

ANNEXURE E

Clause 4.6 Variation – Building Height





Clause 4.6 Variation Statement – Building Height (Clause 4.3)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Ryde *Local Environmental Planning Plan 2014* (“RLEP 2014”) to accompany Development Application at Nos. 1-5A, 9-11, 13-17, 18-20 and 27 Railway Road, and 50 Constitution Road, Meadowbank (“the site”). The application seeks consent for the demolition of existing buildings and structures, remediation, excavation, and construction of a mixed use development with associated landscaping and basement car parking.

2. PROPOSED VARIATION

Clause 4.3 of RLEP 2014 prescribes the maximum building height for the site and refers to the *Height of Buildings Map*. The relevant map [sheet HOB_003] indicates that the maximum building heights permitted at the subject site are 18.5m and 21.5m (see **Figure 20**).

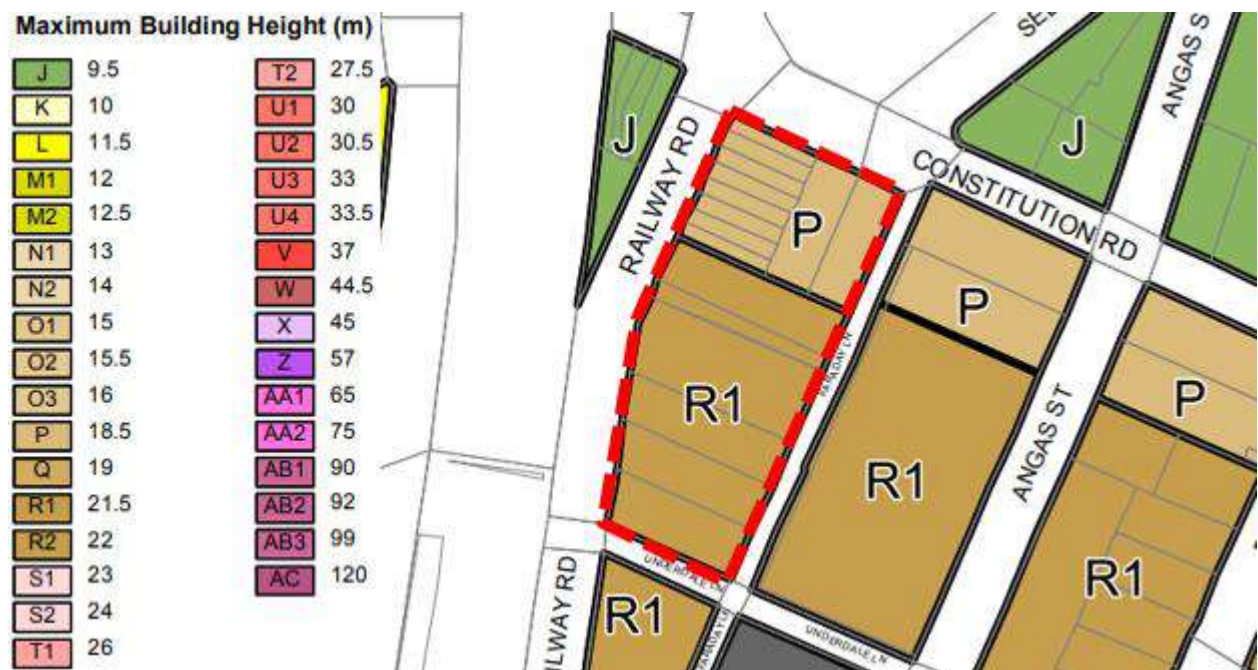


Figure 22 Extract from height of buildings map HOB_003. Subject site outlined in red.

Under RLEP 2014, building height is defined as:

“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.”



