

CLAUSE 4.6 VARIATION REQUEST: HEIGHT OF BUILDINGS

24-26 RAILWAY PARADE, WESTMEAD

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URBIS

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1. INTRODUCTION

This variation request has been prepared under Clause 4.6 of the *Parramatta Local Environmental Plan* (PLEP 2011). The Height of Buildings Map that accompanies Clause 4.3 of the PLEP 2011 prescribes a maximum height of 52m for the subject site (refer **Figure 1**).

The proposed mixed-use development has a total height of 56.5m, exceeding the maximum height for the site by 4.5m (8.6%). To achieve a better development outcome, this clause 4.6 variation seeks an exception to this development standard.

Figure 1 – Height of Building Map



Source: Urbis

2. ASSESSMENT FRAMEWORK

2.1. CLAUSE 4.6 OF PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2011

Clause 4.6 of PLEP 2011 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

- *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- *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:

- 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.*

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:

- 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.*

[Note: Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018].

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 PLEP 2011, Clause 4.6 Exceptions to Development Standards.

2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

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 correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.

[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as

to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

- [15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard 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 (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- [16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.
- [17] The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
- [18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].
- [19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
- [20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
- [21] A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
- [22] These 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, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
- [23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

- [24] *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. 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: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*
- [25] *The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant’s written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].*
- [26] *The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant’s written request has adequately addressed the matter in cl 4.6(4)(a)(ii).*
- [27] *The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).*
- [28] *The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.*
- [29] *On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].*

