

Clause 4.6 Variation Request

Height of Buildings Development Standard

20 Waterview Street, Putney

Submitted to City of Ryde Council
on behalf of PMAP Putney Pty Ltd as trustee for the PMAP Putney
Property Trust



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of PMAP Putney Pty Ltd as trustee for the PMAP Putney Property Trust. It is submitted to the City of Ryde Council (Council) in support of a development application (DA) for the detailed design of the land-based portion of the site in accordance with the Stage 1 consent (LDA/2018/0223) at 20 Waterview Street, Putney.

It is noted that a variation to the Height of Building development standard was approved as part of LDA/2018/0223. This DA does not seek to increase the overall maximum approved height. Rather, this clause 4.6 variation request is administrative in nature and reflects minor changes made through the design development process.

This clause 4.6 variation request demonstrates that:

- Compliance with the Height of Building development standard is unreasonable and unnecessary in the circumstances of the case given the objectives of the standard are achieved notwithstanding non-compliance with the standard.
- That there are sufficient environmental planning grounds to justify contravention of the standard, as the proposed development:
 - Is consistent with the first objective of Clause 4.6 of the *Ryde Local Environmental Plan 2014* (RLEP 2014), the degree of flexibility required by the consent authority to support the minor increase in building height in this instance is considered both appropriate, and particular to the circumstances of the development;
 - Is consistent with the second objective of Clause 4.6 of the RLEP 2014 in achieving better outcomes for and from development notwithstanding the minor increase in building height;
 - The proposal remains consistent with the envisioned uses and built form deemed suitable for the site determined under the site-specific provisions of the RLEP 2014;
- The variation is in the public interest because it is consistent with the objectives of the zone and the development standard. The proposal facilitates improved outcomes which protect existing trees and provide publicly accessible through site links;
- The Secretary's concurrence can be obtained as contravention of the development standard does not raise any matter of significance for State and regional planning.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 within the RLEP 2014.

2.0 Request to Vary a Development Standard

Clause 4.6 of the RLEP 2014 enables Ryde Council to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

2.1 Development Standard to be Varied.

The development standard that is sought to be varied as part of this application is Clause 4.3 of the RLEP 2014, which sets the maximum height of buildings applicable to the site. Clause 4.3 of the RLEP 2014 is reproduced below in its entirety, and an extract of the Height of Buildings Map, to which this clause applies, is reproduced in Error! Reference source not found..

4.3 Height of buildings

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

- (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.

