

Clause 4.6 Exception to Development

Standard (Issue 2) – Building Height - Merrylands East

Neighbourhood Centre

Job Name	Merrylands East Neighbourhood Centre		
Job Number	18-029		
Client	Green Dior Holdings Pty Ltd		
Quality Management			
	Name	Date	Signature
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This report is current at the date of the development application only.

This report is to be read in its entirety and in association with other documentation submitted as part of the Development Application.

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1. Introduction

Knight Frank Town Planning have been commissioned by Green Dior Pty Ltd to prepare a request pursuant to clause 4.6 of the *Parramatta Local Environmental Plan 2011* (the LEP) in respect of a Development Application seeking development consent for a proposed Mixed-Use Development on the former John Cootes Furniture site located over the following properties:

- ◆ 246 Woodville Road;
- ◆ 248-260 Woodville Road (part of former JCF site);
- ◆ 2 and 4 Lansdowne Street;
- ◆ 8 Lansdowne Street (part of former JCF site);
- ◆ 8A, 10, 12 and 14 Lansdowne Street;
- ◆ 16 Lansdowne Street (part of former JCF site); and
- ◆ 19 Highland Street (part of former JCF site).



marchesepartners |  Merc Capital

Figure 1 - Site Location Aerial Photograph (Marchese Partners)

Details of the mixed use development proposal that are subject of this Development Application are shown on the accompanying Architectural Drawings package prepared by Marchese Architects, Job No.18109 Revision C, and include the following components:

- ◆ Two (2) basement floors comprising 930 car parking spaces, 56 motorcycle spaces and 300 bicycle spaces;
- ◆ Single level 10,055m² retail shopping centre (GFA) that comprises a supermarket and specialty shops;
- ◆ Shop-top housing/apartment building comprising 413 dwellings, inclusive of 42 adaptable dwellings and 8 affordable housing dwellings;
- ◆ A landscaped podium area and rooftop communal landscaped areas;
- ◆ Hotel/Serviced Apartments with 95 rooms over four (4) floors, 5,784m² in floor area, with associated hotel facilities, a swimming pool and double height lobby; and

- ◆ Childcare centre for up to approximately 100 children measuring 816m² (GFA) plus outdoor space in accordance with regulations;

With regard to the building form, the development comprises a single storey shopping centre as the podium with 5 buildings measuring between 4 to 8 storeys above ground level (5 to 9 storeys including the podium). Two basement levels are proposed which primarily contain car parking for the development.

The proposed development includes some essential building roof elements that are slightly above the building height development standard within the Parramatta LEP 2011 (the LEP). Consistent with the terms set out in clause 4.6 of the LEP, a variation to the height of buildings development standard is being sought for these roof elements.

Clause 4.6 establishes preconditions that a Consent Authority must be satisfied of before it can grant consent to a development that is non-complaint with a development standard. This written statement has been prepared in accordance with the relevant principles established in the following NSW Land and Environment Court judgments:

- ◆ *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- ◆ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- ◆ *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
- ◆ *Moskovich v Waverley Council* [2016] NSWLEC 2015; and
- ◆ *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

2. The Proposed Variation

An exception is being sought under clause 4.6 of the Parramatta LEP 2011 from the need for some building roof elements to strictly comply with the development standard clause 4.3 Height of buildings, which reads as follows:

4.3 Height of buildings

(1) *The objectives of this clause 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.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) *Despite subclause (2), any development on land identified with a thick blue line and labelled "Area 1" on the Height of Buildings Map is not to exceed the height determined in accordance with the Table to this clause.*

Site area	Maximum height
≤ 950 square metres	15 metres
> 950 ≤ 2,100 square metres	21 metres
> 2,100 ≤ 3,200 square metres	39 metres
> 3,200 square metres	52 metres

The Height of Buildings Maps – Sheet HOB_006 and Sheet HOB_011 under Parramatta LEP 2011 identifies the subject site as having a maximum building height of 31m, detailed as 'U1' on the associated maps – see **Figures 2 and 3**.