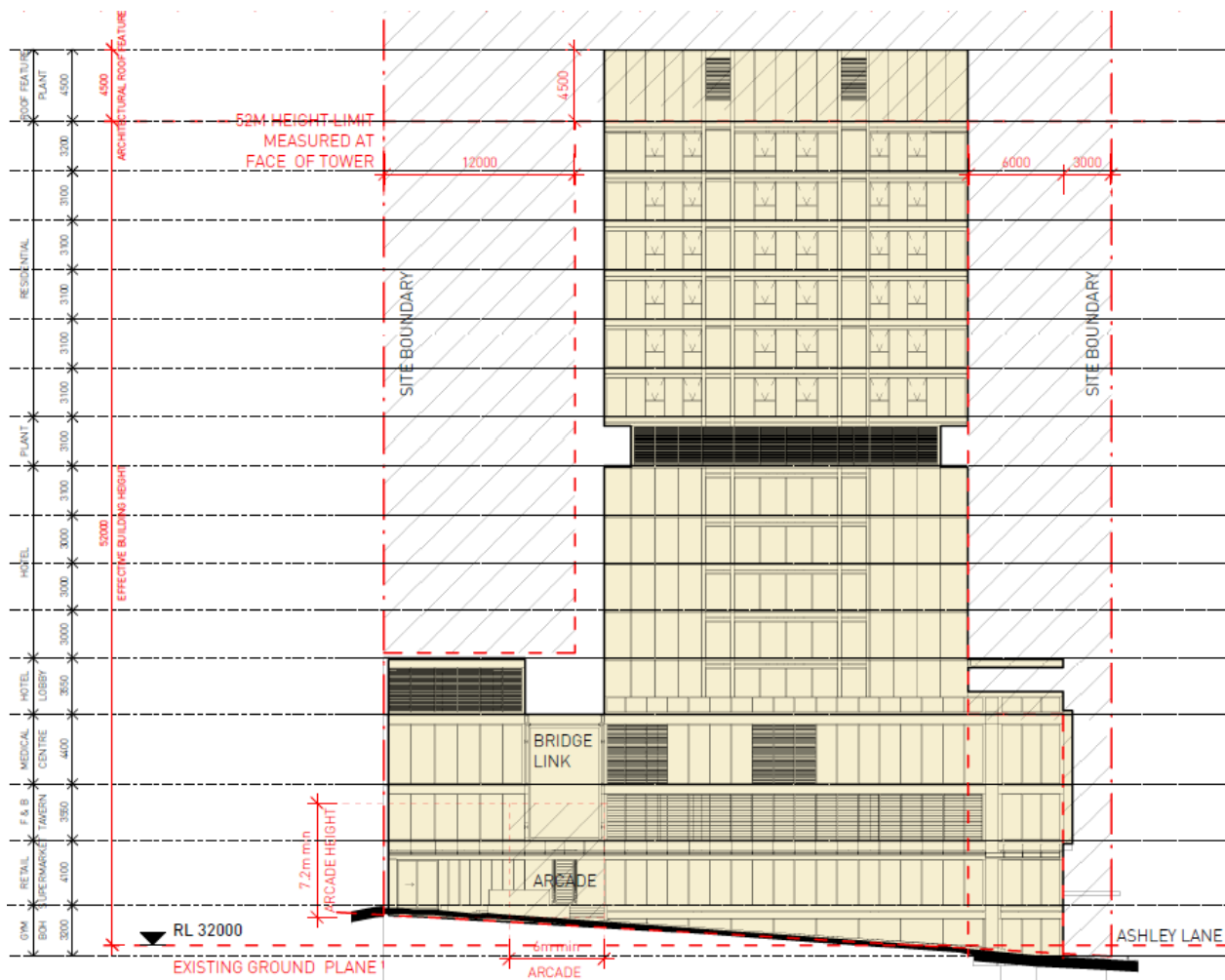
3. EXTENT OF CONTRAVENTION

3.1. BACKGROUND

In March 2016, a site-specific amendment to the Parramatta LEP 2011 and Parramatta DCP 2011 were gazetted and adopted by Council. The amendments facilitated an increase in the site's height of building and FSR development standard to 52 metres and 4.5:1 (and imposed a maximum residential FSR of 1.5:1). The accompanying DCP amendment provides more detailed objectives and design controls including setting the built form and building envelope to guide future development on the subject site.

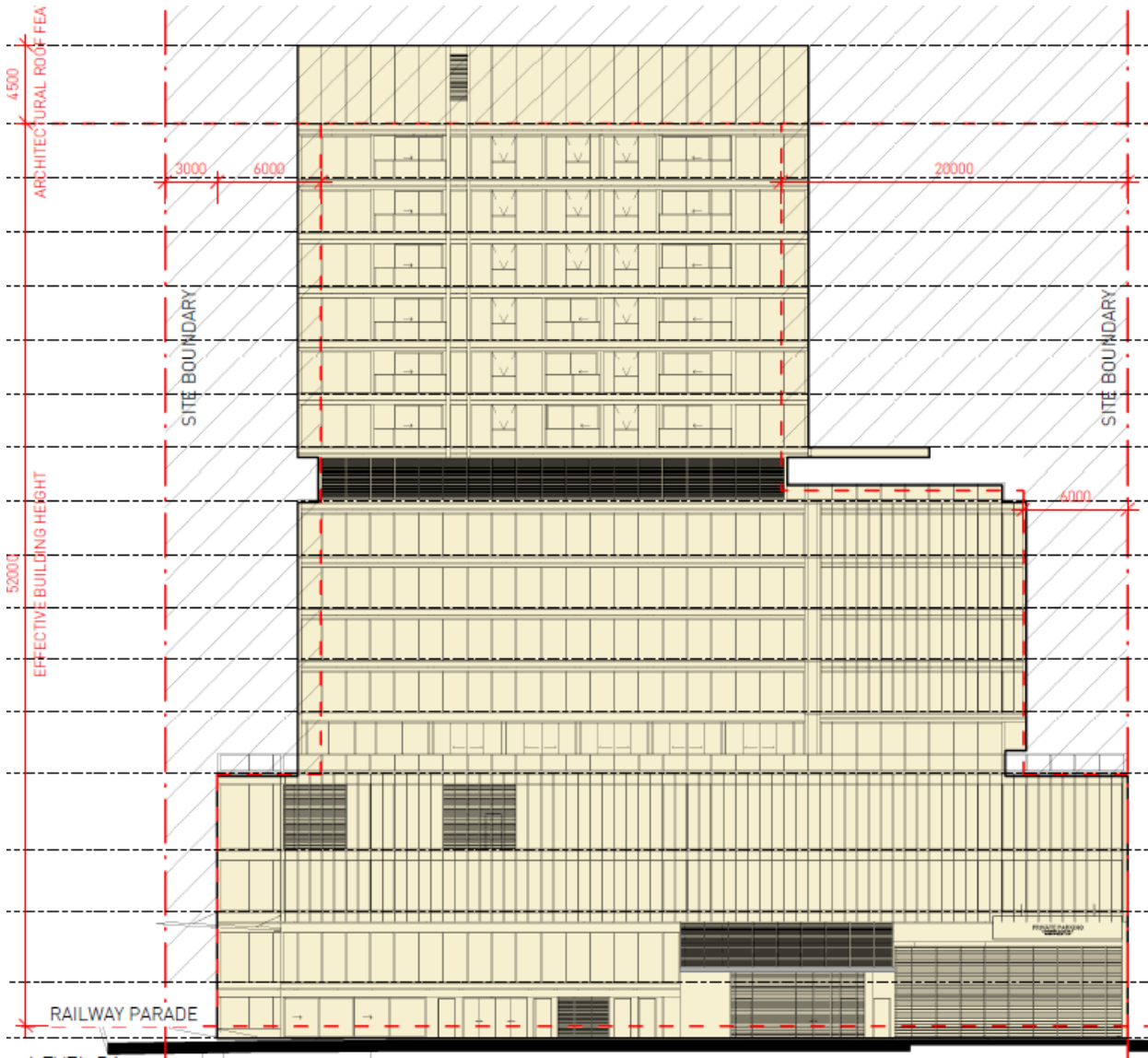
The proposed development is generally consistent with the built form envisaged for the site under the Part 4.3.4.2 of the Parramatta DCP 2011 and Parramatta LEP 2011. As shown in the **Figure 2** and **Figure 3** elevation extracts, the proposed floor space (measured to the FFL of Roof Level) of the development sits entirely within the maximum 52 metre LEP height of building development standard and generally within the building envelopes envisaged for the site under the DCP 2011 (building envelope annotated by 'dotted red outline').