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

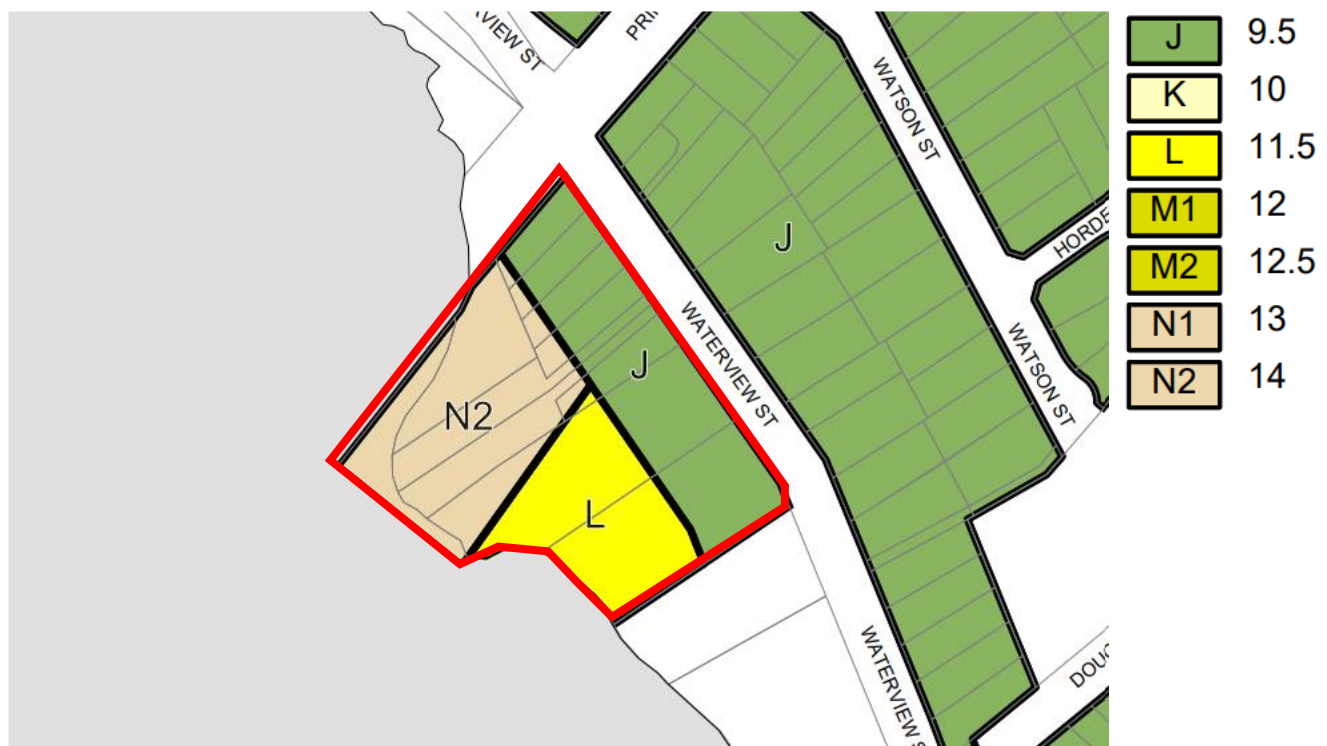


Figure 1 Height of Buildings Map

Source: RLEP 2014

2.2 Nature of the Variation

The variations relate to the residential flat buildings (RFBs) only. All other components of the proposed development are consistent with the Height of Building development standard.

The RFBs are largely compliant with the maximum Height of Buildings development standard which applies to that portion of the site (being 11.5m), except for some minor components designed to accommodate the existing trees on the site, lift overruns, balustrades, and features within the rooftop communal open space.

Specifically, the variations to the Height of Buildings development standard relate to the RFB:

- Parapet;
- Lift overrun; and
- Pergola.

The variation proposed for each RFB is provided in **Table 1**. The detailed extent of each variation is elaborated below.

Table 1 Extent of the Variation

Component	Approved Height in LDA/2018/0223	Proposed Height	Proposed Variation
Residential Flat Building (East)			
Parapet	RL 16.15m	RL 16.35m	Compliant.
Lift Overrun	RL 19.35m	RL 19.35m	2.22m-2.42m variation.
Pergola	RL 18.36m	18.75m	1.3m – 1.86m
Car Park Exhaust	-	RL 18.75m	1.83m-1.93m variation.
Residential Flat Building (West)			
Parapet	RL 16.15m	RL 16.35m	0.13m variation.
Lift Overrun	RL 19.35m	RL 19.35m	2.31m-2.37m variation. No variation from approved
Stair Overrun	RL 19.35m	RL 18.75m	1.75m variation.
Pergola	RL 18.36m	18.75m	1.4m-2.05m

2.3 Extent of the Variation

The RFBs are required to accommodate lift overruns and rooftop balustrades to support a rooftop communal open space. This results in a building with a height up to RL 19.35m. This equates to approximately a minimum of 11.63m and a maximum of 13.92m from ground level (due to the topography of the site).

Where the proposed height remains consistent with that approved in LDA/2018/0223 but the extent of the variation has changed, this is due to the relocation of that building component on the site.

The lift overruns are isolated to the central, rooftop portion of the RFBs only. These exceedances will not adversely impact surrounding amenity in terms of overshadowing and visual intrusion and will ensure equitable access can be achieved to any future rooftop communal open space. The car park exhaust which is located on the eastern RFB was not shown in LDA/2018/0223. Its height is driven by the requirement for the exhaust to be located at least 3m above the roof level, to ensure air quality for users. The stair overrun on the western RFB was previously adjoined to the lift overrun but has been relocated.