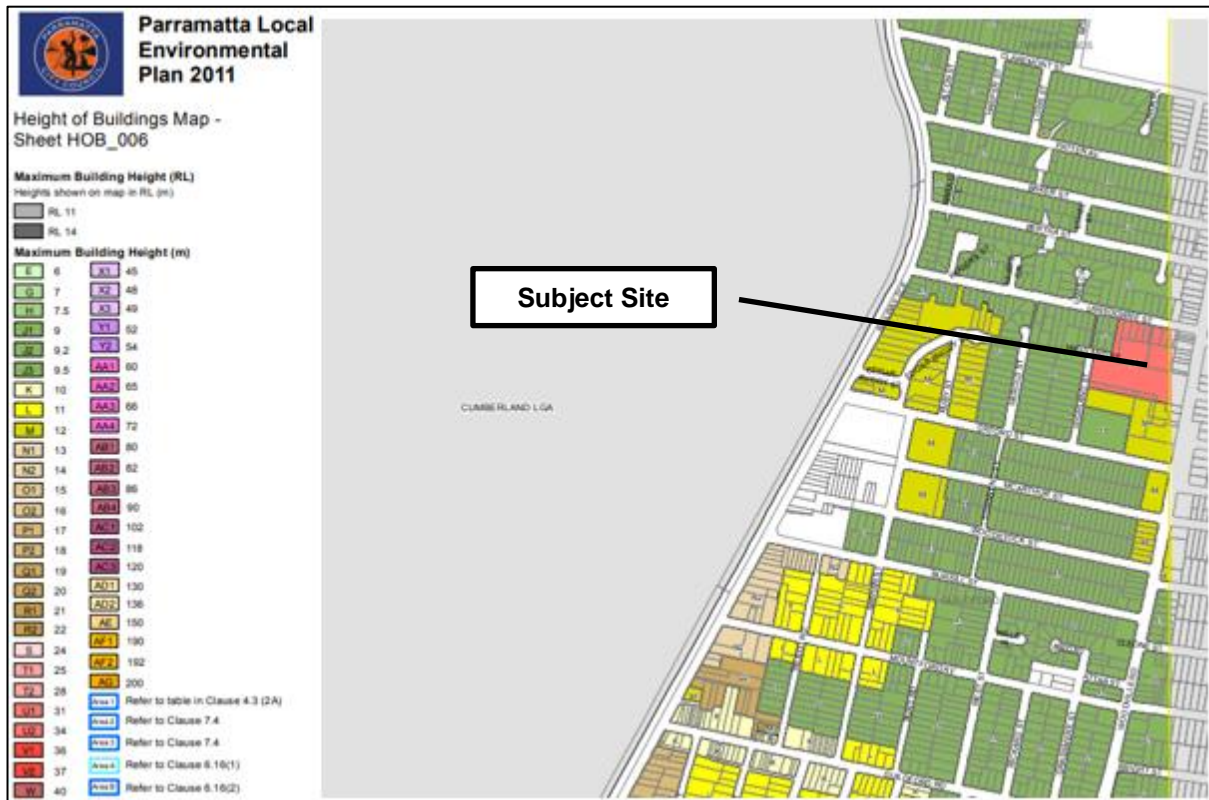


Figure 2 - Height of Building Map Sheet HOB_006

Source: Parramatta LEP 2011

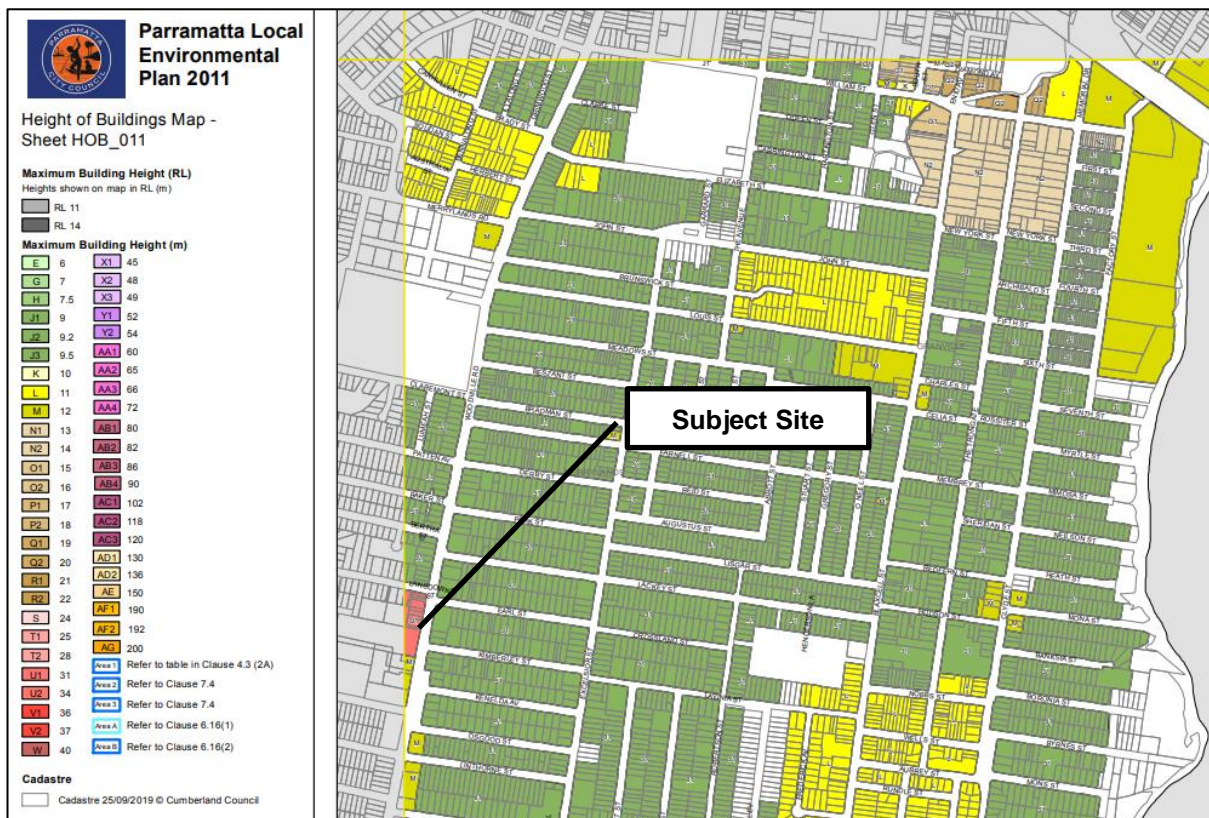


Figure 3 - Height of Building Map Sheet HOB_006

Source: Parramatta LEP 2011

The Dictionary to the LEP provides the following definition of **building height**.

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Architectural drawings prepared by Marchese Partners International Pty Ltd display the proposed development and include specific drawings that indicate the extent of the proposed exceedance of the height of buildings. It is noted that exceedances to the height of building standard are minor and limited to parts of the essential roof elements on Buildings C and D, the remainder of the development is compliant with the height standard.

- Drawing DA9.10 (see Figure 4) shows that there is a slight exceedance of the height of building development standard by roof components of Building D, with a maximum building height of 31.22m. This represents a maximum numerical exceedance of the height of building development standard by 0.22m or 0.7% which is exceedingly minor. A breakdown of the building components and building heights exceeding the development standard are detailed below:
 - Balustrade/screen height (made from translucent/transparent material): 31.22m – exceeds development standard by 0.22m or 0.7%;
 - lift/stair overrun: 31.15m – exceeds development standard by 0.15m or 0.48%;
 - Plant machinery screen – exceeds development standard by 0.1m or 0.32%.
- Drawing DA9.10 (see Figure 4) show that there is a slight exceedance of the height of building development standard by roof components of Building C, with a maximum building height of 33.07m. This represents a maximum numerical exceedance of the height of building development standard by 2.07m or 6.67%. A breakdown of the building components and building heights exceeding the development standard are detailed below:
 - Balustrade/screen height (made from transparent/translucent material): 31.91m – exceeds development standard by 0.91m or 2.93%;
 - lift/stair overrun: 33.07m – exceeds development standard by 2.07m or 6.67%.

