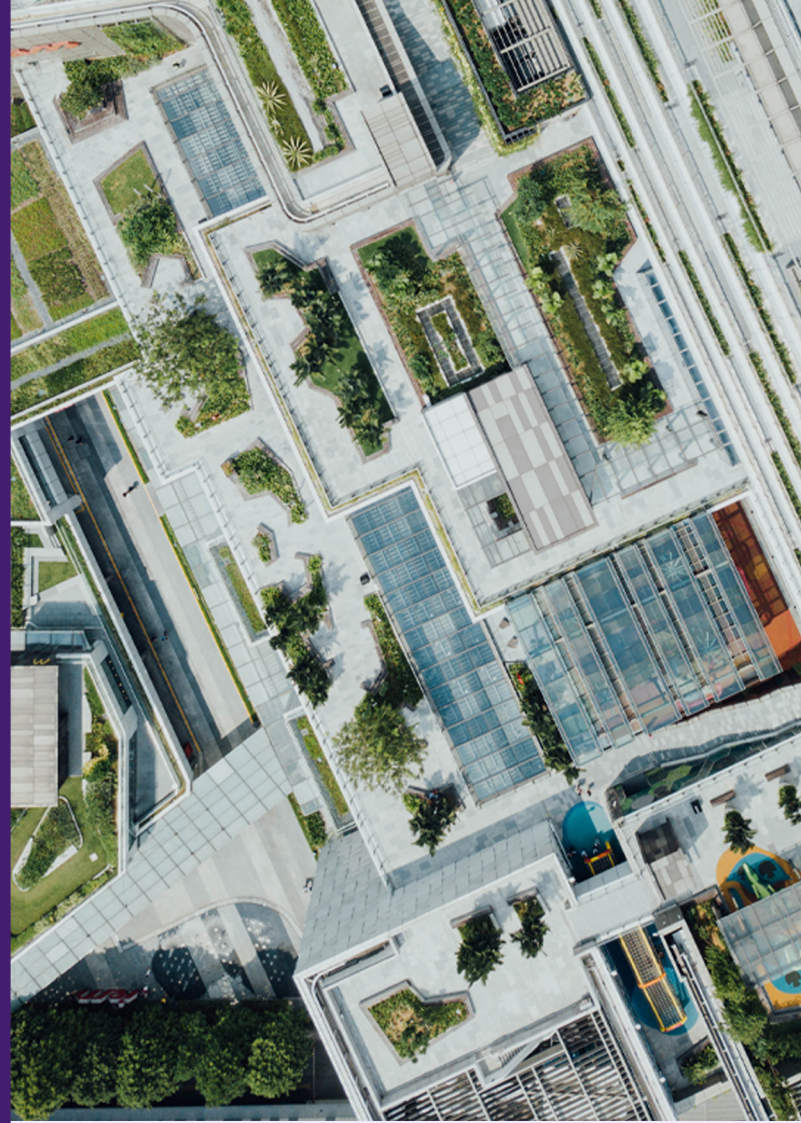




The Planning
Studio

DEVELOPMENT APPLICATION
810/2021
Randwick City Council
22 December 2021
Records Received



137 – 151 Anzac Parade, Kensington

Clause 4.6 Variation to Height of
Buildings

On behalf of
TOGA Addison Unit Trust Pty Ltd
July 2021

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1 Introduction

This Clause 4.6 variation request has been prepared by The Planning Studio on behalf of the applicant and is submitted to Randwick City Council (Council) in support of a Development Application (DA) for 137-151 Anzac Parade, Kensington (the site), which proposes a mixed use development.

The request seeks to vary the development standard for maximum Height of Buildings under Clause 4.3 of the RLEP 2012 as amended by Clause 6.17 of the RLEP 2012. This Clause 4.6 variation request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of case, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the Height of Buildings standard and the objectives for development within the B2 Local Centre zone in which the development is proposed to be carried out.

The variation allows for a development that provides for the orderly and economic use of the land in a manner which is appropriate when considering the site's context and specific environmental conditions.

