



Clause 4.6 – Exceptions to Development Standards Request to Vary Clause 4.3 – Height of Buildings

Address: 12 and 14 Waters Road, Neutral Bay

Proposal: Demolition of two (2) existing mixed-use commercial buildings and the construction of a five (5) to storey residential development, including retail and commercial spaces and basement carparking

Date: June 2021

1.0 Introduction

This is a written request to seek an exception to a development standard pursuant to Clause 4.6 – Exceptions to Development Standards of North Sydney Local Environmental Plan (NLEP) 2013. The development standard for which the variation is sought is clause 4.3 Height of Buildings under NLEP 2013.

The numerical non-compliance arises from the design approach to provide roof top communal and private open space, which in the context of the commercial zone applying to the locality affords greater amenity and utility than communal open space at ground floor level. This approach providing elevated communal open space necessitates the provision of servicing and access for all mobility levels which adds to the numerical non-compliance.

2.0 Description of the planning instrument, development standard and proposed variation

2.1 *What is the name of the environmental planning instrument that applies to the land?*

The North Sydney Local Environmental Plan (NLEP) 2013.

2.2 *What is the zoning of the land?*

The land is zoned B4: Mixed Use.

2.3 *What are the Objectives of the zone?*

The objectives of the zone are:

- To provide a mixture of compatible land 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;
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity; and
- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

2.4 What is the development standard being varied?

The development standard being varied is the height of buildings development standard.

2.5 Is the development standard a performance based control? Give details.

No, the height of buildings development standard is a numerical control.

2.6 Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.3 of NLEP 2013.

2.7 What are the objectives of the development standard?

The objectives of Clause 4.3 are:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- (b) to promote the retention and, if appropriate, sharing of existing views,
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area."

2.8 What is the numeric value of the development standard in the environmental planning instrument?

Clause 4.3 establishes a maximum height of buildings control for the site of 16m as illustrated in the extract of the Height of Buildings Map included in Figure 1 below.



Figure 1: Extract of NLEP 2013 Height of Buildings Map

2.9 What is the proposed numeric value of the development standard in the development application?

The proposed building height is 21.3m. Figures 2 to 5 below demonstrate the extent of the proposed development which exceeds the 16m maximum building height standard. The diagrams demonstrate that the part of the building that exceeds the height control is generally plant, lift overrun, rooftop stair access, building parapets and structures associated with the proposed roof top communal open space.



Figure 2: Extract from architectural section drawing DA-0601 - Vertical red line showing the maximum building height of the proposed development

