

# REQUEST TO VARY DEVELOPMENT STANDARD

PORT STEPHENS LEP 2013

## CLAUSE 4.3 – BUILDING HEIGHT

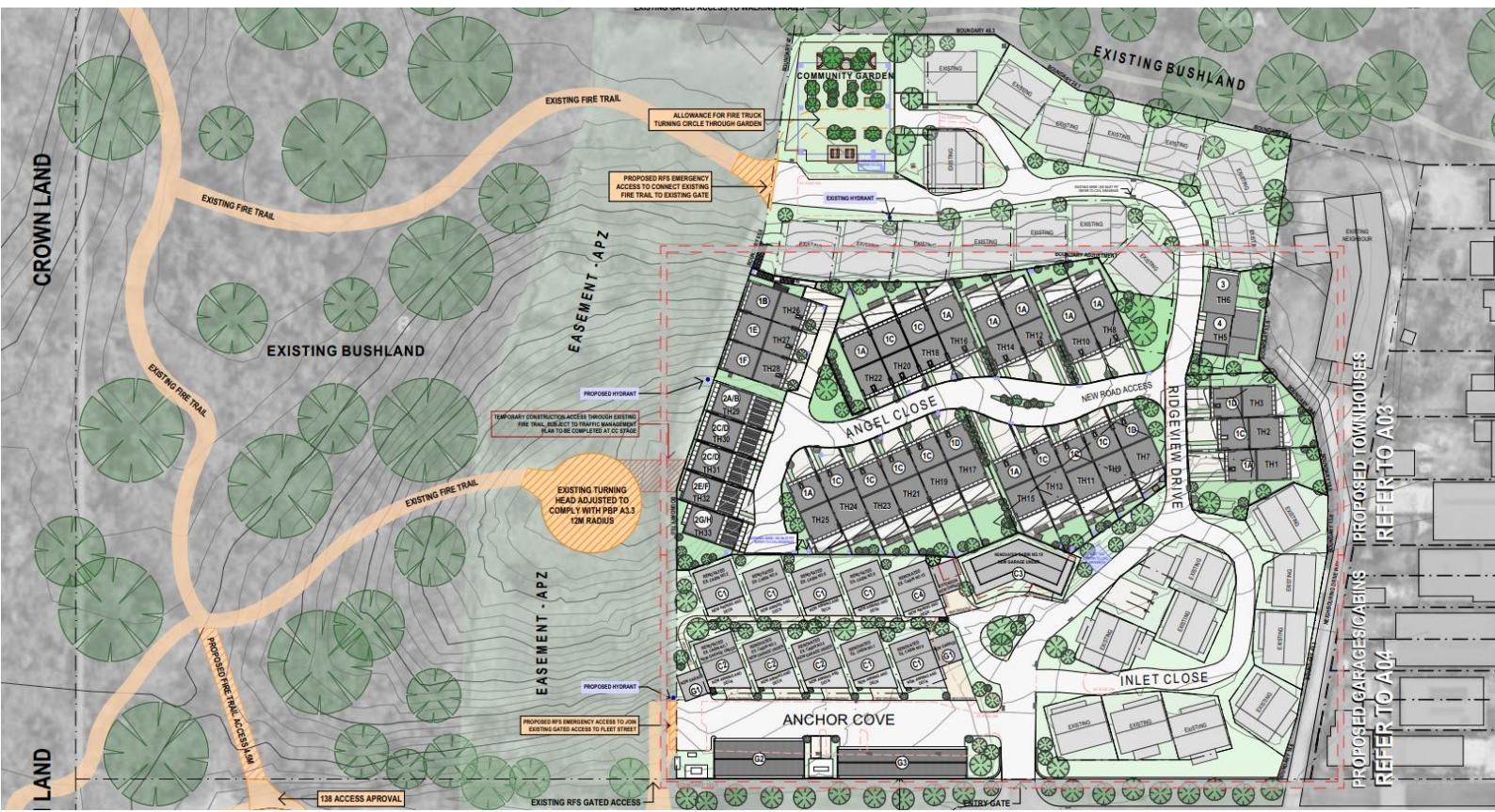
11 – 20 & 25 INLET CLOSE, SALAMANDER BAY NSW 2316

18 – 24, 26 – 42 RIDGEVIEW DRIVE, SALAMANDER BAY NSW 2316

1 – 10 ANCHOR COVE, SALAMANDER BAY NSW 2316

8 FLEET STREET, SALAMANDER BAY, NSW 2316

(Lots 1-20, 25-50 DP285191, Lot 2 DP791551)



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## EXECUTIVE SUMMARY

Perception Planning Pty Ltd have been engaged by Wanda Beach Estate Pty Ltd (the client) to prepare this submission to vary a development standard at 8 Fleet St Salamander Bay, 11 – 20 & 25 Inlet Close, Salamander Bay, 18 – 24, 26 – 42 Ridgeview Drive, Salamander Bay and 1 – 10 Anchor Cove, Salamander Bay (Lot 2 DP791551 & Lots 1-20, 25-50 DP285191), **(the site)**.