As indicated in the Sections below (**Figure 23 and Figure 24**) and the height blankets (**Figure 25**), there will be a breach of the prescribed height of buildings development standard. The maximum exceedance in relation to the prescribed heights for each building are as follows:

Building	Maximum Permitted Building Height under Ryde LEP 2014	Proposed Maximum Height (m)	Maximum Exceedance
A	18.5m (northern portion) 21.5 (southern portion)	25.8m	7.3m (39%)
B	21.5m	26.4m	4.9m (23%)
C	18.5m (northern portion) 21.5 (southern portion)	24.56m	6.06m (33%)
D	21.5m	25.87m	4.37m (20%)



Figure 23: Section through Buildings A and B (red line indicated maximum permitted building height)



Figure 24: Section through Buildings D and C (red line indicated maximum permitted building height)

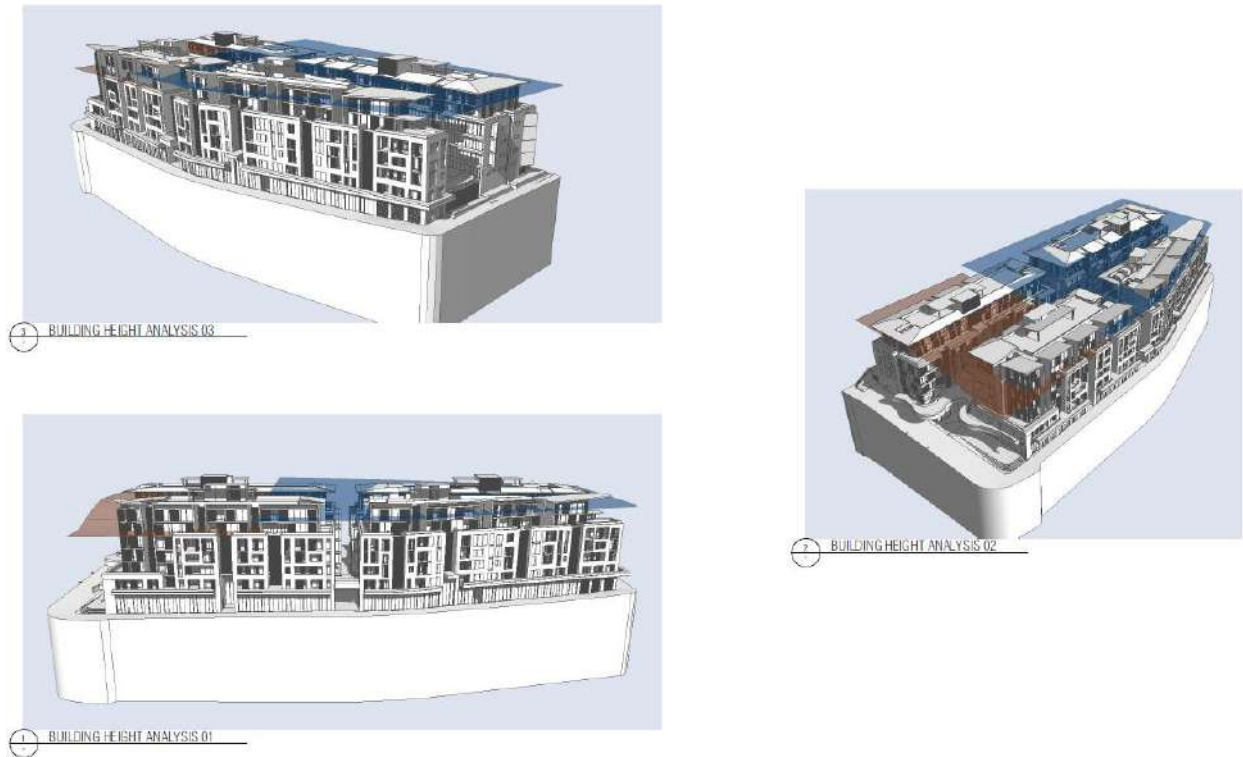


Figure 25: Height blankets showing areas of exceedance against the two prescribed heights for the site (18.5m in red and 21.5m in blue).