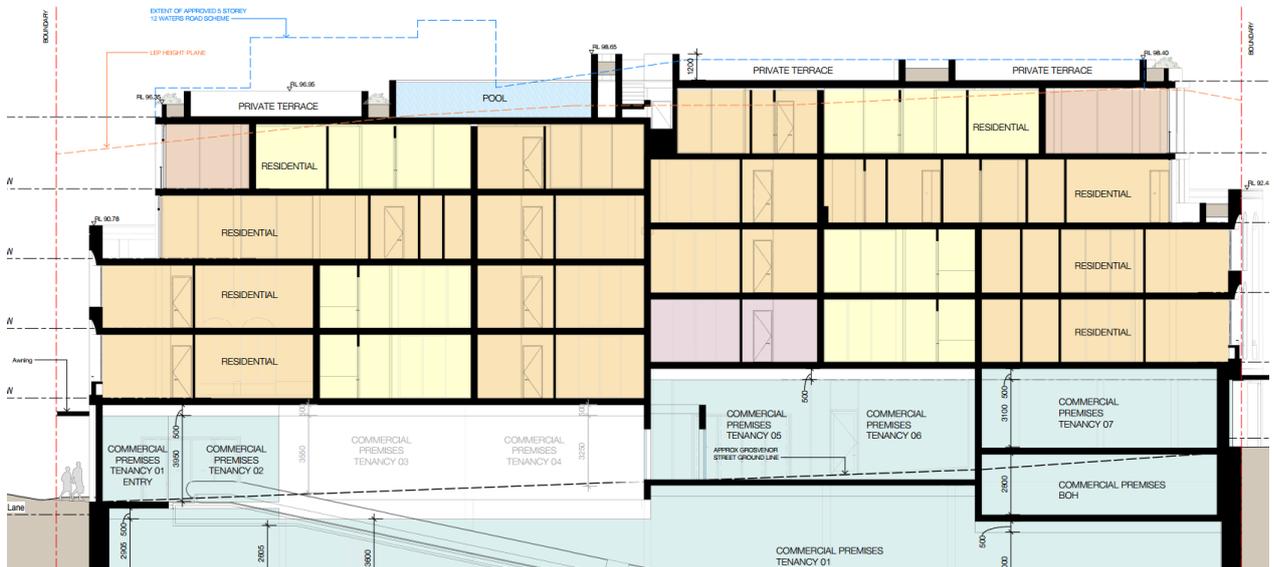


Figure 3: Extract from architectural section drawing DA-0602

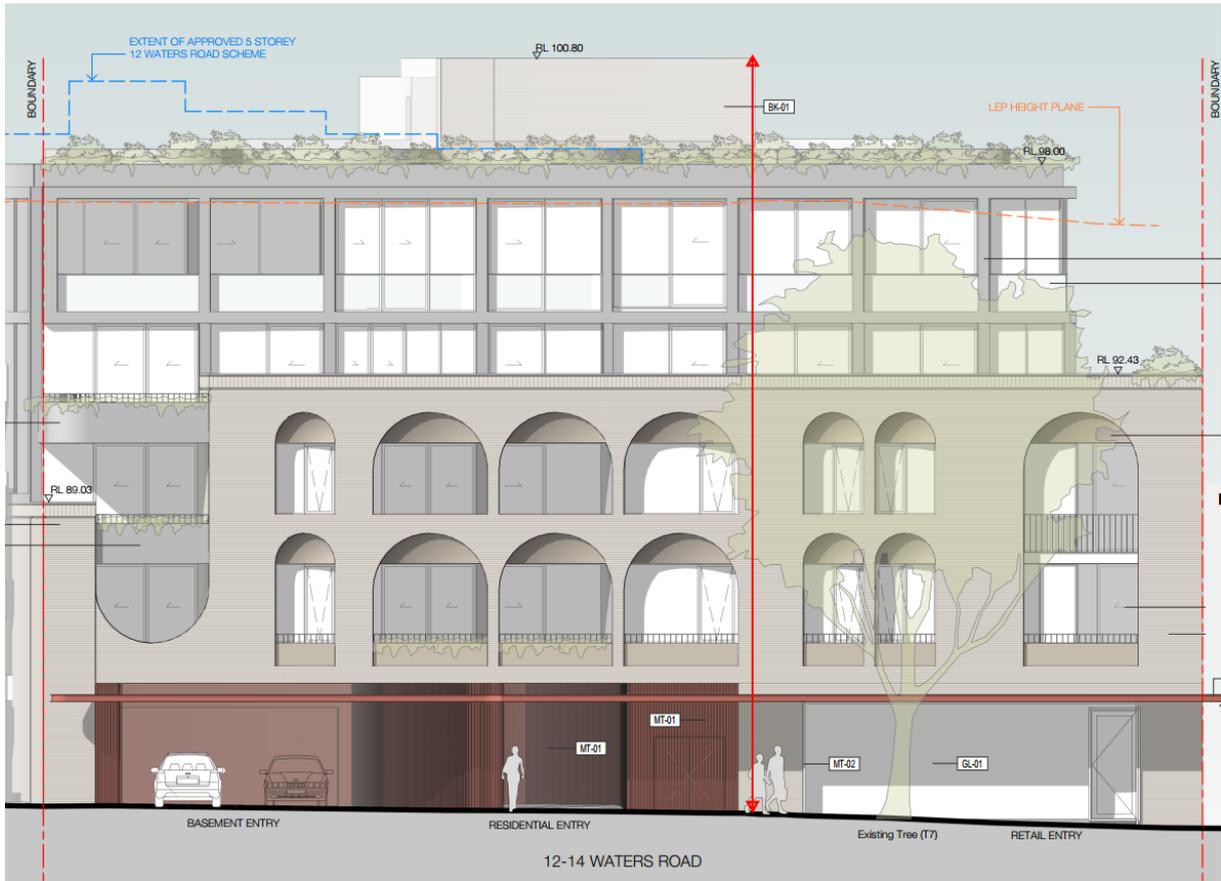


Figure 4: Extract from architectural west elevation drawing DA-0501 - Vertical red line showing the maximum building height of the proposed development

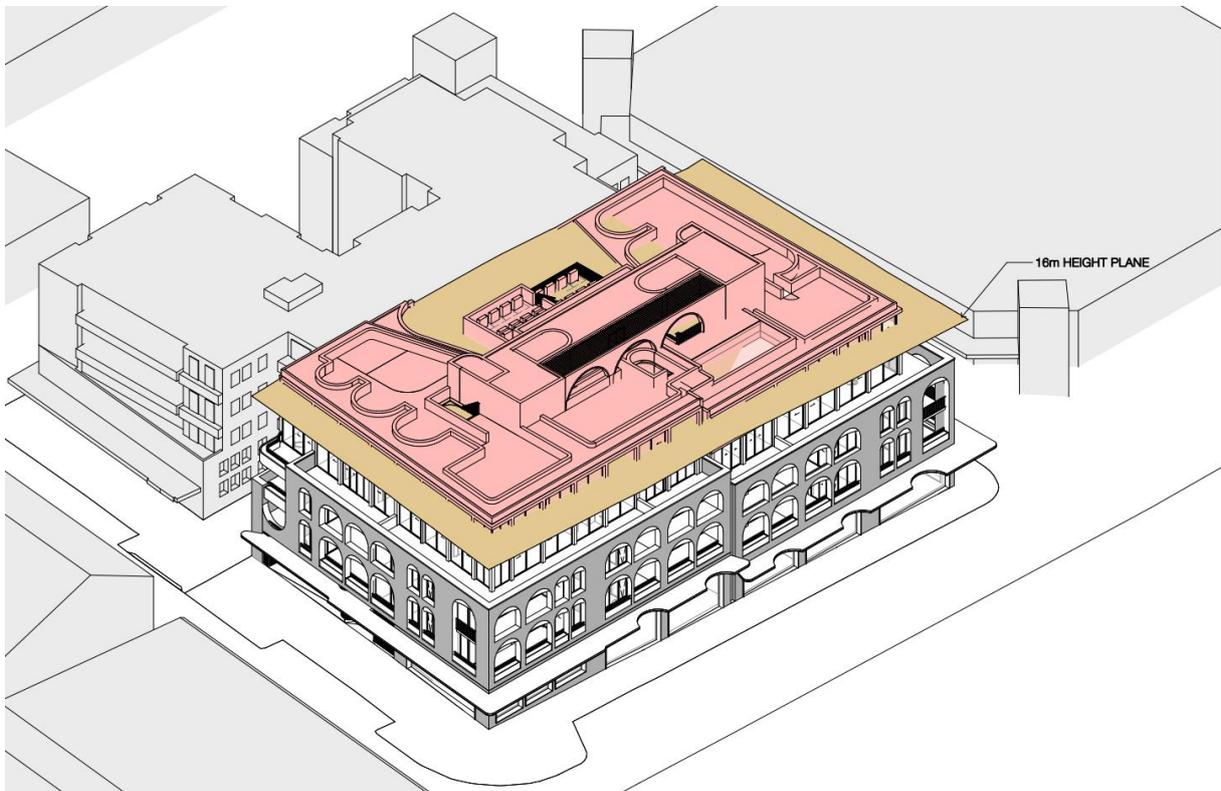


Figure 5: Extract from Building Height Plane drawing DA-0251

2.10 What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposal exceeds the maximum height of buildings development standard of 16m by approximately 33.13% (5.3m).

3.0 Assessment of the Proposed Variation

3.1 Overview

Clause 4.6 Exceptions to development standards establishes the framework for varying development standards applying under a local environmental plan.

Objectives to Clause 4.6 at 4.6(1) 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.”*

Clause 4.6(3)(a) and 4.6(3)(b) require that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- “(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.”*

Clause 4.6(4)(a)(i) and (ii) require that development consent must not be granted to a development that contravenes a development standard unless the:

- “(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”*

Clause 4.6(4)(b) requires that the concurrence of the Secretary be obtained, and Clause 4.6(5) requires the Secretary in deciding whether to grant concurrence 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.”*

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline *Varying Development Standards: A Guide*, August 2001, and has incorporated as relevant principles identified in the following judgements:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* (‘Four2Five No 1’);

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* ('Four2Five No 2');
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* ('Four2Five No 3');
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386*;
- *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*;
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*;
- *RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130*;
- *Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61*; and
- *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245*.