The site's natural topography causes the RFBs to have an uneven natural ground level, causing protrusion from the 11.5 height plane. This is exacerbated by its proximity to the foreshore, which generates a more severe slope and reduced height plane (refer to **Figure 2**).

An oblique view of the 11.5m height plane over the RFBs is provided at **Figure 3**.

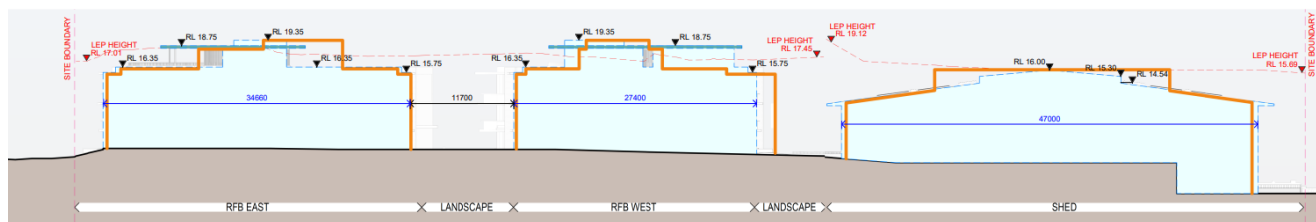


Figure 2 Variations to the Height of Building Development Standard

Source: SJB

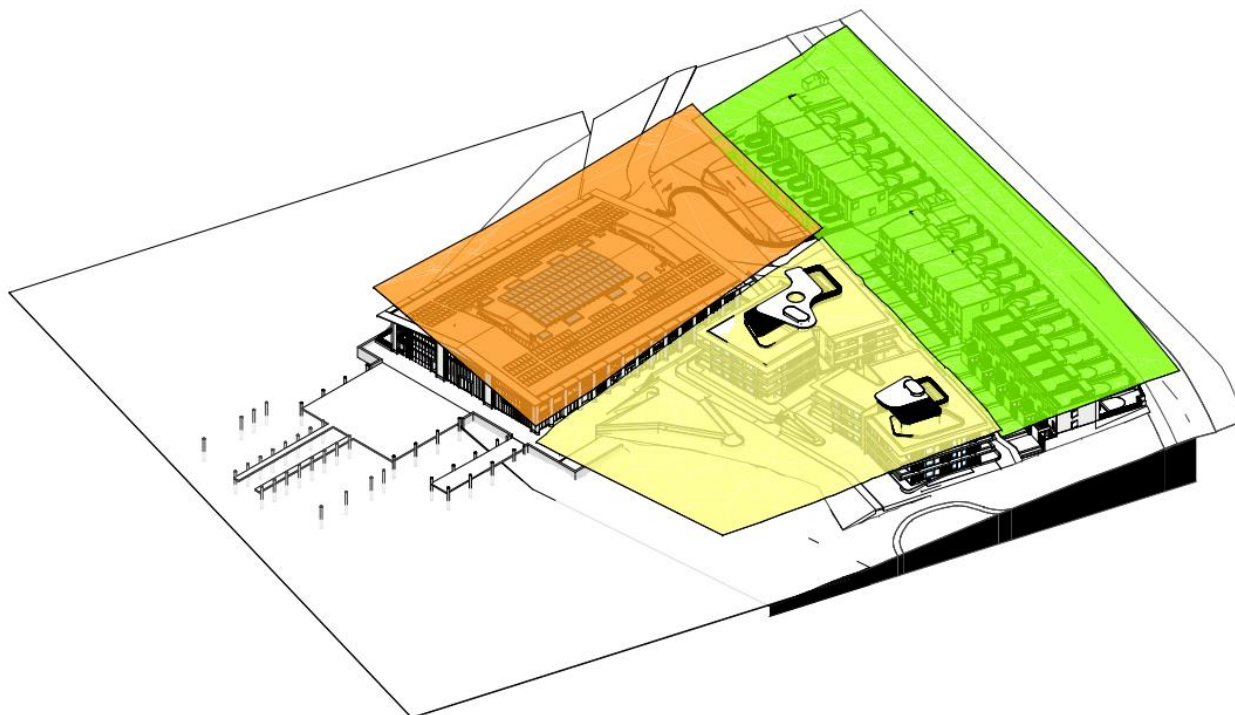


Figure 3 Components of the RFBs which will Exceed the 11.5m Height Plane

Source: SJB

2.4 Is the Planning Control in Question a Development Standard?

'Development Standards' are defined under Section 4(1) of the *Environmental Planning and Assessment Act 1979* as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work..."

The Height of Buildings control prescribed under Clause 4.3 of the RLEP 2014 is clearly and unambiguously a development standard and has continually been applied in this manner by the consent authority.

3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the RLEP 2014 states that:

4.6 Exceptions to development standards

- (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.*

Further, clause 4.6(4)(a) of RLEP 2014 provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard is to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of the RLEP 2014, with respect to the Height of Buildings development standard, are each addressed below, including with regard to these decisions.

3.1 Role of the Consent Authority

The role of the consent authority in considering this written request for a Clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

1. That the applicant's request has adequately addressed the matters in clause 4.6(4)(a)(i).
2. That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The consent authority is required to form these two opinions first before it considers the merits of the DA, and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters. In particular, the consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

This report provides the basis for the consent authority to reach the required level of satisfaction. This Clause 4.6 Variation to Development Standards Report is proposed in context of Clause 4.3 of the RLEP 2014. Relevant matters contained in Clause 4.6 of the RLEP 2014, with respect to the maximum building height development standard, are each addressed below.

3.2 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the RLEP 2014 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

3. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
4. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
5. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
6. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
7. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height control pursuant to the First Way outlined in *Wehbe*.

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