The prescribed building heights under Clause 4.3 of RLEP 2014 are “development standards” to which exceptions can be granted pursuant to Clause 4.6 of RLEP 2014.

3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows:

4.6 Exceptions to development standards

(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.*

(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.*

(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.*

(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 Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include all of these zones.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (ca) clause 4.3, to the extent that it applies to the land identified as "Town Core" on the Ryde Town Centre Precincts Map,
- (cb) clause 4.1A, to the extent that it applies to the Torrens title subdivision of a dual occupancy (attached),
- (cc) clause 6.9.

It is noted that Clause 4.3 of RLEP 2014 is not "expressly excluded" from the operation of Clause 4.6, other than for land identified as "Town Core" on the Ryde Town Centre Precincts Map, which does not apply to the subject site.



Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. 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 that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”



Compliance with the building height development standards is considered to be unreasonable and unnecessary as the objectives of those standards are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard(s) will be in the public interest because it is consistent with the objectives of the particular standard(s) and the objectives for development within the zone in which the development is proposed to be carried out. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standards, the following planning grounds are submitted to justify contravening the prescribed maximum building heights:

- a. The encroachments into the maximum building heights have allowed building mass to be centred above the buildings so as to enable a significant setback at the intersection of Railway Road and Constitution Road to provide a plaza area. That is, the opportunity is available to increase building volume at the front of the site where a void has been created. Notably, during the design process the architects were able to ascertain that the approximate volume of the plaza and its setbacks was equivalent to 1 storey across both buildings A and B. Preference has been given to increasing the height of the buildings at points of little or no impact. Rather than filling the proposed void with floor space the proposal lifts up the floor space to provide an open area which will contribute to the public domain and the social fabric of the site and the locality.
- b. The breach of the building height enables the built form of the development to be broken up above ground level, creating four distinct residential towers and enhancing the building expression when viewed from the surrounding streets. The additional height actually has the effect of reducing the overall visual bulk of the development, enabling horizontal and vertical physical breaks to be provided through the site, maximising views through the site and creating a sense of openness. The provisions of a two storey street wall along Railway and Constitution Roads, and an increased setback to provide a public plaza in the northwest corner of the site ensures that the development has a 'human' scale from street level.
- c. The orientation of the subject site combined with steep topography, results in a number of constraints and hence presents a challenge to ensure good outcomes for commercial and retail areas, reasonable residential amenity and minimising amenity impacts to nearby developments. The constraints require a unique and tailored built form response to meet the RLEP objectives of providing development that is generally compatible with or improves the appearance of the area and encourages sustainable development patterns around key public transport infrastructure.

The existing ground level of the subject site steeply drops on its western side, down to street level at Railway and Constitution Roads. The steep drop to the western part of Constitution Road means the height plane technically drops substantially at the corner of the site (see **Figure 26** below). It is this drop in the height plane that results in the highest degree of the height breach. Whilst the proposal could dip at this corner such a characteristic is not evident in other developments in the area which tend to emphasise the corners and it would not be compatible with a harmonious streetscape profile.

As such, the proposed development maintains a consistent height with high density developments within the precinct and achieves a compatible scale and form with developments along the eastern side of Railway Road and the southern side of Constitution Road.

