

Clause 4.6 Variation to Development Standard – Height of Buildings

2-10 Finlayson Street Lane Cove

8 Finlayson Street Lane Cove Pty Ltd

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1.0 Executive Summary

This written clause 4.6 variation request has been prepared on behalf of 8 Finlayson Street Lane Cove Pty Ptd (**the Applicant**) in support of a proposed mixed-use building at 2-8 and 10 Finlayson Street, Lane Cove (**the Site**) comprising a residential flat building, a place of public worship and community facility.

This clause 4.6 seeks to vary the development standard for height under both the Lane Cove LEP and the development standard for both height and storeys in Section 180 of Chapter 6 *Low and Mid Rise Housing* of the Housing SEPP. The Lane Cove LEP permits a height of 18m, whilst the Housing SEPP permits a height of 22m. As part of the Site (Lot 69) is a local heritage item, only the Lane Cove LEP height of 18m applies to that part of the site.

For absolute completeness, this clause 4.6 request also seeks to vary the non-discretionary development standard for height in Section 175 of Chapter 6 of the Housing SEPP. The non-discretionary development standard for height in Section 175 is also 22m.

The proposed development exceeds the permitted LEP 18m height by 9.85m at the highest point, at the north east corner of the building within Lot 69 and breaches the Housing SEPP 22m height by 5.6m at the highest point, at the northern facade between lots 68 and 69, where the permitted height 'drops' from 22m to 18m.

The proposed exceedance of the permitted heights under Chapter 6 of the Housing SEPP and LEP is shown in Figure 1.

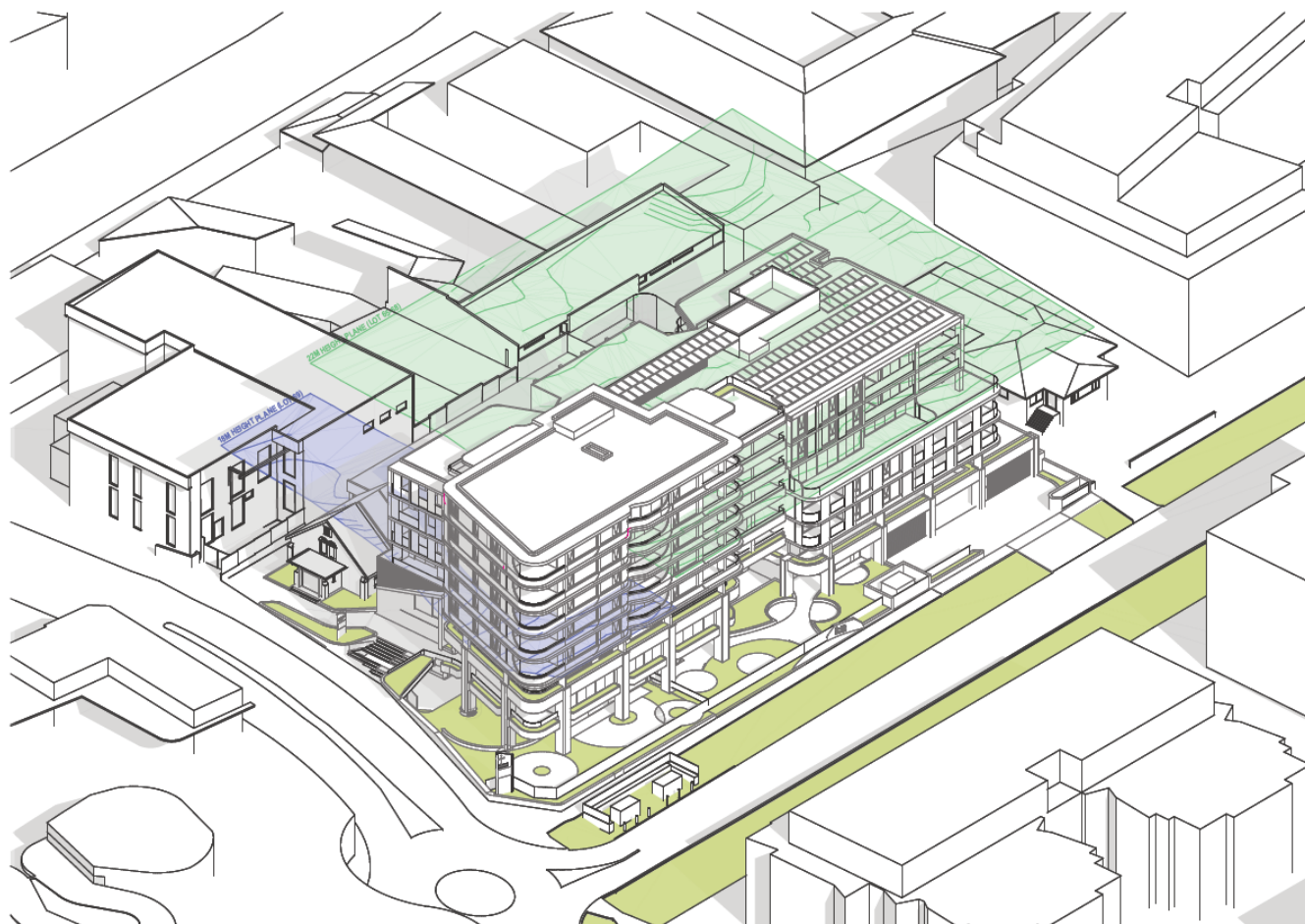


Figure 1: Height Plane Diagram (Housing SEPP Chapter 6 Context)

Source: Plus Architecture

This request seeks an appropriate degree of flexibility to achieve a better outcome for the development, as the additional height sought is in order to deliver a significant community facility that will be available for Church and other community uses. A 'theatre performance space' is identified in Council's strategic plans as a priority need for Lane Cove Town Centre.