This Clause 4.6 variation written request adequately demonstrates that, notwithstanding the numerical non-compliance, the proposed development:

- Achieves the objectives of the Height of Buildings development standard in Clauses 4.3 and 6.17 of the RLEP2012 (Wehbe#1);
- Has sufficient environmental planning grounds to justify the variation;
- Is consistent with the objectives of the B2 Local Centre zone prescribed by RLEP 2012;
- Is consistent with the applicable and relevant State and Regional planning policies; and therefore
- Is in the public interest.

As a result, the development application may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the RLEP 2012.

2 The Development Standard to be varied

This Clause 4.6 variation has been prepared as a written request seeking to justify a contravention of the maximum Height of Buildings development standard as set out in Clause 4.3(2) of the RLEP 2012.

Clause 4.3(1) states:

4.3 Height of buildings

1. The objectives of this Clause are as follows:
 - a. To ensure that the size and scale of development is compatible with the desired future character of the locality



- b. To ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
- c. To ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

As identified on the RLEP 2012 Height of Buildings Map associated with Clause 4.3, the site is subject to a 'base' height limit of 25m (refer to **Figure 1**).



Figure 1 Height of Buildings Map Extract Illustrating the 'Base' Height Limit (RLEP 2012)

This 25m 'base' height limit is supplemented by Clause 6.17 of the RLEP 2012 which permits an increased alternative height limit where a proposed development provides community infrastructure.

Clause 6.17(1-2) states:

6.17 Community Infrastructure Height of Buildings and Floor Space at Kensington and Kingsford Town Centres

1. The objectives of this Clause are as follows:
 - a. to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is provided,
 - b. to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,
 - c. to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.



2. Despite Clauses 4.3 and 4.4 the consent authority may consent to development on a site that results in additional building height or additional floor space, or both, in accordance with sub-Clause (4) if the development includes community infrastructure on the site.

As established by the RLEP 2012 Alternative Height of Buildings Map associated with Clause 6.17 (refer to Figure 2), the site is subject to a maximum building height limit of 31m. This request proceeds upon the assumption that Cl.6.17 applies so as to establish the Alternative Height.



Figure 2 Alternative Height of Buildings Map Extract Illustrating Maximum Height Under Clause 6.17 (RLEP 2012)

3 Extent of Variation to the Development Standard

As addressed above, Clause 4.3 as supplemented by Clause 6.17 of the RLEP 2012 prescribes a maximum height of 31m for the site where development proposed on the site includes community infrastructure. The proposed maximum building height is RL 60.31 or 35.45m when measured from existing ground level to the top of the lift overrun. This results in a variation to the 31m maximum Height of Buildings development standard of 4.45m, representing an exceedance of 14% (If cl.6.17 of the LEP was not engaged the variation of the development standard would be 10.45m).

The variation proposed results only from lift overrun, fire stairs and pergola structures associated with the proposed communal roof terrace, as well as plant servicing the development. The building parapet sits at RL55.70, which is 30.5m. No floor space is within the structures breaching the height control, with the exception of a small area between the ceiling and finished floor level of the topmost storey on the south-west area of building.



The lift overruns are inset from the façade and will therefore have no visibility when viewed from the surrounding ground plane.

The height variation is illustrated in **Figure 3**.

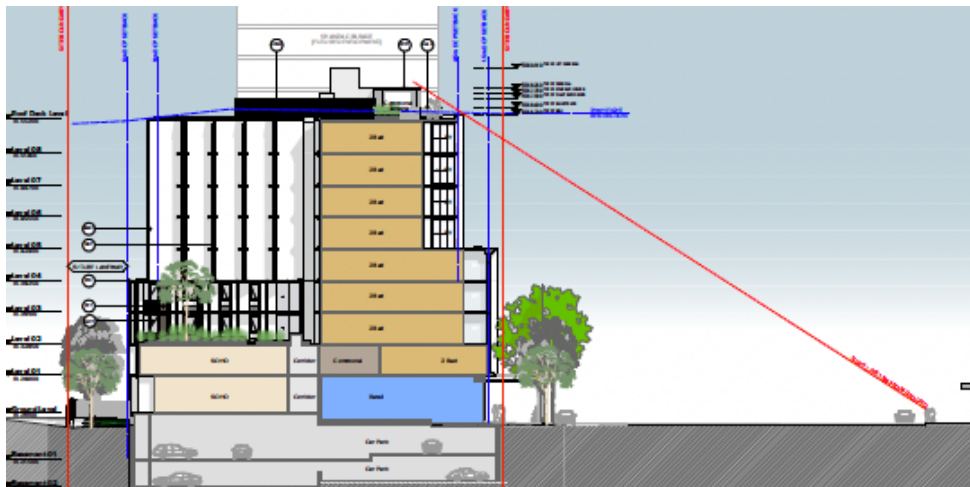


Figure 3 Proposed Height Exceedance (A-310-001 RevP01) (Turner)