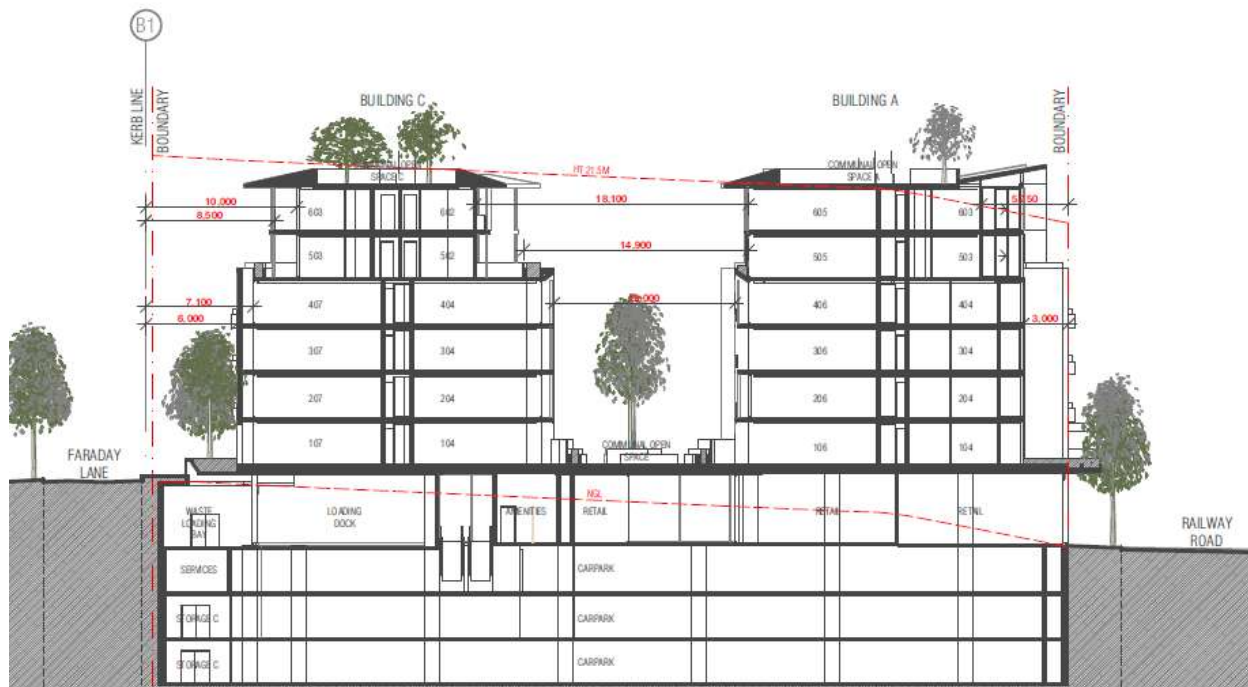


Figure 26: Section through Buildings C and A showing natural ground level

- d. Despite the numerical non-compliance, the development provides a scale and form of development that is compatible with surrounding developments and the emerging high density character of the Shepherd's Bay, Meadowbank precinct. The majority of new developments in the precinct are 6 and 7 storeys in height and as such, the proposed development will not be out of character with this scale. Indeed, if a storey were removed, creating a part 5, part 6 storey development, this would appear at odds with the scale and character of developments to the south and east of the subject site.
- e. A large portion of the building height non-compliances relate to the lift overruns and shade structures for the rooftop communal open spaces. These structures are primarily located at the centre of the building. The location and minimal bulk of the structures will ensure they will not be highly visible from the public domain, and the impacts to adjoining properties will be negligible. The rooftop communal open spaces provide high quality communal open space with good solar access for future residents as encouraged by the Apartment Design Guide (Part 3D). In order to provide equitable access to this space the lift overrun must necessarily breach the height control. Therefore, this non-compliance provides substantial benefits to the development without impacting neighbouring sites;
- f. The design of the development carefully considers surrounding built context, including heritage assets in the locality. This includes Meadowbank shops, a local heritage item located on the western side of Railway Road. To provide appropriate relief to this heritage item the development incorporates a large 7.5m setback from Constitution Road which allows for a public plaza including public domain improvements, outdoor dining opportunities, and landscaping. This increased building separation ensures that the heritage significance and setting of nearby heritage items is not prejudiced by the development, as confirmed in the accompanying Heritage Impact Statement which concludes that:



No part of the subject site is listed as a heritage item in any statutory list, nor does it contain a heritage item. The site is not located in or near any heritage conservation areas.