The sections below address the matters in clause 4.6(3)(a), and in particular how the objectives of the development standard are achieved notwithstanding the non-compliance with the numerical control.

3.2.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way)

The objectives of the Height of Buildings development standard (under clause 4.3 of the RLEP 2014), and an explanation of how these objectives are met notwithstanding the non-compliance with the numerical control is provided below.

Objective (a) - To ensure that street frontages of development are in proportion with and in keeping with the character of nearby development.

The RFBs are not proposed along the Waterview Street frontage. They will be significantly setback from the street frontage and located in the central portion of the site. The distance from Waterview Street and the naturally lower ground level, will ensure the amenity and character of the street front is not reduced.

Specifically, significant trees along the site's eastern boundary at the Waterview Street frontage, are proposed to be retained. New landscaping is also proposed to ensure the retention of the existing street front character.

The trees will provide a natural screening element of the site from Waterview Street and ensure the site's frontage will remain proportionate with the trees and grass covered street frontages provided to nearby residential development along Waterview Street.

The retention of the existing streetscape will continue to ensure the site's frontage provides a seamless transition to the recreational space at its northern and eastern boundaries which also contains large trees lined along Waterview Street. An exceedance of the height plane within the central portion of the site will not detract from this. The existing tree frontage of the site will be maintained by protecting the existing trees and their root system.

In addition to the generous landscaped setback, the site's natural fall from east to west will ensure that development on the site is perceived to have a reduced height and scale when viewed from Waterview Street, ensuring an appropriate height transition when compared to the single and double storey development along Waterview Street.

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

Exceedances to the Height of Buildings development standard are limited to upper elements of the RFBs which are not of a bulk and scale capable of significantly increasing the overshadowing impacts of the proposal.

The portions of the RFBs designed to accommodate lift overruns of the future building, are centrally positioned. Their shadow will not extend beyond the buildings.

No portions of the RFBs which exceed the height plane generate any additional overshadowing to the public recreational space south of the site. The lift overruns are centrally positioned and do not generate a shadow which exceeds the proposed buildings. The south and west corners of the RFBs which exceed the height plane do not cause additional overshadowing to the foreshore.