This report has been prepared to support a Development Application for the construction of multi-dwelling housing and community title subdivision, with a partial change of use, including site preparation, construction of an internal road network, stormwater infrastructure and landscaping works.

The proposed development results in buildings measuring greater than the maximum building height (HOB) applicable to the land specified under Clause 4.3 of the Port Stephens Local Environmental Plan (LEP) 2013. The site has a prescribed HOB limit of 9m. The highest point of the proposed development measures 9.69m above the natural ground level (TH1), due to sites topography. This represents a 0.69m or 7.66% variation.

Clause 4.6 of LEP 2013 provides for an appropriate degree of flexibility in applying certain development standards such as building height to provide improved environmental planning outcomes. In summary:

- Strict adherence to the numerical height of buildings development standard would be unreasonable and unnecessary in the circumstances of the case.
- The proposed height of building is appropriate when considering it in relation to the existing natural features of the site such as topography, the location of the site and existing built form established in close proximity.
- The proposed development (including additional height) integrates in with the desired contemporary built form of the area and will have no significant impact on the ‘views’ held by existing properties or recreational areas.
- The proposed development provides an appropriate response to the context of the site and its location within Salamander Bay, fronting Fleet Street.
- There are negligible environmental or social impacts as a result of the proposed variation.

This report demonstrates that the proposed development should not be refused on the basis of a variation to the height of buildings development standard resulting from the proposed development.

## TERMS AND ABBREVIATIONS

EP&A Act	Environmental Planning & Assessment Act 1979
EPI	Environmental Planning Instrument
DA	Development Application
HOB	Height of Buildings
LGA	Local Government Area
PSLEP	Port Stephens Local Environmental Plan
SEPP	State Environmental Planning Policy
SEE	Statement of Environmental Effects
VIA	Visual Impact Assessment

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# SITE AND PROPOSED DEVELOPMENT

## 1. Describe the site.

The site is located at 8 Fleet St Salamander Bay, 11 – 20 & 25 Inlet Close, Salamander Bay, 18 – 24, 26 – 42 Ridgeview Drive, Salamander Bay and 1 – 10 Anchor Cove, Salamander Bay (Lot 2 DP791551 & Lots 1-20, 25-50 DP285191) (**FIGURE 1**). The site comprises of an irregular shaped parcel of land with an area of approximately 5.8 ha. The site is zoned R2 – Low Density Residential and C2 – Environmental Conservation and is in Salamander Bay, within the Port Stephens Local Government Area (LGA).

The site currently maintains direct vehicular access from Fleet Street which will maintain vehicle and pedestrian access. Buildings, roads, and other associated infrastructure relating to the existing tourist facility previously operated on Lots 1-20 and 25-50 of DP285191 are located on the site. West of the site, beyond the asset protection zone consists of dense vegetation, known as the Stoney Ridge Reserve (under private ownership). East, south and north of the site comprise low-density residential housing and ancillary structures and a manufactured home estate (Gateway Lifestyle and Salamander Haven Village). Salamander Bay and associated coastline is located approximately 140m to the east of the site.

As shown at **FIGURE 1**, the development site has largely been cleared of vegetation, through historic use as a tourist facility. Commencement of the development consent under DA 16-2018-121-1 has led to the establishment of an asset protection zone (APZ) over 8 Fleet Street Nelson Bay, which will continue to support the site and proposed development in perpetuity. The site does not contain any Biodiversity Values (BV) mapped land, however, is nearby BV land, associated with Stoney Ridge Reserve.