This request demonstrates that strict compliance with the height of building development standards of the LEP and Chapter 6 of the Housing SEPP is unreasonable or unnecessary in the circumstances, as the objectives of the development standards are met notwithstanding the height exceedance. Specifically;

- With regard to the objectives of Clause 4.3 of the Lane Cove LEP, the request demonstrates that:
 - reasonable solar access to existing buildings and public areas is achieved, and all residential dwellings impacted by the proposed development receive more than 2 hours of solar access on 21 June,
 - that privacy and visual impact on neighbouring properties is not unreasonable, and the proposed additional height does not cause any additional impact in terms of privacy or visual impact,
 - the design does not impact sunlight to the public domain, including to the Canopy and Village shopping centres, and
 - the development relates to its topography, and has been designed to respond to the slope of the site from the south down to Finlayson Street.
- With regard to the aim of Chapter 6 of the Housing SEPP, in lieu of any objectives, the clause 4.6 demonstrates that the aim is satisfied as the proposed development delivers mid rise housing in an area that is well located with regards to goods, services and public transport.

This request also demonstrates that there are sufficient environmental planning grounds to justify the contravention of the height development standard, as the development satisfies the relevant Objects of the EP&A Act, and that it would be unreasonable and unnecessary to strictly apply the provision in this circumstance. In the event that Chapter 6 of the Housing SEPP is considered a draft instrument, the development standard for height under the Low and Mid-rise provisions remains relevant and can be considered as an environmental planning ground.

In summary, this written clause 4.6 request demonstrates that the proposed development remains consistent with the objectives and aim of the standards and the R4 High Density Zone. Importantly, the proposed height is sought in order to facilitate the delivery of a community facility that would otherwise may not be delivered if strict compliance with the permitted heights is required and one that does not result in any undue impacts above that of an ordinarily permissible development.

To deliver the community facility, the Applicant seeks an appropriate degree of flexibility in applying the height standards to achieve a better outcome at the Site, in accordance with the objectives of Clause 4.6 of the LEP.

2.0 Introduction

This written clause 4.6 variation request has been prepared by Planning & Co on behalf of 8 Finlayson Street Lane Cove Pty Ltd (ABN 48 673 064 643) (**the Applicant**) in support of a development application for the construction of a mixed-use development containing a residential flat building, a place of public worship and community facility at 2-8 and 10 Finlayson Street, Lane Cove (**the Site**). The proposed development seeks to vary the height of building development standards per Clause 4.3 of the Lane Cove Local Environmental Planning 2009 (**LEP**) and Section 175 of Chapter 6 of State Environmental Planning Policy (Housing) 2021 (**Housing SEPP**). For completeness, this clause 4.6 also seeks to vary the non-discretionary development standard for height in Section 180 of Chapter 6 of the Housing SEPP.

Clause 4.6 of the LEP enables a consent authority to grant consent for a development even though the development contravenes a development standard of the LEP or another environmental planning instrument. The objectives of clause 4.6 are (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 (3) of the LEP requires that a consent authority be satisfied of two matters before granting consent to a development that contravenes a development standard. These two matters are detailed below:

- That the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- The applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard.

The Land and Environment Court has established planning principles to guide assessment of whether a variation to development standards should be approved. Guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- Turland v Wingecarribee Shire Council [2018] NSWLEC 1511;
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386; and

- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- Identifies the development standard to be varied (Section 2.0);
- Identifies the variation sought (Section 3.0);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 4.0);
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (Section 5.0); and,
- Demonstrates that the proposed variation is in the public interest (Section 6.0);

Therefore, the development application may be approved with the variation proposed in accordance with the flexibility allowed under Clause 4.6 of the Lane Cove LEP.

2.1 Background

The proposed development includes an auditorium hall, that is proposed to operate under a shared-use arrangement to facilitate community facility uses alongside Church uses. This arrangement may be formalised through a voluntary planning agreement (**VPA**) between the Applicant and Lane Cove Council. The delivery of a theatre performance space is a priority of the Lane Cove Local Strategic Planning Statement (**LSPS**) and is included in Council's s7.11 Contributions Plan Works Schedule.

However, it is important to note that the VPA is a separate matter between the Applicant and Council, and the agreement is not a consideration for the purposes of this clause 4.6 request. The VPA agreement, if entered into, must not influence or change a planning decision or approval granted by the Consent Authority. The cl4.6 variation request has merit irrespective of the VPA being entered into.

2.2 Chapter 6: Low and Mid-Rise Housing (Housing SEPP)

We are of the opinion that Chapter 6 of the Housing SEPP applies to the proposed development, despite the development application having been lodged prior to the Chapter coming into effect. Schedule 7A of the Housing SEPP does not include savings and transitional provisions that preclude an undetermined development application from utilising the provisions of the Chapter.

In any case, Chapter 6 of the Housing SEPP is relevant to the proposed development as it is, at a minimum, a draft instrument, that must be considered by the consent authority in determining a development application pursuant to Section 4.15(a)(ii) of the EP&A Act. The Site is within a 'low and mid rise housing inner area' as defined in s163 of the Housing SEPP as it is within 400m walking distance of land identified as a 'Town Centre' on the Town Centres Map, being Lane Cove town centre.