Figure 2 – Railway Parade Elevation



Source: *Sissons Architects*

Figure 3 – Ashley Lane Elevation



Source: *Sissons Architects*

3.2. VARIATION TO HEIGHT

The proposed 4.5m height protrusion is limited to lift and stair core overruns and consolidated rooftop plant and does not relate to a residential level. Further, the plant and services overrun are setback from the building edge and will be concealed from view by a 4.5m high glazed architectural roof feature. Thus, it will not be readily perceived when viewed from the public domain (see **Figure 3** perspective extracts).

Overshadowing analysis has been undertaken by Sissons Architects at June 21 and is attached to this report. The shadow compares the shadow cast from a compliant 52m height control and the proposed 56.5m building height (shadow attributed to the additional height is shown by 'red shading').

The analysis demonstrates that there is minimal additional shadow arising from the rooftop plant, services and integrated architectural roof feature. This shadow is however fast moving and will have negligible impact on any property it affects. In summary, this minor additional shadow is apparent in the morning period between 9am and 10am to properties located on the south western side of Alexandra Avenue (opposite side of Westmead Railway Station). Between 11am and 2pm the shadow is confined to the Alexandra Avenue roadway and Westmead Railway Station. By 3pm, the additional shadow reaches the front setback of the residential properties located along Alexandria Avenue near the Hassall Street intersection.

Overall, strict compliance with the building height development standard would result in an approximate. 14-storey built form. This is considered to be a significant underutilisation of the floor space available for this strategically important site, which is located directly adjacent to the Westmead Train Station, and within a

walkable catchment to several existing bus stops as well as the planned Parramatta Light Rail and Sydney Metro West.

The proposal also provides a unique opportunity to revitalise and redevelop the site into a highly mixed-use development. This opportunity is somewhat constrained for other adjoining sites in Westmead due to them being strata subdivided.

Figure 4 – Perspective Views



Picture 1 – View from North West and North East



Picture 2 – View from South East and South West

Source: *Sissons Architects*

4. CLAUSE 4.6 VARIATION REQUEST: BUILDING HEIGHT

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum height of buildings in accordance with Clause 4.6 of PLEP 2011.

4.1. KEY QUESTIONS

4.1.1. Is the Planning Control a Development Standard?

The height of buildings prescribed under Clause 4.3 of the PLEP 2011 is a development standard capable of being varied under Clause 4.6 of PLEP 2011.

4.1.2. Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of Clause 4.6.

4.1.3. What is the Underlying Object or Purpose of the Standard?

The objectives of the height of buildings development standard are as follows:

- (a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- (c) to require the height of future buildings to have regard to heritage sites and their settings,*
- (d) to ensure the preservation of historic views,*
- (e) to reinforce and respect the existing character and scale of low density residential areas,*
- (f) 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.*

4.2. CONSIDERATION

4.2.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the ‘five-part test’ outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. These tests are outlined in Section 2.2 of this report (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests or ‘ways’. **It may be sufficient to establish only one way**, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way

The development is justified against the first of the Wehbe tests as set out below.

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

The proposed development achieves the objectives of the height of buildings standard as outlined in clause 4.3(1) of the PLEP 2011 as detailed in Table 1 overleaf.