The site is located in the vicinity of the following heritage items listed in Schedule 5 of the Ryde LEP 2014:

Item No: I37 - 58-64 Constitution Road, Meadowbank (Meadowbank shops), and

Item No: I116 - Corner 1A Angas and 34 See Streets (Attached dwellings)

The proposed design for a Mixed Use & Co-Living development prepared by Fender Katsalidis Architects is sympathetic to the adjacent Meadowbank shops through the transition between the two, in both stepping of the buildings and in the careful articulation of the façade.

The siting of the proposal does not obscure any views of the Meadowbank Shops heritage item, and whilst the wider setting for the buildings is altered by the addition of the multi storied development to the east, the appreciation of the significance of the heritage item is retained and conserved.

The architectural form and detailing of the corner entry to the pedestrian plaza is strongly influenced by the form and scale of the heritage item, and specifically by the rhythm and proportions of the existing façade. The retention of the historic character of the item in an acceptable setting is further supported by a sympathetic choice of materials and colour palette for the new development.

The visual impact and proximity of the new building to the heritage item in the vicinity has an acceptable heritage impact.

In supporting and enhancing the relationship between the new development and the existing heritage building, specifically the open public space in front of the main heritage façade, the intent of Section 5 of the Ryde DCP 2014, will be fulfilled in that the project will support and encourage lively and safe streets by requiring active street frontages. The proposal will ideally encourage the care and use of the heritage buildings, driven by an increase in the local community and subsequent activity, which will provide an opportunity for the future care and conservation of the building fabric and potentially the establishment of more active uses.

The proposed redevelopment of the property at 1-27 Railway Road & 50 Constitution Road, Meadowbank, will have an acceptable impact on the heritage significance of the heritage items in the vicinity.

The proposed project, for a Mixed Use & Co-Living development, is consistent with the heritage objectives of the Ryde LEP 2014 and the Ryde DCP 2014. In our view, the consent authority should have no hesitation, from a heritage perspective, in approving this application.

- g. New developments within the precinct generally comprise of solely residential developments with no non-residential uses on ground level (despite the B4 Mixed Use zoning). In contrast, the proposed development includes a ground floor that is entirely made up of non-residential land uses and publicly accessible areas (other than servicing and plant areas). This achieves a truly mixed used development, which will provide a new village square for the precinct, providing amenities, services and employment opportunities that will serve the whole precinct and wider locality. The development therefore provides an exemplary response to desired future character that is envisaged for the locality and is consistent with the desired future character objectives for the precinct which have been discussed in detail in Section 7 below.
- h. There will be no adverse impacts on solar access to neighbouring properties as a result of the non-compliances. The proposed development will not give rise to additional adverse impacts on solar access to neighbouring private open space or living areas between 9am and 3pm on 21 June, consistent with the relevant provisions under the ADG. Shadow diagrams that have been prepared with the development application demonstrate that the additional height as a result of the non-compliance will not result in any significant increase in adverse solar



impacts to neighbours, over and above a height compliant development. The additional height creates minor additional overshadowing between 10am and 1pm in midwinter with the shadows primarily falling on the adjoining roads and thus no impacting on adjoining residential apartments (see **Figure 27** below).



Figure 27: Shadow Analysis

- i. The height breach does not result in any additional adverse amenity impacts on neighbouring properties. Compliant building setbacks and separation have been provided in accordance with the ADG and RDCP 2014 requirements. As such, levels of visual and acoustic privacy, and outlook for neighbouring residences will not be adversely affected by the non-compliant part of the development.
- j. The increased height as a result of the breach has allowed floor space to be concentrated into the four residential building elements rather than spread across the entire frontages of the site. Opportunities for private and public views through the site are enhanced by the height breach which has enabled the built form to be broken up, providing physical gaps in the development, both from north to south and east to west through the site.