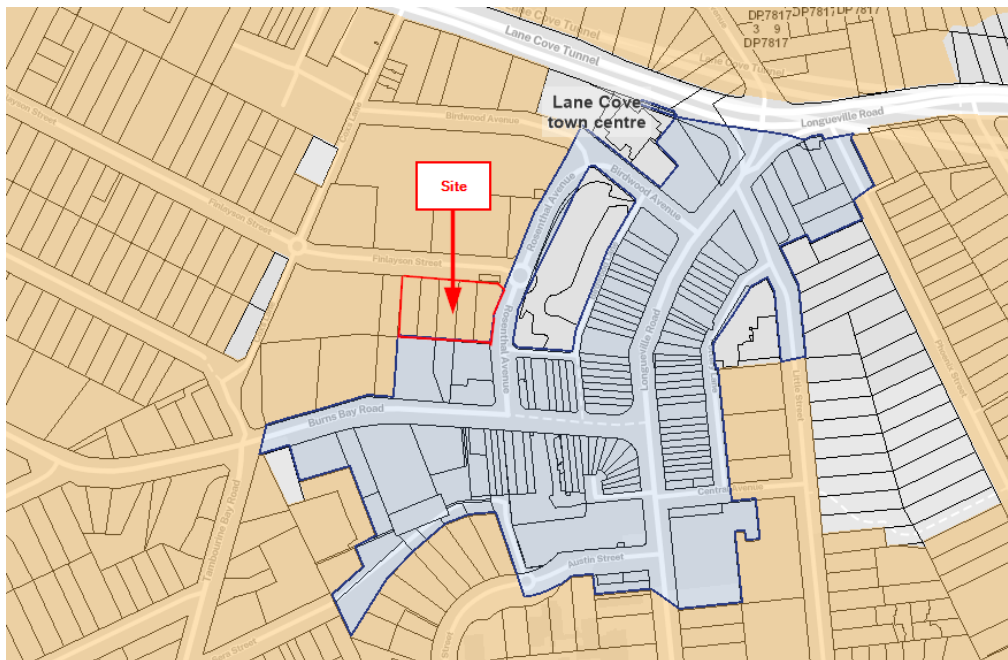


Figure 2: Low and Mid Rise Policy Indicative Map

Source: DPHI / Spatial Viewer

Section 164(d) of the Housing SEPP states that the provisions of Chapter 6 do not apply to land that is a heritage item or on which a heritage item is located. Schedule 5 of the Lane Cove LEP 2009 identifies heritage item I198 'St Andrew's Anglican Church Hall' as being on "Part Lot 69, DP 10155".

Therefore, in the event that Chapter 6 of the Housing SEPP applies to the Site, Lots 65-68 of DP 10155 may utilise the development standards under the Housing SEPP, however is excluded from Lot 69 of DP 10155, where the Church Hall is located. The Site cadastre is provided in Figure 3 for reference.



Figure 3: Site Cadastre

Source: SDT Viewer

3.0 Development Standards to be Varied

This clause 4.6 request seeks to vary Clause 4.3 of the Lane Cove LEP and Section 175 and 180 of Chapter 6 of the Housing SEPP.

Housing SEPP Chapter 6, Part 4, Division 2 Section 175 development standards

Chapter 6 of Housing SEPP applies to the Site, specifically to Lots 65-68 of DP 10155. Chapter 6 includes at s175 development standards for residential flat buildings and shop top housing in Zone R3 or R4 within a low and mid rise housing inner area.

Section 175 reads as follows:

175 Development standards—low and mid rise housing inner area

(1) This section applies to land in a low and mid rise housing inner area in Zone R3 Medium Density Residential or R4 High Density Residential.

(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.

(3) Development consent must not be granted for development for the purposes of a building containing shop top housing with a building height of up to 24m unless the consent authority is satisfied the building will have 6 storeys or fewer.

(4) In this section, a storey does not include a basement within the meaning of the standard instrument.

For completeness, this clause 4.6 request seeks to vary both the 22m numerical height development standard as well as the 6 storey control under section 175(2) of the Housing SEPP.

Lane Cove LEP Clause 4.3 Height of Buildings

This clause 4.6 also seeks to vary the height of building pursuant to clause 4.3 of the Lane Cove LEP.

Where the development standard for height under Chapter 6 of the Housing SEPP applies to the proposed development, clause 4.3 of the LEP remains relevant to Lot 69, where the additional height granted under the Housing SEPP do not apply. In the event that Chapter 6 of the Housing SEPP does not apply to the proposed development, then the development standard for height under clause 4.3 of the LEP is relevant to the whole site.

Clause 4.3 of the LEP states;

4.3 Height of buildings

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

- (a) to ensure development allows for reasonable solar access to existing buildings and public areas,
- (b) to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,
- (c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,
- (d) to relate development to topography.

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

(2A) (Repealed)

As shown in Figure 4, the maximum height shown for the land on the Height of Buildings Map is 18m.

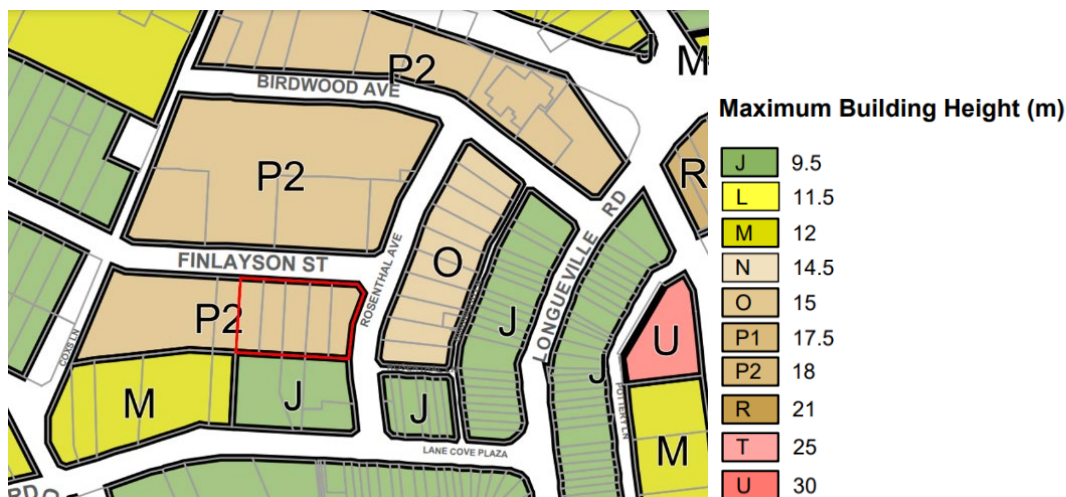


Figure 4: Height of Building Map

Source: Lane Cove LEP 2009 Height of Building Map

A summary of the application of the LMR and LEP heights on the Site is provided in Figure 5.

