permeability (Source: AJC) .....	15
Figure 8: Strictly Height Compliant And The Modulated Height Proposal (Source: AJC) .....	16
Figure 9: Stage 1 Render Looking South From Victoria Road (Source: AJC).....	16
Figure 10: Building Envelopes Stepped In Response To Fall Of The Land (Source: AJC) ...	17
Figure 11: View From Corner Of Victoria And Wharf Roads (Source: AJC) .....	18
Figure 12: View From Kissing Point Road (Source: AJC).....	18

## List of Tables

Table 1: DP&E Guide recommended planning information and numeric overview
Table 2: Consistency with B4 Mixed Use zone objectives
Table 3: Consistency with Clause 4.3 Building Heights objectives

## 1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Parramatta Local Environmental Plan 2011* (PLEP 2011).

This Request relates to Clause 4.3 Height of Buildings of the PLEP 2011.

This Request has considered the detailed guidance within the NSW Department of Planning and Environment (DP&E) guideline *Varying Development Standards: A Guide, August 2011* (DP&E Guide), and addresses the findings and established principles (as relevant) of the following judgements of the Land and Environment Court:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827; and
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and [2015] NSWCA 248.

The following sections of this Request critically analyse the proposed increase in building height, its impact and reasonableness. This analysis demonstrates that an exception to the Height of Buildings development standard is warranted in this instance and will provide for a significantly better urban outcome than a compliant development.

## 2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* was introduced to create a common format for local environmental plans across NSW and all councils have now adopted local environmental plans based on the Standard Instrument (SI).

The SI includes various development standards as a means to achieving environmental planning objectives and these standards can be numerical or performance based.

Clause 4.6 of the SI allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard. Importantly, on land where a SI applies and Clause 4.6 is relevant, the powers *State Environmental Planning Policy No.1 – Development Standards* do not apply.

The DP&E Guide confirms that the NSW planning system allows for flexibility in planning controls, in certain circumstances, through the provisions of Clause 4.6 of the SI.

The DP&E Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. The following table (**Table 1**) provides a summary of the relevant planning context and provides a key numerical overview of the proposed variation.



Information Requirement	Comment
Relevant Applicable Planning Instrument	PLEP 2011.
Zoning of the Land	Zone B4 Mixed Use (refer to <b>Figure 1</b> ).
Objectives of the Zone	<p>The objectives of zone B4 Mixed Use are:</p> <ul style="list-style-type: none"> <li>• to provide a mixture of compatible land uses;</li> <li>• to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling;</li> <li>• to encourage development that contributes to an active, vibrant and sustainable neighbourhood;</li> <li>• to create opportunities to improve the public domain and pedestrian links;</li> <li>• to support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality; and</li> <li>• to protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</li> </ul>
Development Standard to be Varied	Building heights.
Nature of the Development Standard	A numerical height control (RL).
Relevant Development Standard Clause	Clause 4.3 'Heights of Buildings' of the PLEP 2011.
Objectives of the Development standard	<p>The objectives of Clause 4.3 Heights of Buildings are:</p> <ul style="list-style-type: none"> <li>• to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan;</li> <li>• to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development;</li> <li>• to require the height of future buildings to have regard to heritage sites and their settings;</li> <li>• to ensure the preservation of historic views;</li> <li>• to reinforce and respect the existing character and scale of low density residential areas; and</li> <li>• to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</li> </ul>
Development Standard Numeric Control for the Site	Maximum building height of 28 metres (refer to <b>Figure 2</b> ).
Proposed Numeric Control	Maximum building height of <b>35 metres</b> , exceedances are limited to six locations.
Percentage Variation Between the Proposal and the Planning Instrument	An increase of seven metres represents a 25% increase over the PLEP 2011 building height control of 28 metres.

**Table 1:** DP&E Guide recommended planning information and numeric overview

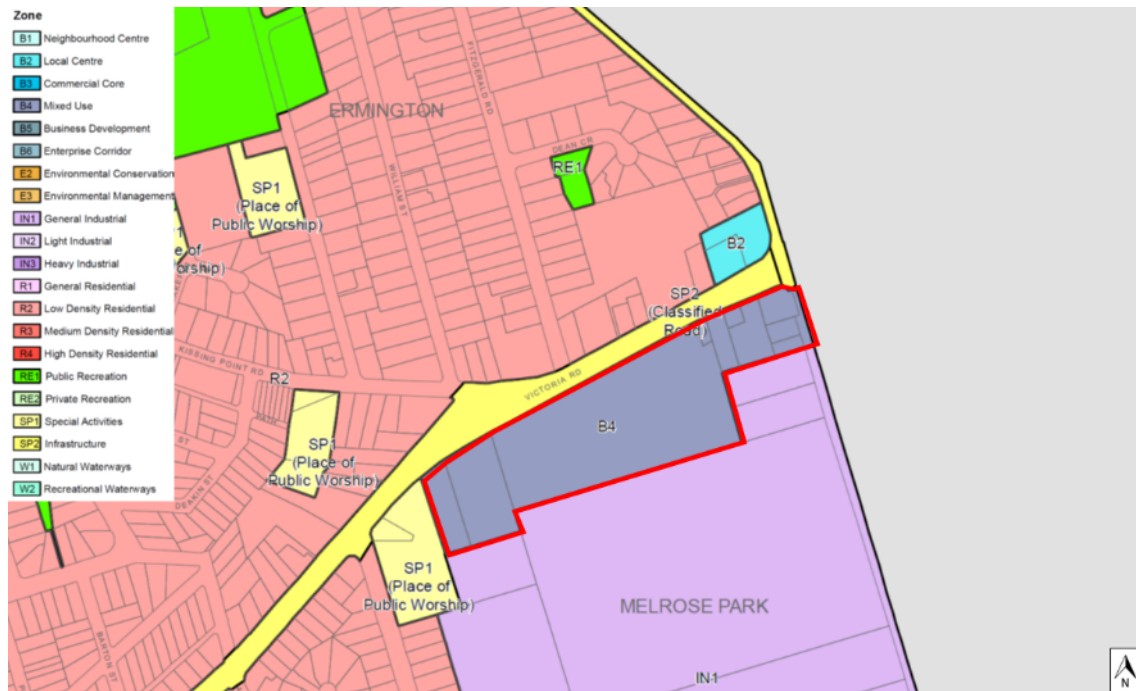


Figure 1: PLEP 2011 zoning map excerpt (Source: PLEP 2011)

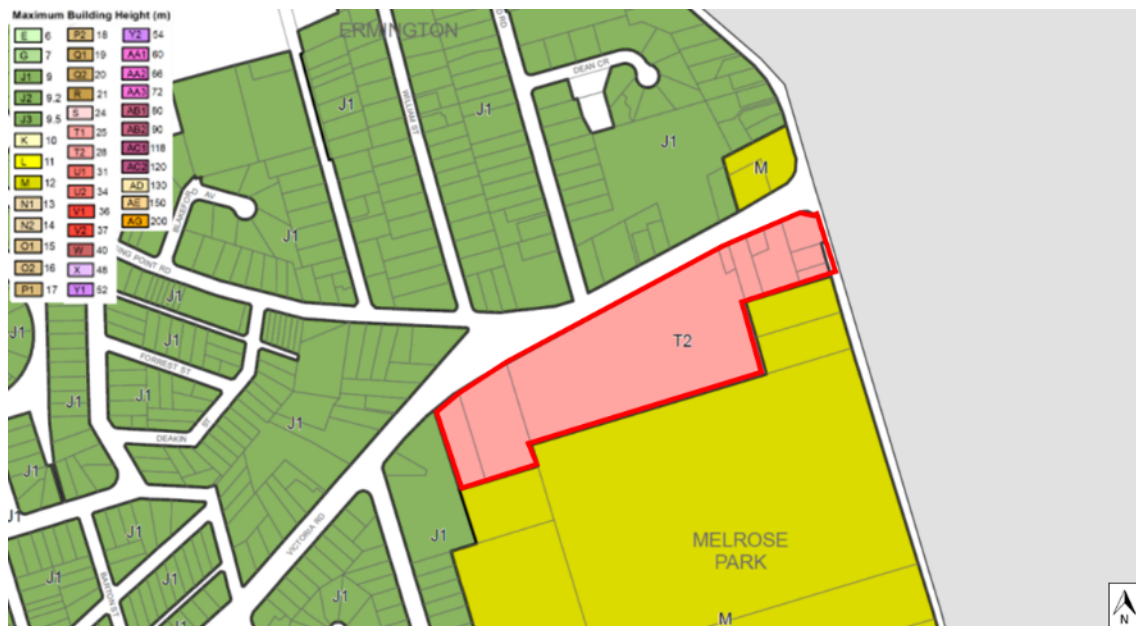


Figure 2: PLEP 2011 building height map excerpt (Source: PLEP 2011)

### 3. Proposed Development

The proposed maximum heights of building envelopes across the site is varied and ranges from 4 to 10 storeys:

The proposed building envelopes provide for the following maximum heights across the VRS:

- Superlot AA – 6 to 10 storeys (maximum RL 68.70);
- Superlot AB – 4 to 10 storeys (maximum RL 72.80);
- Superlot AC – 6 to 10 storeys (maximum RL 67.00) (Stage1); and
- Superlot AD – 7 to 8 storeys (maximum RL 58.10).

The proposed 10 storey components of the proposed building envelopes exceed the PLEP 2011 height development standard (28m) by up to **seven** metres in six locations as indicated as shown at **Figure 3**.