**Figure 1:** Aerial image of the site (Nearmap, 2024)



Figure 2: Site plan of proposed development (EJE, 2025)



## **2. Describe the proposed development.**

The proposed development incorporates the following:

1. Construction of multi-dwelling housing and community title subdivision (including part change of use element), including:
  - a. Construction of 30 new townhouses (mix of two & three storeys, and three storeys with basement), comprising:
    - 28 x 3br units (an alternative floor plan is provided for typology 2, which includes 5 x 4 bdr units, depending on market demands. This is to be considered as an option for DA assessment, however, does not contribute to addition unit counts).
    - 2 x 2bdr Units
2. Conversion of all existing units (36) to dwellings. 25 do not require any development works. 11 require minor alterations including interior renovations and addition of awning and deck to each.
3. Construction of internal road network (Angel Close) to connect to existing.
4. Conversion of existing tennis court to landscaped area.
5. Construction of four x new double garages (G3), two x new double garages and 1 x new double carport within (G2) for use by caravans etc adjoining Fleet Street.
6. Stormwater Infrastructure & Landscaping works.
7. Community Title Subdivision of proposed dwellings into the existing Scheme.

The above development will replace the built works approved under DA 16-2015-448-1 (multi-dwelling housing), and DA 16-2018-121-1 (seniors housing), noting vegetation removal works approved under this DA have been completed. Demolition works approved under DA 16-2022-691-1 have also been completed.

The exceeding elements largely relate to the roofs of the proposed townhouses located along the central spine of the site, where the site slopes upward in a substantial way. The proposed development exceeds the 9m HOB development standard in multiple parts of the site, with the largest exceedance being 0.69m, which is a 7.66% variation.

# PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

## 3. What is the environmental planning instrument/s you are seeking to vary?

Port Stephens Local Environmental Plan 2013

## 4. What is the site's zoning?

R2 Low Density Residential & C2 Environmental Conservation

## 5. Identify the development standard to be varied.

- *What is the development standard being varied?*

Height of Buildings

- *What clause is the development standard listed in the EPI?*

Clause 4.3 – Height of buildings

- *What are the objectives of the development standard?*

The objectives of clause 4.3 are as follows:

- (a) *to ensure the height of buildings is appropriate for the context and character of the area,*
- (b) *to ensure building heights reflect the hierarchy of centres and land use structure*

## 6. Identify the type of development standard.

The development standard is numerical.

## 7. What is the numeric value of the development standard in the environmental planning instrument?

9m above ground level. As per the Standard Instrument “*ground level (existing) means the existing level of a site at any point.*”

**8. What is the difference between the existing and proposed numeric values?  
What is the percentage variation (between the proposal and the environmental planning instrument)?**

The proposed development results in a townhouse exceeding the maximum 9m HOB development standard by 0.69m, or 7.66% variation ( $0.69 / 9 = 0.0766 \times 100$ ).

The drawing provided in **FIGURE 3** below shows a blanket set at 9m above natural ground level, demonstrating various degrees of non-compliance, with a maximum non-compliance at Townhouse 1 (TH1) of 0.69m (7.66%). It is noted that there are other typologies within the proposed development that exceed the HOB development standard, however they are of a lesser extent, and as such the maximum exceedance will take primacy in discussing the environmental planning grounds for the exceedance.