4 Objectives of the Standard

The objectives of the Clause 4.3 Height of Buildings development standard are as follows:

- a) To ensure that the size and scale of development is compatible with the desired future character of the locality,
- b) To ensure that development is compatible with the scale and character of contributory buildings in a conversation area or near a heritage item,
- c) To ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The objective of Clause 6.17 Community Infrastructure Height of Buildings at Kensington and Kingsford Town Centres development standard are as follows:

- a) To allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,
- b) To ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,
- c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

5 Objectives of the Zone

The objectives of the B2 Local Centre zone are as follows:

- To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in and visit the local area.



- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To enable residential development that is well-integrated with, and supports the primary business function of, the zone.
- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- To minimize the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.
- To facilitate a safe public domain.

6 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the height standard is considered unreasonable and unnecessary in the circumstances for the reasons outlined in **Section 7.1 below**.

6.1 The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard (Wehbe#1)

The following sections demonstrate that the proposed variation will result in a built form outcome that achieves the objectives set out under Clause 4.3 and Clause 6.17 of the RLEP 2012.

6.1.1 Objectives of Clause 4.3 - Height of Buildings Development Standard

The following sections demonstrate that the objectives associated with the Clause 4.3 development standard are achieved notwithstanding the proposed non-compliance.

a) To ensure that the size and scale of development is compatible with the desired future character of the locality,

The site is located on the western side of the Kensington Town Centre and is subject to the controls originally developed through the K2K Planning Strategy and associated Planning Proposal, which permits a 31m height control subject to delivery of community infrastructure on site. The adjoining property to the north is identified as being a 'Strategic Node Site' and is designated a maximum height of 54m (or 18 storeys with demonstrated design excellence). In light of this, the desired future character of the locality is to consist of high-density, mixed-use development with a greater bulk and scale relative to the existing built form within the streetscape.

The development, as proposed, only seeks to vary the height control to deliver an additional communal open space area at the top of the building. The variation relates to the required lift overrun, stairs and pergola structures associated with this additional communal benefit, as well as some of the plant the development requires. These structures are set back from the edges of the site, and therefore will not be able to be viewed from the public domain.



The building's height, as perceptible from the street, will therefore appear as compliant with the 31m control. The development also provides a clear building break to the tower site to the north in recognition of the different building envelope and control applicable to this site to achieve an appropriate scale and transition to surrounding existing and future developments.

The proposal is consistent with the DCP height in storeys control, which permits a building of up to 9 storeys at this location. The use of the roof area to deliver communal open space is to deliver additional amenity associated with the development, in addition to the communal spaces proposed at ground and western podium levels.

The additional height therefore provides an opportunity to concentrate high density development around a transport node whilst facilitating a gradual transition to the lower scaled built form located further southward along Anzac Parade. It is compatible with the built form controls for the block, as well as the approved development to the south and planning controls to the north. For these reasons, it is considered that the proposed development achieves the objective of the standard notwithstanding the non-compliance.

b) To ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,

The site is not located in the immediate vicinity of a heritage item or an HCA. The site is located to the west of three (3) contributory buildings situated at the intersection of Anzac Parade and Darling Street (refer to **Figure 4**). These contributory buildings do not form part of an HCA.

The contributory buildings reach two storeys and have the potential to be redeveloped to support a six (6) storey street wall height in accordance with the DCP. These buildings are also designated a maximum height of 31m in accordance with the LEP controls.



Figure 4 Location of Surrounding Contributory Buildings (DCP)

Heritage to the West

An HCA and two heritage items listed as Items I150 and I151 under Schedule 5 of the RLEP 2012 are located further westward of the site. These items and the HCA do not



directly interface with the proposal and are located a considerable distance from the site.