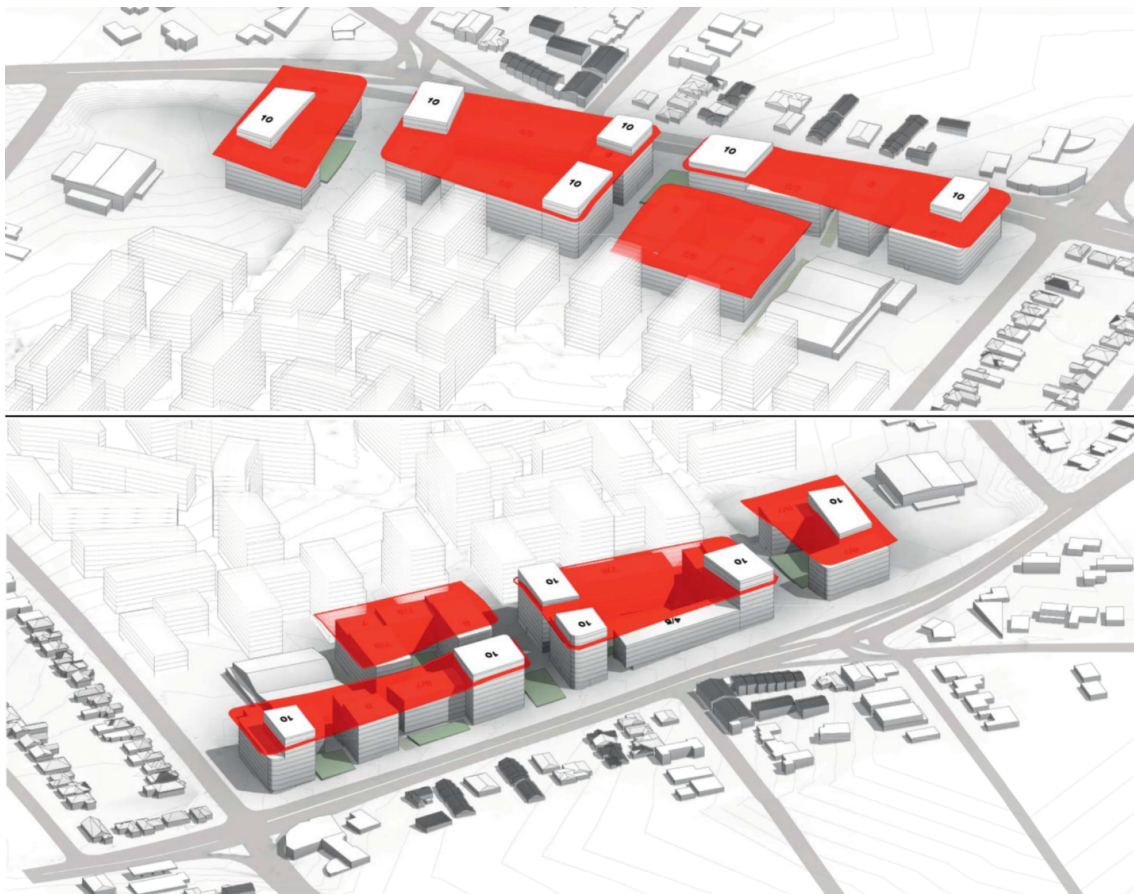


Figure 3: Proposed scheme with LEP 2011 height plane (shown in red) (Source: AJC)

## 4. Legislative Context

### 4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the PLEP 2011 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (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.*

Subclauses (3), (4) and (5) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

#### 4.1.1. Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

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

#### 4.1.2. Clause 4.6(4)

Clause 4.6(4) requires that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
  - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*



#### 4.1.3. Clause 4.6(5)

Clause 4.6(5) requires that in deciding whether to grant concurrence, the Secretary must consider:

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

## 4.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827; and*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248.*

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

### 4.2.1. Winten Property Group Limited v North Sydney Council (2001)

The *Winten Property Group Ltd v North Sydney Council (2001)* case posed the following questions to be addressed when considering objections to development standards:

- Is the planning control in question a development standard?
- If so, what is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)
- Is the objection well founded?

#### 4.2.2. *Wehbe v Pittwater Council* (2007)

This case expands on the findings of *Winten Property Group Limited v North Sydney Council* (2001) case and establishes a five-part test ‘Wehbe tests’ to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the 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;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
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; or
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.

It is noted that the DP&E Guide was formulated on the basis of the findings of the *Winten Property Group Limited v North Sydney Council* (2001) case and the Wehbe Tests.

#### 4.2.3. *Four2Five Pty Ltd v Ashfield Council* (2015)

The outcome of these cases (initially heard and then upheld at appeal) concluded that in addition to considering the Wehbe Tests, Requests must also demonstrate that:

- the grounds for departing from the development standard must be particular to the circumstances of the proposed development on the subject site; and
- compliance with the development standard is unreasonable or unnecessary, in addition to demonstrating that the proposal was consistent with the objectives of the development standard and/or land use zone.

## 5. Assessment of the Variation to Building Height Development Control

The PLEP 2011 contains a RL 28 metre (approximately 8 storeys) maximum building height development control for the entire site. This maximum building height is noticeably higher than the existing nearby low-density residential areas of RL 9 metres (approximately 2-storeys).

The maximum building height constitutes the built form baseline from which any variation request is measured and assessed.

The proposal seeks to increase the maximum building height development control by 7 metres (from RL 28 to RL 35 metres) to accommodate localised increases in building height across the site, as shown in **Figure 3**, and facilitate significant improvements to the development as discussed in the following sections.

The following assessment comprehensively considers the provisions of CI 4.6 which has also been informed by an analysis of the relevant case law.

### 5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

This land south of the site is recognised by Council as being in transition and is currently the subject to the *Draft Northern Melrose Park Structure Plan* (recently placed on public exhibition) to facilitate its urban renewal. A Planning Proposal has also been lodged with Council in February 2016 for the Melrose Park Precinct. The Planning Proposal seeks to facilitate up to 5,200 dwellings, a minimum of 15,000m<sup>2</sup> commercial and employment uses, 8,100m<sup>2</sup> retail uses and 2,500m<sup>2</sup> for community uses.

The VRS site plays a critical role as the first stage of the North Precinct and entrance into the Melrose Park Precinct.

The VRS site provides the entrance to the broader Melrose Park Precinct with key frontage to Victoria Road, delivery of a landmark development, ability to create a suitable transition in ground levels to respond to the topography of the site and the variety of proposed employment and residential uses and open space network within the Precinct.

Overall, the Melrose Park Precinct has the potential to deliver accelerated significant urban renewal outcomes by providing new housing, foster housing choice, employment opportunities and other public benefits close to Parramatta and other strategic centres.

The development will embrace world's best practice urban design and leading sustainability measures, will revitalise Melrose Park and the surrounding locality by developing a contemporary urban environment and includes new or improved green links, parks and streets.

Given the strategic importance of the VRS and its intrinsic link to the success of the broader Melrose Park Precinct, the applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

#### *Urban Design Outcomes*

- The VRS' proposed layout and built form has been carefully designed to integrate seamlessly with the broader Melrose Park Precinct envisaged by the Council's Northern Structure Plan and Planning Proposal. The VRS is critical in providing an entrance and marker to the broader Melrose Park Precinct and transition between the existing surrounding area;
- a strictly height compliant development would provide for uniform building heights across the site and would result in a substantially inferior urban design outcome, as discussed in **Section 5.6**; and
- the development achieves the objectives of the zone and the development standard as discussed in **Section 5**.

#### *Impact on Neighbouring Properties*

- The location, setback and height of the proposed buildings has been designed to sympathetically respond to existing neighbouring development sites and ensures that the development potential of those sites is not jeopardised and is equitable in the context of the overall regeneration of Melrose Park (**Figure 4**);
- the proposal has been extensively revised following comments from Council staff and the Design Excellence Advisory Panel (DEAP) in relation to the interface and transition in height to Wharf Road. The revised scheme now provides for an improved built form transition to neighbouring properties on Wharf Road and the Brethren place of worship (**Figure 5**).
- the site is located to the southern side of Victoria Road and the proposed increase in height would have no material impact on the neighbouring low-density residential properties to the north, east or west;
- there would be no additional overshadowing impacts to residential properties east and west of the site compared with a height compliant scheme between the critical hours of 9am and 3pm at mid-winter (**Figure 6**);
- the increase in height would not cause any additional overshadowing impacts when compared to a height compliant development;
- building separation distances meet or exceed the minimum apartment design guideline (ADG) building separation distances for visual privacy; and
- the increase in height would not obstruct the outlook or views from neighbouring residential properties, more than what would occur from a height compliant development.



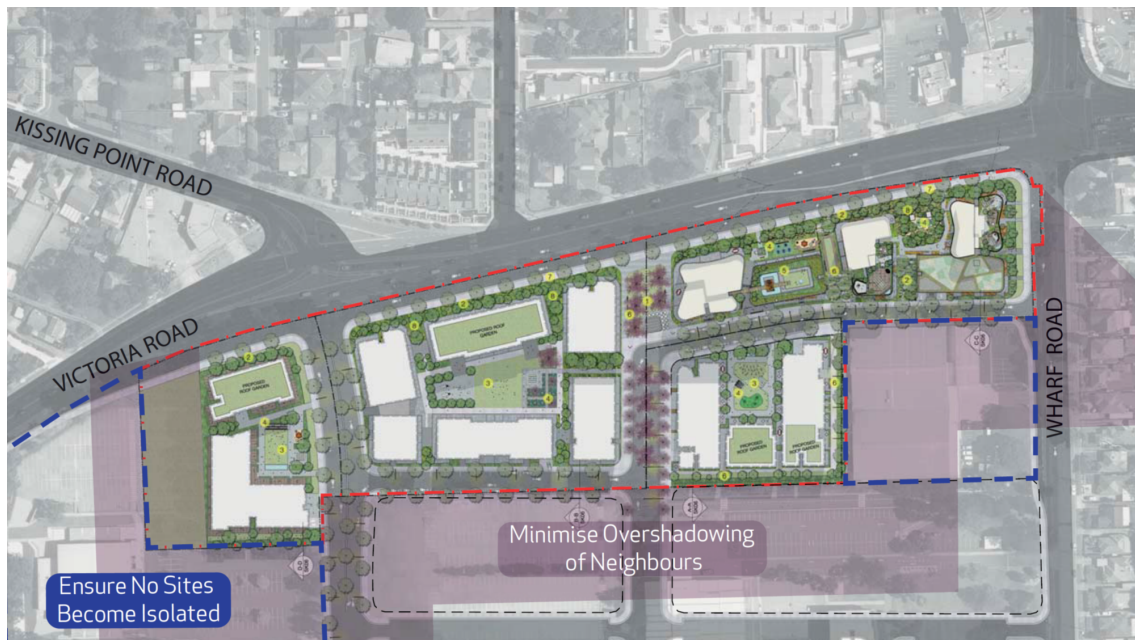


Figure 4: Proposal's relationship to neighbouring sites (Source: AJC)