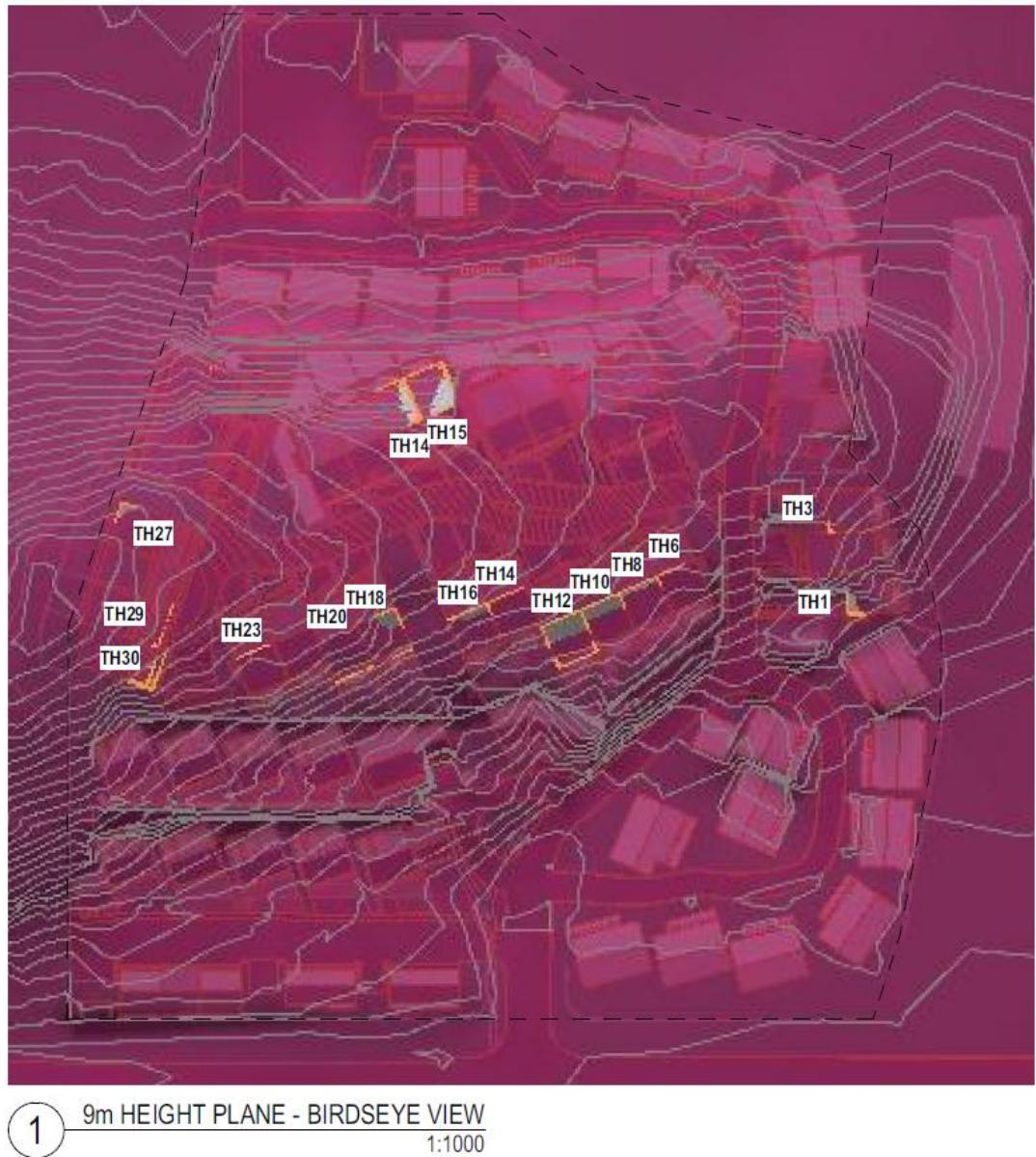
The table below provides a summary of each proposed townhouse's height. Colour coding indicates:

- Green: Compliant
- Yellow: Non-compliant, under 10% variation

As noted below, 46.66% of units are below the 9m HOB prescribed by LEP 2013, while 53.33% of the units are above the 9m HOB prescribed by LEP 2013, but by no more than 10%. The height exceedances result from the varying levels of topography across the site, with those townhouses exceeding the HOB being located on a crest. Part 10 and 11 of this report provide detail into the justification for this departure in the development standard.

<b>Unit Number</b>	<b>Compliance</b>	<b>Unit Number</b>	<b>Compliance</b>
TH1	0.69m over (7.66%)	TH16	0.22m over (2.44%)
TH2	Complies	TH17	0.57m over (6.33%)
TH3	0.21m over (2.33%)	TH18	0.52m over (5.77%)
TH4	Complies	TH19	Complies
TH5	Complies	TH20	0.02m over (0.22%)
TH6	0.11m over (1.22%)	TH21	Complies
TH7	Complies	TH22	Complies
TH8	0.23m over (2.55%)	TH23	0.04m over (0.44%)
TH9	Complies	TH24	Complies
TH10	0.43m over (4.77%)	TH25	Complies
TH11	Complies	TH26	Complies
TH12	0.31m over (3.44%)	TH27	0.44m over (4.88%)
TH13	Complies	TH28	Complies
TH14	0.04m over (0.44%)	TH29	0.09m over (1%)
TH15	0.43m over (4.77%)	TH30	0.44m over (4.88%)

## 9. Visual representation of the proposed variation



**Figure 3:** Blanket overlay of 9m above natural ground level, showing HOB breaches (EJE, 2025)

## JUSTIFICATION FOR THE PROPOSED VARIATION

### 10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

There are five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary (items a to e), in accordance with the Five Part Test (*Wehbe vs Pittwater Council*). The five possible ways and associated assessment are set out in **TABLE 1** below. One of them are relevant in this case.