With regard to the building form, the development contains a single storey shopping centre comprising non-residential land uses at the podium with 5 buildings measuring between 4 to 8 storeys (5 to 9 storeys including the podium) above ground level. Two basement levels are proposed which primarily contain car parking for the development.

Building D

Building D is located at the north east corner of the development at the intersection of Woodville Rd and Lansdowne St. The built form includes a ground floor podium and 5-7 storey residential apartment building. The proposed exceedance for Building D is limited to part of the lift/stair overrun, part of the balustrade/screen in the far north eastern corner of the building and part of the plant machinery screen. The habitable floor levels of Building D are substantially under the LEP height limit.

The building form with regard to the number of storeys at this location is consistent with the area-specific Development Control Plan within the Parramatta DCP 2011, which envisages a nine (9) storey building form along the Woodville Road frontage whereas an overall eight (8) storey building form is proposed.

Building C

Building C is located within the south eastern corner of the development site, at the intersection of Woodville Rd and New Street 1. The built form includes a ground floor podium and 5-8 storey residential apartment building. The proposed exceedance for Building C is limited to part of the lift/stair overrun and part of the balustrade/screen. The habitable floor levels of Building C are substantially under the LEP height limit.

The remainder of the development, namely Buildings A, B and E, are all compliant with the height of buildings development standard with a ground floor podium and between 4 -7 storey apartment building. Figure 4 is an excerpt from the suite plans prepared by Marchese Partners, which display the extent of the variation being sought in the context of the proposed development.

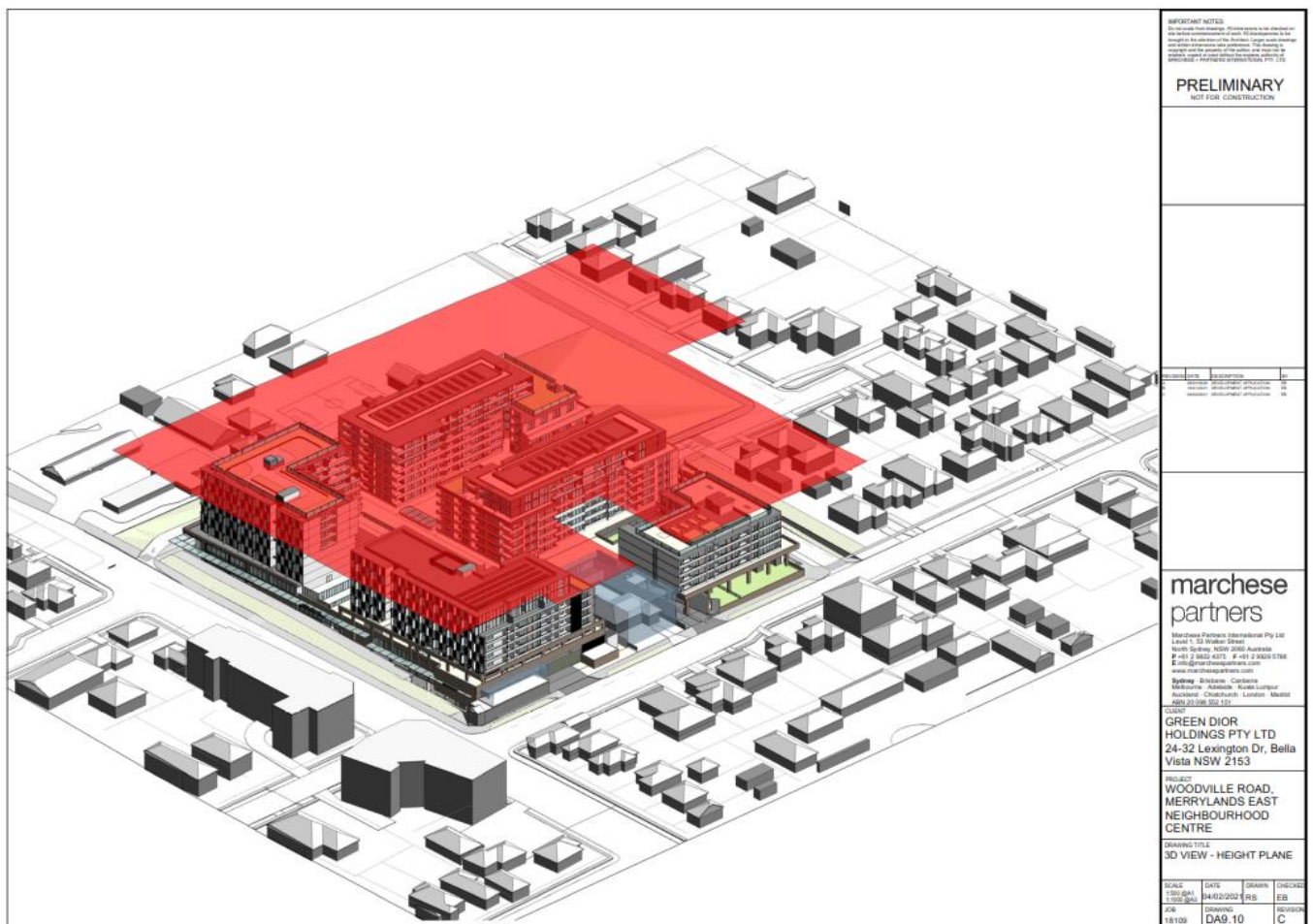


Figure 4 – 3D View – Height Plane (Source: Marchese Partners)