3.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

3.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

A development that strictly complies with the height of buildings standard is unreasonable or unnecessary in this circumstance for the following reasons:

- The proposal complies with the objectives of the B4 Mixed Use zone, as detailed in the assessment at Table 1 below.
- The proposal is consistent with the objectives of the Height of Buildings development standard as detailed in the assessment at Table 2 below.
- The development is in the public interest as it is consistent with the objectives for the development within the zone and replaces an outdated commercial and mixed use building with a high quality high quality mixed use development comprising contemporary new retail, commercial and residential floor space. The new building will activate the sites three street frontages of Waters Road, Grosvenor Street and Waters Lane with a building of high visual appeal and will significantly enhance the streetscape and urban design outcomes of the Neutral Bay Town Centre;
- The development responds to the built form and amenity provisions with the North Sydney DCP 2013 and demonstrates consistency with setback and building alignment requirements. Additionally, the development is compatible with the desired future character for the Neutral Bay Centre as outlined in the North Sydney DCP 2013;
- The site is located within the Neutral Bay Town Centre, which forms part of the Military Road Corridor Study. As part of the Military Road Corridor Study a Future Directions Paper was released in March 2020, amended in November 2020 and most recently contemplated and formally endorsed by Council on 22 February 2021 to proceed to an amendment of the LEP. The Study identifies an increase to the maximum building height for the subject site from its current 16m limit to 6 storeys, (refer to Figure 6), and envisages a minimum 1.2:1 FSR for non-residential floor space in mixed used development in the B4 Mixed Use zone.



Figure 6: Extract from Figure 35 (Building Height) Military Road Corridor Study - Future Directions Paper

- Notwithstanding the 6 storey height limit envisaged for the site under the Future Directions Paper, the proposal seeks consent for a 5 storey development (albeit a split level 5 storey development which responds to the 3m height difference across the site).

The overall top height of the development as demonstrated in the extracts of the submitted architectural Section drawings in Figures 1 to 3 above, is effectively a 6 storey scale which is established by the recessed rooftop communal open space structures. Specifically, the building elements that sit above the 16m building height control include the following:

- Small parts of the Level 4 (i.e. roof slabs and top corners of some sections);
 - Lobby, lift overrun and stairs that allow access to the roof top communal open space area;
 - Covered roof top communal loggia with operable louvred roof adjacent to proposed pool deck;
 - Wall parapets (some of which act as a balustrading to roof top open space); and
 - Mechanical plant structures and rooms.
- The rooftop plant and communal open space structures are effectively at a 6 storey scale, and are consistent with the scale and height envisaged under the Future Directions Paper.
 - The communal open space structures will provide enormous amenity for future residents, providing weather protection for the space. The roof top open space area associated with the building height non-compliance is considered to be of high quality and provides a substantial benefit to the development in terms of amenity for the occupants.

The communal open space area has been designed with a focus on promoting wellness for all residents. The space is a relatively large contiguous area, receives abundant solar access and comprises of landscaping, water features, BBQ areas, outdoor dining, outdoor lounges, pool and pool deck area and a yoga/fitness multipurpose room with mediation space.

The design approach to provide roof top communal open space instead of ground level communal open space is in the context of the site being within a commercial centre an outcome that provides far superior amenity for the future residents of the development.

The height associated with the rooftop communal open space structures and plant structures has been purposefully positioned at the centre of the site, set well back from side boundaries and the levels below.

These elements will not be clearly visible from public domain locations in Grosvenor Street, Waters Road and Waters Lane and thereby not result in adverse visual massing impacts as demonstrated in the photomontages (refer to Figures 7 and 8).



Figure 7: Photomontage of proposed 5 storey building when viewed from from Grosvenor Street



Figure 8: Photomontage of proposed 5 storey building when viewed from from Waters Road and Grosvenor Street

Additionally, the positioning of the structures in a central location on the roof level has the result that no adverse additional overshadowing will occur to adjacent properties when compared to a compliant scheme and the recently approved development at 12 Waters Road (i.e. approved DA 104/2020).

The proposed development includes appropriate floor to floor and floor to ceiling heights that respond to the desire for lower level commercial premises in the B4 Mixed Use zone. Such that lower levels (i.e.

Basement 1, Waters Lane and Waters Road levels) have floor to ceiling heights ranging between 3.6m to 4.4m with the upper residential levels having floor to ceiling levels of 2.7m to 2.8m. The proposal also incorporates the generous clearances for service vehicles to utilise the loading dock (off Waters Lane) required to service a development of this nature;

The non-compliant height be partially attributed to a 3m height difference in the existing ground level from one side of the site to the other. The design of the building seeks to overcome this site constraint by effectively splitting the building into two main components (the western and the eastern components). There is an effective 'split' in levels between the two components from Level 1 (or the Waters Road Level) approximately through the centre of the site (with the split running in a north south direction). The split is clearly evident in the Section and Elevation drawings showing that the western side or component of the building has a finished floor level for its upper most level (effective 5th storey) that is 1.65m lower (i.e. RL 92.45m) than the finished floor level of the equivalent 5th storey of the eastern component of the building (i.e. RL 94.10m). Inevitably the design is unable to fully mirror the slope of the site and there are corners of the building that rise above the maximum building height plane and this is best illustrated in the extract of North Elevation Drawing DA-503 (refer to Figure 9).