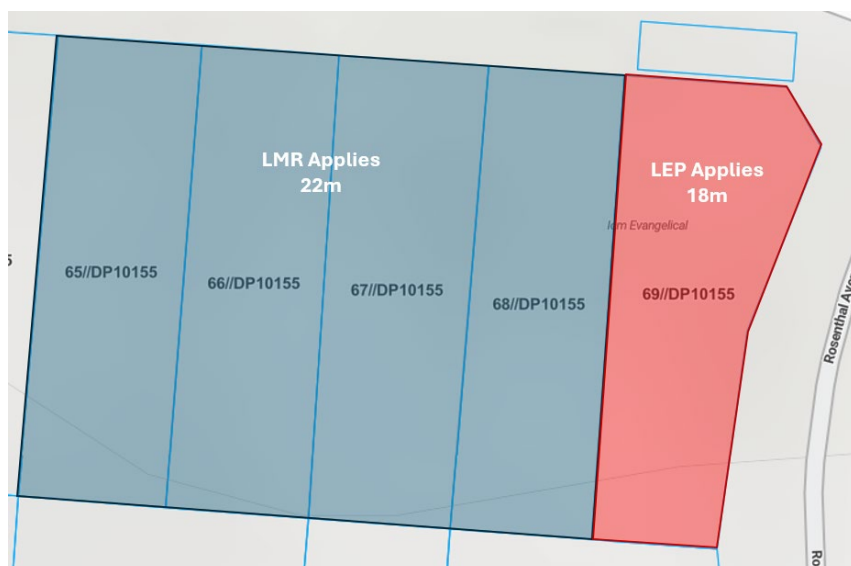


Figure 5: Application of LMR and LEP height controls

Source: Planning&Co

Housing SEPP Chapter 6, Part 4, Division 2 Section 180 Non-discretionary development standards

Section 4.15(3) of the EP&A Act relevantly states that “a provision of an environmental planning instrument that allows flexibility in the application of a development standard [such as Clause 4.6 of the LEP] may be applied to the non-discretionary development standard.”

Therefore, for absolute completeness, this clause 4.6 also seeks to vary the non-discretionary standard for maximum building height pursuant to section 180(2)(b), which reads as follows:

180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3 or R4

(1) This section applies to development for the purposes of residential flat buildings or shop top housing on land in a low and mid rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.

(2) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing inner area—

(a) a maximum floor space ratio of 2.2:1,

(b) for residential flat buildings—a maximum building height of 22m.

(c) for a building containing shop top housing—a maximum building height of 24m.

(3) The following non-discretionary development standards apply in relation to development on land in a low and mid rise housing outer area—

(a) a maximum floor space ratio of 1.5:1,

(b) a maximum building height of 17.5m.

4.0 Nature of the Variation Sought

The maximum permitted height of building for residential flat buildings is 22m and 18m per the development standards contained in Chapter 6 of the Housing SEPP Section 175(2) and the Lane Cove LEP Clause 4.3 respectively. Chapter 6 of the Housing SEPP also contains a non-discretionary standard for height of 22m at Section 180(2)(b) and a development standard for 6-storeys at Section 175(2).

Applying the Housing SEPP 22m height to Lots 65-68 and LEP 18m height to Lot 69 results in a ‘split’ height plane, where the proposed development exceeds the permitted LEP 18m height by 9.85m (54.7%) at the highest point, at the north east corner of the building within Lot 69. The proposed maximum exceedance is the same in the event that the LEP height applied to the entire Site, being 9.85m at the north east corner of the Building.

The proposed development breaches the Housing SEPP 22m height by 5.6m (25.5%) at the highest point, at the northern facade between lots 68 and 69, where a permitted height ‘drops’ from 22m to 18m.

As identified in Section 2.1 of this request, the exceedance in height is sought in order to deliver and offset a shared-use community facility in the Lane Cove Town Centre as envisaged by Council’s LSPS and Council’s s7.11 Plan.

A VPA to formalise the shared-use arrangements of the facility between Council and the Applicant is ongoing. The VPA is a separate matter to the proposed development application and written clause 4.6 request. The VPA with Council must not fetter any approval granted by the Consent Authority, which is the North Sydney Local Planning Panel.

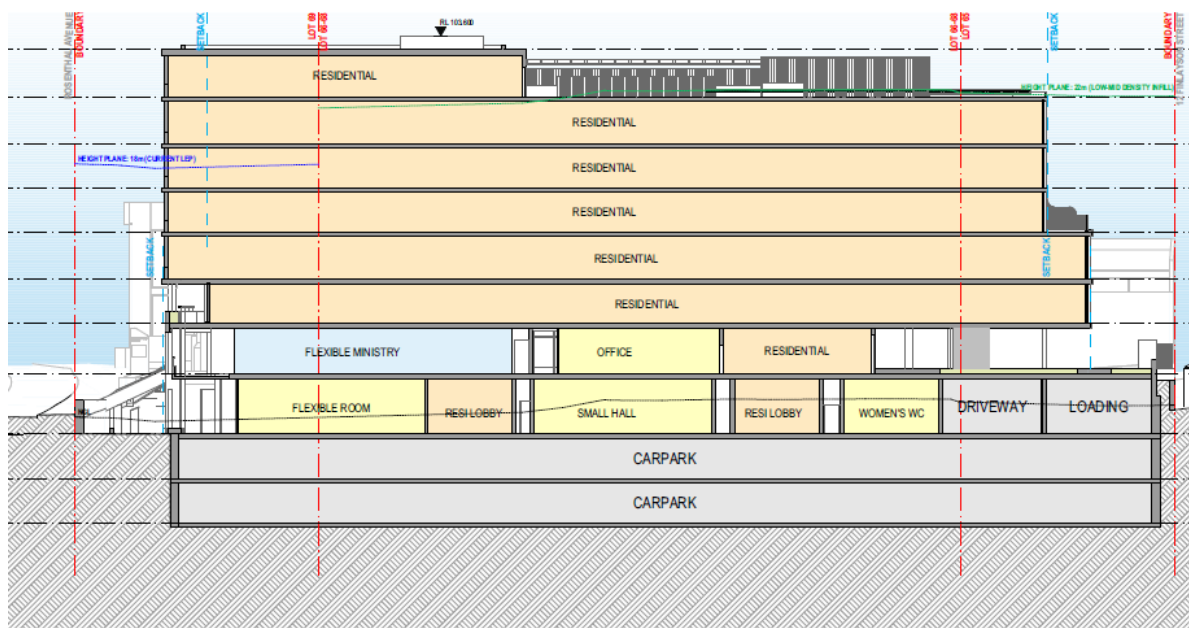


Figure 6: Height Plane in Section

Source: Plus Architecture

5.0 Clause 4.6 (3)(a): Compliance with the development standard is unreasonable or unnecessary

In *Wehbe v Pittwater Council* [2007] NSWLEC 827, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. His Honour in that case (and subsequently in *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1097) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis is of assistance in applying Clause 4.6 given that subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