Draft Cumberland Local Environmental Plan

Council has prepared a Planning Proposal for the new Cumberland Local Environmental Plan. The Planning Proposal describes how the provisions of the Auburn, Parramatta and Holroyd Local Environmental Plans will be consolidated to provide a single planning framework for all of Cumberland City. At the time of writing this cl 4.6 variation submission the Planning Proposal had been publicly exhibited and reported to Council. The planning proposal was endorsed by Council at its Meeting of 15 July 2020 and formally provided to the Department of Planning, Industry and Environment in August 2020. The new Cumberland LEP is expected to be finalised by the end of the 20/21 financial year. The resolution of Council, when endorsing the new LEP, included the following provision for development which comprises affordable housing:

- f. Allow an increase to the existing HOB controls in the R4 High Density Residential, B2 Local Centre & B4 Mixed Use zones of an additional 7 metres (2 additional levels) for all proposed developments whereby the Affordable Housing component (in accordance with State Environmental Planning Policy (Affordable Rental Housing) 2009) is 50% or more and an increase of 3.5 metres (1 additional level) where the Affordable Housing component is less than 50%. (Development must be for a land use of Shop Top Housing, Residential Flat Buildings or Boarding Houses only where permissible.*

As the proposed development contains eight (8) affordable housing units the development, being within the proposed land use zone B2 Local Centre, would benefit from an uplift of 3.5m. This would have the effect of raising the height of building development standard to 34.5m. Under the draft LEP the proposal would comply with the maximum permitted height of building.

3. Clause 4.6 Exceptions to Development Standards

3.1 Subclause 4.6(1) – Objectives

Clause 4.6 Exceptions to Development Standards of the *Parramatta Local Environmental Plan 2011* (LEP) permits Council the flexibility to grant consent where a development exceeds a development standard of the LEP. The objective of clause 4.6 is to provide flexibility in applying certain development standards to development to achieve a better town planning outcome than would otherwise occur through strict compliance to the development standard.

Clause 4.6 of the LEP sets out the objectives of the clause:

(1) The objectives of this clause are as follows—

- (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.*

In the circumstance of the case asset out in this submission, it is entirely appropriate to apply a degree of flexibility in considering the development standard. The proposed development would result in an exceedance of the numerical building height by 2.07m or 6.67% at the greatest exceedance. Exceedance of the development standard is limited to Building C and D, the remainder of the development complies with the maximum permitted building height. This is a minor variation to the development standard for a development that is consistent with the future desired character of the area and will not result in significant adverse effects upon adjoining development. The habitable floor levels for both buildings remain substantially under the LEP height limit.

- Drawing DA9.10 (see Figure 4) shows that there is a slight exceedance of the height of building development standard by roof components of Building D, with a maximum building height of 31.22m. This represents a maximum numerical exceedance of the height of building development standard by 0.22m or 0.7% which is exceedingly minor. A breakdown of the building components and building heights exceeding the development standard are detailed below:
 - Balustrade/screen height (made from translucent/transparent material): 31.22m – exceeds development standard by 0.22m or 0.7%;
 - lift/stair overrun: 31.15m – exceeds development standard by 0.15m or 0.48%;
 - Plant machinery screen – exceeds development standard by 0.1m or 0.32%.
- Drawing DA9.10 (see Figure 4) show that there is a slight exceedance of the height of building development standard by roof components of Building C, with a maximum building height of 33.07m. This represents a maximum numerical exceedance of the height of building development standard by 2.07m or 6.67%. A breakdown of the building components and building heights exceeding the development standard are detailed below:
 - Balustrade/screen height (made from transparent/translucent material): 31.91m – exceeds development standard by 0.91m or 2.93%;
 - lift/stair overrun: 33.07m – exceeds development standard by 2.07m or 6.67%.

It is proposed to redevelop the majority of the 'key site' as indicated within Section 4.1 Town and Neighbourhood Centres of the Parramatta DCP 2011 (Merrylands East Neighbourhood Centre Precinct) as a new neighbourhood centre within Merrylands East. This will provide a variety of compatible land uses that satisfy the day to day needs of residents and contributes to a mix of housing typologies, including 8 affordable housing units and 10% of adaptable housing units, which are able to respond to changing demographics and needs of the community.

As set out within this written statement the development achieves a better town planning outcome than would otherwise occur through strict compliance with the development standard.

3.2 Subclause 4.6(2) – Exclusions from the Operation of Clause 4.6

Subclause 4.6(2) provides that;

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

Clause 4.3 Height of buildings is not expressly excluded from the operation of clause 4.6. Therefore, consent may be granted under the operation of the clause.

3.3 Subclause 4.6(3) – Written Request

Subclause 4.6(3) establishes that consent must not be granted by Council unless it has considered a written request that seeks to justify the contravention of the development standard and demonstrating certain matters:

(3) Development consent must not be granted for 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—
(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed development is non-compliant with the clause 4.3 Height of buildings development standard. This submission constitutes a written statement for Council's consideration under the terms of this clause.

Strict compliance with the numerical development standards is considered to be unreasonable and unnecessary in the circumstances of the case under clause 4.6(3)(a) and there exist sufficient environmental planning grounds to justify the departure from the development standard consistent with clause 4.6(3)(b).

The exceedance of the LEP height limit is limited to part of the building roof elements of Buildings C and D which are essential to the functioning and internal amenity of the building and which have no significant environmental impact.

Buildings C and D are consistent with the maximum number of storeys in the area specific DCP. Building C has a height in storeys that is the same as the DCP, and Building D has a height in storeys that is one storey lower than the DCP.

Clause 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Clause 4.6(3)(a) of the LEP provides that a written request must demonstrate that compliance with the development standard is 'unreasonable or unnecessary in the circumstances of the case'.