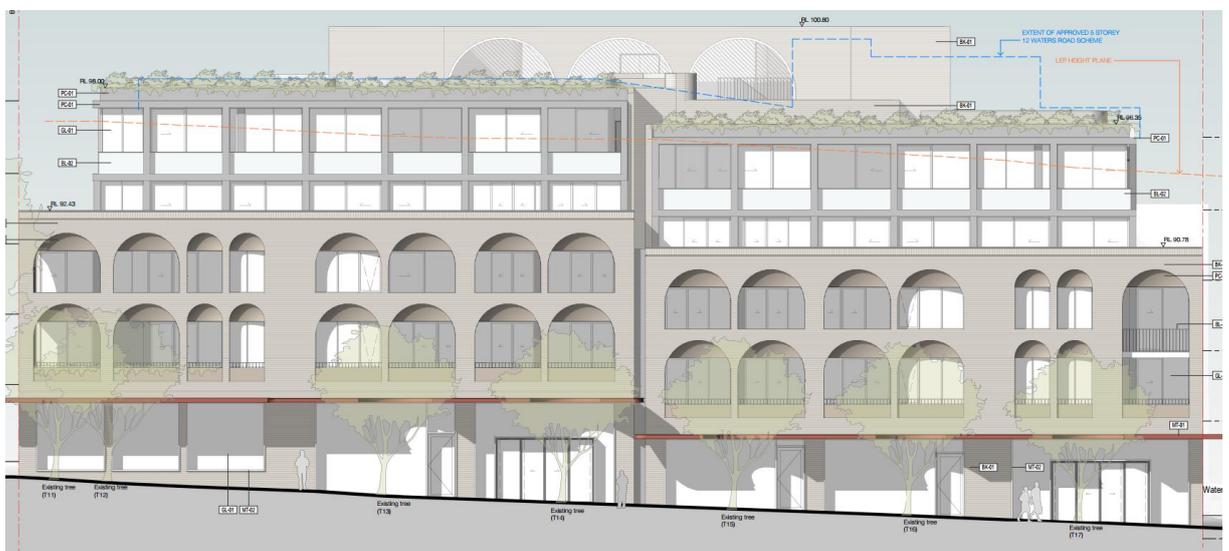


Figure 9: Extract from architectural Section drawing DA-0603

The proposed development is compatible with the desired future character for the Neutral Bay Centre as provided for within the North Sydney DCP 2013. Specifically, the DCP requires buildings to be built to all street frontages at ground level and for buildings to be setback 1.5m at ground level from all laneways. The proposed development is setback 1.5m from Waters Lane and fully complies with this control.

The North Sydney DCP 2013 requires a two (2) storey podium while the Military Road Corridor Study envisages a three (3) storey podium for the Town Centre. The proposed three (3) storey podium (and two storey element at the southern end of the Waters Road elevation) is built to the street frontage of Waters Road and Grosvenor Street and provides an appropriate scale and built form to the public street frontages, consistent with the existing character and the desired future character of the Centre as envisaged in the North Sydney DCP 2013 and the Military Road Corridor Study. Activation of the public realm is established on each frontage with glazing and pedestrian entries.

The built form for each of the two (2) components of the proposed building above the three (3) storey podium are setback a minimum of 3m from the podium below.

It is noted that Section 2.4.4 of the DCP requires podiums to match the height and setbacks of adjacent buildings or the average of the heights of the adjacent podiums having regard to their existing nature and/or their redevelopment potential. A study of the locality shows that there is no uniform or predominant podium design in the Centre. The development adjoining the site to the south at 4-8 Waters Road has a two (2) storey podium with three (3) storey built form above and a cut-out for the driveway fronting Waters Road. The same development incorporates a single storey podium to Waters

Lane with a four (4) storey built form above the single storey podium. It is noted that the 'laneway' scale reads as a four (4) storey podium due to the balcony line (include thick masonry columns and hard upstands) aligning with the ground level building wall. There is no development adjoining the site to the north.

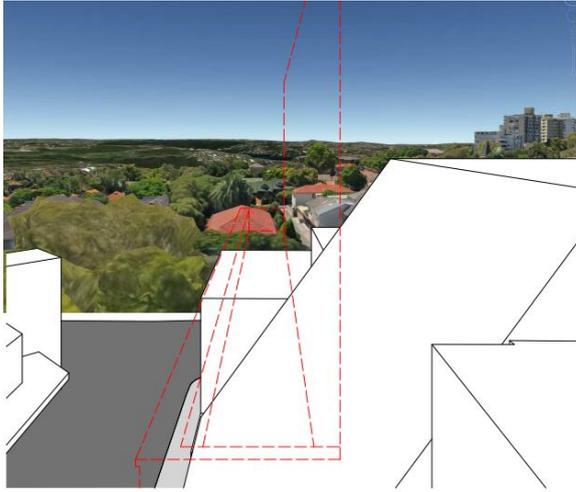
Notwithstanding a two (2) storey podium DCP requirement, a merit assessment of the proposed three (3) storey podium arrangement demonstrates that it is an appropriate design approach within the inconsistent podium/setback regime in the vicinity of the site and is compliant with the envisaged controls in the recently adopted Military Road Corridor Study.

It is also noted that the setback of the eastern built form along Waters Road varies due to the geometry of the façade, nonetheless the podium and arrangement of recessed articulated upper levels mitigate visual massing and achieve a human scale for pedestrians in the Neutral Bay Town Centre.

Importantly, the southern end of the eastern façade has been recessed so that when viewed from the street the built form reads a 2 storey element compared to the 3 storey podium further north.

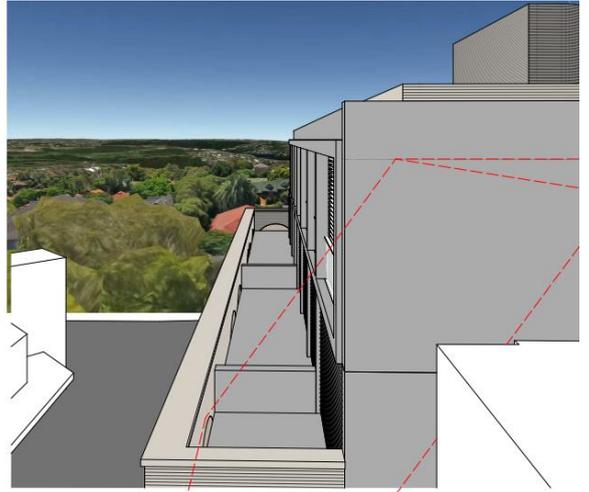
This element of the design responds to the built form at 4-8 Waters Road as illustrated in the Eastern Elevation drawing, such that the proposed building transitions from a 3 storey podium to a two storey podium where it meets the built form at 4-8 Waters Road.

- The proposed development will result in additional overshadowing to adjacent development (in particular to the immediately adjacent building at 4-8 Waters Road). Specifically, the proposal will overshadow several north facing windows in the recessed north east corner of the mixed use building at 4-8 Waters Road however the impacts are reasonable in this instance for the following reasons:
 - The impact is similar to the impact that will occur in accordance with the approved development at 12 Waters Road under Development Consent DA 104/2020 such that the north-facing windows within the north-east recessed corner will be affected by the development.
 - The Military Road Corridor Study anticipates development at the site of a compatible scale and density as proposed.
 - The development is located within a town centre. The predominant built form typology is zero lot development as proposed. A side setback would be inconsistent with the prevailing pattern of development in the Centre.
 - The proposal includes a 3m setback above the podium on Waters Road, which responds to the DCP requirements and the Military Road Corridor Study, allowing solar access to the northeast corner of the neighbouring development.
 - The side windows (north facing windows) are not the primary windows in the respective units in 4-8 Waters Road, instead each of the affected units have windows to living rooms which face the east and each unit also includes a balcony facing east (i.e. towards Waters Road). Thus, these units will retain solar access in the morning period to their respective living rooms and balconies.
- The overshadowing impacts therefore are of a degree that can reasonably be expected from a development that complies with the DCP controls and also the controls envisaged under the Military Road Corridor Study and are generally commensurate with the solar access impacts associated with the approved development at 12 Waters Road (i.e. under DA 10/2020).
- In terms of view impacts, the proposed height will not adversely affect views from private or public land. Architectural Plans DA-3011 to DA-3014 show the limited impact of the proposed development from Levels 3, 4 and 5 of 4-8 Waters Road (refer to the extracts of the view analysis below).