**Table 1:** Development standard compliance assessment

<p>a) <i>Are the objectives of the development standard achieved notwithstanding the non-compliance?</i></p>
<p>The first way is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The objectives of Clause 4.3 are:</p> <p>(a) <i>to ensure the height of buildings is appropriate for the context and character of the area.</i></p> <p>(b) <i>to ensure building heights reflect the hierarchy of centres and land use structure.</i></p> <p>a) As shown within <b>FIGURE 4</b> below, the proposed buildings slightly exceed the extent of existing development height of the site. This creates a tiered visual impact; however the magnitude is limited, and the exceedance is limited to buildings on the central portion of the site. The site slopes up from the Fleet Street frontage, as shown below, creating a tiered built outcome. This will lessen the perceived bulk and scale and render the built outcome more appropriate for the area.</p>  <p><b>Figure 4:</b> Photo montage showing compliant buildings as the primary feature on landscape</p>

The surrounding neighbourhood context and character can be described as a mixture of low and medium density development. Land to the east and north is predominantly low-density development, with smaller amounts of medium density development. Land to the south consists of medium density development, with seniors living facilities forming the boundary of urban settlement with the heavily vegetated area to the west.

Strict compliance with the HOB control would not result in a substantially different outcome when considering this HOB objective. The 7.66% exceedance has not resulted in a development outcome that is inappropriate for the area. The proposed development brings a degree of medium density development (as permitted in the R2 zone under LEP 2013). Taking all these elements into consideration, the height of the proposed buildings is appropriate for the context and character of the area, and objective (a) is achieved.

b) A hierarchy of centres, or broad land use structure is not established within the location and surrounding area. The site and surrounding land is zoned R2 Low Density Residential, with land to the west being C2 Environmental Conservation. The non-residential zoned land in the immediate surrounding area does not contain maximum building height controls. The proposed development, and height exceedance, will not compromise any perceived land use structure, per objective (b).

*b) Are the underlying objectives or purpose of the development standard not relevant to the development?*

The underlying objective of the height standard is relevant to the development and is achieved as outlined in above. Therefore, this test is not applicable.

*c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)*

It must be considered whether the underlying object or purpose of the standard would be defeated or thwarted if compliance was required and therefore compliance is unreasonable. This is not considered to be relevant under the circumstances of this case and the test is therefore not applicable.

*d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?*

Strictly limiting development forms using this development standard may be overly restrictive and could result in outcomes that are both unsuitable to the locality and of lesser or poor quality. The proposal has not disregarded the development standard, however, looks for a level of flexibility as is provided under Clause 4.6. The proposed development provides a high degree of amenity for residents on the site, without adversely impacting the amenity of adjoining residents and properties. The proposed development does not dominate the landscape any more than what has been previously approved on the site. We do not argue that the development standard has been virtually abandoned or destroyed, and approving this variation would not result in this outcome. As such, it this test is also not applicable.

e) *Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?*

The final test is whether the zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land. That is, the particular parcel of land should not have been included in the particular zone. This is not applicable as the R2 Low Density Residential zoning of the site is entirely appropriate for the surrounding locality, and the proposed development is permissible in the zone. The test is therefore not applicable.

## **11. Are there sufficient environmental planning grounds to justify contravening the development standard?**

Environmental planning grounds that justify contravening the development standard are detailed below.

### Architectural Design, Amenity, Site Characteristics and Visual Impact

- The site comprises of a level of approximately 6m AHD at its lowest point, with a steep rise to approximately 21m AHD at its highest point. The topography of the site makes compliant buildings challenging, whilst having the same level of amenity. As shown on Sheet A103M of **APPENDIX 2**, the height breach blanket shows only the roofs slightly below the roofs as being the primary sources of the breach. A compliant design would require a flat roof, or a reduction in built form (storeys). Flat roofs are generally not desired for stormwater collection purposes, and a reduction in storeys would not represent the same level of amenity.
- All variations range from 0.02m to 0.69m. From the common eye, this variation is unlikely to be noticeable from the public domain i.e. Fleet Street. Each unit corresponds with the topography, to minimise excessive amounts of earthworks and cut and fill. This will ensure that overall impacts on the landscape are minimised, and that overall visual impacts are minimised. The exceeding elements are located on crests. If compliance was strictly required, it would not provide a significantly improved visual outcome, as the variations are not likely to be explicitly noticeable in the broader urban landscape of the area.
- As the non-compliant elements of the proposed development are generally concentrated to the centre of the site, the proposed development is largely not considered to cause overlooking issues. Any potential overlooking issues are not resulting from the exceedance, as the proposed buildings on the east side of the lot (of which concern for overlooking was raised in the pre-lodgement minutes at **APPENDIX 11**) are largely compliant. Their non-compliant elements relate to the western side of those buildings, and thus the non-compliance does not impact overlooking issues, which are in part addressed by the Landscape Plan at **APPENDIX 7**.
- It is noted that strict compliance with Port Stephens DCP controls relating to floor-to-ceiling heights (FCH), the proposed development would still render a