The five methods outlined in *Wehbe* were:

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

In this instance, the **First Method** is of particular assistance in establishing that compliance with a development standard is unreasonable or unnecessary. The objectives of the development standard in Clause 4.3 of Lane Cove LEP are:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure development allows for reasonable solar access to existing buildings and public areas,*
 - (b) *to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,*

(c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,

(d) to relate development to topography.

The objectives of the development standard are individually addressed below.

(a) to ensure development allows for reasonable solar access to existing buildings and public areas

The solar access diagrams prepared by Plus Architecture demonstrate that the proposed development allows for reasonable solar access to existing buildings and public areas, notwithstanding the proposed height exceedance. The surrounding context and typology is identified in Figure 7. Public areas proximate the Site are shown yellow highlighted for reference.

The surrounding land to the north and west of the Site is zoned R4 High Density Residential. A single occupancy dwelling is located at 12 Finlayson Street.

The land immediately south of the Site is Zoned E1 Local Centre. The Canopy to the east of the Site is Zoned MU1 Mixed Use. The buildings to the south are retail and commercial uses and include a mechanic, a post office and the Lane Cove Village. The Village includes a small 'square' as shown in Figure 8.



Figure 7: Surrounding Context

Source: Planning & Co, Six Maps



Figure 8: Lane Cove Village Square

Source: Google Maps

With regard to ensuring reasonable solar access to existing buildings, the Lane Cove DCP Part C3 clause 3.14 requires that habitable rooms to the proposed development and residential development beyond the Site receive at least 2 hours of direct sunlight between 9am and 3pm on 21 June. The DCP also requires that *“a reasonable proportion of both the common and private open space in those Sites is also to receive sunlight during that period, according to the circumstances of the Sites.”* The DCP does not prescribe any similar control to commercial development.

The solar access diagrams prepared by Plus Architecture demonstrate that some overshadowing of the residential property at 12 Finlayson Street (immediately west of the subject Site) will occur at 9am and 10am. The overshadowing is limited predominately to the rear of the property including its private open space. Nonetheless, the property at 12 Finlayson Street including private open space receives direct solar access from (at least) 11am until 3pm on 21 June and therefore the DCP control is met.

Similarly, whilst some overshadowing occurs to the commercial properties to the south-west of the Site, this is limited to non-trafficable rooftop areas and the proposed building does not cast additional shadows to the usable parts of these buildings between 11am and 3pm on 21 June. The diagrams also demonstrate that no additional shadow is cast to the public area within the Lane Cove Village square.

The solar diagrams undertaken demonstrate that the proposed development meets the DCP requirements regarding solar access to existing buildings, notwithstanding the proposed height exceedance.