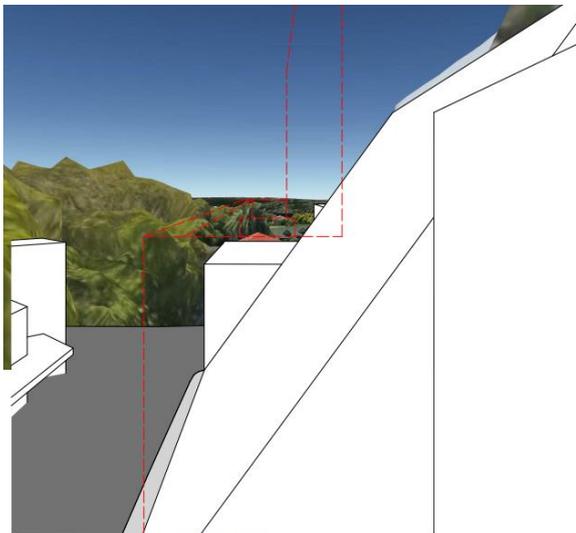


View From Level 5, 4-8 Waters Rd - Existing

Figure 10: Extract from architectural drawing DA-3011

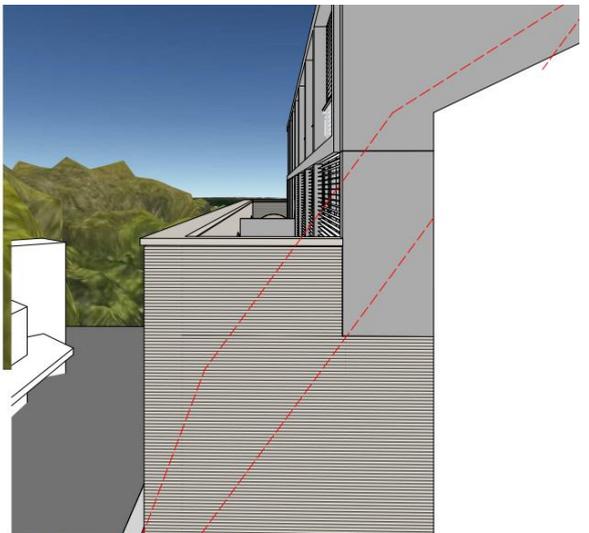


View From Level 5, 4-8 Waters Rd - Proposed

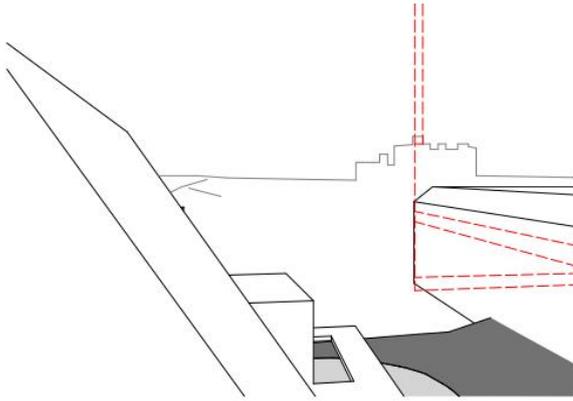


View From Level 4, 4-8 Waters Rd - Existing

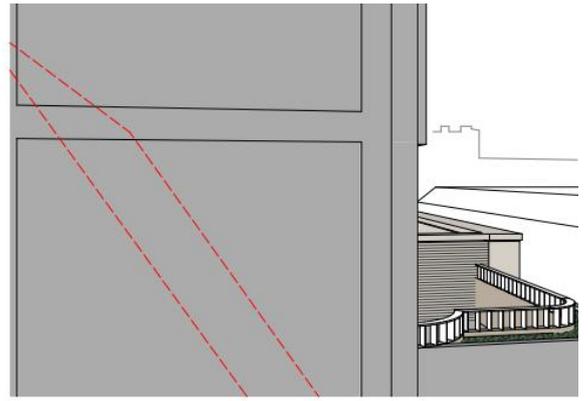
Figure 11: Extract from architectural drawing DA-3012



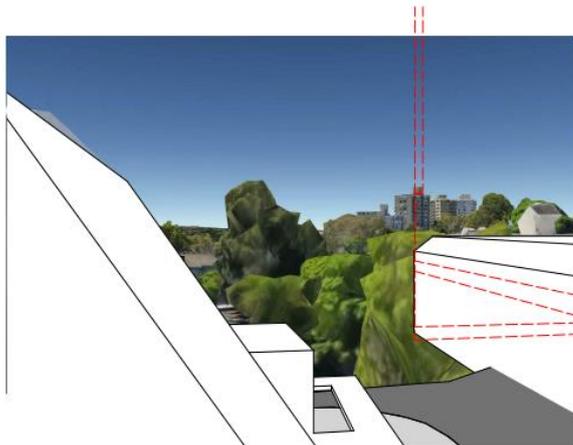
View From Level 4, 4-8 Waters Rd - Proposed