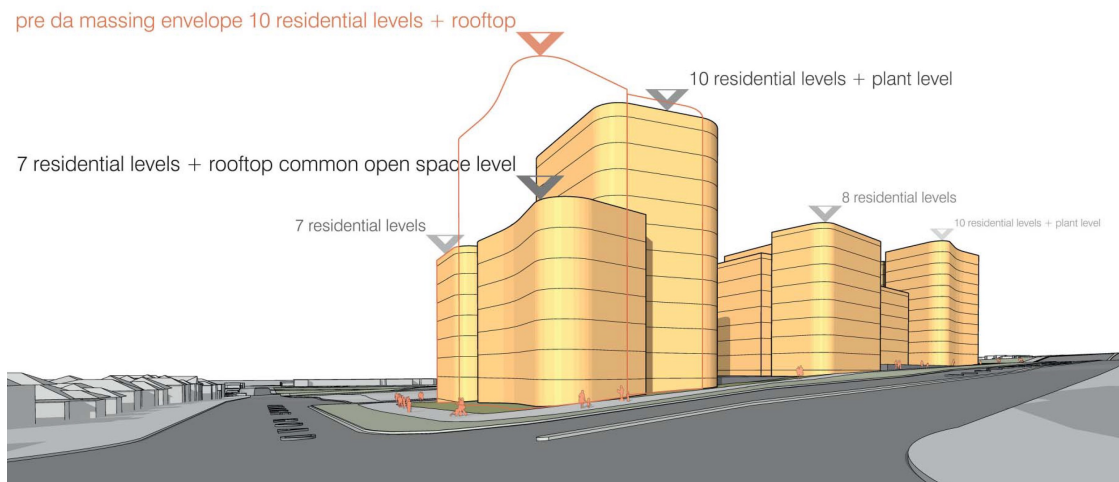


Figure 5: Reduction of building height and improved built form transition at Wharf Road (Source: AJC)

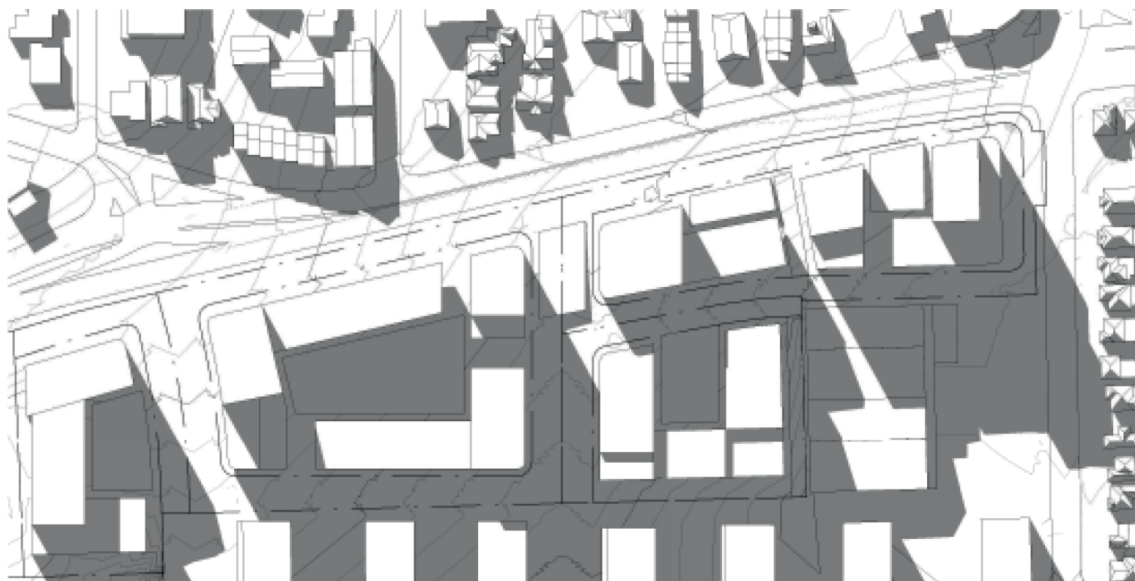


Figure 6: Shadows cast by the development at 3pm during mid-winter (Source: AJC)

#### Section 94 Contributions

- The increase in height and subsequent quantum of development will result in an increase in Section 94 development contributions, which will directly benefit the local community.

### 5.2. Clause 4.6(3)(b) – Grounds to Justify Contravening the Development Standard

The development of the VRS, including the localised increases in height, will provide for a landmark development of the highest standard of visual appearance and public benefit. In this context there are sound planning grounds and significant benefits to justify contravening the building heights development standard.

In particular, the proposed built form and localised increases in height will present a significantly superior urban design outcome for the site as outlined below.

#### Consistency with the Strategic Context and Structure Plan

- The site is strategically positioned on the edge of the *Global Economic Corridor*, which is identified in *A Plan for Growing Sydney* for future growth, and is located close to Parramatta CBD, Sydney Olympic Park and Rhodes. As such, the site represents a precious land resource and its development potential should be maximised for the greatest effect and benefit to the LGA and Sydney;
- the proposal will deliver an appropriate mix of dwellings, improved housing choice and employment opportunities within a new vibrant mixed use neighbourhood;

- the provision of publicly accessible pedestrian through-site links and new roads will significantly increase the permeability of the site and be instrumental in connecting Victoria Road to Parramatta River (**Figure 7**); and
- the proposed buildings that exceed the Height of Buildings development standard are strategically located to provide excellent urban design outcomes, critical among these include:
  - provision of gateway entrances to the site and broader Melrose Park Precinct;
  - marking key corners within VRS with buildings of an appropriate stature, foster unique architectural responses and achieve landmark status; and
  - establishing buildings that appropriately frame streets and the public domain.

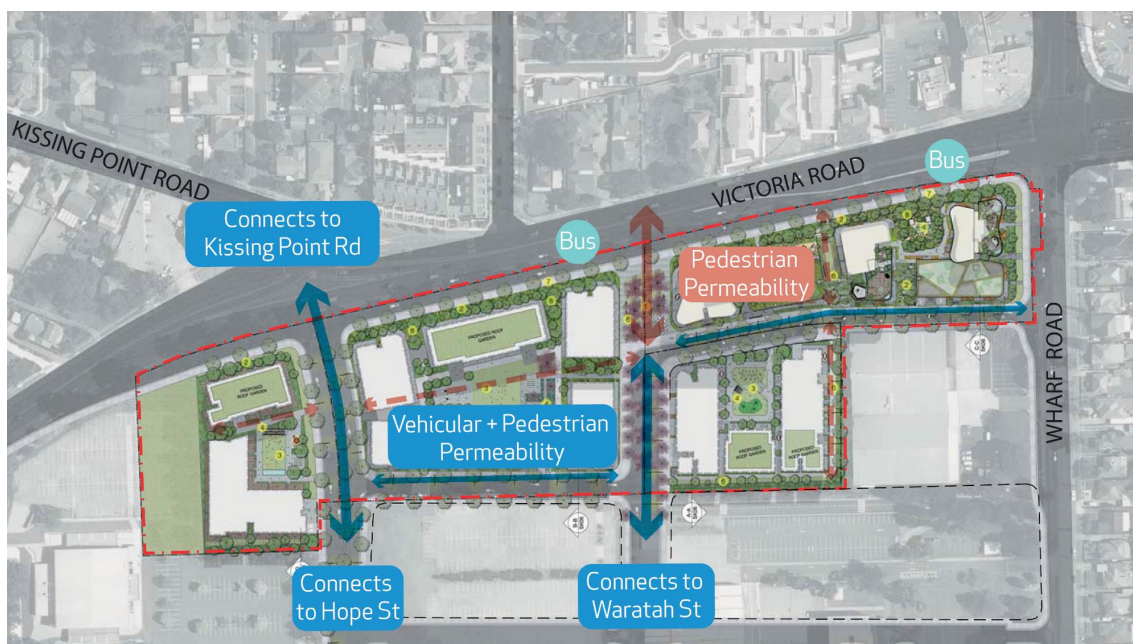


Figure 7: Improved site permeability (Source: AJC)

#### Improved Urban Design outcomes

- The provision of a varied, rather than uniform, roof-line provides for additional visual interest and facilitates the development of architecturally unique responses to each of the development superlots;
- the increase in building heights at six key locations (up to 10 storeys), relative to a height compliant scheme, facilitates the lowering of building heights at seven other locations across the site. This ensures that height variation across the site is emphasised and celebrated (**Figure 8**);
- the design response will provide for buildings with landmark qualities that will create an instantly recognisable development, which is desirable for a site of this size, location and importance (**Figure 9**);
- the localised increases in height will provide a stronger vertical emphasis to individual buildings and will provide for additional physical building articulation in addition to architectural/façade treatments; and



- the proposed buildings will achieve a human scale of development, by varying and graduating building heights across the site, localising the tallest buildings at key focal points.



Figure 8: Strictly height compliant (top) and the modulated height proposal (bottom) (Source: AJC)



Figure 9: Stage 1 Render looking south from Victoria Road (Source: AJC)



### Improved response to the topography of site

- The proposed increase in heights appropriately responds to the topography of the site by stepping the proposed buildings with the fall of the land (**Figure 10**);
- the proposed increase in heights allows for the provision of additional open spaces and wider roadways; and
- provision of modulated building heights across the VRS has allowed for the creation of rooftop communal open spaces that are varied in design and achieve an appropriate balance between shade and solar access.