Objective (c) - To encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,

LDA/2018/0223 was approved with a variation to the Height of Building development standard and this DA does not seek any further increases to the overall maximum height that was approved. Therefore, the proposed variation been deemed suitable to accommodate the scale and type of development proposed. The minor exceedances to the Height of Buildings development standard will not impact or result in a greater intensification of the land use on the site, nor will it result in a development that is of a larger scale than that envisioned for the site by the planning proposal.

The site is not located around key public transport infrastructure. Notwithstanding, the proposal seeks to integrate several land uses including residential typologies of different densities. These uses are suitable to the site's public transport options. Minor departures from the Height of Building development standard for upper storey building components and lift overruns does not change this.

Objective (d) - To minimise the impact of development on the amenity of surrounding properties,

The site adjoins recreational land north and south along the waterfront. It does not contain any buildings that would potentially be affected by the proposal.

The overshadowing impacts of the proposal are generally consistent with that approved in LDA/2018/0223. As demonstrated by the overshadowing analysis diagrams prepared by SJB, the proposal will not overshadow the recreational land to the north. There will be some overshadowing to the recreational land to the south (Bennelong Park), however it is noted that this overshadowing is at its least between 9:00am and 12:00pm, a time where solar access is desirable for passive users. RFBs which are fully compliant would still generate a similar shadow to the recreational land south of the site.

The retention and provision of landscaping throughout the site will ensure adequate separation from properties along Waterview Street. It will also provide a suitable transition from development along Waterview Street, ensuring the existing amenity, in the form of street character is retained.

The east-west fall of the site reduces the visual impacts of the proposal to development along Waterview Street. The proposed development on the site will have a naturally lower ground level, ensuring its perceived height and scale from Waterview Street is reduced.

Objective (e) - To emphasise road frontages along road corridors.

The townhouses which are located adjacent to Waterview Street are entirely consistent with the Height of Building development standard. Notwithstanding this, landscaping retained along Waterview Street will

continue to demarcate the road frontage and along with the natural topography of the site which falls to the west, will visually screen the buildings, ensuring development is not perceived to encroach the Waterview Street corridor.

3.3 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of Building development standard as it applies to the site.

In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. With regards to this application, there are particular elements that contribute to the proposed development's variation to the Building Height development standard and these are detailed below.

The site has an uneven topography which falls from east to west towards the waterfront.

This results in an irregular height plane across the site which avertedly results in the proposed RFBs partially breaching the height plane as they fall across the site, in turn causing a technical non-compliance with the Height of Buildings development standard from the natural ground level.

This is the case for the upper portions of the RFB's, which will protrude the 11.5m height plane. The RFBs are primarily compliant with the control, yet becomes non-compliant as the severity of the slope to the water front increases.

Importantly, this portion of the site, due to its proximity to the waterfront and morphology, has limited excavation potential. Further excavation to reduce the height of the buildings and ensure full compliance with the height plane would not be viable.

It is considered that without the topographic constraints, the lift overruns and other roof elements would only marginally exceed the 11.5m height plane. Although still technically non-compliant, the departure from the development standard would be nominal in nature, incapable of generating any adverse environmental impacts.

Full compliance with the 11.5m height plane would not allow elevator access to the rooftop, reducing accessibility to the rooftop open space envisioned under the development scheme. This is considered a sub-optimal outcome for residential amenity and accessibility, as detailed further below.

Rooftop communal open space provides positive residential amenity and public benefit.

The development scheme for the site incorporates a rooftop communal open space for the RFBs, which will significantly enhance residential amenity and help improve the overall environmental performance of any future scheme.

Importantly, a rooftop communal open space will ensure the ground plane can be utilised for public access thus creating the opportunity for significant community benefit. Without a rooftop communal open space, ground floor open space would need to be restricted to the public, to meet communal open space requirements for residents.