Table 1 – Consistency with the Height of Buildings development control objectives

| Objective | Assessment |
|---|--|
| <p><i>(a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,</i></p> | <p>The proposed development has been designed to achieve the desired future character for the Westmead Strategic Precinct and built form principles established specific to the site under the Parramatta DCP 2011. The proposed massing has been developed in accordance with the DCP to achieve a sense of transition in use and form to the residential neighbourhoods to the east and north.</p> <p>The proposed non-compliance relates to rooftop plant and services and does not relate to an additional residential level. All of the permissible floor space is contained within the permissible 52m height control.</p> |
| <p><i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i></p> | <p>The variation has been informed from detailed building services advice. The proposal represents the requirements for building plant and vertical transportation throughout the building, having regard to the multitude of uses the proposal seeks to introduce.</p> <p>Because the proposed non-compliance is limited to rooftop plant and services it will have no disruption of views or loss of privacy to existing development.</p> <p>The plant and services are proposed in a consolidated rooftop location, setback from the building edges and concealed from view by a 4.5m high architectural roof feature. Thus, as illustrated at Figure 3, it is not anticipated it will not be readily perceivable from the public domain.</p> <p>Overshadowing analysis has been undertaken by Sissons Architects at June 21 (refer attachment). The shadow compares the shadow cast from a compliant 52m height control and the proposed 56.5m building height (shadow attributed to the additional height is shown by ‘red shading’).</p> <p>The analysis demonstrates that there is very minor additional shadow arising from the rooftop plant and services. This shadow is however fast moving and will have negligible impact on any property it affects. In summary, this additional shadow is apparent between 9am and 10am to properties located on the southern side of Alexandra Avenue (opposite side of Westmead Railway Station). Between 11am and 2pm the shadow is confined to the Alexandra Avenue roadway and Westmead Railway Station. By 3pm, the additional shadow reaches the front setback of the residential properties located along Alexandra Avenue near the Hassall Street intersection.</p> |
| <p><i>(c) to require the height of future buildings to have regard to heritage sites and their settings,</i></p> | <p>The proposed 52m height control and built form and massing requirements were developed for the site based on an extensive analysis of important heritage significant sites. This includes</p> |

| Objective | Assessment |
|--|---|
| | <p>landscape vistas from Old Government House and a streetscape response to the Old Boys Home on Hawkesbury Road.</p> <p>The proposed rooftop plant and services are considered to result in negligible heritage impact on these items. As discussed, the proposed plant and services are located in the centre of the building, setback from the building edges and are screened by an architectural roof feature. As such, they are not considered to be visually apparent from the public domain and key viewpoints.</p> |
| <i>(d) to ensure the preservation of historic views,</i> | See comment above regarding maintaining historic landscape vistas to Old Government House. |
| <i>(e) to reinforce and respect the existing character and scale of low density residential areas,</i> | <p>The site is strategically located in the Westmead Town Centre and adjoins land that is zoned B4 Mixed Use and R4 High Density Residential.</p> <p>The proposed height exceedance has no impact on the character and scale of any low density residential area.</p> |
| <i>(f) 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.</i> | <p>The proposed overshadowing impacts arising from the development are considered acceptable. The proposal demonstrates that satisfactory solar access on June 21 is maintained to neighbouring residents, whereby all affected dwellings are capable of achieving a minimum of 3 hours of solar access on June 21.</p> <p>In addition, the attached overshadowing diagrams demonstrate that the additional building height results in negligible additional overshadowing.</p> |

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

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

Not relied upon.

Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable

Not relied upon.

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

Not relied upon.

Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary

Not relied upon.

4.2.2. 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 variations to the development standard, including the following:

- It results in a superior outcome for the community with a preferred built form arrangement that aligns with the vision for the site and the wider Westmead Strategic Precinct compared to a compliant scheme. A compliant scheme is likely to result in a 15-storey built form and a significant underutilisation of the floor space for this strategically important site located in the growing Westmead Strategic Precinct and well connected to existing and planned public transport infrastructure.
- The Statement of Environmental Effects prepared by Urbis demonstrates that any impacts associated with the proposed development are acceptable, particularly since there are no significant solar access impacts on neighbouring properties or the public domain as a result of the height variation.
- The additional building height is confined to rooftop plant and services. All floor space is confined within the maximum 52 metre height control.
- The variation does not result in unreasonable adverse amenity impacts on adjacent land.
- The variation does not diminish the development potential of adjacent land.
- The development is compliant with the floor space ratio development standards.
- The scale of development is considered appropriate given the significance of the site as supporting the growth of the Westmead Strategic Precinct.