**View From Unit Level 5, 4-8
Waters Rd - Existing**

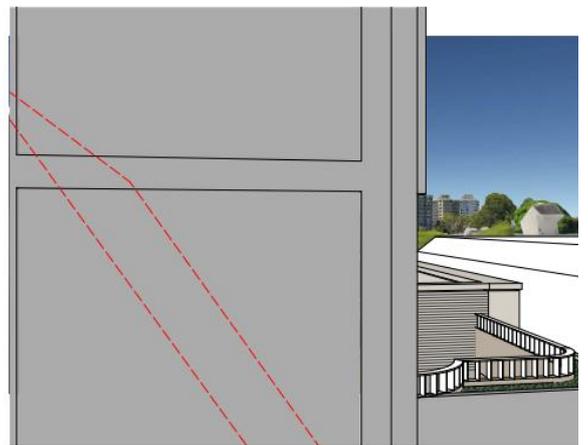


**View From Unit Level 5, 4-8
Waters Rd - Proposed**

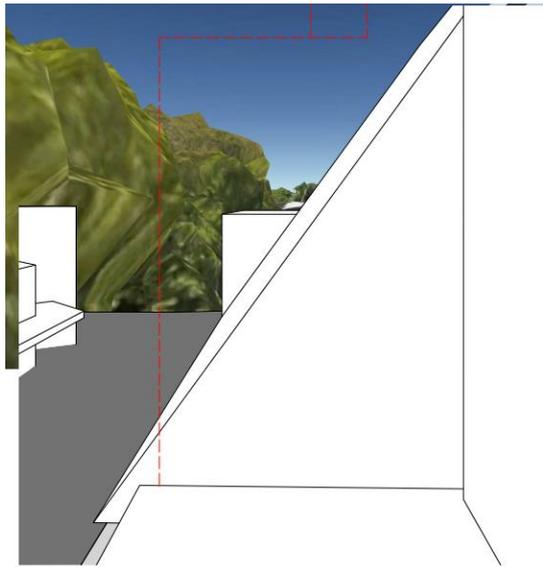


**View From Unit Level 5, 4-8
Waters Rd - Existing**

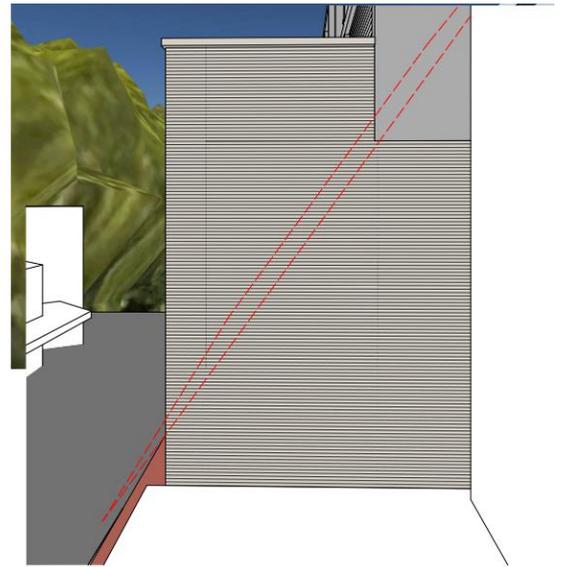
Figure 12: Extract from architectural drawing DA-3014



**View From Unit Level 5, 4-8
Waters Rd - Existing**



View From Level 3, 4-8 Waters Rd - Existing



View From Level 3, 4-8 Waters Rd - Proposed

Figure 13: Extract from architectural drawing DA-3013

- The proposed development will partially affect district views, however it is noted that such views are across a side boundary. It is also considered that the views would also include unaffected views to the north-west, which are not evident in the photograph in the view analysis. On this basis, the proposed height variation is not considered to unreasonably affect the views from the neighbouring property.
- The proposed height non-compliance will not result in adverse privacy impacts. The proposed development has been designed to ensure adequate visual and acoustic privacy between the subject development and the adjoining properties. There are no south-facing openings, avoiding direct overlooking to the only adjoining development. Additionally, the communal open space on the rooftop has been arranged and setback from the boundaries of the site so as to avoid overlooking of the building to the south. Finally, there are appropriate setbacks on all sides, combined with the street widths of Waters Road, Waters Lane and Grosvenor Street, so that the rooftop communal open space and lower level openings and balconies are adequately separated from buildings opposite, avoiding privacy impacts.
- The design and height of the proposed development ensure that the proposal is compatible with the existing and anticipated future character of the area and provides for excellent internal amenity whilst also preserving external amenity to surrounding properties in a reasonable manner.

Based on the above assessment, it is considered that strict compliance with the LEP building height standard is unreasonable and unnecessary in this instance.

3.2.2 Would the underlying objective or purpose be defeated or thwarted if compliance was required?

The underlying objective or purpose of the development standard would not be defeated or thwarted if compliance was required.

3.2.3 Has the development standard been virtually abandoned or destroyed by the Council's own actions in departing from the standard?

It cannot be said that the height of buildings development standard has been abandoned.

3.2.4 Is the zoning of the land unreasonable or inappropriate?

The zoning of the land is reasonable and appropriate given the site's location.

3.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

It is considered that there are sufficient environmental planning grounds to justify varying the building height development standard, which include:

- The proposal complies with the objectives of the development standard and the objectives of the B4 Mixed Use zone.
- The proposal will result in significant benefits and high levels of amenity for future residents through the provision of a well designed roof top landscaped communal open space and associated structures. This space sits above the LEP maximum height control, but does not result in adverse impacts upon adjacent private properties or the public domain in terms of overshadowing, privacy, visual massing and view loss.
- The proposal results in the provision of significantly greater non-residential floor space than is required under the LEP. The provision of this retail floor space, combined with the higher floor to floor heights of this space, will result in a dynamic new commercial offering in the Town Centre, with activated street frontages and increasing services and employment generation in excess of what otherwise might be expected at this site.
- Non-compliance with the standard does not contribute to adverse environmental, social, or economic impacts and does not give rise to unacceptable impacts associated with bulk and scale, overshadowing, privacy, rather the proposal will result in considerable positive social and economic impacts.
- The variation to the development standard does not result in non-compliance with the other fundamental built form control applicable to development at the site, being the FSR development standard at Clause 4.4A of NLEP which requires non-residential FSR to be not less than 0.5:1 for any development at the site.
- The proposal represents a development that is consistent with the land uses and character envisaged in the Neutral Bay Town Centre as envisaged in the North Sydney DCP 2013 and also within Council's core strategic planning policy for the location, being the Military Road Corridor Study as endorsed on 22 February 2021. Notwithstanding the above, the proposal still represents a development that is less than the intensity and scale of development envisaged in the Military Road Corridor Study.
- It is also noted that the proposed non-residential FSR is consistent with the extent of non-residential FSR envisaged within the Military Road Corridor Study for the Neutral Bay Town Centre.
- The proposed configuration responds to the environmental and planning objectives within the DCP and is compliant with or less than the 6 storey scale envisaged for the site within the endorsed Military Road Corridor Study.
- The proposal includes a significant offering of public works around the curtilage of the site at ground level. Specifically, the proposal includes detailed landscape concept plans demonstrating the comprehensive landscaping and beautification of the three street frontages of the site. The applicant proposes to undertake these works, subject to design approval by Council, as works in kind. The outcome will be a significantly enhanced public interface at the site and a positive contribution to the overall Neutral Bay Town Centre streetscape and public domain facilities.
- The proposal provides a high-quality contemporary commercial space and residential apartments that are appropriate for the site's location and current/future setting within a Town Centre and close to public transport.
- The proposal will have a positive economic impact on the locality by providing additional short term and long term employment and ongoing economic activity through the proposed new commercial and retail floor space. The proposal seeks to provide commercial floor space well above the minimum non-residential floor space requirement which can be reasonably be expected to generate positive economic impacts above those otherwise achieved (i.e. the proposal provides a non-residential FSR of 1.24:1 compared to the minimum requirement of 0.5:1).