Compliance with the height of building development standard in the Parramatta LEP is unreasonable and unnecessary as the zoning and height of building development standard applying to the site in the Parramatta LEP are being repealed and replaced in the Draft Cumberland LEP which is certain and imminent and for which the proposed development complies. The proposal complies with the incentivised increase to height of building controls of 3.5m for the site (or total overall permitted building height of 34.5m) in the Draft Cumberland LEP, and it is therefore unreasonable and unnecessary to comply with the 31m height of building development standard in the Parramatta LEP. The proposed development is also consistent with the objectives of the standard being varied.

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston expressed the view that there are five ways in which an objection may be well founded, and that approval of the objection may be consistent with the aims of that policy. The position that compliance with the development standard is unreasonable or unnecessary may be demonstrated in any one of the following five ways outlined in *Wehbe*.

Table 1 - Wehbe v Pittwater Council, Five Methods

<i>Wehbe v Pittwater Council</i> [2007] NSW LEC 827	
The Five Methods	Response
1. <i>The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)</i>	As detailed within section 3.4 of this report the objectives of the development standard are achieved despite the non-compliance with the height of building standard. Building heights have been distributed throughout the site consistent with Council's strategic direction for the site guided by the area specific planning controls within the Parramatta DCP 2011. The variation to the development standard will not result in any greater overshadowing of adjoining properties, particularly the Granville South Public School to the south, nor will it result in any significant adverse visual or privacy impacts upon adjoining properties.
2. <i>The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).</i>	This method is not relied upon to determine that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
3. <i>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).</i>	This method is not strictly relevant and is not relied upon to determine that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.
4. <i>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 (Fourth Method)</i>	The HOB standard in Parramatta LEP is being repealed and replaced with a new HOB standard in the new Cumberland LEP, which is imminent. That is, the proposed development would be compliant with incentivised increase to HOB controls of 3.5m for the site (or total overall permitted HOB of 34.5m) based on its provision of affordable housing. Whilst not known to be abandoned or destroyed by actions of the Council in granting consents departing from the standard, the existing HOB control is being repealed and replaced with a new HOB control under which the proposed development would be compliant.

Wehbe v Pittwater Council [2007] NSW LEC 827	
The Five Methods	Response
5. <i>The zoning of the particular 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 and compliance with the standard would be unreasonable and unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).</i>	This method is not relevant to the development standard being varied and is not relied upon for determining that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

As demonstrated in **Table 1**, and elsewhere in this report compliance with the development standard is unreasonable and unnecessary in the circumstances of the case consistent with the test established in *Wehbe v Pittwater [2007] NSW LEC 827*.

Clause 4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

There are unique circumstances to this case and sufficient environmental planning grounds specific to the development and subject site which warrant support, including:

- The development is closely aligned with Council's strategic direction for the proposed Merrylands East Neighbourhood Centre Precinct. The built form and distribution of bulk and scale throughout the development site is consistent with the area specific planning controls under the Parramatta DCP 2011. The number of storeys proposed for Buildings C and D are consistent with the distribution of the built form adjoining Woodville Road as envisaged by the DCP. On this point it is important to note that Building D proposes a built form of eight (8) storeys whereas the DCP allows for a built form of nine (9) storeys.
- The development will deliver a range of compatible land uses comprising residential dwellings, a supermarket, specialty retail shops, child-care centre and hotel.
- The built form has been appropriately distributed throughout the site with the greater built form adjoining Woodville Road being the least sensitive to a greater building height and form. The development transitions in height and scale to the more sensitive fringes which comprise low density residential development and the Granville South Public School to the south. This decanting of height from the more sensitive fringes will improve amenity outcomes for the School and adjoining low density residential development with regard to visual impacts and improved privacy outcomes.
- Building C contains a high-quality community rooftop terrace on the uppermost level which provides amenities and open space for use by the residents to gather and socialise along with appropriate landscaping. The non-compliant elements of this building comprise only the stair/lift overrun and to a lesser extent the balustrade/screen which is to be constructed from translucent/transparent material.
- The proposed development will deliver a full line supermarket generally consistent with the requirements of Council's planning controls within the ground floor podium adjoining Woodville Road. Given the user requirements the podium level design has required a substantial floor area at a single level, minimising opportunity for stepping the design without complicating the construction process and built form outcomes, noting the slope of the land which falls approximately 4.5m to the north across the Woodville Road frontage measuring approximately 150m. This could include creating accessibility issues throughout the site by

providing stepped internal & external areas, modifications to the basement areas allowing for varying ceiling heights and excessive excavation.

- The variation to the development standard will not result in any greater overshadowing of the Granville South Public School to the south or adjoining low-density residential development. Shadow diagrams prepared by Marchese Partners detail the potential overshadowing based on the current LEP building height controls when compared with the proposed development, including those elements that exceed the height of building control. While there will be some greater overshadowing internal to the development site, there will be no greater overshadowing of the School to the south or established low density residential development resulting from the building height exceedances.
- The variation to the development standard will not result in any significant adverse visual or privacy impacts upon adjoining properties.
- The development has been appropriately designed with regard to an adjoining listed heritage item. Supporting the application is a Heritage Impact Assessment prepared by Urbis which has considered the potential impact of the development upon the significance of the listed heritage item. Noting in their conclusion and recommendations with regard to the relationship of the proposed development with the heritage item *"The scale of the proposed development is modulated, comprising five separate tower forms (Blocks A-E) varying between 5 and 9 storeys, with 9 storey towers proposed on the Woodville Road corridor...The main school building is physically and visually distanced from the subject site in views along Woodville Road...the subject development will form part of a backdrop of medium density contemporary development"*. The report concludes that *"The subject proposal is supported on heritage grounds and the development application is therefore recommended to the consent authority for approval"*.
- The proposed development will contribute to housing diversity within the area with 8 affordable housing units that will be dedicated to Council and 10% of adaptable housing units which will cater for changing demographics and enable ageing in place.
- Despite the additional building height the scale of development remains consistent with the future desired character of the area by providing local services and facilities within walking distance of established neighbourhoods with good access to Woodville Rd and throughout the 'key site'.