In conclusion, there are sufficient environmental planning grounds to justify convening the development standard.

4.2.3. 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?

As detailed in Table 1, the proposed development is consistent with the objectives of the height of buildings development standard. The proposal is also consistent with the B4 Mixed Use zone land use objectives that apply to the site under the PLEP 2011, as outlined within Table 2 below.

Table 2 – Consistency with the B4 Zone Objectives

| Objective | Assessment |
|--|---|
| <i>To provide a mixture of compatible land uses.</i> | The proposal integrates a multitude of uses and is a genuine mixed-use development. The proposal includes retail, commercial, health and hotel uses which complement the proposed residential land use and contribute to providing for the local needs of the broader community. |
| <i>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.</i> | The proposal is for the redevelopment of the site comprising the integration of residential and non-residential uses. The site is located in a highly accessible location. The site is currently serviced by the Westmead Train Station and several local and regional bus routes. The site will also benefit in the future from the planned Parramatta Light Rail and Sydney Metro West. Both of these new transport modes are planned to be located within a 500m radius of the site. |

| Objective | Assessment |
|--|--|
| <i>To encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i> | The proposal incorporates a range of apartment types and sizes in one, two and three-bedroom configurations located above a highly active ground plane and through-site link comprising active retail uses, a medical centre and a hotel. |
| <i>To create opportunities to improve the public domain and pedestrian links.</i> | <p>The proposal itself will make a significant contribution to the public domain. The proposal represents an opportunity to renew the existing shopping centre in a vibrant mixed-use development.</p> <p>The proposal includes the provision of a publicly accessible through site link from Railway Parade to the rear of the site, which continues through to an existing informal pedestrian connection to Westmead Hospital and Western Sydney University beyond. In addition, a Voluntary Planning Agreement (VPA) is registered on the title of the land requiring the developer to undertake public domain improvements along Railway Parade and Ashley Lane including the realignment of the pedestrian crossing which provides safe pedestrian access to Westmead Railway Station.</p> |
| <i>To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</i> | The proposal includes a range of non-residential uses. In particular, the proposal comprises neighbourhood scale retail uses to support the daily needs of the community. The proposal also includes a medical centre and a hotel, leveraging the sites strategic location in the Westmead health and education precinct. |
| <i>To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i> | Not applicable. |

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.

4.2.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the height of buildings 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.

4.2.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development does not result in any unreasonable or significant adverse environmental (social, economic or biophysical) impacts. In particular, the variation does not diminish the redevelopment potential or amenity of any adjoining land.

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

The proposed variations to the maximum building height are limited to rooftop plant and services, does not include any floor space and is not attributed to a storey. The rooftop plant and services are setback from the building edge and concealed from view by an architectural roof feature.

Compliance in this circumstance would result in an inferior outcome, with a development that is 15-storeys in height and does not realise to its full extent the floor space available. This is considered to result in a poor outcome for the site that is strategically located in the growing Westmead Strategic Precinct and well connected to existing and planned public transport infrastructure.

The proposal aligns with the directions of the Greater Sydney Region Plan and Central District Plan. It will contribute to achieving the '30 min city' concept and facilitates urban renewal including housing and jobs in alignment with infrastructure investment.

Given the nature of the proposed variation and the justification of the impacts provided within this statement and accompanying SEE. The proposal is consistent with the public interest as it promotes the orderly and efficient use of land. Maintaining the development standard would not result in a public benefit.