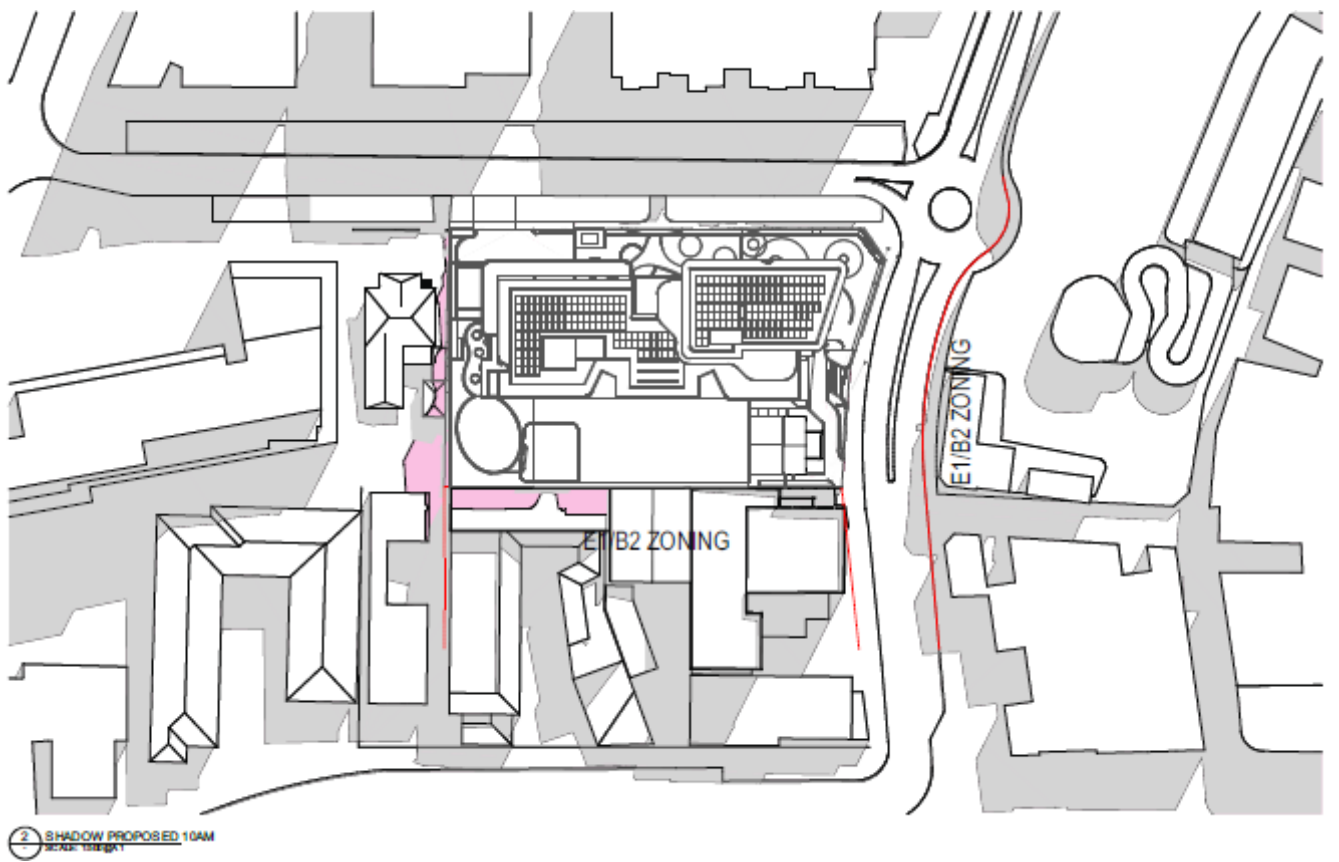
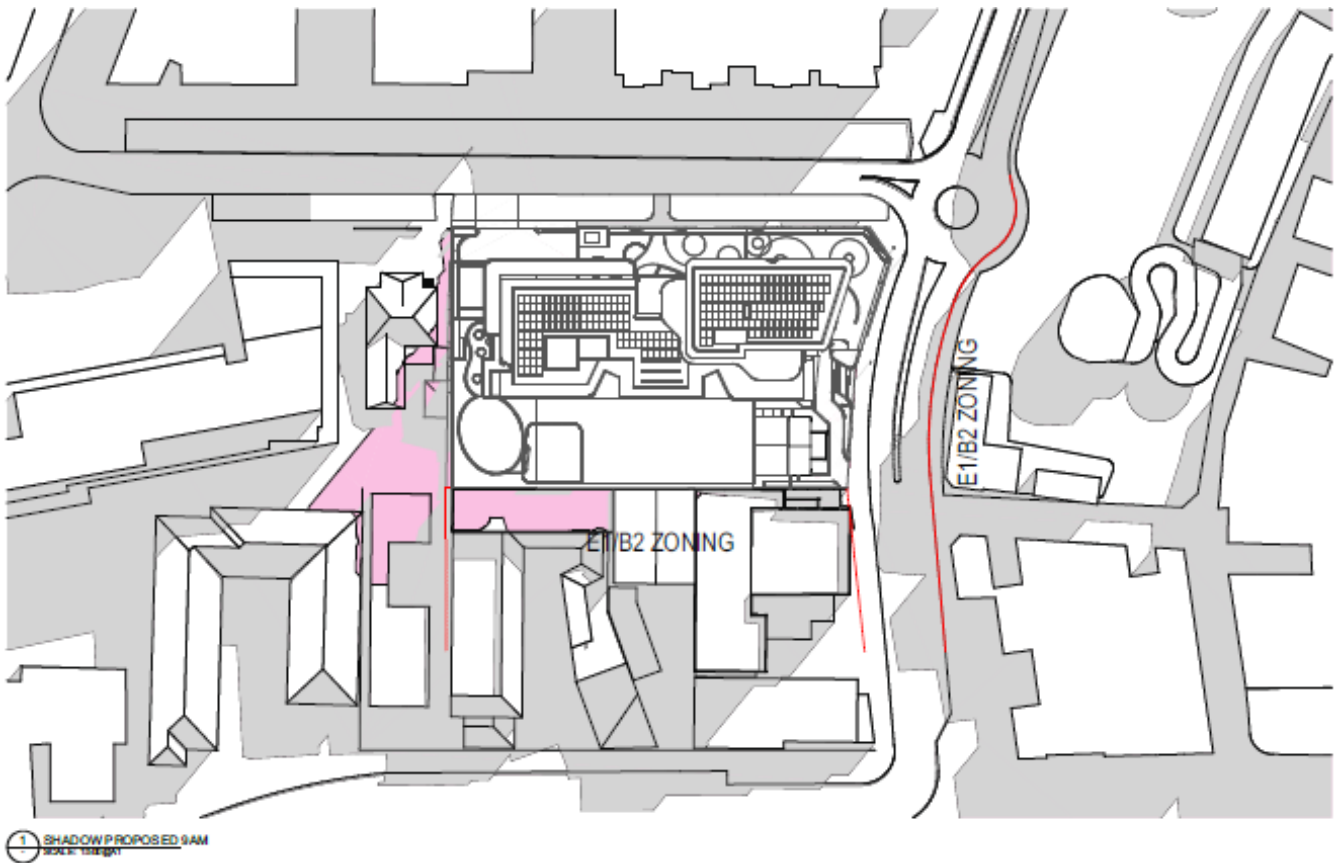


Figure 9: Shadow Analysis

Source: Plus Architecture

Mindful of the Site's zoning in the R4 High Density Zone, in determining whether the proposed development allows reasonable solar access in its context, the *Benevolent Society v Waverley Council* [2010] NSWLEC 1082 at 144 sets out revised planning principles to assess the adequacy of solar access and relevantly notes that “at higher densities sunlight is harder to protect and the claim to retain it is not as strong.”

Objective (a) of LEP cl 4.3 also considers reasonable solar access to public areas. ‘Public areas’ is not a defined term, however for the purposes of this analysis is taken to mean any publicly assessable area that is open and available for use by the public. In relation to solar access to public areas, the Canopy building opposite the Site on Rosenthal Avenue is relevant as it includes a public area at roof-level that is publicly assessable. The public area within the Lane Cove Village is also relevant. The streets and public footpaths surrounding the proposed development are also public areas, although potential impacts on these areas are considered generally more acceptable as users of these areas are likely to do so in a more transient way as they travel past the Site either as pedestrians or in private vehicles. Both public areas and adjacent streets are identified in Figure 10.



Figure 10: Public Open Areas and Pedestrian Movement

Source: Planning & Co, SixMaps

The Canopy is to the east and north-east of the Site. The Lane Cove DCP Part B6 clause 6.1 requires that “new development must allow for a minimum of 2 hours of solar access to at least 50% of new and existing public open areas or plazas between the hours of 11am and 2pm on 21st June.” The solar diagrams prepared by Plus Architecture demonstrate that the public areas of the Canopy and the Lane Cove Village will continue to receive at least 2 hours of solar access between 11am and 2pm on 21 June.