- The proposed development has been designed to create three (3) active street frontages in accordance with the provisions of Clause 4.4A which requires that developments in the B4 Mixed Use zone are to have an active street frontage, such that no part of the ground level is to be used for residential accommodation.
- As demonstrated in the extracts of the building height plane, the elements of the development that site above the 16m LEP building height line are limited in scope to the following:
 - Level 5 (i.e. the sixth storey as envisaged by the Military Road Corridor Study);
 - Lobby, lift overrun and stairs that allow access to the roof top communal open space area;
 - Covered roof top communal loggia with operable louvred roof adjacent to proposed pool deck;
 - Wall parapets (some of which act as a balustrading to roof top open space); and
 - Mechanical plant structures and rooms.

These elements are set well back from the boundaries of the levels below and will not result in adverse overshadowing, visual massing or adverse streetscape impacts.

- The roof top communal open space area associated with the building height non-compliance is considered to be of high quality and provides a substantial benefit to the development in terms of amenity for the occupants without adversely impacting adjacent properties or the streetscape of the Town Centre.
- A reduction of the proposed building height would provide negligible benefits to the streetscape and adjacent properties, while significantly reducing the amenity of future occupants and users of the development.
- The additional building height does not prevent the proposal from achieving the objectives of the building height standard and that of the B4 Mixed Use zone.

Based on the above assessment, it is considered that there are sufficient environmental planning grounds to permit the building height variation in this instance.

3.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the B4 Mixed Use Zone in the LEP	
Objective	Assessment
<i>To provide a mixture of compatible land uses</i>	The proposal includes a mixture of compatible land uses through the provision of commercial premises (including retail premises) on the lower level with a residential flat building above. This is consistent with development immediately adjacent and elsewhere within the B4 Mixed Use zone.
<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>	<p>The proposal includes retail and commercial floor space on the lower levels and residential space on the levels above.</p> <p>The Future Direction Report of the Military Road Corridor Study identifies Waters Lane as being a shared zone to improve the existing public domain and the proposed design ensures a suitable connection to Waters Lane with entry points in the north west corner (i.e. the corner</p>

Consistency with the objectives of the B4 Mixed Use Zone in the LEP

Objective	Assessment
<i>To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity</i>	<p>of Waters Lane and Grosvenor Street) of the Waters Lane level.</p> <p>The site is in close proximity to public transport including the Military Road B-Line and Neutral Bay Bus Interchange. The proposed development will therefore be located in an accessible location will maximise public transport patronage and encourage walking and cycling.</p>
<i>To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels</i>	<p>The design is of high architectural merit and will activate Waters Lane, Waters Road and Grosvenor Street.</p> <p>The proposal seeks to improve the landscaping and public domain interfaces on each street frontage and ensures that the proposal is consistent with the existing and anticipated future character of the locality.</p> <p>The proposal respects and will improve the commercial and retail activity at lower levels within the centre, while respecting the amenity of adjacent residential properties and providing a considerable new residential offering of 36 high amenity units at the site.</p> <p>The proposal achieves this by providing a significant new contemporary commercial and retail floor space (2020m² in total) over three levels (i.e. Basement Level 1, Waters Lane level and Waters Road Level).</p> <p>Seven tenancies are proposed, with the largest tenancy being suitable for a small format supermarket tenancy (i.e. the lower commercial level tenancy has 1,570m² GFA at Basement Level 1 including a generous back-of-house area at ground level).</p> <p>The tenancies have been designed to address each of the three street frontages, responding to the significant slope of the site, while providing pedestrian access from Waters Lane, Grosvenor Street and Waters Street.</p> <p>The retail tenancies will provide prominent corner exposure to Waters Road and Grosvenor Street at ground level. Access to supermarket level is provided via travelators and a dedicated passenger lift.</p> <p>The supermarket tenancy area of approximately 1,570m² of GFA (in total) is considered suitable for a small format supermarket which typically range from 1,000m² to 2,000m² (refer to the Retail Advice provided by Urbis at Attachment 5).</p>

Table 1: B4 Mixed Use Zone Objectives Assessment Table

Consistency with the objectives of the building height standard in the LEP

Objective

Assessment

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

The site slopes by 3m from the front south-eastern corner (81 AHD) to the rear north-western corner (78 AHD).

The proposed development comprises of a 5 storey mixed use development with rooftop open space and associated structures and 5 levels of basement (of which 4 levels are for parking).

The height and scale of the proposal is consistent with the recent development at 12 Waters Road and also the desired future character of the area as identified within Council's statutory and strategic planning documents.

The proposed 3 storey podium form responds well to the streetscape and provides an appropriate scale to the public street frontage. The 2 built form components of the proposed development above the 3 storey podium include 3m setbacks from the podium, mitigating potential visual massing.

The architectural design of the building is well articulated with a high degree of modulation and visually interesting forms and external materiality providing visual relief when viewing the building from the street level and achieving a human scale for pedestrians in the Neutral Bay Town Centre.

(b) to promote the retention and, if appropriate, sharing of existing views,

The proposed development will not adversely affect views from private or public land.

The proposal is of a similar form with respect to the height and nil setback arrangements proposed along the southern boundary adjacent to the mixed use development at 4-8 Waters Road. In that respect Council have previously assessed that the view impacts for a development of the height and scale proposed along this common boundary is acceptable.

Specifically, it was found in the assessment and subsequent approval of the DA 104/2020104/2020 that there would be a limited impact of the proposed development from Levels 3, 4 and 5 of 4-8 Waters Road. Such that the development will partially affect district views, however such views are across a side boundary and could not be reasonably expected to be maintained with any future development of the subject site. It is also considered that views to the north-west would be unaffected by the proposed development. On this basis, the proposed height variation is not considered to unreasonably affect the views from the neighbouring property.

Consistency with the objectives of the building height standard in the LEP

Objective

Assessment

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

The proposed development will not overshadow existing or proposed public open spaces.