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

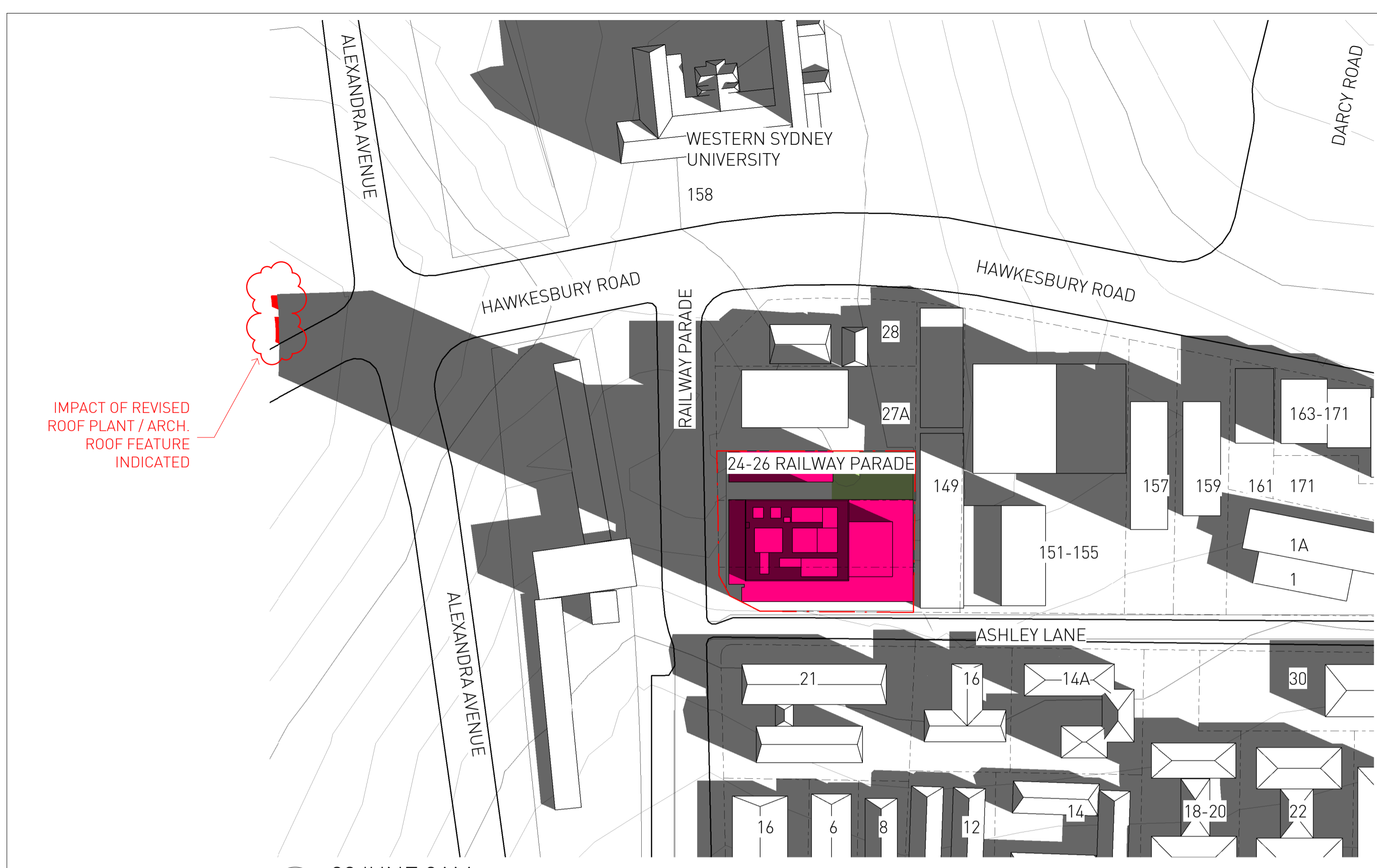
Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 request prior to granting concurrence, should it be required.