To maintain equitable access to this rooftop communal open space, and contribute to its amenity, the lift overruns will protrude the 11.5m height plane within the central portion of the RFBs. This will not impact significant views to or from the site and will not generate any additional overshadowing on the surrounding locality. The lift overruns and balustrades have been integrated into the architectural form of the development.

Full adherence to the development standard would require the lift overruns and balustrades to be either reduced and or removed. This would result in:

- Unequitable access to the rooftop open space for residents. A reduction to the lift overruns can only be achieved by removing elevator access, and introducing stair access to the rooftop communal open space. This does not ensure equitable access to the space particularly for those in wheelchairs and or with prams, and would generate a building design unable to meet BCA/DDA requirements.
- A reduced amount, type and diversity of communal open space available to the site. If the lift overruns were to be removed, the rooftop communal open space would not be possible in the development scheme. Alternative areas of communal open would have to be found at ground level which would reduce the area of site open to the public.

Additionally, and alternatively, an entire floor would need to be removed from the RFBs to enable a scheme which provides a rooftop communal open space and compliant lift overruns. This would not allow the site to achieve the scale of development envisioned for the site and would result in the site not reaching its full capacity in terms of delivering much needed housing supply.

Maintaining this development standard would therefore result in a sub-optimal design and amenity outcome for residents and visitors. It would reduce the diversity and type of communal open space available to the site and impacts its ability to provide a high-quality through site pedestrian link, or generate an undue reduction to residential floor space and housing supply.

Rooftop communal open space improves the availability of open space for future residents within the residential flat building, reducing demand, and improving the permeability of other communal spaces across the site.

A place making opportunity is provided to the site via adaptive reuse and urban renewal.

The site is currently occupied by a boat shed and ancillary structures suitable for adaptive reuse, and a significant portion of the site is asphalted car park and driveways that have fallen into disrepair, suitable for urban renewal (much of which has already been approved for removal or demolition). Redevelopment of the site presents a unique opportunity to provide a new high-quality development which activates the waterfront yet remains sympathetic to the site's existing heritage features. The proposed RFBs offer appropriate interfaces and excellent amenity to ensure the character of the development is appropriate to its waterfront location.

Upper portions of the buildings which exceed the height planes across the site, including lift overruns, are minor and localised in nature, which do not alter the appropriateness of development to the site.

Additional planning grounds which support the contravention of the Height of Buildings development standard in this instance include:

- The uses proposed were considered appropriate for the site, its proximity to the Parramatta River and surrounding locality, following a site-specific planning proposal and subsequent Stage 1 Concept DA (LDA/2018/0223).
- The scheme proposed is consistent with the Schedule 1 provisions of the RLEP 2014 applicable to the site, ensuring development is appropriate to the area, yet remains sympathetic to existing vegetation and the foreshore.
- The proposal remains consistent with the objectives of the Height of Buildings development standard as detailed in **Section 3.1.1** above.

3.3.1 Conclusion on clause 4.6(3)(b)

In light of the above, it is considered that there are no environmental planning grounds that warrant maintaining and/or enforcing the Height of Buildings development standard in this instance. Rather, there are clear and justifiable environmental planning merits that validate the flexible application of the height control by Clause 4.6 of the RLEP 2014.

3.4 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. The proposal is therefore in the public interest as it is consistent with the objectives of the development standard and the objectives of the zone.

'Consistency' has been defined throughout caselaw including the following Land and Environment Court cases:

- *Addenbrooke v Woollahra Municipal Council* [2008] NSWLEC 190.
- *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21.
- *Raassis v Randwick City Council* [2019] NSWLEC 1040.
- *Abrams v Council of City of Sydney* [2018] NSWLEC 1648.
- *Kingsland Developments v Parramatta Council* [2018] NSWLEC 1241.
- *Dem Gillespies v Warringah Council* (2002) 124 LGRA 147.