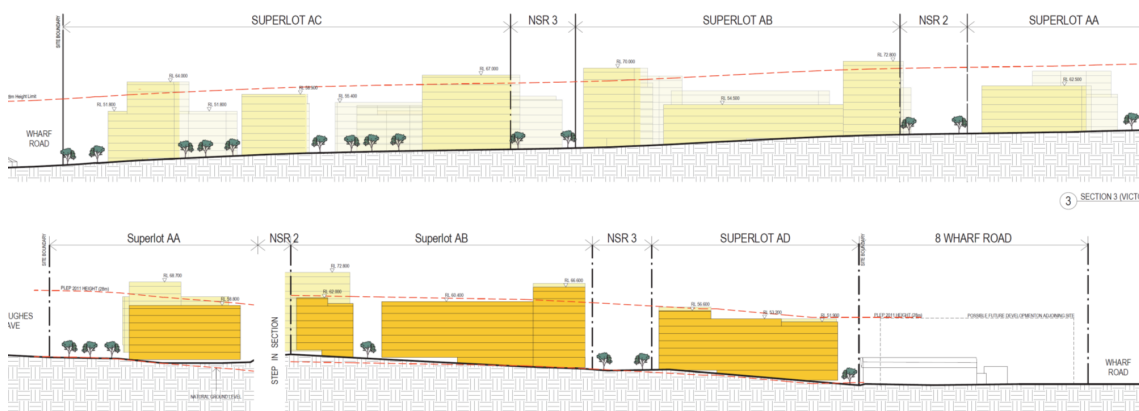


Figure 10: Building envelopes have been stepped in response to the fall of the land (Source: AJC)

### Improved relationship with the local context

- Victoria Road is significant in width, comprising a 6 lane carriageway measuring on average 28 metres wide. A large and busy road such as this is capable of, and would benefit from, being framed by buildings of a taller stature (**Figures 11 & 12**);
- the increases in building height will have a positive visual impact on the Victoria Road streetscape and the broader surrounding area;
- the buildings in excess of the building height development control are separated by roads, open spaces and other lower-rise buildings, which prevents tower-crowding, and there is an appropriate transition of built form / scale within the site and to neighbouring properties;
- the taller building elements will provide for sweeping views for future residents; and
- the design response does not result in any additional gross floor area (GFA) across the site, or additional traffic or amenity impacts when compared to a height compliant scheme.

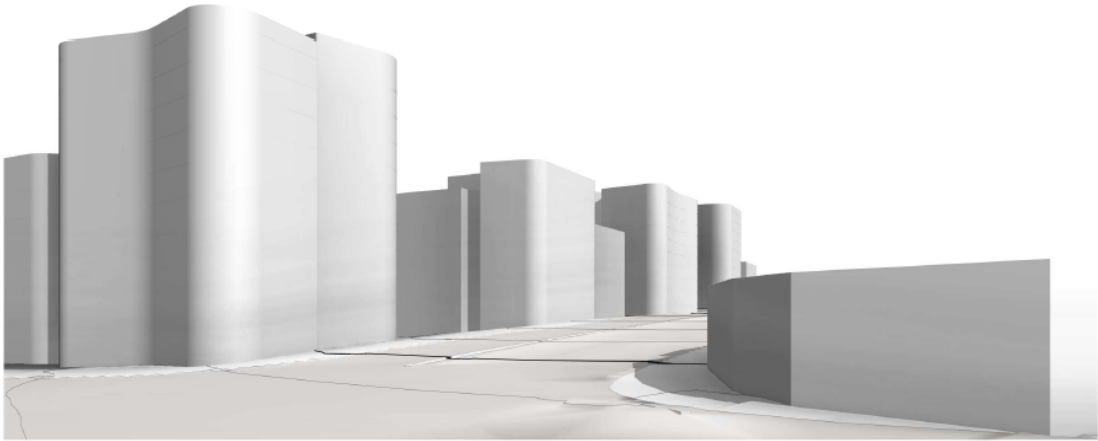


Figure 11: Development's relationship to Victoria Road. View from Corner of Victoria and Wharf Roads (Source: AJC)

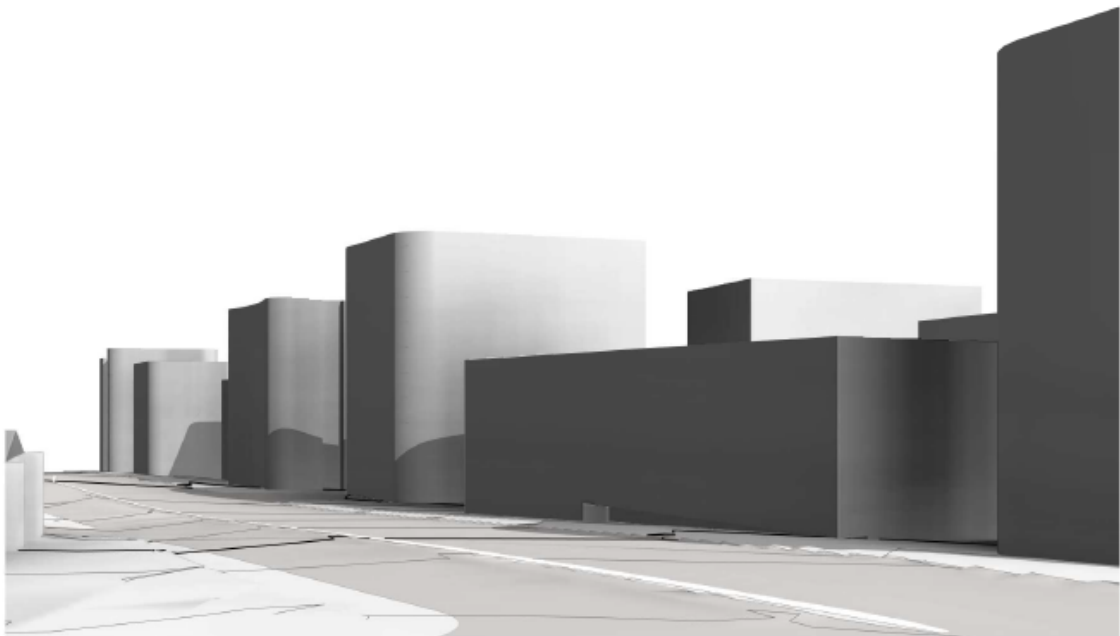


Figure 12: Development's relationship to Victoria Road. View from Kissing Point Road (Source: AJC)

For all the reasons above, the proposed development provides for a significantly superior urban design outcome for the site, when compared to a strictly height compliant scheme. In contrast, a height compliant scheme would be visually monotonous, understated and would fail to achieve a landmark status befitting a site of this size and importance.

### 5.3. Wehbe Tests

*Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard*

The proposed variation to the Height of Building development standard will be achieved notwithstanding the non-compliance with the standard as outlined in detail at **Section 5.1**.

*Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary*

The underlying objective and purpose of the Height of Buildings development standard, (including transition of built form, minimise impacts, safeguard heritage, respect existing character and satisfactory sky exposure) is considered relevant to the development. However, as discussed in **Section 5.1** above, it is considered that the localised increase in heights at strategic corner locations will facilitate the achievement of a landmark development that is respectful of the existing urban character, have a substantially positive urban design impact and acceptable amenity impacts.

Therefore, the localised increase in heights represent a significant improvement over a compliant scheme of uniform height and therefore better achieves the objectives of the Height of Buildings development standard.

*Wehbe Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable*

The provision of a development that strictly complied with the Height of Buildings development standard would result in a significantly inferior urban design outcome for the site as discussed in **Sections 5.1 and 5.2**.

The proposal is considered superior to a strictly height compliant scheme as:

- localised increases in height have allowed localised decreases in height elsewhere on the site, ensuring appropriate built form transition and integration;
- strategically located buildings have provided for gateway entrances to the site, marking key corners and framing streets;
- the localised increase in vertical density has allowed for maximisation of the size of landscaping areas and facilitates the delivery of publicly accessible through-site links;
- the areas of non-compliance will not lead to adverse impacts on adjoining properties in Wharf Road in terms of overshadowing;

- the areas of non-compliance will not lead to adverse impacts on adjoining properties or will inhibit the future development potential of adjoining properties within the Melrose Park Precinct; and
- provision of a stronger vertical emphasis to individual buildings fosters the delivery of landmark and architecturally unique development.

Therefore, a strictly height compliant scheme would fail to deliver a development of sufficiently high quality, would not provide adequate public benefit and for these reasons compliance is unreasonable.

*Wehbe Test 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*

The VRS is within the Northern Precinct of Melrose Park and is surrounded by low-scale residential development. It is therefore a unique precinct in terms of its allowable height, density and nature.

As there is no development site with a comparable applicable Height of Buildings development standard within the immediate (1 kilometre) vicinity of the Northern Precinct the Height of Buildings development standard is not considered to have been abandoned or destroyed by Council's own actions in granting consents departing from the standard.

*Wehbe Test 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*

The land has been zoned appropriately and the controls applicable to the site are generally acceptable, despite the proposed localised increases in height. As discussed at **Section 5**, the proposed development is consistent with the objectives of the zone.

For the reasons outlined in **Section 5**, the proposed height of buildings and built form design response would better achieve the objectives of the zone than a strictly height compliant scheme.

#### **5.4. Clause 4.6(4) – Consistency with Objectives**

This Request has adequately addressed the matters required to be demonstrated by subclause (3), as outlined in **Section 5**.

The proposed development is consistent with the objectives of the Height of Buildings development standard, as outlined in **Table 3**, and the objectives of the B4 Mixed Use zone as outlined in **Table 2**



In addition, the proposed development is a superior development to a strictly height compliant scheme and therefore better achieves the objectives of the Height of Buildings development standard and the zone. The proposal is therefore in the public interest.

<b>ZONE B4 MIXED USE</b>	
<b>Objectives</b>	<b>Achievement of Objectives</b>
<b>Provide a mixture of compatible land uses.</b>	<p>The proposal provides a mixture of residential, retail and childcare uses, which are compatible land-uses with the surrounding area. The proposed additional building height will provide for additional residential floorspace and therefore achieves this objective</p> <p>The provision of retail and childcare uses, which will contribute towards meeting the needs of the locality. The variation in building height will increase the population and therefore the expenditure of the new neighbourhood which will support the growth of retail tenancies in established centres within the vicinity of the site and Parramatta..</p>
<b>Encourage development that contributes to an active, vibrant and sustainable neighbourhood.</b>	The additional building height provides for a significantly better than consistent development, which will provide for increased landscaping areas, pedestrian-through site links, a human scale of development and fosters an active, vibrant and sustainable neighbourhood.
<b>Create opportunities to improve the public domain and pedestrian links.</b>	The proposal provides for significantly improved public domain, pedestrian site permeability, open space, communal open space, pedestrian links, landscaped streetscapes and provision of landscaped buffer between buildings and the public domain. The proposed variation to the building height development control enables this objective to be better met through the increase of landscaping areas and inclusion of pedestrian through-site links
<b>Support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</b>	N/A
<b>Protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</b>	There are no designated special areas within or nearby the site and this objective is therefore not relevant to this site. Notwithstanding, the proposed increases in height will enhance the qualities and character of the surrounding area through the creation of a landmark development.