5. SUMMARY

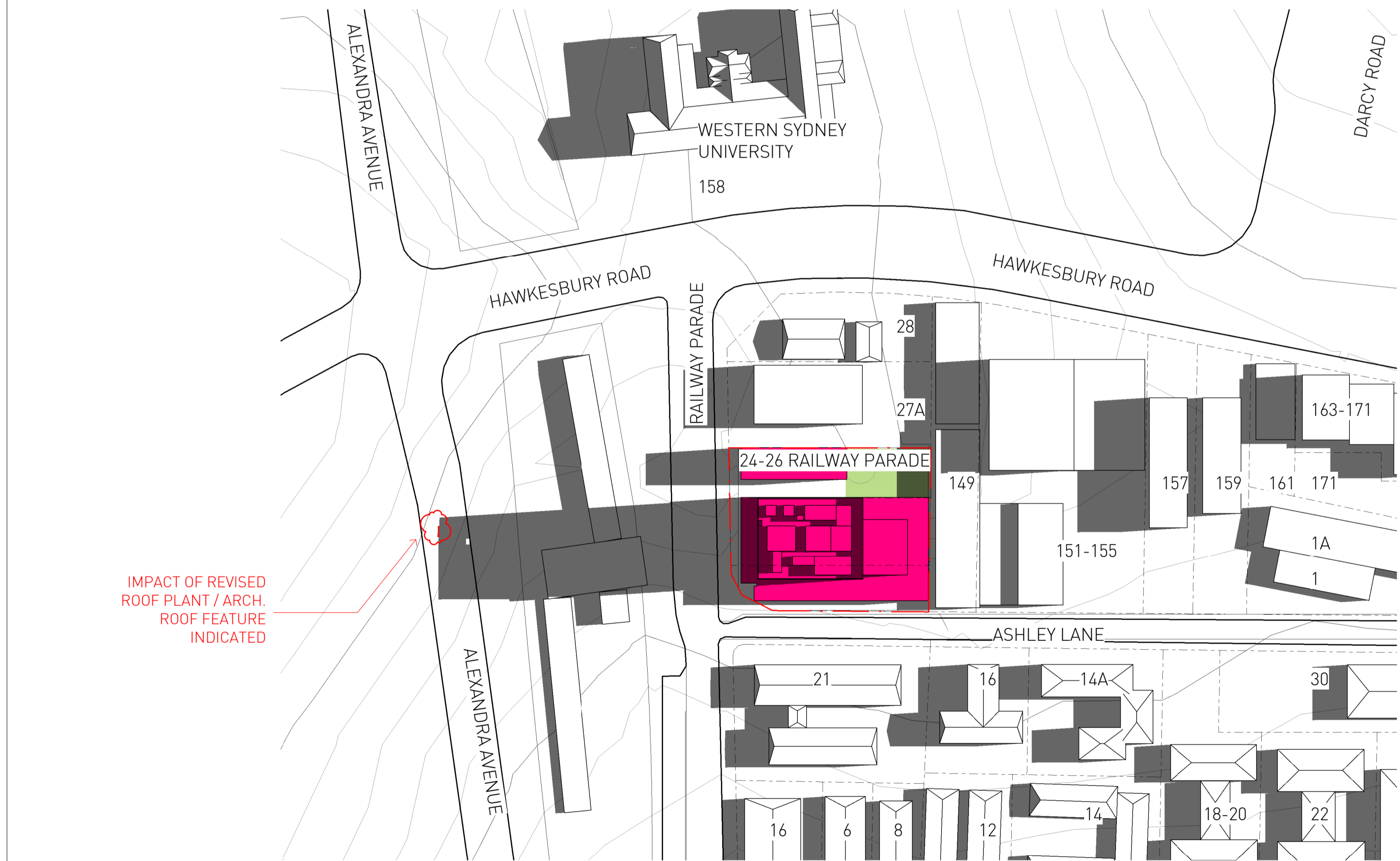
As described in the preceding sections, taking into account the significance of the site, its context, and the vision for the locality, strict compliance with the numerical standard in this instance is both unreasonable and unnecessary for the following reasons:

- The proposal has been reviewed on several occasions by the Parramatta Design Excellence Advisory Panel whom commended the architect on the quality of the design.
- The vision for the Westmead Strategic Precinct is to celebrate its regionally significant health and education hub and provide opportunities for residential, retail, business, hospital, education and community facility development integrated with public transport facilities to improve public transport accessibility and to provide a more permeable pedestrian and bicycle network. This has been achieved through the proposed uses and scale and arrangement of the public realm as a key feature of the site.
- The proposal aligns with the strategic planning framework – the Greater Sydney Region Plan and Central District Plan. Specifically, the proposal will contribute to achieving the '30 min city' concept and facilitates urban renewal including housing and jobs in alignment with infrastructure investment.
- The proposed height exceedance is confined to rooftop plant and services and does not represent additional floor space.
- The proposed floor space, which complies with Clause 4.4 of the LEP is entirely within the height of building control under the Parramatta LEP 2011.
- The additional height will not result in any significant detrimental amenity impacts (overshadowing, views or privacy) to surrounding development when compared to a complying design. Nor will the extent of the non-compliance result in any adverse visual impact on the locality.
- The non-compliance will not hinder the development's ability to satisfy the objectives of the B4 Mixed Use zone.

Based on the reasons outlined, it is concluded the request is well founded and the particular circumstances of the case warrant flexibility in the application of the maximum height of building development standard.