In these cases, consistency is considered to be different to that of 'achievement'. The term 'consistent' has been considered in judgements of the Court in relation to zone objectives and has been interpreted to mean "compatible" or "capable of existing together in harmony" (*Dem Gillespies v Warringah Council* (2002) 124 LGRA 147; *Addenbrooke Pty Ltd v Woollahra Municipal Council* [2008] NSWLEC 190) or "not being antipathetic" (*Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21). Whichever interpretation is adopted, the test of "consistency" is less onerous than that of "achievement".

3.4.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Height of Building development standard, for the reasons discussed in **Section 3.1.1** of this report.

3.4.2 Consistency with objectives of the zone

The RFBs on the site exceed the maximum height standard in the *W4 Working Waterfront* zone, and as such, the objectives of the zone are required to be considered in determining whether the variation is supportable.

Objective (a) - To retain and encourage waterfront industrial and maritime activities.

The proposed development will facilitate a range of residential and commercial at the site which will take advantage of the site's prominent location on the waterfront. The DA also site forms part of a wider site that is proposed to include a new marina (subject to a separate DA - refer to the SEE for details). This component will address demand for wet berth marinas and the shortage of suitable maritime facilities for Western Sydney, in accordance with the *Sydney Harbour Boat Storage Strategy* released by Transport for NSW in 2013. The provision of new maritime facilities will increase the boat storage capacity and recreational boating opportunities on the site, enhancing a popular maritime activity within the region.

The minor exceedances to the Height of Buildings development standard will not:

- Impact the marine related uses and their ability to facilitate maritime activity or hinder the vision for a new wet berth marina; and
- Detract from providing equitable access to the foreshore in undertaking such activities.

Objective (b) - To identify sites for maritime purposes and for activities that require direct waterfront access.

The site is adjacent the Parramatta River and provides direct waterfront access from Waterview Street. Minor exceedances to the height plane do not reduce the suitability of the site for maritime purposes or a future marina.

The proposal will not reduce access to the waterfront. The buildings on site are deliberately spaced with pedestrian links and communal open space to ensure legible access to the waterfront from Waterview Street. This is aided by the rooftop communal open space proposed for the RFBs, which will ensure more open space to the waterfront is available to the public.

Objective (c) - To ensure that development does not have an adverse impact on the environmental and visual qualities of the foreshore.

Components of the proposal which are in proximity to the foreshore have been provided with generous setbacks. Particular attention has been paid to the RFBs due to its proximity to the foreshore. This setback has

sought to retain the landscaped character of the foreshore, in accordance with the principles under the *Sydney Harbour Foreshore and Waterways Area Development Control Plan*. Specifically:

- The generous setback provides communal open space and vegetation. This will act to provide a natural screen to the foreshore, ensuring development is not visually intrusive from the Parramatta River, and the natural aesthetics of the foreshore is retained.
- The landscaping provided will reduce the visual protrusion and reflectivity of the proposal along the foreshore by reducing the contrast between natural and built elements.
- The generous setback provided will improve the visual and physical continuity of the foreshore towards the adjoining recreational open space east of the site.
- The generous setback ensures the natural shoreline is retained and development does not protrude the foreshore. Such intrusion would be visually intrusive and alter the natural morphology of the foreshore.

The natural fall of the site ensures the perceived height, bulk and scale of the RFBs is reduced. As the buildings a naturally lower ground level than the rest of the site, its level of protrusion is reduced, and its ability to interfere with sight lines from Waterview Street is also reduced, notwithstanding its exceedance from the height plane. A Visual Impact Assessment has been submitted with the Stage 2 DA which concludes that the proposed built form will have an acceptable impact on views from the surrounding public and private domain.

The remaining components of the proposal are consistent with the Height of Building development standard and are a sufficient distance from the foreshore, in order to protect the site's environmental and visual qualities. The proposed minor exceedances to the Height of Buildings development standard are not considered to generate any additional environmental impacts to those already identified in the DA.

Objective (d) - To encourage employment opportunities.

The proposed mix of residential and commercial uses will improve the employment opportunities available on the site and within Putney. This is consistent with the overarching objectives of the *Central City District Plan*, to provide employment opportunities in proximity to residential development. The objective is considered to be achieved.