**Table 2: Consistency with B4 Mixed Use zone objectives**

<b>CLAUSE 4.3 HEIGHT OF BUILDINGS DEVELOPMENT STANDARD</b>	
<b>Objectives</b>	<b>Achievement of Objectives</b>
<b>Nominate heights that will provide a transition in built form and land use intensity.</b>	The variation of the building height development control will ensure that the development provides a varied and interesting built form, which provides for an appropriate scale of development and facilitates the provision of buildings with landmark qualities. The increases in building height will appropriately punctuate important street corners and announce the entrances to the broader Melrose Park Precinct.
<b>Minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.</b>	The proposed additional height will have a positive visual impact and will not result in loss of privacy or unreasonable loss of solar access to existing properties. The location of the tallest buildings at key corners of the site frame the views and vistas created along the new roads and pedestrian through-site links.
<b>Require the height of future buildings to have regard to heritage sites and their settings.</b>	The proposed variation to the building heights development control does not have any adverse impacts on nearby heritage items or their setting.
<b>Ensure the preservation of historic views</b>	The proposal does not interfere with any existing historic views.
<b>Reinforce and respect the existing character and scale of low density residential areas.</b>	As discussed previously within this report the proposed the scale of the development is appropriate for the site and the variation of the Height of Building development standard is warranted and will have significant positive visual and urban design impacts. The Height of Buildings development standard for the VRS envisages a high density development and therefore does not require that the development replicate the scale of the surrounding low density areas. The heights of building envelopes have been carefully considered to deliver the best urban design for the site and the most appropriate relationship to existing surrounding areas. The proposal would not have an adverse impact on the character and scale of the nearby low density residential area.
<b>Maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</b>	The variation to the building height development control would not have an adverse impact on sky exposure and daylight to the sides and rear of the proposed towers or to key areas of the public domain. The additional height would not have any adverse impacts on existing (or likely future) neighbouring residential properties.

Table 3: Consistency with Clause 4.3 Building Heights objectives

## 5.5. Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning

The proposed exceedance of the maximum Height of Buildings development standard for the site does not raise any matters of State or Regional Planning significance as:

- the development is not of a size or nature to have more than local impact;

- the height exceedances are localised to discrete locations and facilitate the lowering of building heights (below the LEP maximum) in seven other locations. Overall the increase in building height is minor in the context of the development and broader Melrose Park regeneration;
- the exceedance in building height will have a positive townscape and urban design impact;
- there are no significant amenity or environmental impacts; and
- the site is not a site designated to be of State significance.

## **5.6. Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard**

As demonstrated in the previous sections of this report, the variation to the height of buildings development standard would establish the best urban design response for the site and provide for a landmark development. Conversely, a strictly height compliant development would result in a substantially inferior outcome due to the provision of uniform building heights and overall monolithic development.

In light of the significant public benefits arising from allowing a variation, it cannot be reasonably assumed that there is any public benefit in maintaining the existing height of buildings development standard.

Other public benefits that are unique to the proposal and would be unable to be delivered or significantly reduced in benefit, when compared to a strictly height compliant scheme, include:

- attainment of a suitably high standard of design and appearance to deliver an iconic / landmark development;
- increased areas of landscaping;
- provision of publicly accessible through-site links; and
- increased provision of developer contributions.

## **5.7. How Would Strict Compliance Hinder the Attainment of the Objectives Specified in Section 5(a)(i) and (ii) of the Act**

Sections 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are quoted below:

*The objects of the Act are:*

(a) *to encourage:*

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

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

The development is wholly consistent with the objectives specified in Section 5(a)(i) and (ii) of the EP&A Act, as:

- the site is located within an existing urban area and within a zone that establishes a high density environment;
- the redevelopment of the site for residential, retail and childcare uses will create a new vibrant neighbourhood, maximises the efficient use of the land and will contribute to urban consolidation and reducing demand to develop more environmentally sensitive lands;
- the development promotes the orderly and economic use and development of the land as it delivers new housing and jobs within an established urban environment located on a rapid bus corridor (Victoria Road) without significant or unreasonable environmental impact; and
- the provision of pedestrian through-site links and new roads fosters the orderly use of the land by enabling future pedestrian and vehicular connections, integration with the Melrose Park Northern Precinct, access to the Parramatta River and prevents site isolation.

Strict compliance with the Height of Buildings development standard would hinder the attainment of the objective of the EP&A Act, as such a development would:

- not deliver the optimum urban design solution for the development of the site;
- have a detrimental visual impact on the surrounding area and Victoria Road streetscape;
- present a uniform height that would fail to transition to adjoining residential areas and respect their existing character;
- would be unable to achieve a landmark status befitting the importance of the site and the entrance to the Melrose Park Precinct; and
- would not be able to deliver pedestrian through-site links or maximise the provision of landscape areas.

## **5.8. Is the Objection Well Founded**

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

## 6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3), 4.6(3) and 4.6(4) of the PLEP 2011.

It has been demonstrated that compliance with the height of buildings development standard is unnecessary and unreasonable given the specific circumstances of the proposal. In addition, clear planning grounds have been provided that justify contravening the development standard. The proposal is consistent with the objectives of the development standard and the B4 Mixed Use zone. Given the high standard of the proposal and public benefits the development is considered to be in the public interest.

The proposed localised increases in height are considered appropriate and would provide for a superior than height compliant development. The tallest components of the site are strategically located to celebrate key corners within the site, establish a landmark development and frame views and the streetscape. The proposal results in a scale of development that is appropriate within the emerging Melrose Park Precinct and provides an acceptable built form transition to existing neighbouring residential development.

The variation to the height standard would not result in a breach of the FSR for the site and the additional population would support future and existing retail units and commercial centres.

The proposed development is considered to better satisfy the objectives of the height of buildings development standard and the B4 Mixed Use zone by delivering a more appropriate development outcome for the site and the broader area.

Overall, and for the reasons set out above, the proposed development represents a superior outcome for the site and it is therefore justified and appropriate that the development standard be varied as proposed.





**KEYLAN**  
consulting pty ltd

Level 2, 37-39 The Corso  
Manly NSW 2095  
ABN 51 45 22 11 892  
ACN 613 590 775

**Clause 4.6  
(ADDENDUM)  
Exception to Development Standard  
657-661 Victoria Road**

**Melrose Park**

submitted to the *City of Parramatta Council*  
on behalf of:  
PAYCE BS 2 P/L & SH Melrose Development 2 P/L

**13 June 2017**

## Contact

This report has been prepared by:



Level 2, 37-39 The Corso  
Manly NSW 2095  
ABN 51 45 22 11 892  
ACN 613 590 775

**Dan Keary**  
**Director**

P: 0429 565 291

E: [dan@keylan.com.au](mailto:dan@keylan.com.au)

**Michael Woodland**  
**Director**

P: 0448 726 214

E: [michael@keylan.com.au](mailto:michael@keylan.com.au)

All Rights Reserved. No material may be reproduced without prior permission of KEYLAN Consulting Pty Ltd. While KEYLAN Consulting Pty Ltd working on this project has tried to ensure the accuracy of the information in this publication, it accepts no responsibility or liability for any errors, omissions or resultant consequences including any loss or damages arising from reliance in the information in this publication.

## Table of Contents

1. Introduction .....	4
2. Zoning Compliance .....	5
3. Public Interest and Public Benefit .....	6
4. Height Increase Justification .....	10
5. Land-Use Urban Design Outcome.....	19
6. Conclusion .....	20

## List of Tables

<b>Table 1:</b>	Significant public benefits arising from the development
<b>Table 2:</b>	Response to WCDP's key priorities
<b>Table 3:</b>	Response to the Guiding and Urban Design Principles of the Structure Plan

## 1. Introduction

This is an addendum to the written request (the Clause 4.6 Request) prepared by *KEYLAN Consulting Pty Ltd* to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Parramatta Local Environmental Plan 2011* (PLEP 2011).

Council's preliminary assessment of the original development application (DA) has raised some issues with the Clause 4.6 Request and has requested additional information. A summary of Council's issues in relation to the Clause 4.6 Request is detailed below:

- **Zoning Compliance:** further address how does the use and works proposed support the objectives of the site's B4 zone
- **Public Interest:** demonstrate how the public interest test of Clause 4.6 is satisfied
- **Height Increase Justification:**
  - **Strategic/Regional Context and the Structure Plan:** justify how the additional height is warranted based on the principles of the Melrose Park Northern Structure Plan (the Structure Plan), the existing height and zoning context of adjoining land and the site's regional context
  - **Height Increase:** further contextual and strategic justification to be provided for 10-storey buildings on the Stage 1 site.
- **Land-Use Urban Design Outcome:** demonstrate that the variation provides for a better land use and urban design outcome on the site compared to compliance with the control

This addendum to the Clause 4.6 Request lodged with the Statement of Environmental Effects (SEE) has been prepared in response to these issues. This addendum should be read in conjunction with the Clause 4.6 Request submitted with the SEE.

A summary of the responses to Council's issues is provided below:

- *Zoning compliance:* the application has been amended to include an additional 71m<sup>2</sup> retail floorspace specifically within Stage 1
- *Public Interest:* the original Clause 4.6 Request confirms that the height increase is in the public interest. Notwithstanding, the application has been amended to include additional public benefits, including additional retail floorspace and ESD features, improved public domain, inclusion of public art
- *Height increase:* further justification of the height increase, including additional consideration of the strategic, contextual context with the Structure Plan; and consistency with Council's established position with the site
- *Land-Use Urban Design:* further clarification of the land-use and urban design outcomes including additional justification for the proposed height variation compared to a fully compliant scheme

## 2. Zoning Compliance

The original DA included a total of 696m<sup>2</sup> non-residential floorspace consisting of retail and childcare uses located centrally within the site at Superlot AB.