The solar diagrams also demonstrate that the development will also not unreasonably impact on solar access to the street and footpath adjacent the Site. Where additionally overshadowing occurs to the street, it is limited to a small part of the western footpath along Rosenthal Avenue at 1pm-3pm on 21 June. The existing and proposed developments cast a similar shadow in this regard. The proposed development does not overshadow public footpaths or the street between 9am and 12pm on 21 June.

We refer to **Appendix A** for shadow diagrams prepared by Plus Architecture.

(b) to ensure that privacy and visual impacts of development on neighbouring properties, particularly where zones meet, are reasonable,

With regard to privacy and overlooking, analysis to determine any potential impacts or casual overlooking opportunities, with particular consideration given to the residential development opposite and adjacent the Site on Finlayson Street.

Potential opportunities for casual overlooking are generally contained to the upper ground communal open space of the proposed development and some west-facing balconies to 12 Finlayson Street. North-facing balconies face towards existing residential flat buildings opposite the Site along Finlayson Street, however the proposed development is setback to upper levels per the ADG building separation requirements.

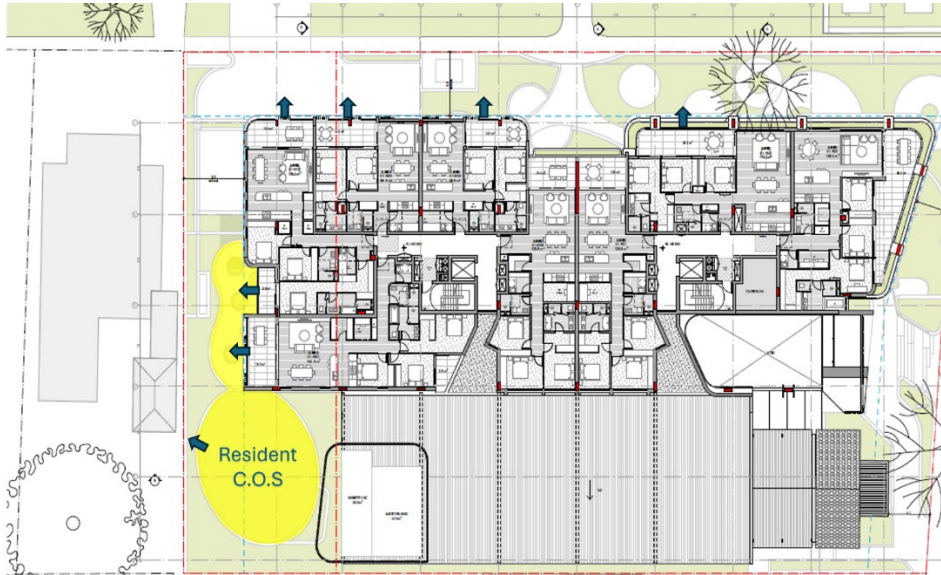


Figure 11: Potential opportunities for overlooking

Source: Plus, Planning&Co

The most likely opportunity for overlooking is from the communal open space of the proposed development towards the private open space of 12 Finlayson Street. Opportunities will be restricted through deep planter boxes and landscaping on structure to limit residents from standing at the edge of the open space adjacent 12 Finlayson Street. Importantly, the proposed exceedance of the height standard will not increase opportunities for casual looking from this communal open space, and the height exceedance is limited to the north eastern corner of the development, away from the property at 12 Finlayson Street.

Further, the difference in levels significantly limit any opportunity for casual overlooking, and the private open space of 12 Finlayson Street is shielded from view.



Figure 12: Neighbouring Private Open Space

Source: SixMaps, Planning&Co

It is considered that potential opportunities for casual overlooking are generally contained to the upper ground communal open space of the proposed development and some west-facing balconies to 12 Finlayson Street. As a result of the difference in levels and location of wide garden planting at the edge of the development these casual overlooking opportunities are unlikely. Further, the proposed height exceedance does not impact or worsen opportunities for casual overlooking compared to a compliant envelope.

The visual impacts of the proposed development compared to a compliant LEP and Low- and Mid-Rise Policy compliant envelope is considered minor and is not anticipated that any existing significant district or regional views exist from neighbouring properties that would be effected by the development.

There are no iconic or longer term views that are likely to be exacerbated by the height exceedance.

(c) to seek alternative design solutions in order to maximise the potential sunlight for the public domain,

As addressed above in response to objective (a), the proposed development does not unreasonably impact the public domain and satisfies the DCP controls relating to solar access to public open areas and plazas. The proposed design has been refined and alternatives considered during the design review panel process and based on engagement with Council. Design Review Panel feedback has been incorporated into the final design and addressed in the Design Report & Verification Statement prepared by Plus Architecture and attached as **Appendix D** to the Statement of Environmental Effects.

(d) to relate development to topography.

The proposed development relates to its topography through refined architectural design as per the Design Report and Verification Statement prepared by Plus Architecture. The proposed development seeks to focus height and bulk to the corner of Finlayson and Rosenthal as an urban design response to the topography of the Site and uses the fall in natural ground level down to Finlayson Street to provide separate and well defined residential access at street level. The proposed development relates to its topography notwithstanding the exceedance in height.

In summary, the proposed achieved the objectives of the height of building development standard are notwithstanding non-compliance with the standard per the First Method established in Wehbe.

Aim of Chapter 6 of the Housing SEPP

Chapter 6 of the Housing SEPP does not include objectives to which the First Method established in Wehbe can be tested. For completeness, this clause 4.6 considered the aim of the Chapter, as follows:

The aim of this chapter is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport.

Lane Cove Town Centre includes a range of services including The Canopy Shopping Centre, the Village Shopping Centre, Lane Cove Library and a variety of commercial shops along Burns Bay Road. The Site is proximate regular bus services along Burns Bay Road, Rosenthal Avenue, Epping Road and Longueville Road. The proposed development will locate new mid rise housing close to these goods, services and public transport.