The building elements associated with the non-compliant building height will not generate additional overshadowing of existing dwellings, and public reserves when compared to a compliant height of 16m.

Adjoining the site to the south is 4-8 Waters Road. As outlined in the Design Report prepared by SJB submitted with this application, at the north east corner of 4-8 Waters Road the built form steps in and includes windows that face the common side boundary. Any future compliant development at 12-14 Waters Road will overshadow these windows due to their orientation towards the side boundary.

In the circumstances the overshadowing of the property at 4-8 Waters Street is reasonable for the following reasons:

- The impact is consistent with the impact that would otherwise occur from a building that is compliant with the building height;
- DCP and LEP anticipate development consistent with the proposal;
- The Military Road Corridor Study anticipates development compatible with or of greater scale and intensity than the proposal;
- The predominant built form typology is for buildings within the town centre to have nil side setbacks as such a side setback in this instance would be inconsistent with the prevailing built form pattern; and
- The proposal includes the 3m above podium setback on Waters Road. This allows solar access to the northeast corner of the neighbouring development.

The side (north) facing windows in 4-8 Waters Road are not the primary windows for those apartments, such that they will retain solar access from the east facing (Waters Road facing) living room windows.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The proposed development has been designed and sited to ensure adequate visual and acoustic privacy between the subject development and the adjoining properties.

The proposal has considered the location of the development on the site, the internal layout and the building materials used.

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Consistency with the objectives of the building height standard in the LEP

Objective

Assessment

(e) to ensure compatibility between development, particularly at zone boundaries,

The site has an infill built form and contains three street/lane frontages. The proposal as such has a staggered arrangement of setbacks, with nil setback to the abutting mixed use building to the south. From Level 3-4 the glazing line is setback 3m from the eastern and northern boundaries and 4.5m from the western boundary.

At Level 3 -4 the balcony line is setback 3m from the eastern and northern boundaries and 4.5m from the western boundary.

The proposed roof top open space will not result in unreasonable amenity impacts to adjoining and neighbouring properties due to the provision of appropriate planting and positioning of structures providing a buffer to adjoining properties.

Combined with the width of the road reserves on the western, eastern and northern sides, the proposal will achieve appropriate separation to existing and future mixed use development in the B4 zone.

Visual privacy between the proposed development and potential future developments will also be achieved as a result of the proposed 'courtyard typology' which is elaborated upon within the attached Design Statement (refer to Attachment 4).

The proposal includes a mixture of compatible land uses through the provision of commercial premises (including retail premises) on the lower levels, with a residential flat building above. This is consistent with development immediately adjacent and elsewhere within the B4 Mixed Use zone.

The proposal seeks to improve the landscaping and public domain interfaces on each street frontage and ensures that the proposal is consistent with the existing and anticipated future character of the locality.

The proposal respects and will improve the commercial and retail activity at lower levels within the centre, while respecting the amenity of adjacent residential properties and providing a considerable new residential offering of 36 high amenity units at the site.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The overall height and scale of the proposal is compatible with the desired future character of the area.

The 3 storey podium is an appropriately scaled form having regard to the existing mixed use character of the town centre as well as the desired future character. It

Consistency with the objectives of the building height standard in the LEP

Objective	Assessment
	provides a human scale to the public street frontage and acknowledges the lower level commercial uses of the centre. The built form above the podium is setback 3m from the podium alignment.
	The overall scale and density is consistent with or less than the scale and density of development envisaged for the site within the adopted Military Road Corridor Study.

Table 2: Assessment of Building Height Standards in LEP

The proposal is considered to be in the public interest as it is consistent with the objectives of the B4 Mixed Use zone and the objectives of the Building Height development standard.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views impacted, overshadowing of public spaces or detrimental streetscape outcomes associated with the height variation.

The proposed development would not have an adverse impact on the environmental amenity and enjoyment of the adjoining properties with respect to privacy and solar access.

The proposal is consistent with the strategic planning vision for the Neutral Bay Town Centre as outlined in the Military Road Corridor Study, and as such is considered that there are no public interest matters which would prevent a variation to the building height control.

3.5 Whether contravention of the development standard raises any matter of significance for the State or regional Environmental Planning?

The proposed building height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act 1979*.

The contravention of the development standard in this case does not raise an issue of State or regional planning significance as it relates to local and contextual conditions.

Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

3.6 Is there public benefit in maintaining the development standard?

There is no public benefit in maintaining the building height standard given the limited amenity impacts associated with the development and the positive streetscape outcome and residential amenity benefits that would arise from the redevelopment of the subject site in the manner proposed.

3.7 Is the objection well founded?

There are not considered to be any additional matters to consider beyond those discussed above.

Generally as to concurrence, for the reasons outlined above – and particularly having regard to the site specific nature of this clause 4.6 variation request – there is nothing about this proposed height variation that raises any matter of significance for State or regional environmental planning, nor is there any broad

public benefit in maintaining the development standard on this site. There are no other relevant matters requested to be taken into consideration before granting concurrence.

4.0 Conclusion

The proposed variation is based on the reasons contained within this formal request for an exception to the standard.

The development will not result in unacceptable impacts with regard to the amenity of surrounding properties. The overall aesthetic appearance and scale of the development is compatible with the desired future character of locality. The proposed density and building envelope is similar with a previous development consent issued with respect to development at 12 Waters Road.

Contextually, the proposal will provide a development of a density, height and form that appropriately responds to the sites' location within a B4 Mixed Use zone. The development responds to the desired and emerging Neutral Bay Town Centre streetscape and the arrangements of mixed use and commercial premises development in the vicinity of the site. The proposed 5 storey scale is commensurate with (less than) the scale of development outlined in the strategic planning vision for the Neutral Bay Town Centre as outlined in North Sydney Council's recently endorsed Military Road Corridor Study.

The additional height does not contribute to significant adverse amenity impacts by way of overshadowing or privacy impacts and does not result in a building that is out of proportion, scale or density with surrounding existing and anticipated development.

A development strictly complying with the numerical standard would not significantly improve the amenity of surrounding land uses. In the context of the locality, it would be unreasonable for strict compliance to be enforced.

It has been demonstrated that the proposal will promote the social and economic welfare of the community and the overall development will have positive outcomes for the urban aesthetic of the locality.

The proposal does not represent an overdevelopment.

The non-compliance is not considered to result in any precedents for future development within the locality or broader LGA, given the site considerations and surrounding pattern of development.

It is concluded that the objection is well founded as compliance with the standard is both unnecessary and unreasonable.