Due consideration has been given to the design to the western façade to minimise its visual prominence when viewed from these distant heritage items and the surrounding residential area to the west. The proposal's footprint allows the western elevation to read as being three distinct building envelopes. This massing strategy has been adopted to avoid the delivery of a conventional rectilinear footprint that would present as having a greater bulk. The exceeding elements do not materially contribute to the perceived visual massing of the development, including the heritage items to the west.

Heritage to the East

As noted above, three (3) contributory buildings are sited to the east of the site and occupy the corner of Anzac Parade and Darling Street (refer to **Figure 4**). These contributory buildings consist of two storey shop top housing developments. They are separated from the site by Anzac Parade and are therefore located a considerable distance from the site.

The massing for the eastern elevation oriented towards these buildings reflects a stepped built form, with the upper three levels inset from the street wall by a 4.5m setback, with the lift overrun, stairs, plant and pergola structures that create the height variation further inset. These structures which project beyond the 31m height limit will not be apparent from the surrounding conservation areas or heritage items to the east of the site.

As shown in the Shadow Diagrams at **Appendix 3** of the SEE, the shadow cast by the proposal during the Winter Solstice affects the contributory buildings for a limited duration between 3 – 4pm. As illustrated this shadow does not emanate from the height non-compliance and would occur even if the proposal complied with the 31m height maximum.

In addition to the above, due consideration has been given to the design of the active frontage to ensure that it is sympathetic to these buildings. In particular, glazed fenestration, concrete pillars / blades, a continuous awning and the proposed subdivision size of these tenancies will contribute to a fine-grained appearance that is sympathetic to the proportions of the contributory buildings.

Notwithstanding the above, irrespective of the proposal's architectural expression, the heritage items, contributory buildings and HCA are located a considerable distance from the site. Consequently, the variation of the height development standard does not detract from the heritage values in the surrounds and the proposal is considered to achieve the objective notwithstanding the non-compliance.

- c) To ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.**

Supporting architectural and consultant information confirms that the proposal, and the area of non-compliance related to the height control, will not give rise to additional amenity impacts beyond a development proposal that is entirely compliant with the standard. Further discussion is provided below. The relevant drawings and supporting information are referenced under each particular amenity issue below.



Privacy

The additional height relates to lift overrun, fire stairs and pergolas to support the proposed rooftop communal area and plant required for the wider development. As the surrounding development currently consists of medium to low scale density developments with comparatively reduced heights, there will be no opportunity for direct sightlines to and from the structures proposed within the non-compliant height.

Building Separation

The exceeding elements of the building have no impact on the development's separation from surrounding properties.

Overshadowing

Overshadowing diagrams are included at **Appendix 4**. The diagrams confirm that the additional height will not give rise to shadow impacts that would create any additional overshadowing to surrounding residential properties beyond a compliant envelope.

The overshadowing impacts of the height non-compliant elements of the development, therefore, do not prevent the development from achieving the objective of the development standard. Further discussion is provided in **Section 5.2 of the SEE**.

Private Views

The site is positioned within a mixed-use town centre and interfaces with residential development to the south and west. Due to the density anticipated by the LEP controls along with the strategic distribution of the building's mass, the proposal will not result in unacceptable private view impacts to surrounding properties.

The site is located within a highly urbanised setting whereby the controls permit significant density for the locality. In consideration of the site's context, it can reasonably be anticipated that adjacent properties will experience some degree of view loss from any future development at the site consistent with the planning controls.

The height non-compliance relates to the proposed plant, lift overruns and structures associated with a roof terrace. The variation will create no additional impact to the view corridors obtained from private properties beyond that of a compliant scheme.

Visual bulk

The Randwick Development Control Plan 2013 (RDCP 2013) does not identify any significant view corridors or vantage points that require protection. A number of design measures have been incorporated to limit the visual impact of the proposal and non-compliant height when viewed from the general surrounds, including:

- Recesses have been introduced to the western elevation, breaking up the continuity of the façade to allow it to read as three distinct building envelopes for the purpose of reducing the building's mass;
- The lift overruns are located centrally to the envelope and will not be perceptible from the ground plane, **refer to A-310-001 RevP01** and
- The façade is highly articulated, featuring undulating forms and curvature edges that reduce the perceived mass of the development.

As a result of the above, the height exceeding elements will create no additional visual bulk impacts when viewed from the surrounding locality.