As outlined in the original DA, this proposed mix of uses was considered to meet the objectives of the B4 zone as the:

- proposal includes residential, retail and childcare uses, which are compatible land-uses with the surrounding area
- provision of retail and childcare uses will contribute towards meeting the needs of the locality. The development of the site will further increase the population and therefore the expenditure of the new neighbourhood which will support the growth of retail tenancies in established centres within the vicinity of the site and Parramatta
- additional building height provides for a significantly better than consistent (and compliant) development, which will provide for increased landscaping areas, pedestrian-through site links, a human scale of development and fosters an active, vibrant and sustainable neighbourhood
- the proposal provides for significantly improved public domain, pedestrian site permeability, open space, communal open space, pedestrian links, landscaped streetscapes and provision of landscaped buffer between buildings and the public domain
- proposed increases in height will enhance the qualities and character of the surrounding area through the creation of a landmark development

Further to the above, the DA has been amended to include a new 71m<sup>2</sup> retail tenancy into the ground floor of Building 3 within Stage 1 and fronting the central public open space.

It is considered that the increase of 71m<sup>2</sup> retail accommodation (to a total of 767m<sup>2</sup>) will further diversify the variety of uses within Stage 1 (and the entire site) and will foster the creation of an active, vibrant and sustainable new mixed-use neighbourhood.

The proposed additional retail uses will support both the proposed future and existing neighbouring residential developments and therefore represents a significant public benefit to existing and future residents of this site and the broader community.

The increase in non-residential accommodation ensures that the development provides for an appropriate mixture of compatible land-uses and ensures that the development supports, and complies with, the objectives of the B4 Mixed Use zone.

### 3. Public Interest and Public Benefit

It is noted that Council (in its letter) has interchangeably referred to the 'public interest test' (p9) and 'public benefit test' (p10) of Clause 4.6 when referring to affordable housing and retail floorspace provision.

However, under Clause 4.6, these two 'tests' refer to and require noticeably different considerations. For reference, the relevant Clause 4.6 clauses are repeated below (bold our emphasis):

*Clause 4.6(4) requires that development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (ii) the proposed development will be in the **public interest** because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*Clause 4.6(5) requires that in deciding whether to grant concurrence, the Secretary must consider:*

- (b) the **public benefit** of maintaining the development standard*

#### **Public interest 'test' (Clause 4.6(4)(a)(ii))**

The requirement of this 'test' is to consider whether the development is in the public interest due to its consistency with the objectives of the standard and the zone.

Council's reference to retail floorspace provision is relevant to the 'public interest test' of Clause 4.6.

The Applicant maintains its view, as discussed at Section 6.4 of the Clause 4.6 Request (and summarised below), that the proposed variation of the building height is wholly consistent with the objectives of the height of buildings development standard as the development:

- provides for a varied and interesting built form, appropriate scale of development, and facilitates the provision of buildings with landmark qualities
- will have a positive visual impact and will not result in loss of privacy or unreasonable loss of solar access to existing properties
- does not have any adverse impacts on nearby heritage items or their setting
- the careful design of the development sympathetically responds to existing neighbouring development and Building 1 within Stage 1 has been designed to be generously set-back from Wharf Road
- the development standard envisages a high-density development and therefore does not require that new development replicates the scale of the surrounding low density areas



- the proposed heights of buildings deliver the best urban design for the site and the proposal would not have an adverse impact on the character and scale of the nearby low density residential area
- would not have an adverse impact on sky exposure and daylight, or on existing (or likely future) neighbouring residential properties

The compliance with the Mixed-Use zone objectives is discussed within the previous Section. It is noted that the DA has been amended to include retail floorspace specifically within Stage 1 in addition to future stages to ensure all stages of the development provide for an appropriate mixture of compatible land-uses. The proposed development is therefore in the public interest and the variation of the development standard should be allowed.

***Public benefit ‘test’ (Clause 4.6(5)(b))***

The specific requirement of this ‘test’ is to consider the public benefit in **maintaining the development standard**. This test should not be confused with the specific consideration of public benefits arising from the proposed development that is the subject of the variation request.

Neither of Council’s comments about affordable housing or retail floorspace provision are considered relevant to the public benefit ‘test’.

As discussed in detail throughout the Clause 4.6 Request and summarised specifically at Section 6.6, a strictly height compliant development (i.e. a scheme which maintained the development standard), which reasonably maximised the efficient and use of the site and achieved the expected 2:1 FSR density, would result in a substantially inferior outcome due to the provision of uniform building heights, an overall monolithic development and lack of sufficient public / communal open spaces and public domain.

Council states in its letter that a more varied skyline could be established without the need for localised increases in height across the site, by similarly modulated buildings within the height control. However, pursuing such an approach would require the lowering of the height of all buildings (not just the 10-storey components) across the site and result in the:

- development falling below the FSR for the site (the current proposal does not exceed the current FSR of 2:1) and therefore failing to maximise the development potential for this strategically important site in accordance with the Objects of the EP&A Act, objectives of the B4 zone and the provisions of the Structure Plan
- provision of poorly proportioned buildings that would fail to achieve an appropriate vertical emphasis and therefore an appropriately high standard of design
- need to expand building envelopes to realise the site’s development potential, and therefore consequential reductions in the provision of open spaces, public domain and through-site links and reduced setbacks

- diminution of the landmark qualities of the development, which would jeopardise the provision of an appropriate gateway development to the broader Melrose Park Precinct

Considering the above, the Applicant maintains that a strictly height compliant scheme would deliver an inferior design outcome, would fail to maximise the development potential of this strategically important site and would fail to include sufficient open space and public domain improvements.

Based on this analysis, it is concluded that there is no public benefit in maintaining the development standard in this instance.

### **Additional public benefits arising from the development**

Notwithstanding the analysis above, as discussed within the Clause 4.6 Request (and later in this Section), the variation to the height of buildings development standard represents a significant public benefit by providing:

- a development that achieves a high standard of design and appearance that provides an iconic and dramatic entrance to the Melrose Park Precinct (which is an area endorsed by Council as a high-density development community)
- increased areas of public and communal open space, landscaping and public domain
- provision of publicly accessible through-site links and significant connectivity improvements to existing community and the Structure Plan
- increased provision of developer contributions

Council's comment about affordable housing provision is considered relevant to the general public benefits arising from the development.

Notwithstanding the Applicant's position that the development already provides significant public benefit (and in response to Council's comments), the amended DA has been amended to include the following additional public benefits, which are considered to further justify this exemplary urban development:

Benefit	Description
<b>ESD</b>	<p>The proposed development has been designed in accordance with Ecologically Sustainable Development (ESD) principles.</p> <p>Further to the commitments made to ESD within the SEE, the proposal has been further amended to improve its sustainability offer and includes the following additional sustainable features and initiatives, which are in the public interest and add further weight and justification to the proposed localised variation of height across the site and within Stage 1:</p> <ul style="list-style-type: none"> <li>• exceed BASIX standards</li> <li>• inclusion of 2 car share bays within Stage 1 of the development</li> <li>• improvements to stormwater infrastructure resulting in Overland flow paths being directed to Wharf Road (via East-West Road 1) and removing the requirement to drain stormwater through adjoining sites</li> </ul>

Benefit	Description
	<ul style="list-style-type: none"> <li>provision of a rain garden beneath the High Voltage lines at Lot 2, which will address stormwater and provide habitat</li> <li>commitment to implement Red List for material used on-site and to avoid the using of Red List materials wherever possible</li> <li>solar hot water with central gas boosted system to be included within the services design</li> <li>energy efficient fittings, fixtures and appliances, including fluorescent or LED lighting, lighting controls and ventilation</li> <li>high efficiency fittings including dual flush toilets and low-flow taps and showerheads</li> <li>aim to achieve Green Star Communities Rating</li> <li>retention of all existing trees along Victoria Road within the RMS road reserve.</li> </ul>
<b>Public Domain</b>	<p>The proposal includes addition public domain improvements including:</p> <ul style="list-style-type: none"> <li>Provision of a rain garden beneath the High Voltage power lines at Lot 2</li> <li>creation of a new public plaza located at the north-eastern corner of Stage 1 and including locations for public art</li> <li>retention of two substantial fig trees at the eastern boundary of the site with Wharf Road and the retention of existing trees along Victoria Road within the RMS road widening reserve</li> </ul> <p>It is noted that Council acknowledges on page 10 of its letter that the proposed communal and public open spaces proposed by the development are of a high quality and diversity.</p>
<b>Retail Use</b>	As discussed in the previous section, Stage 1 has been amended to provide a 71m <sup>2</sup> increase of retail floorspace. The new accommodation will foster the creation of a sustainable new neighbourhood and will be accessible by existing surrounding and future residents.
<b>Public Art</b>	The Applicant has agreed to provide for Public Art in appropriate locations throughout the development, in accordance with Council's requirements.
<b>Affordable Housing</b>	At least 150 affordable dwellings for key workers will be provided in the new Town Centre adjoining the site. The target is to provide up to 250 affordable rental housing subject to further discussions with Council. These will be managed by a registered Community Housing Provider and will provide important housing for key workers and those on lower incomes.
<b>Site Remediation</b>	It can be confirmed that the Applicant is contributing approximately \$14 million towards site remediation ensuring that the site and particularly its public open spaces and the public domain can be made suitable for its intended use.

**Table 1:** Significant public benefits arising from the development

## 4. Height Increase Justification

### ***Strategic and Regional Context***

The existing planning controls for the site, which envisage a high-density development comprising an FSR of 2:1 and uniform height restriction of 28m already establish that the site is suitable for high-density development.

The Clause 4.6 Request relates to minimal, localised height increases of between one and two storeys within the FSR controls. Strategically, the site is well suited to accommodate the proposed localised increases in height (maximum 7 metres in 6 locations across the site), as:

- the site is located on the Victoria Road Major Transport Corridor
- the site is strategically positioned on the edge of the *Global Economic Corridor*, which is identified in *A Plan for Growing Sydney* for future growth, and is located close to Parramatta CBD, Sydney Olympic Park and Rhodes
- the site represents a scarce land resource and its development potential should be maximised for the greatest effect and benefit to the LGA and Sydney
- the site plays a critical role as the first stage of the Melrose Park Northern Structure Plan and the principal entrance into the Melrose Park Precinct as adopted by Council
- the proposal will deliver accelerated significant urban renewal outcomes by providing new housing, foster housing choice, employment opportunities and other public benefits close to Parramatta and other strategic centres

Since the submission of the SEE the Greater Sydney Commission (GSC) has exhibited draft District Plans for the Sydney metropolitan area, which further establishes regional planning context to support increased density in this location. The subject site is located within the *West Central District*.