For those reasons we consider there to be sufficient environmental planning grounds consistent with clause 4.6(3)(b) to warrant support from Council.

3.4 Subclause 4.6(4) – Written Request to the Satisfaction of Council

Subclause 4.6(4)(a) and (b) notes that development consent must not be granted for development that departs from a development standard unless:

(4) 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.

This submission constitutes a written statement for Council's consideration. The development is considered to be in the public interest in accordance with clause 4.6(4)(a)(ii) given that the proposal is consistent with the objectives of the development standard being varied and the objectives of the land use zone in which it is proposed.

Clause 4.6(4)(a)(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,

In determining whether the proposed development is in the public interest, despite the variation being sought to a development standard, it is necessary to consider the objectives of the standard that is being varied. **Table 2** below provides an assessment against each of the objectives of clause 4.3 Height of buildings and **Table 3** provides an assessment against each objective of the proposed clause 4.3 Height of buildings under the Draft Cumberland LEP.

Table 2 - Clause 4.3 Height of buildings Objectives (Parramatta LEP 2011)

Clause 4.3 Height of Buildings	
Objectives	Response
<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>Maximum building heights under the Parramatta Local Environmental Plan 2011 have been nominated as a blanket 31m across the 'key site' within the Merrylands East Neighbourhood Centre. The distribution of the built form is then refined in the area specific Development Control Plan which provides indicative building form and number of storeys throughout the site with an emphasis on bulk and scale adjoining Woodville Road.</p> <p>Buildings C and D are consistent with the maximum number of storeys in the DCP and have habitable floors lower than the LEP height limit, with minor parts of their roof elements breaching the height limit. The development is consistent with the number of storeys for a building adjoining Woodville Road, transitioning to a five (5) storey building at the north-western corner of the site and six (6) storey building at the south-western corner. This is entirely appropriate with the greater built form adjoining Woodville Road being a source of greater land use intensity, transitioning to the more sensitive fringes being established low density residential development generally to the north and west of the development site and the Granville South Public School. This transition is in addition to a generous separation between the development and adjoining land uses created in part by the existing and proposed road network and deep soil zones which form the perimeter of the site. This includes an approximate setback of 40m between Building D and development to the east and an approximate building separation of 30m between Building C and commercial development to the south.</p> <p>Early community consultation on land use planning for the Woodville Road Corridor was recently undertaken by Council in November/December 2020. For land on the opposite side of Lansdowne Street from the development site, an increase to 'high density' with building height of 4-5 storeys is proposed as per the Proposed Planning Framework. This is compatible with the Building D return height on Lansdowne Street and more generally the desired character and built scale of Merrylands East.</p>
<i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i>	<p>As detailed within the shadow diagrams prepared by Marchese Partners there will be no overshadowing of the established residential development to the north and west of the site. There will be some minor overshadowing of residential development to the east.</p> <p>There will be minor overshadowing of the Granville South Public School to the south. At 9am there will be overshadowing of two sporting courts, car parking, demountable buildings and around the playground shade structure. Between 10am and 11am overshadowing is limited to the basketball court and demountable</p>

Clause 4.3 Height of Buildings	
Objectives	Response
	<p>buildings. At 12pm overshadowing is further reduced with partial overshadowing of the basketball court and demountable buildings. At 1pm overshadowing of the basketball court is nominal. The overshadowing is minor in the context of the size of the school landholding and the areas overshadowed. Solar access to sporting courts will be retained at critical times to ensure a high degree of amenity for students.</p> <p>Adjoining the site to the south-east is a service station and fast food development site which will in part be overshadowed by the development. This is not a sensitive land use that is likely to be impacted by the overshadowing.</p> <p>The exceedance of the height limit by the roof elements on Buildings C and D are minor and do not generate any significant environmental impact on views, privacy or solar access. These roof elements are barely visible from the surrounds, and their small shadows will fall mainly on the roofs. The roof balustrading is a translucent material through which filtered light passes and does not have a shadow impact. Shadows from the lift overruns, fire stairs and plant screen wall on the roofs of Buildings C and D largely fall on their respective roofs.</p> <p>The built form has been appropriately distributed throughout the site with the greater built form adjoining Woodville Road being the least sensitive to a greater building height and form. The development transitions in height and scale to the more sensitive fringes which contains low density residential development and the public school to the south. The development has been appropriately separated into individual buildings that are articulated with upper level setbacks with a defined bottom, middle and top.</p> <p>A high level of permeability through the development site is achieved with generous building separation and view corridors particularly from the west and the north of the site. Privacy impacts have been addressed through a mix of building separation from adjoining development, including from the isolated site at 6 Lansdowne Street, use of vertical louvres for those apartments addressing the public school and orientation of upper residential apartments.</p> <p>For these reasons the development has minimised visual impacts, disruption of views, loss of privacy and solar access to existing development.</p>
<p>(c) to require the height of future buildings to have regard to heritage sites and their settings,</p>	<p>Located to the south of the development site is a listed local heritage item under Parramatta LEP 2011. Supporting this application is a Heritage Impact Assessment prepared by Urbis which has considered the proposed development and the potential impact on the significance of the listed item.</p> <p>A substantial separation between the heritage item and the development is achieved. The materiality of the heritage item has been picked up in the podium of the proposed building through the use of masonry elements.</p> <p>Urbis note in their report that <i>"The main school building is physically and visually distanced from the subject site in views along Woodville Road...the subject development will form part of a backdrop of medium density contemporary development"</i></p>