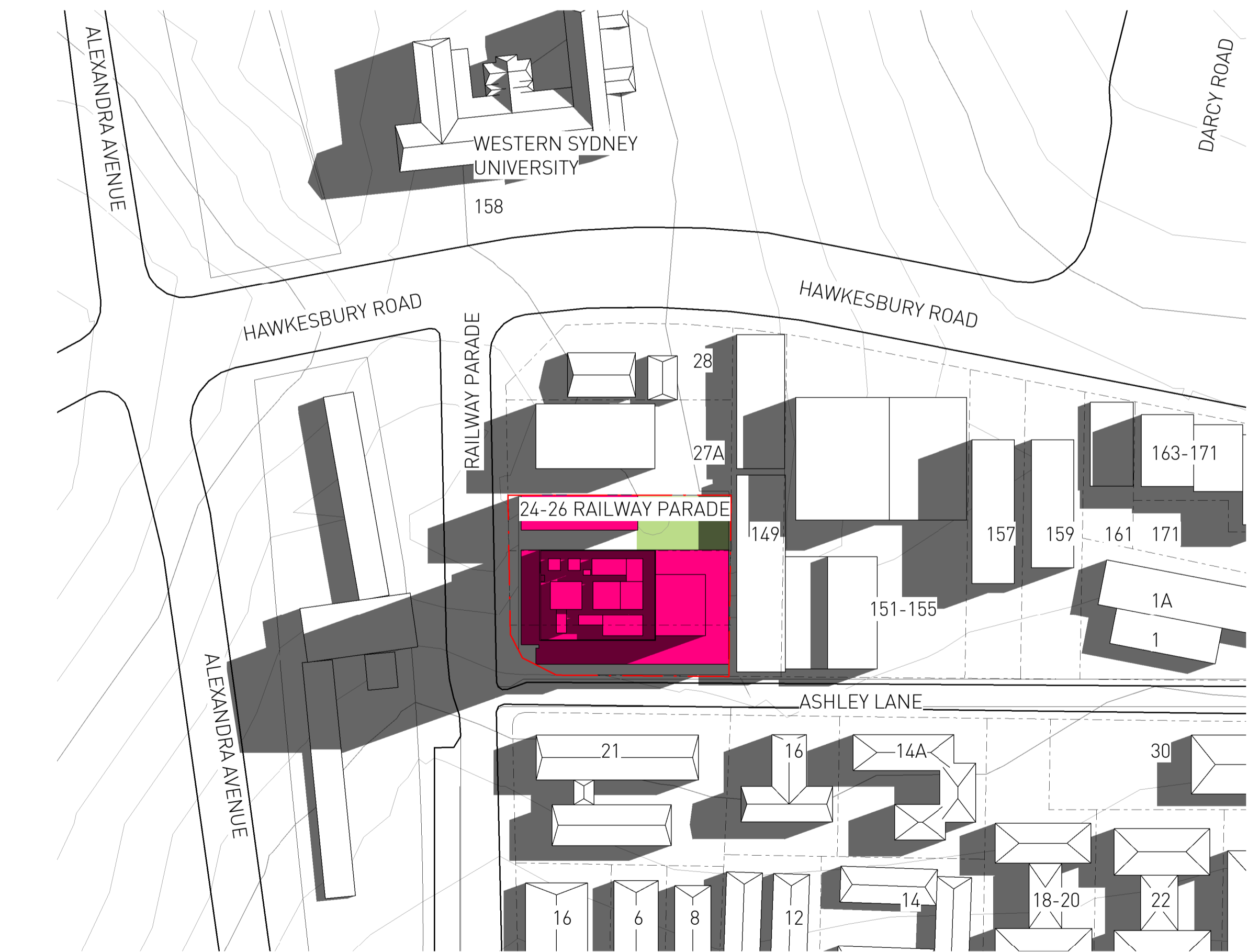
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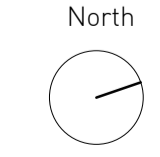
General Notes

1. Do not scale drawings. Dimensions govern.
2. All dimensions are in millimetres unless noted otherwise.
3. All dimensions shall be verified on site before proceeding with the work.
4. All omissions or discrepancies shall be notified to the architect.
5. Mechanical and Electrical plant and services shown are indicative only. Refer to Service Engineers drawings.
6. All steelwork section sizes are indicative only. Refer to Structural Engineers drawings for serial sizes.

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| B | 26.10.2018 | REVISED DA |
| C | 05.03.19 | DA - RFI UPDATE |



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SHADOW DIAGRAMS WITH EXISTING CONTEXT

DEVELOPMENT APPLICATION

16-021 DA180
Project No. Drawing No.

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Rev.



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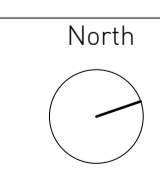
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Scale
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Drawing Title
SHADOW DIAGRAMS WITH EXISTING CONTEXT

DEVELOPMENT APPLICATION

16-021 DA181
Project No. Drawing No.

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Rev.

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