The *Draft West Central District Plan* (WCDP) sets out the 20-year vision for the West Central District, which includes the Blacktown, Cumberland, Parramatta and The Hills Local Government Areas. The WCDP seeks to provide the district level framework to implement the goals and directions outlined in *A Plan for Growing Sydney* and is intended to be used to inform the preparation of Local Environmental Plans, Planning Proposals, and strategic land use and transport and infrastructure planning.

The WCDP's vision includes cementing the *West Central District* as Sydney's economic powerhouse, supported by planned investment in new transport infrastructure, the provision of new and diverse housing options, and the expansion and diversification of employment opportunities that build on and respect the regions significant cultural and landscape assets.

The WCDP identifies a five-year housing target for the Western District of 53,500 new dwellings, of which 21,650 are to be located within the Parramatta LGA.

The WCDP's key priorities are to provide a productive, liveable and sustainable city and these priorities are considered below (Table 2).

Priority	Response
<b>Productivity Priority 2: Deliver housing diversity</b>	<p>The increase in height would provide for a development that:</p> <ul style="list-style-type: none"> <li>• accommodates a range of apartment types and sizes, consistent with local housing needs</li> <li>• achieves a high-quality design outcome for both buildings and public spaces/places</li> </ul>
<b>Productivity Priority 3: Manage growth and change in strategic and district centres and, as relevant local centres</b>	<ul style="list-style-type: none"> <li>• the creation of up to 767m<sup>2</sup> of new retail floor space will not result in any adverse impacts at existing or planned retail centres, further, the development will ensure sufficient floorspace is provided to meet the retail and service needs of future residents within the subject site</li> <li>• the proposed amended height limits (maximum of a single storey in six locations) will facilitate the construction of appropriate buildings to create an articulated skyline that transitions sensitively to the adjacent neighbourhoods</li> <li>• the development has been designed to provide shared access routes for bicycles and pedestrians and will promote walking, cycling and increased public transport use within the site</li> <li>• the development includes excellent through-site connectivity</li> <li>• the development seeks to create extensive new public and communal open spaces for active and passive recreation</li> </ul>
<b>Livability Priority 1: Deliver West Central's five year housing targets</b>	<ul style="list-style-type: none"> <li>• the development will create approx 1,100 new dwellings that will make a valuable contribution to the 202,500 new dwellings targeted within the West Central District and Parramatta LGA targets</li> <li>• the increase of housing above a strictly height compliant scheme will further support this priority</li> </ul>
<b>Livability Priority 2: Deliver Housing Diversity</b>	<ul style="list-style-type: none"> <li>• Refer to Productivity Priority 2</li> </ul>
<b>Livability Priority 3: Implement the Affordable Rental Housing Target</b>	<ul style="list-style-type: none"> <li>• PAYCE are providing at least 150 affordable dwellings for key workers will be provided in the new Town Centre adjoining the site. The target is to provide up to 250 affordable rental housing subject to further discussions with Council. These will be managed by a registered Community Housing Provider and will provide important housing for key workers and those on lower incomes.</li> </ul>
<b>Livability Priority 5: Facilitate the development of safe and healthy places</b>	<ul style="list-style-type: none"> <li>• The development will facilitate the creation of a high quality, safe and healthy built environment via: <ul style="list-style-type: none"> <li>• the provision of active streetscapes at a human scale</li> <li>• new retail/commercial and childcare uses that will foster social interaction for future residents</li> </ul> </li> </ul>

Priority	Response
	<ul style="list-style-type: none"> <li>new areas of public open space with space for community gardens</li> <li>rationalised ground levels so that public and communal open spaces and the public domain are fully accessible and integrated into the existing surrounding area and the future neighbouring Melrose Park Precinct</li> <li>the creation of new cycle, walking and road infrastructure to link the site with Melrose Park and the broader Parramatta Valley Cycleway to promote the use of healthy and sustainable modes of transport within the District</li> </ul>
<b><i>Livability Priority 6: Facilitate enhanced walking and cycling connections</i></b>	<ul style="list-style-type: none"> <li>as outlined above, the development will create permeability through the site and will provide new walking and cycling connections that link in with existing local, district and regional transport infrastructure and open spaces</li> <li>rationalised ground levels will ensure that public and communal open spaces and the public domain are fully accessible and integrated into the existing surrounding area and the future neighbouring Melrose Park Precinct</li> </ul>
<b><i>Livability Priority 8: Foster the creative arts and culture</i></b>	<ul style="list-style-type: none"> <li>the development has been designed to promote community interaction, the arts and cultural activities</li> <li>the proposal will include public art in various locations around the site</li> </ul>
<b><i>Sustainability Priority 1: Maintain and improve water quality and waterway health</i></b>	<ul style="list-style-type: none"> <li>the site has key benefits in terms of water quality and water treatment to improve runoff</li> <li>improvements to stormwater infrastructure resulting in Overland flow paths being directed to Wharf Road (via East-West Road 1) and removing the requirement to drain stormwater through adjoining sites</li> <li>provides a rain garden beneath the High Voltage lines at Lot 2, which will address stormwater and provide habitat</li> </ul>
<b><i>Sustainability Priority 5: Align strategic planning to the vision for the green grid</i></b>	<ul style="list-style-type: none"> <li>the development will assist with the on-going implementation of Sydney's Green Grid by creating new open space which will link to broader networks including the Parramatta River</li> </ul>
<b><i>Sustainability Priority 6: Protect, enhance and extend the urban canopy</i></b>	<ul style="list-style-type: none"> <li>the development includes significant tree planting within the public and communal open spaces and within the public domain and will increase the tree canopy cover across the site</li> </ul>
<b><i>Sustainability Priority 12: Mitigate the urban heat island effect</i></b>	<ul style="list-style-type: none"> <li>significant landscaping treatments are proposed to mitigate the urban heat island effect – a key issue in the Parramatta LGA</li> </ul>



Priority	Response
<b>Sustainability Priority 13: Integrate land use and transport planning to consider emergency evacuation needs</b>	<ul style="list-style-type: none"> <li>the SEE (as updated by this Amended DA) demonstrates the development will not result in any adverse traffic impacts, subject to the implementation of the recommended road upgrades</li> <li>the development will be fully integrated into the existing road network integration into the existing local network to allow for acceptable accessibility for emergency vehicles</li> </ul>

**Table 2:** Response to WCDP's key priorities

Given the strategic importance of the site, its intrinsic link to the success of the broader Melrose Park Precinct and clear public benefits, the Applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary.

### **Melrose Park Northern Structure Plan**

Contrary to Council's comment that the Structure Plan envisages up to 8-9 storey buildings on the Stage 1 site, the Structure Plan does not stipulate any building heights.

Further, it is noted that Council specifically deleted references to building heights from the Structure Plan at its Council Meeting on 12 December 2016 (Recommended Change 64(a)(iv)). Although the Melrose Park Precinct is divided into notional low, medium and high density areas, importantly the VRS site is only referred to as *Existing B4 Zone*.

It is noted that Council consulted with the Applicant and adopted the Structure Plan before the submission of the SEE. In such circumstances, it would be highly improper for the Structure Plan to suggest increases in building height prior to the determination of the Applicant's Clause 4.6 Request, as this would pre-empt the outcome of the assessment. Accordingly, the fact that the Structure Plan does not stipulate 10-storeys for the site should not be misconstrued as the Council's determination on the matter.

A consideration of the proposal against the 6 Guiding Principles and 8 Urban Design Principles of the Structure Plan (**Table 3**).

<b>MELROSE PARK NORTHERN STRUCTURE PLAN</b>	
<b>SIX GUIDING PRINCIPLES</b>	
Principles	Response
<b>1. Strategic context</b>	Refer to previous section <i>Strategic and Regional Context</i> .
<b>2. Urban renewal</b>	<p>The proposal will develop a previously underutilised and strategically important site, which is located fronting one of Sydney's strategic transport corridors.</p> <p>The development, bolstered by the proposed minor increase in height, will provide for housing and employment uses close to Parramatta and other strategic centres.</p>

	Expanded public and communal open spaces, public domain and through-site links.
<b>3. Creating employment opportunities</b>	<p>The original DA included the creation of a total of 696m<sup>2</sup> non-residential floorspace (retail/commercial and childcare uses) on a site that previously contained minimal employment generating uses.</p> <p>The total amount of retail floorspace has been increased by an additional 71m<sup>2</sup> (a total of 767m<sup>2</sup>).</p>
<b>4. Creating new communities</b>	<p>The proposed development will revitalise the site by providing for a contemporary urban environment comprised primarily of a new residential community and supported by retail/commercial and childcare uses.</p> <p>The increase in height will allow significant improvements and enlargements to public and communal open spaces, through-site links and public domain improvements.</p>
<b>5. Sustainability and connection</b>	<p>The proposal has been designed in accordance with ESD principles and includes a range of innovative sustainable features. The proposal includes new north-south and east-west road and footway connections, which will connect the site to the surrounding area.</p> <p>Upgrades are proposed to vehicular access points. In addition, public open spaces and through-site links further improve the permeability and connectivity of the site.</p> <p>As discussed at Section 3, the development has been amended to strengthen its commitment to ESD and provision of sustainable features. In addition, the increase in building height has allowed for the inclusion of through-site pedestrian links, which significantly improve site permeability and connectivity.</p> <p>The development will rationalise ground levels so that public and communal open spaces and the public domain are fully accessible and integrated into the existing surrounding area and the future neighbouring Melrose Park Precinct.</p>
<b>6. Environmentally conscious</b>	The site will be fully remediated so that it is suitable for its intended use as a mixed-use community.