6.1.2 Objectives of Clause 6.17 - Community Infrastructure Height of Buildings and Floor Space at Kensington and Kingsford Town Centres

The following sections demonstrate that the objectives associated with the Clause 6.17 development standard are achieved notwithstanding the proposed non-compliance.

a) To allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,

In accordance with Clause 6.17(2), the application includes the delivery of community infrastructure on site that is consistent with Council's DCP, including:

- Provision for a future 6m rear lane along the western interface of the site at ground-level;
- Provision for a future 3m pedestrian link along the northern interface of the site at ground-level; and
- A ground-floor setback of the building along the eastern elevation to provide additional footpath width on Anzac Parade, as well as space for potential future footpath dining.

Refer to **Appendix 27** for further detail regarding the Community Infrastructure provision.

Whilst the ADG definition of communal open space recognises that publicly accessible open space can contribute to total communal open space, the roof area ensures that future residents will still have access to significant private communal open space once the area along the western boundary of the site becomes a future shared laneway.

b) To ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,

The proposed height variation, which only relates to structures on the roof for communal facilities and plant, is considered to be compatible with the desired character for the Kensington Town Centre for the reasons addressed in Section 7.1.1(b).

The proposal has been designed to minimise impacts to the locality to the greatest extent possible. For the reasons addressed in Section 7.1.1(c), the height exceeding elements of the proposal will not give rise to unreasonable or additional amenity impacts beyond that of an entirely compliant development thereby ensuring that the development achieves the objective notwithstanding the height non-compliance.

c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

The site is located a short 150m from the recently constructed Kensington Light Rail Station which forms part of the CBD and South East Light Rail network. It is also in walking distance of several bus routes located along Anzac Parade and Todman Avenue, which provide connections to the CBD, Redfern, Bondi Junction and Wolli Creek. The site is therefore well serviced by existing public transport infrastructure.

Notwithstanding the height variation, the proposal complies with the maximum FSR of 4:1 prescribed by Clause 6.17, and the structures above the height control do not



contain any floorspace. The recently adopted FSR maximum was determined as being suitable for the site in recognition of its proximity to the light rail and following the completion of an infrastructure capacity analysis which forms part of the K2K Planning Strategy.

In light of the above, the height variation does not necessitate a corresponding contravention to the FSR development standard and therefore does not increase the intensity of the proposed development beyond that of a complying scheme. Rather, the height variation is merely a consequence of the proposed massing strategy which distributes the building's bulk vertically. In turn, irrespective of the height variation, the proposal continues to provide a land use intensity commensurate with the capacity of surrounding infrastructure.

In addition, the proposal accommodates a quantity of parking to encourage sustainable modes of transport and optimise its proximity to the light rail. In turn, the height exceeding elements of the proposal will not give rise to additional traffic generation that would adversely impact the capacity and functioning of the surrounding road network. This conclusion is supported by the findings of the traffic generation assessment included within the Traffic and Parking Assessment at **Appendix 6 of the SEE**.

6.2 Clause 4.6(3)(b) - There are sufficient Environmental Planning Grounds to Justify Contravening the Development Standard.

Clause 4.6(3)(b) of the RLEP 2012 requires that the consent authority be satisfied that the applicant's written request has adequately demonstrated that:

There are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Turland v Wingecarribee Shire Council [2018] NSWLEC 1511 and Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019).

The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention. Further discussion is provided in the following sections.



The Most Optimal Means of Addressing Site Constraints

The non-compliant height is proposed for the purpose of responding to the site's constraints. The site occupies a narrow rectilinear allotment with a depth ranging from 41.4m to 44m. This presents a challenge to designing a scheme that provides functional floor plates; achieves high level of compliance with the ADG; and accords with the future DCP controls for the Kensington Town Centre.

In determining the envelope footprint, due consideration has been given to providing the following design outcomes:

- Compliant front setbacks to facilitate the provision of public domain upgrades along the Anzac Parade frontage;
- An adequate rear setback that allows for the delivery of a single consolidated generously sized outdoor communal open space area capable of being utilised in the future as a rear access lane;
- A full building break at the northern frontage to deliver a pedestrian link along this site interface;
- Compliant building separation, particularly to the western boundary where the site interfaces with low to medium scale residential development;
- Generous sized apartments that exceed the minimum sizing requirements nominated by the ADG;
- Highly functional floorplates that achieve a high level of compliance with key ADG amenity standards, including solar access, building separation, cross ventilation, minimum room sizing requirements etc. (both for the site and adjoining properties);
- A highly articulated built form that contributes to visual interest; and
- Adequate ceiling heights, particularly for the retail uses at ground level to promote flexibility in the use of these future tenancies.