- k. The breaking up of the built form, facilitated by the height breach, has enhanced opportunities for sunlight penetration and cross ventilation to dwellings within the proposed development. As a result, the proposed residential apartments comply with the ADG in respect of solar access and natural ventilation requirements, and the co-living development complies with the solar access requirements under SEPP ARH. As a direct consequence of the height breach and physical breaks provided in the built form, the development has achieved enhanced amenity for future occupants, providing high quality dwellings that will improve the choice of housing stock in the locality to the benefit of the local community.
- l. The proposed development meets the objectives of the development standards and meets the objectives of the B4 Mixed Use zone (as further detailed in Section 7 below).
- m. The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:
 - The development facilitates ecologically sustainable development by providing much needed, well-designed housing and commercial/retail floor space in an appropriate and highly accessible location. This will positively permute sustainable modes of transport and increase employment opportunities locally. Furthermore, the development will have a positive economic and environmental impact on the locality, increasing urban tree canopy on site (1.3b);
 - The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for an appropriate mixed use development. There will be substantial uplift in both housing and employment generation on the site, which aligns with the desired future character of the Shepherd's Bay, Meadowbank precinct (1.3c);
 - The development will deliver a 162 room co-living building which will provide high quality affordable rental housing for the wider Ryde community. The development is well placed to maximise the benefits of this type of housing, being adjacent to a TAFE and Meadowbank Railway Station, providing access to the wider Sydney region (1.3d);
 - As stated earlier in this statement, the development will not prejudice the heritage significance and setting of heritage items in the vicinity of the site (1.3e); and
 - The development has been designed to be compatible with the surrounding built form and despite the height non-compliance, will not adversely impact neighbouring amenity. The development will provide excellent levels of amenity for prospective occupants, which is facilitated through the increased height enabling the built form to be broken up. Furthermore, the proposed development exhibits design excellence (1.3g).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The additional height will facilitate a high quality mixed use development with excellent levels of internal amenity that does not prejudice the character or appearance of the local streetscape or levels of residential amenity enjoyed by neighbouring properties.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard

might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. CLAUSE 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (CLAUSE 4.6(4)(a)(ii))

7a. Objectives of Development Standard

Clause 4.3 of RLEP 2014 contains the following objectives to be achieved by the height of buildings development standard:

"(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,

(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,



- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- (d) to minimise the impact of development on the amenity of surrounding properties,*
- (e) to emphasise road frontages along road corridors.”*

The proposal's compliance with these objectives and the objectives for development in the zone are demonstrated below.

Objective (a): “to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,”

As set out earlier, the proposed development will be compatible with the size of the subject site and its surrounding built and natural environment. The height breach is largely a consequence of the sloping topography of the site, down to its low point on Railway and Constitution Roads. Extensive excavation is proposed to allow a suitable building pad and provide level access to the site from these frontages, in accordance with the vision for the site outlined in the RDCP 2014. This allows the development to properly address these key street frontages and provide an exemplary commercial/retail plaza that provides a village plaza and ‘gateway’ to the Shepherd’s Bay, Meadowbank precinct from the northwest and Meadowbank Railway Station.

The scale of development, being 6 or 7 storeys in height is in keeping with the scale and height of other recently constructed high density developments in the locality. This includes developments throughout the precinct and directly adjacent sites to the south and west, which also benefitted from height of building breaches.

As can be seen from **Figure 28** below, the proposed development will not appear as an overdevelopment of the site and will not be at odds with other built form in the locality. Despite the breach in building height, the development will sit comfortably into the site and the use of articulation and breaking up the built form by increasing the height – resulting in the breach – will actually reduce the overall appearance of bulk of the development when viewed from the street and surrounds.



Figure 28: Photomontage of Development viewed from intersection of Constitution Road and Railway Road



Therefore, despite the non-compliance, objective (a) is achieved.

Objective (b): “to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,”

Despite the height non-compliance, the proposed development will not give rise to significant adverse overshadowing impacts on neighbouring properties, over and above those created by a compliant development.