Objective (e): To minimise any adverse effect of development on land uses in other zones.

Land adjoining the site is zoned *RE1 Public Recreation* and is therefore highly unlikely to be redeveloped in the future. It does not contain any buildings that would potentially be affected by the proposal. The proposal does not significantly overshadow the recreational land south of the site (Bennelong Park) when compared to a compliant building and does not result in greater impacts than those deemed acceptable under the Stage 1 consent.

The site is not in close proximity to surrounding development. This is reinforced by the large setback and tree protection zone from Waterview Street. Residences across Waterview Street, zoned *R2 Low Density Residential*, will not be impacted by overshadowing due to their location north of the site. The proposal remains consistent with that envisioned for the site, under LDA/2018/0223.

The proposed uses were also assessed and considered appropriate for the site.

3.5 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

3.5.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation of the maximum Height of Buildings development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with The Greater Sydney Region Plan, A Metropolis of Three Cities in that it:

- Seeks a built form outcome aimed to provide future accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows;
- Does not affect any strategic employment areas or industrial zoned land since the site was determined suitable for alternative uses through its recent rezoning and Stage 1 Concept consent; and
- Is consistent with the scale of development envisioned for the site by the site-specific planning proposal and subsequent Stage 1 Concept DA.

3.5.2 Clause 4.6(5)(b): The 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. As noted in the preceding sections, the additional height proposed is minor and is internal to the site, and the proposed variation would not give rise to any adverse environmental impacts. The proposed variation is a result of the site's specific topographic constraints, and in the case of the RFBs, would facilitate a high-quality rooftop communal open space, consistent with the built form envisioned for the site.

Full compliance in this instance would result in the loss of communal open space, which would need to be provided elsewhere at the expense of a high quality, publicly accessible through site pedestrian link.

The reduction in high quality communal open space or the artificial deletion of future residential floors to strictly comply with the Height of Building development standard would be contrary to the public interest.

3.5.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

In addition to preceding matters, it is noted that the height variation sought applies only to certain upper portions of the buildings proposed. These elements are not visible from Waterview Street, and will not be detrimental to the amenity of the surrounding locality.

4.0 Conclusion

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of PMAP Putney Pty Ltd as trustee for the PMAP Putney Property Trust. It is submitted to the City of Ryde Council in support of a DA for the detailed design of the land-based portion of the site in accordance with the Stage 1 consent (LDA/2018/0223) at 20 Waterview Street, Putney.

Compliance with the Height of Buildings development standard in clause 4.3 of the RLEP 2014 is unreasonable and unnecessary in the circumstances of the case, and the justification is well founded. It is considered that the variation allows for a positive planning outcome in light of the site's specific circumstances.

The consent authority can be satisfied that this clause 4.6 variation request demonstrates, notwithstanding the proposed variation to the development standard, that:

- Compliance with the Height of Building development standard is unreasonable and unnecessary in the circumstances of the case given the objectives of the standard are achieved notwithstanding non-compliance with the standard.
- That there are sufficient environmental planning grounds to justify contravention of the standard, as the proposed development:
 - Is consistent with the first objective of Clause 4.6 of the RLEP 2014, the degree of flexibility required by the consent authority to support the minor increase in building height in this instance is considered both appropriate, and particular to the circumstances of the development;
 - Is consistent with the second objective of Clause 4.6 of the RLEP 2014 in achieving better outcomes for and from development notwithstanding the minor increase in building height;
 - the proposal remains consistent with the envisioned uses and built form deemed suitable for the site determined under a site-specific planning proposal;
- The variation is in the public interest because it is consistent with the objectives of the zone and the development standard. The proposal facilitates improved outcomes which protect existing trees and provide publicly accessible through site links; and
- The Secretary's concurrence can be obtained as contravention of the development standard does not raise any matter of significance for State and regional planning.

It is therefore requested that development consent be granted for the proposed development despite its contravention of the Height of Buildings development standard within the *Ryde Local Environmental Plan 2014*.