To deliver the aforementioned design outcomes, it has been determined that the proposal's bulk should be distributed vertically. Whilst the floor space is entirely contained within the height control, the delivery of a potential future shared rear lane necessitates an additional communal open space area as part of the overall development. The roof was considered to be most suitable for future additional communal space, as it would create minimal view or privacy impacts from either surrounding or within the development.

The additional height will also assist in providing retail uses at street level with compliant ceiling heights that will promote flexibility of use. These uses have the opportunity to accommodate needed services for the community and potentially contribute to the night-time economy.

Absence of Adverse Environmental Impacts

As confirmed by supporting consultant reports and addressed throughout this variation request, the non-compliance with the development standard does not result in any adverse environmental planning impacts. Specifically, relative to a complying scheme that reached 31m (9 storeys), there will be no loss of significant or iconic views;



no additional privacy impacts; unacceptable traffic impacts; adverse visual impacts or additional overshadowing to residential properties.

For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of the case, particularly given that the design provides a tailored and well considered response to the site's constraints and articulation.

6.3 Clause 4.6(4)(a)(i) – 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

6.3.1 Consistency with the objectives of the development standard

The proposed development is consistent with the objectives of the Height of Buildings development standard and the Community Infrastructure Height of Buildings at Kensington and Kingsford Town Centres development standard for the reasons discussed in **Section 7.1** of this report.

6.3.2 Consistency with the B2 – Local Centre Objectives

To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in and visit the local area.

The proposal seeks the delivery of a mixed-use development. The ground floor accommodates continuous retail uses along the Anzac Parade frontage. Residential apartments are proposed at the upper levels and to the rear of the ground level where street activation is not attainable.

The additional height will facilitate the delivery of a new high-quality mixed-use development within the Kensington Town Centre that is anticipated to undergo a process of urban renewal and be redeveloped for increased density in line with Council's strategic planning aspirations.

The proposed height variation will provide additional amenity to the future residents of the development through additional communal open space, as well as photovoltaic cells to support sustainability for both residential and retail uses.

The additional height will also assist in providing retail uses at street level with compliant ceiling heights that will promote flexibility of use. These uses have the opportunity to accommodate needed services for the community and potentially contribute to the night-time economy.

To encourage employment opportunities in accessible locations.

The proposal incorporates 724m² of retail and 691m² of commercial floor space at the ground-level of the building. This floor space will contribute to an activated public domain and will assist in meeting the target to deliver 6,000 - 6,500m² of employment generating floor space for the Kensington Town Centre by 2036.



The site is located approximately 150m of the Kensington Light Rail. Given the proximity to a transport node, the proposal will provide employment opportunities in a highly accessible location, particularly as they relate to the small-scale commercial uses associated with the soho offering.

To maximise public transport patronage and encourage walking and cycling.

The proposal fosters the principles of transit-oriented development by co-locating housing and employment generating floor space on a site positioned within walking distance of the Sydney Light Rail and bus services along Anzac Parade.

The proposal provides a compliant amount of bicycle parking and parking numbers consistent with a transit-oriented development. Whilst consent is sought for additional height, the proposal does not propose a corresponding increase in the quantity of car parking.

For the reasons set out above, the proposal will encourage non-vehicular modes of transport, including walking and cycling.

To enable residential development that is well-integrated with, and supports the primary business function of, the zone.

The site is located within the B2 Local Centre zone. The primary function of the zone is to support a mix of uses, including employment generating uses and residential accommodation.

The existing buildings accommodated across the site are outdated, with many in a state of disrepair. The proposal provides an opportunity to replace this building stock with a high-quality mixed-use development that will play a transformative role in revitalising the Kensington Town Centre.

The contravention of the development standard will facilitate the provision of infrastructure to support the development in the form of communal open space and plant structures such as solar panels to support the business and residential function of the development.