Clause 4.3 Height of Buildings	
Objectives	Response
	<p>With regard to aspects of the proposed development that could detrimentally impact on the heritage significant of the listed item the report notes that <i>"There are no aspects of the development that are considered to detrimentally impact on the proximate heritage item. The proposed new development will be larger in scale than surrounding development...however impacts of scale are considered to have been mitigated by the setbacks to the shared boundary, proposed site planning (specifically the roadways proposed at the site boundaries and the proposed site landscaping) that will assist to create a sense of visual separation and define the curtilage of the heritage item."</i> (p.31).</p> <p>The report concludes that the subject proposed is supported on heritage grounds.</p>
<i>(d) to ensure the preservation of historic views,</i>	<p>The Heritage Impact Assessment prepared by Urbis has considered the significance of the listed heritage item to the south of the site. The proposed development is physically and visually separated from the heritage item and will instead form part of the backdrop of medium density contemporary development. It is considered that there are no historic views that would be adversely affected by the proposed development.</p> <p>The roof elements on Buildings C and D are barely visible from the surrounds and do not generate any significant impact on views.</p>
<i>(e) to reinforce and respect the existing character and scale of low density residential areas,</i>	<p>Built form has been appropriately distributed throughout the site generally consistent with the area specific planning controls within the Parramatta DCP 2011. Density has been focused adjoining Woodville Road having the greater intensity of land uses, which then transitions in height and scale to the more sensitive fringes which contains low density residential development and the public school to the south. The development has been appropriately articulated with upper level setbacks and a defined ground, middle and top, providing a consistent street level wall height.</p> <p>The exceedance of the building height development standard relates particularly to Building C which adjoins Woodville Rd and to a lesser degree Building D also adjoining Woodville Rd. The remainder of the development is compliant with the building height development standard.</p> <p>The development is for the creation of a new neighbourhood centre within an area that is undergoing a transition in character and building scale. Appropriate regard has been given to the existing character and scale of low-density residential areas and the future desired character of the area.</p> <p>The roof elements on Buildings C and D are barely visible from the surrounds and do not affect the character of the development or its surrounds.</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,</i>	<p>The proposed development is for the redevelopment of the B4 Mixed Use zone to facilitate the Merrylands East Neighbourhood Centre. There are two properties that do not form part of the redevelopment of the neighbourhood centre being 6 Lansdowne St and the property at the corner of Lansdowne St and Woodville Rd.</p> <p>Appropriate setbacks are proposed, particularly to 6 Lansdowne Street which has allowed for its separate redevelopment, or integration in future with the</p>

Clause 4.3 Height of Buildings	
Objectives	Response
<i>including parks, streets and lanes.</i>	neighbourhood centre as explored in the architectural drawings prepared by Marchese Partners. Both isolated sites are northern facing and will continue to benefit in their current form, or as redeveloped, from good solar access and sky exposure. The roof elements on Buildings C and D do not impact on sky exposure and daylight.

Table 3 - Clause 4.3 Height of buildings Objectives (Draft Cumberland LEP)

Clause 4.3 Height of Buildings	
Objectives	Response
a) <i>To establish a maximum height of buildings to enable appropriate development density to be achieved</i>	<p>Built form has been appropriately distributed throughout the site generally consistent with the area specific planning controls within the Parramatta DCP 2011. Density has been focused adjoining Woodville Road having the greater intensity of land uses, which then transitions in height and scale to the more sensitive fringes which contains low density residential development and the public school to the south.</p> <p>The HOB standard in Parramatta LEP is being repealed and replaced with a new HOB standard in the new Cumberland LEP, which is imminent. That is, the proposed development will be compliant with incentivised increase to HOB controls of 3.5m for the site (or total overall permitted HOB of 34.5m) based on the provision of affordable housing.</p>
b) <i>To ensure that the height of buildings is compatible with the character of the locality.</i>	<p>The development is for the creation of a new neighbourhood centre within an area that is undergoing a transition in character and building scale. Appropriate regard has been given to the existing character and scale of the residential areas and the future desired character of the area as set out in the Woodville Road Corridor Strategy.</p> <p>Buildings C and D are consistent with the maximum number of storeys in the DCP and have habitable floors lower than the LEP height limit, with only parts of their roof elements breaching the height limit. The roof elements on Buildings C and D are barely visible from the surrounds and do not affect the character of the development or its surrounds.</p>
c) <i>To minimize the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties.</i>	<p>As detailed within the shadow diagrams prepared by Marchese Partners there will be no overshadowing of the established residential development to the north and west of the site. There will be some minor overshadowing of residential development to the east.</p> <p>There will be minor overshadowing of the Granville South Public School to the south. At 9am there will be overshadowing of two sporting courts, car parking, demountable buildings and around the playground shade structure. Between 10am and 11am overshadowing is limited to the basketball court and demountable buildings. At 12pm overshadowing is further reduced with partial overshadowing of the basketball court and demountable buildings. At 1pm overshadowing of the basketball court is nominal. The overshadowing is minor in the context of the size of the school landholding and the areas overshadowed. Solar access to sporting</p>

Clause 4.3 Height of Buildings	
Objectives	Response
	<p>courts will be retained at critical times to ensure a high degree of amenity for students.</p> <p>Adjoining the site to the south-east is a service station and fast food development site which will in part be overshadowed by the development. This is not a sensitive land use that is likely to be impacted by the overshadowing.</p> <p>A high level of permeability through the development site is achieved with generous building separation and view corridors particularly from the west and the north of the site. Privacy impacts have been addressed through a mix of building separation from adjoining development, including from the isolated site at 6 Lansdowne Street, use of vertical louvres for those apartments addressing the public school and orientation of upper residential apartments. For these reasons the development has minimise visual impacts, loss of privacy and solar access to existing development.</p> <p>The roof elements on Buildings C and D are barely visible from the surrounds and do not generate any significant environmental impact on views, privacy or solar access.</p>
d) <i>To reinforce and respect the existing character and scale of low density residential areas.</i>	<p>Built form has been appropriately distributed throughout the site generally consistent with the area specific planning controls within the Parramatta DCP 2011. Density has been focused adjoining Woodville Road having the greater intensity of land uses, which then transitions in height and scale to the more sensitive fringes which contains low density residential development and the public school to the south. The development has been appropriately articulated with upper level setbacks and a defined bottom, middle and top, providing a consistent street level wall height.</p> <p>The exceedance of the building height development standard relates particularly to Building C and to a lesser degree Building D both of which have frontages to Woodville Rd. The remainder of the development is compliant with the building height development standard.</p> <p>The development is for the creation of a new neighbourhood centre within an area that is undergoing a transition in character and building scale. Appropriate regard has been given to the existing character and scale of low-density residential areas and the future desired character of the area as set out in the Woodville Road Corridor Strategy.</p> <p>The roof elements on Buildings C and D are barely visible from the surrounds and do not affect the character of the development or its surrounds.</p>

In establishing whether the proposed development is in the public interest, despite the variation being sought to a development standard, it is necessary to also consider the objectives of the land use zone. **Table 4** below provides an assessment against each of the objectives of the B4 Mixed Use zone.