Due to the orientation of the site, there would be a degree of overshadowing, a number north-facing windows of apartments at Nos. 21-24 Railway Road and Nos. 15-17 Angas Street, and west-facing windows of apartments at Nos. 3-13 Angas Street will be overshadowed by the development. However, as demonstrated by the accompanying shadow diagrams (an extract of which is provided at **Figure 27**), the level of overshadowing caused by the height breach will be nominal and will not give rise to additional significant adverse impacts on apartments within those neighbouring developments.

Furthermore, the proposed development will maintain compliant building separation and street setbacks, as prescribed by the ADG, and complies with the FSR prescribed for the site. As such, the level of overshadowing caused by the development is consistent with that which is reasonably expected by the building envelope controls that apply to the site.

Additionally, as previously stated, the proposed development is of a scale and form that is characteristic of the high density streetscape within the precinct and is compatible with other developments in the locality. The proposed development will enhance the general appearance of the site and wider streetscape through a high quality development that exhibits design excellence.

Therefore, despite the non-compliance, objective (b) is achieved.

Objective (c): “to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,”

The proposal provides a large scale development on a site consisting of 16 smaller lots. This provides a development of a scale and type that is consistent with other developments in the Shepherd’s Bay, Meadowbank precinct and that is encouraged by the planning controls that apply to the site.

The development provides a significant uplift in housing and employment generation on the site, in a location with excellent access to public transport. As such, it will encourage sustainable modes of transport and demonstrate a truly transit-oriented development that is encouraged in the precinct. Furthermore, the development provides a compatible mix of residential and on-residential uses on the site.

Therefore, despite the non-compliance, objective (c) is achieved.

Objective (d): “to minimise the impact of development on the amenity of surrounding properties,”

As set out earlier, the proposed development does not result in any unreasonable adverse amenity impacts on neighbouring properties. Compliant building setbacks and separation have been provided in accordance with the ADG and RDCP 2014 requirements. Furthermore, the proposed density (FSR) is consistent with what is prescribed by RLEP 2014 and ARH SEPP.

Consequently, the development has been designed to not adversely impact levels of visual and acoustic privacy, and outlook for neighbouring residences. Furthermore, as set out under Objective (c) above, the level of overshadowing caused by the development is considered to be reasonable and in accordance with what is anticipated by the building envelope controls that apply to the site.

Therefore, despite the non-compliance, objective (d) is achieved.

Objective (e): “to emphasise road frontages along road corridors.”

The proposed development has been arranged into four distinct residential buildings over a ground floor comprising commercial/retail uses. The development follows the alignment of surrounding roads, with level access provided from both Railway and Constitution Roads to emphasise these road frontages. The form of the development also follows these road alignments, with a zero setback provided for most of the building.

Residential buildings on upper levels will provide a rectilinear form that spans the site from north to south. Building A and B are separated from Building C and D by physical break approximately 12m wide which runs the entire length of the site. This further expresses the length of the site along the Railway Road frontage.

Therefore, despite the non-compliance, objective (e) is achieved.

7b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone B4 are as follows:

- *To provide a mixture of compatible land uses.*

The proposed development will provide a mixture of compatible residential and non-residential uses on the site. These includes residential apartments, co-living development, and commercial and retail uses.

- *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.*

There will be a significant uplift in housing and employment generating uses on the site as a result of the development. Given the excellent accessibility of the site adjacent to Meadowbank Railway Station, this will encourage sustainable modes of transport for future occupants. Furthermore, the public domain in and around the site will be enhances as part of the development, improving the pedestrian and walking environment in the locality.

- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*

This objective does not apply to the subject site.

- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

This objective does not apply to the subject site.

The proposed development is consistent with the objectives of Zone B4 in that it will result in the development of a mixture of compatible uses in a highly accessible area. The use will be compatible with the mix of uses in the zone and will be compatible with the existing environmental and built character of the locality.

The building height variation is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

8. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 5 May 2020, as part of Planning Circular PS 20-002, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table of the notice.

9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the building height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building height exceeds the maximum permitted on the site, the proposed development is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standards and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the building height development standards is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standards would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation is supported.