The retail tenancies are proposed along the entirety of the Anzac Parade frontage. Bay windows combined with generous amounts of glazing and the elevational design will contribute to the appearance of a fine grained built form. These tenancies have the potential to provide a range of services to cater to the needs of the community and the night-time economy.

This retail floor space will be delivered alongside the proposed community infrastructure delivery on the site, which together will facilitate the activation of Anzac Parade.

To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.

The proposal incorporates extensive public domain upgrades within and outside the bounds of the site along Anzac Parade, which represent a substantial public benefit.

The upgrades consist of street tree planting, soft landscaping and paving capable of supporting spill out dining areas associated with the retail tenancies. The provision of a compliant street setback will contribute to the achievement of a pedestrianised



boulevard along Anzac Parade conducive to fostering community interaction and a sense of place.

A continuous awning is proposed along the street frontage and will enhance pedestrian amenity. The additional height and the overall scale of the development will not result in wind impacts that would compromise pedestrian comfort and safety.

To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.

Supporting subconsultant reports and the environmental assessment provided within **Section 5.0** of the SEE confirm that the proposal will not result in unacceptable environmental impacts. Specifically, the proposed height variation does not result in any of the following:

- Additional overshadowing impacts beyond a compliant development;
- Impacts to heritage items, HCAs or contributory buildings;
- Building separation that could provide adverse visual privacy impacts;
- Acoustic impacts that are not capable of being managed through the adoption of mitigation measures;
- Unacceptable traffic generation and impacts to the functioning of the surrounding street network; or
- A reduction of on-street car parking or increased car dependency which may impact residents in the zone.

In consideration of the above, the additional height proposed by the variation is considered appropriate for the site's context considering the lack of resulting environmental and amenity impacts.

To facilitate a safe public domain.

Lighting, active retail uses, legible entries and the generally improvement to the appearance of the area as a result of the proposal will maximise opportunities for surveillance and contribute to a safe public domain.

Further discussion is provided in the CPTED Report at **Appendix 22**.

7 Secretary's Concurrence

Under Clause 4.6(5) of the RLEP 2012, the Secretary's concurrence is required prior to granting consent to a variation. Under Clause 64 of the Environmental Planning and Assessment Regulation (2000), the Secretary has given written notice dated 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 Clause 4.6, subject to the conditions in the table in the notice.

The Planning Circular PS 20-002, issued on 5 May 2020 (the Planning Circular), outlines the conditions for assuming concurrence. The Planning Circular establishes that all consent authorities may assume the Secretary's concurrence under Clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The RLEP 2012 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to Clause 4.6(5). This



assumed concurrence notice takes effect immediately and applies to pending development applications.

Under the Planning Circular this assumed concurrence is subject to conditions. Where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council unless the Council has requested it. The variation to the Clause exceeds 10% and accordingly the Secretary's concurrence cannot be assumed.

7.1 Clause 4.6(5)(a): Any Matters of Significance for State or Regional Environmental Planning

The contravention of the height standard does not raise any matter of State or regional planning significance. The proposed variation will not contravene any overarching State or regional objectives or standards.

7.2 Clause 4.6(5)(b): Any Public Benefit of Maintaining the Development Standard

As demonstrated above there is no public benefit in maintaining the development standard in terms of State and regional planning objectives, or in terms of minimising the environmental impacts of the development given the proposal's compliance with other key DCP and ADG built form and amenity controls.

7.3 Clause 4.6(5)(b): Other Matters Required to be Taken into Consideration Before Granting Concurrence

Other than those identified above, there are no further matters that the Secretary (or Consent Authority under delegation) must consider before granting concurrence.

8 Conclusion

The assessment above confirms that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of RLEP 2012 (as amended by Clause 6.17) is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

This Clause 4.6 variation request demonstrates that notwithstanding the non-compliance with the Height of Buildings development standard, the proposal:

- Achieves the objectives of the development standard in Clause 4.3 of the RLEP 2012;
- Achieves the objectives of the development standard in Clause 6.17 of the RLEP 2012;
- Delivers a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation;
- There are no matters of State or regional planning significance and no public benefit associated with maintaining the height standard in this case;



- Is in the public interest as it is consistent with the objectives of the development standards nominated under Clause 4.3 and Clause 6.17 as well as the B2 Local Centre zone under the RLEP 2012; and
- Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposal.