Table 4 - B4 Mixed Use Zone, Objectives

B4 Mixed Use zone	
Objectives	Response
<i>To provide a mixture of compatible land uses.</i>	The development proposes a mix of appropriate land uses comprising residential dwellings, a supermarket, specialty retail shops, child-care centre and hotel. The development has been designed to allow for land uses to operate harmoniously. Separate lift access has been provided for the individual land uses to ensure user convenience. A high degree of connectivity is provided between the car parking areas and the individual land uses with residential uses and non-residential land uses separated.
<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>	Supporting this application is a Transport Impact Assessment prepared by GTA Consultants which has considered among other matters the level of service provided to the development under the current public transport infrastructure. Currently public buses provide regular service from the site to the Parramatta CBD. Suitable land uses are proposed in a consolidated location within close proximity to established public transport infrastructure.
<i>To encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i>	<p>Located on the ground floor of the development are a range of commercial uses that will contribute towards a vibrant public domain. In the south-west corner of the site is a public park which provides pedestrian linkages with ground floor tenancies earmarked as 'eat-street'. It is intended that cafés and restaurants with outdoor dining will occupy this space consistent with Council's vision for the site. Retail tenancies continue along the western frontage eventually meeting with the proposed childcare centre which forms the north-western corner of the development.</p> <p>The neighbourhood centre is highly walkable with pedestrian footpaths providing a perimeter around and within the site. The public park will provide existing and future residents and workers with an open space to gather and socialise. Communal open space is provided for on the podium along with on the rooftop of Buildings B, C and E allowing for more intimate gatherings. Facilities are proposed as part of the hotel development and will be shared between visitors of the hotel and residents.</p> <p>A range of renewable energy measures are to be implemented including a solar panel array on buildings A, B and D. This will complement water saving measures proposed as detailed within the supporting ESD Report by BCA Energy.</p>
<i>To create opportunities to improve the public domain and pedestrian links.</i>	The majority of the site is currently vacant with the now disused John Cootes furniture warehouse. The development provides the opportunity to deliver a much needed neighbourhood centre that provides high quality open spaces and public domain. Proposed consistent with Council's area specific planning controls is a public park measuring 2,000m ² , ground level shops which will form an 'eat street' with sheltered colonnade allowing for high amenity outdoor dining. Landscaping is proposed throughout the site which will allow for deep soil planting opportunities. In particular transitioning to adjoining low density residential land uses, the Public School and along Woodville Road, which will aid in 'greening' and softening this frontage.
<i>To support the higher order Zone B3 Commercial Core while providing for the daily</i>	Supporting this application is an Economic Impact Assessment prepared by HillPDA which has considered the demand for commercial floor space within Merrylands East and the potential impact delivering that floorspace on other centres within the

B4 Mixed Use zone	
Objectives	Response
<i>commercial needs of the locality.</i>	main trade area. The quantum of commercial floor space is consistent with the level of demand in the local area and will not detract from B3 Commercial Core zones within the Cumberland LGA.
<i>To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i>	The Parramatta City Centre is no longer located within the Cumberland LGA, irrespective of its location the proposed development will have no material impact on the Parramatta City Centre.

The proposed development achieves the objectives of the development standard being varied and the objectives of the zone in which it is proposed, despite the non-compliance with the clause 4.3 Height of buildings development standard. Therefore, the proposed development remains in the public interest despite the variation being sought.

3.5 Subclause 4.6(5) – Planning Secretary Concurrence

Under subclause 4.6(5), in deciding whether to grant concurrence, the Planning Secretary must consider the following matters:

- (5) 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.*

Pursuant to clause 64 of the Environmental Planning and Assessment Regulation 2000, consent authorities are notified by Planning System Circular PS18-003 dated 21 February 2018 that a Council or the Sydney district and regional planning panels may assume the Secretary's concurrence. The Secretary's concurrence may only be assumed where the variation to a numerical standard is less than 10%, or where the variation is to a non-numerical standard.

The exceedance to the building height limit is minor in nature constituting a maximum exceedance for Building C of 2.07m or 6.67% of the allowable building height and 0.22m or 0.7% of the allowable building height for Building D. Exceedances relate to the lift/stair overrun and balustrades/screen height components. Habitable floors for both Buildings C and D are substantially under the LEP height limit.

4. Conclusion

The proposed development results in a numerical non-compliance with a development standard within the Parramatta LEP 2011 (the LEP). Consistent with the terms set out in clause 4.6 of the LEP, a relatively minor variation to the height of buildings development standard is being sought.

The proposed development will deliver a much-needed neighbourhood centre containing a range of compatible land uses that will satisfy the needs of existing and future residents. The design is compatible with the future desired character of the area and will provide for a high-quality public domain. We again note that the proposed development would comply with the height of building development standard under the Draft Cumberland Local Environmental Plan which allows for a height increase of 3.5m where a development contains an affordable housing component. The development is consistent with the objectives of the zone and the objectives of the HOB standard being varied.

The proposed development will not result in any unreasonable or significant environmental, social or economic impacts despite the variation proposed. Compliance in this instance is unreasonable and unnecessary and would result in a lesser planning outcome. The variation to the development standard is well founded and satisfies the public interest.