non-compliance. The DCP requires FCH to be at 2.4m minimum. The proposed development generally provides for 3.1m at the ground floor and 2.7m for subsequent floors. This maximises the level of light and ventilation that enters each townhouse. Strict compliance would render each townhouse with a substantially reduced environmental planning outcome, through less internal solar and ventilation access.

- As shown by Sheet A103M of **APPENDIX 2**, the non-compliance will be most visible from Fleet Street. However, it is not likely that the common eye will notice the difference between a compliant development and the proposed non-compliant development. The Visual Impact Assessment that supports this DA at **APPENDIX 8**, which provides a further assessment of visual impacts regarding the proposed development. The Visual Impact Assessment found that the parts of the site with the highest exceedances (proposed townhouses on the southern side of proposed Angel Close), the built form aligns in scale and the colours and materials are consistent. It finds that the visual impact of the height exceedance is negligible.
- The proposed development is unlikely to impact the views of adjoining development. The most valuable views, per the *Tenacity* planning principle, are whole water views in particular. This is most likely to occur to the east, towards Wanda Beach. It is noted that there are no dwellings or properties to the west of the subject site. This ensures that the proposed development does not result in any view loss, regardless of compliance with the height of buildings development standard. The Visual Impact Assessment at **APPENDIX 8** found that “*the views held towards the site from the adjoining Crown Reserve are only by pedestrian traffic in transit for a short period of time and is not from permanent dwellings or otherwise. The proposed development from this location is well integrated into the surrounds and does not result in a dominating structure to the skyline or existing streetscape*”.



**Figure 5:** Perspective of the proposed development viewed from Fleet Street (EJE, 2025)

- As shown above in **FIGURE 5**, the proposed development responds to its topography. It contains the non-compliant elements largely to the centre of the site, resulting in a bulk and scale outcome that is lesser than if the tallest elements were closer to the property boundaries.

#### Zone objectives and public interest

- The land use zone for the site is R2 Low Density Residential. The objectives of this zone are:
  - *To provide for the housing needs of the community within a low-density residential environment.*
  - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
  - *To protect and enhance the existing residential amenity and character of the area.*
  - *To ensure that development is carried out in a way that is compatible with the flood risk of the area.*
- Despite the variation, the development is in the public interest as it is consistent with the abovementioned objectives through providing additional housing in the community, whilst also being generally consistent with the existing residential amenity and character of the local area. The public interest is best served through the orderly economic use of land for purposes that are permissible under the relevant environmental planning instrument. The proposed development provides additional housing, which is in the public interest as it will directly

address housing supply and affordability issues in the region, as well as promoting housing diversity, as discussed within the Statement of Environmental Effects, which this report supports.

### Natural Environment

- The development has also been identified to be consistent with the relevant objectives, which provides sufficient environmental planning grounds under the LEP (Clause 4.6) for a variation to the numerical development standard.
- The height variation proposed does not compromise the natural environment in which the site is located and is appropriate in the context of surrounding built form and neighbourhood character. It is crucial to note that despite the proposed height variation, the development adheres to the broader principles of ecologically sustainable development by integrating economic, environmental, and social considerations into the planning process.

### **12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)**

No further information is applicable.

## **CONCLUSION**

In summary, through this Clause 4.6 analysis it has been found that;

- Strict adherence to the numerical height of buildings development standard would be unreasonable and unnecessary in the circumstances of the case.
- The proposed height of building is appropriate when considering it in relation to the existing natural features of the site such as topography, the location of the site and existing built form established in close proximity.
- The proposed development (including additional height) integrates in with the desired contemporary built form of the area and will have no significant impact on the 'views' held by existing properties or recreational areas.
- The proposed development provides an appropriate response to the context of the site and its location within Salamander Bay, fronting Fleet Street.
- There are negligible environmental or social impacts as a result of the proposed variation.