	<p>The development has been designed to ensure that it has an appropriate relationship with existing neighbouring properties.</p> <p>The increase in height has allowed for the reduction in buildings footprints and the enlargement of communal and public open spaces, improvements to public domain which are expected to have beneficial habitat and environmental impacts.</p>
<b>EIGHT URBAN DESIGN PRINCIPLES</b>	
<b>Principles</b>	<b>Response</b>
<b>1. Creating a centre of activity (town centre).</b>	<p>The proposal includes a mixture of residential, retail/commercial and childcare uses. The proposal provides for an appropriate amount of non-residential uses that would complement and would not challenge the creation or vitality of the future Melrose Park Town Centre, adjoining the site.</p> <p>The variation in building height will facilitate an increase the total population near the Town Centre which will increase likely expenditure and support retail tenancies and the vitality of the Centre overall.</p>
<b>2. Green connections that provide a network and range of active and passive open spaces</b>	<p>The proposal includes the provision of public and communal open spaces for the benefit of future residents and the broader public. These spaces have been designed to provide for a range of active and passive uses.</p> <p>The proposal provides for new roads with landscaped public domain that provide for a highly permeable site. In addition, north/south and east/west green pedestrian through-site links are provided which further improve pedestrian connectivity.</p> <p>The increase in building height has facilitated a reduction in the footprint of building envelopes, which has allowed for the provision of larger public and communal open spaces, landscaped areas and the provision of pedestrian through-site links.</p>
<b>3. A new Melrose Central Park that provides public open space central to the development.</b>	N/A – to be delivered in adjoining Melrose Park Precinct.
<b>4. A new 'common' that provides for informal active recreation.</b>	N/A – to be delivered in adjoining Melrose Park Precinct.
<b>5. Improved public transport that incorporates sustainable transport</b>	The following bus improvements are of significance to the VRS:

<p><b>initiatives such as electric buses that connect the precinct to nearby strategic centres and transport hubs such as West Ryde and Meadowbank</b></p>	<ul style="list-style-type: none"> <li>• Bus Rapid Transit service on the Victoria Road corridor (BRT)</li> <li>• additional bus priority treatments on Victoria Road</li> <li>• extension of bus lane operating hours and the speeding up of services through wider stop spacing</li> </ul> <p>The proposed additional storeys will provide for an increase in population along the strategic Victoria Road corridor and will foster additional patronage of public transport services along Victoria Road.</p>
<p><b>6. Improved connectivity within the precinct and surrounding areas.</b></p>	<p>At present the public are unable to pass east-west or north-south through the site and connect with the surrounding areas.</p> <p>The proposal includes the provision of new roads, pathways, open spaces and through-site links. As discussed in response to Urban Design Principle 2 (above), the increase in building height has facilitated a reduction in the footprint of building envelopes, which has allowed for the provision of larger open spaces, landscaped areas and the provision of pedestrian through-site links.</p> <p>In addition, ground levels will be rationalised so that public and communal open spaces and the public domain are fully accessible and integrated into the surrounding areas.</p>
<p><b>7. Built form transitions that ensure a sympathetic interface with surrounding development.</b></p>	<p>The PLEP 2011 height development standard for the site (28m) envisages buildings up to 8-9-storeys to the boundary of the site. Notwithstanding, the development has been carefully designed to ensure an appropriate built form transition is provided with the surrounding development.</p> <p>There are only two locations where 10-storey elements would interface directly with neighbouring developments at the eastern and western ends of the site.</p> <p>Building 1 within Stage 1 provides for a sympathetic, graduated built form (7-storeys rising to 10-storeys), with its lowest component fronting the existing residential properties along Wharf Road.</p> <p>In addition, the 10-storey component within Superlot AA (western side of the site) has been localised centrally within the building</p>

	<p>envelope, generously set back from Victoria Road and from the southern boundary.</p> <p>The remaining four 10-storey components are located within the central part of the site and at key gateway points.</p>
8. Density in the core of the precinct to allow for appropriate height transitions to the boundary of the development.	<p>The proposal exceeds the PLEP 2011 height development standard (28m) by 7 metres (generally 1 storey) in 6 locations.</p> <p>The six 10-storey components provide for an appropriate transition to the greater height and scale of development envisaged within the Melrose Park Masterplan (up to 18-storeys), while also providing for appropriate height modulation and visual interest on the site.</p> <p>The inclusion of some 10-storey buildings would not challenge the key urban design principle that the highest density within the Melrose Park should be localised within the central core of the precinct.</p>

**Table 3:** Response to the Guiding and Urban Design Principles of the Structure Plan

### **Height Increase**

It is noted that in considering the increase of height above the LEP maximum proposed by the previous (Aqualand) development application for the site, Council (assisted by an independent planner) concluded in its letter dated 23 December 2015 that:

***...It is acknowledged that minor height variations (max 1 storey) to some, but not all, buildings would allow for an improved built form outcome... an improved design approach may enable some additional height to 10 storeys... through the mechanism of Clause 4.6...***

The above view has been reiterated and confirmed at meetings between the Council, Design Excellence Advisory Panel and the Applicant during the pre-application meetings regarding the current proposal.

Notwithstanding, the following clarification and justification is provided for the height increase.

The Clause 4.6 Request submitted with the SEE carefully considered the existing site context and the impact of the proposed increase in height on the surrounding low-density residential areas.

It was concluded that the proposed development allowed for appropriate built form transition to neighbouring properties, did not have any adverse amenity impacts and would represent a superior scheme when compared with a fully compliant scheme.



As noted within the previous section, the Height of Buildings development standard envisages buildings up to 28 metres to the boundary of the site. However, of the six 10-storey locations proposed, there are only two locations where 10-storey elements interface with neighbouring developments, at the eastern and western ends of the VRS site.

In these locations, the 10-storey component provides for a sympathetic, graduated built form and appropriate and generous setbacks to ensure the development responds appropriately to the surrounding existing character.

With specific reference to Stage 1:

- a variation to the maximum height is only sought for two locations within Stage 1, at the western (Building 3) end of the site and setback 18m from the eastern end (Building 1) of the site, all other buildings are less than the PLEP 2011 maximum height control for the site.
- the two 10-storey elements are setback from the building edge and would not result in excessive bulk and scale
- the height of buildings provides for an appropriate transition to the greater height and scale of development envisaged within the Melrose Park Masterplan (up to 18-storeys). The inclusion of two 10-storey buildings would not challenge the key principle that the highest density within the Structure Plan should be localised within the central core of the precinct
- the height and scale of Building 1 at the eastern end of Stage 1, adjacent to Wharf Road, was amended in response to Council's issues raised at pre-application stage so that it provides a sympathetic, graduated built form (7-storeys rising to 10-storeys), with its lowest component fronting the existing residential properties along Wharf Road
- Building 1 has been designed to be generously set-back from Wharf Road. The 7-storey component is setback 9m from the western side of Wharf Road and the 10-storey component is setback 18m from Wharf Road. In total, and including Wharf Road, the 10-storey component is located a sufficient distance away from residential properties located on the eastern side of Wharf Road, to avoid any significant adverse amenity impacts resulting from the additional height. The careful design of Building 1 sympathetically responds to existing neighbouring development
- the two localised increases in building height allow for all remaining buildings within Stage 1 to be at least one storey shorter than the PLEP 2011 maximum height control and exceed the minimum apartment design guideline (ADG) building separation distances to neighbouring properties for visual privacy
- the buildings would not result in additional overshadowing of existing neighbouring residential properties east of Stage 1 or obstruct their outlook or views, when compared with a height compliant scheme
- Victoria Road is significant in width, comprising a 6-lane carriageway measuring on average 28 metres wide. A large and busy arterial road such as this is capable of, and would benefit from, being framed by buildings of greater height

## 5. Land-Use Urban Design Outcome

The Applicant maintains that the proposal provides for a significantly better land use and urban design outcome for the site compared to compliance with the PLEP 2011 height standard control as:

- the proposal represents the most efficient use of the site, in accordance with the Objects of the *Environmental Planning and Assessment Act 1979* (EP&A Act) clause 5(a)(ii) *promote the promotion and co-ordination of the orderly and economic use and development of land*
- a detailed height and design analysis was prepared by AJ+C Architects in support of the SEE, which confirms the increase in height is appropriate and represents a significantly better development outcome when compared to a fully compliant scheme
- the PLEP 2011 envisages a uniform height of buildings across the site. The provision of a varied, rather than uniform, roof-line provides for additional visual interest and facilitates the development of architecturally unique responses to each of the development superlots
- proposed height increases are minimal, localised height increases of between one and two storeys
- the increase in building heights at key locations (up to 10 storeys), relative to a height compliant scheme, facilitates the lowering of building heights at seven other locations across the site, enlargement of open spaces, and provision of through-site links and improved public domain and landscaping. In addition, ground levels will be rationalised so that public and communal open spaces and the public domain are fully accessible and integrated into the surrounding areas
- providing for a development with modulated height ensures that the development provides for a transition of built form to the existing surrounding area
- the design response will provide for buildings with landmark qualities that will create an instantly recognisable development, which is desirable for a site of this size, location and importance
- the localised increases in height provide a stronger vertical emphasis to individual buildings (and a reduction in the footprint of all buildings) and will provide for additional physical building articulation in addition to architectural/façade treatments
- the areas of non-compliance will not lead to adverse impacts on adjoining properties or will inhibit the future development potential of adjoining properties within the Melrose Park Precinct
- the proposed buildings will achieve a human scale of development, by varying and graduating building heights across the site, localising the tallest buildings at key focal points

## 6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3), 4.6(3) and 4.6(4) of the PLEP 2011.

This addendum has comprehensively considered the proposed increase in height considering the strategic, contextual and region context and the Structure Plan. The proposal has been shown to deliver a far superior scheme for the site that includes significant benefits for existing and future residents.

The proposed increase of building height is wholly consistent with the objectives of the development standard and the B4 Mixed Use zone and clear planning grounds have been provided that justify contravening the development standard.

As shown in the original Clause 4.6 Request and highlighted within this addendum, a strictly height compliant scheme would fail to deliver a development of sufficiently high quality and would fail to maximise the development potential of this strategically important site. There is therefore no public benefit in maintaining the height of buildings development standard.

The proposed localised increases in height are considered appropriate and would provide for a superior outcome to a height compliant development. The proposal has been designed to provide appropriate built form transition to neighbouring residential area and to the adjoining developments within the Melrose Park Precinct. The tallest components of the site are strategically located to:

- respect neighbouring residential amenity
- celebrate key corners within the site
- establish a landmark development and frame views and the streetscape

In summary, for the reasons set out within the original Clause 4.6 Request and this addendum, the proposed development represents a far superior outcome for the site consistent with discussions with senior Council staff over the past 12-18 months following the acquisition of the site. The variation to the development standard is fully justified in this instance and should be varied as proposed in the application.