The aim of Chapter 6 satisfied as the proposed development is mid rise housing in an area that is well located with regards to goods, services and public transport, as Lane Cove Town Centre is identified as a well located town centre by way of its inclusion in the Low and Mid Rise housing policy. Therefore, compliance with the development standards contained in Section 175 and the non-discretionary standard in Section 180 of the Housing SEPP is unreasonable or unnecessary.

6.0 Clause 4.6 (3)(b): Environmental Planning Grounds

Clause 4.6(3)(b) of the Lane Cove LEP requires the consent authority to be satisfied that the Applicant's written request has adequately addressed this clause by demonstrating *that there are sufficient environmental planning grounds to justify contravening the development standard*. The term 'environmental planning grounds' is not defined in the EP&A Act or the standard instrument. Such grounds may relate to the scope and purpose of the Act including the objects set out in s1.3.

In *Four2Five Pty Ltd vs Ashfield Council* [2015] NSWLEC 90, 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.

The objects of the Act and the particular circumstances of the proposed development are assessed in the below **Table 1**. In summary, there are sufficient environmental planning grounds to justify a flexible approach to the application of the height of buildings control as it applies to the Site, based on the particular circumstances

of the proposed development on the Site, which seeks development consent to deliver a mixed use development that includes a community facility.

Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase “*environmental planning grounds*” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the Environmental Planning & Assessment Act 1979 (EP&A Act), including the objects in Section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with all of the objects of the Act, nevertheless, in **Table 1** proposed developments consistency with each object is considered, notwithstanding the proposed variation of the Height of Buildings development standard.

Table 1 Assessment of proposed development against the Objects of the EP&A Act

Object	Assessment
<i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources</i>	<p>The proposed height of building will promote the economic and social welfare of the community by enabling the redevelopment of the existing church to include a community facility that will be available for shared public use – in addition to well-located residential development in an R4 High Density Residential Zone.</p> <p>The variation request seeks an appropriate level of flexibility in its particular circumstances in order to deliver this important social and economic outcome at the Site.</p>
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	<p>The proposed development integrates relevant economic, environmental and social considerations through the orderly redevelopment of the Site in a contemporary, sustainable building that includes community and other uses.</p> <p>Ecologically sustainable development is delivered notwithstanding the proposed exceedance of the height of building standard.</p>
<i>(c) to promote the orderly and economic use and development of land</i>	<p>The land is currently used as the Lane Cove Anglican Church. The redevelopment of the church and the addition of a community auditorium facility and residential apartment dwellings close to the Lane Cove Town Centre will promote the orderly and economic use of the land and reflect the intent and objectives of the R4 Zone, to provide for the needs of the community within a high density residential environment and enable other land uses that provide facilities and services to meet the day to day needs of residents.</p> <p>The proposed development is wholly permitted with consent in the R4 Zone.</p> <p>The proposed development will facilitate orderly and economic use of land as envisaged under the now applicable Low and Mid Rise Housing provisions of Chapter 6 of the Housing SEPP. The proposed development is compatible with the future desired character of the residential land surrounding the Lane Cove Town Centre.</p>
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	<p>The proposed development does not proposed to deliver affordable housing. No affordable housing exists at the Site that would be maintained.</p>
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	<p>The proposed development including the height variation will have no impact on threatened species or ecological communities.</p>
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	<p>The proposed development including the breach of the height of building standard will promote and facilitate the sustainable management of the existing heritage item at the Site, by integrating the item into the proposed new development.</p>
<i>(g) to promote good design and amenity of the built environment,</i>	<p>The proposed development has undergone a design review panel process and the recommendations of that process have been incorporated into the final design and addressed in the design report and verification statement prepared by Plus Architecture.</p> <p>The proposed development also has been designed to limit impact on neighbouring development and public open space, notwithstanding the breach of the height standard.</p>
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	<p>The proposed building will meet all relevant Australian Standards and the BCA in order to protect the health and safety of occupants.</p>

<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	This object is not relevant to this proposed development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposed development including this Clause 4.6 Variation Request will be publicly notified in accordance with Council's requirements.

7.0 Other matters for consideration

7.1 The Public Interest

In *Initial Action* it is established 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. Accordingly, it is demonstrated by this Clause 4.6 Variation Request that the proposal is in the public interest as it is consistent with the objectives of the development standard and the zone. Importantly, the proposal includes a significant public benefit that would not otherwise be achievable through strict compliance with the Lane Cove LEP and Housing SEPP.

7.1.1 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 5.0 of this report.

7.1.2 Consistency with Objectives of the Zone

The proposal is assessed against the objectives of the R4 High Density Residential Zone below.

Table 2: Consistency with the objectives of the R4 Zone

Objectives	Assessment
<i>To provide for the housing needs of the community within a high density residential environment.</i>	The proposed development will provide for the housing needs of the community within a high density residential environment.
<i>To provide a variety of housing types within a high density residential environment.</i>	The proposed development will provide a variety of 2-, 3- and 4-bedroom dwellings.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposed exceedance of the height of building standard will allow the delivery of facilities (community facility and auditorium) and services (relating to the Lane Cove Anglican Church) at the Site, that would otherwise could not be feasibly delivered in a well located Site.
<i>To provide for a high concentration of housing with good access to transport, services and facilities.</i>	The exceedance of height is sought to enable the proposed development to provide a high concentration of housing at the Site, which is located adjacent the Lane Cove town centre and has good access to transport, services and facilities.
<i>To ensure that the existing amenity of residences in the neighbourhood is respected.</i>	The proposed development respects the existing amenity of residents and the impacts of the development on neighbouring development relating to solar access, privacy, traffic, noise and views is acceptable notwithstanding the exceedance of the height standard.
<i>To avoid the isolation of Sites resulting from Site amalgamation.</i>	Site isolation is addressed in the Statement of Environmental Effects supporting the proposed development.
<i>To ensure that landscaping is maintained and enhanced as a major element in the residential environment.</i>	The exceedance of the height of building standard will not impact on, and in-fact will improve the proposed developments ability to provide landscaping and deep soil planting at the Site.

8.0 Conclusion

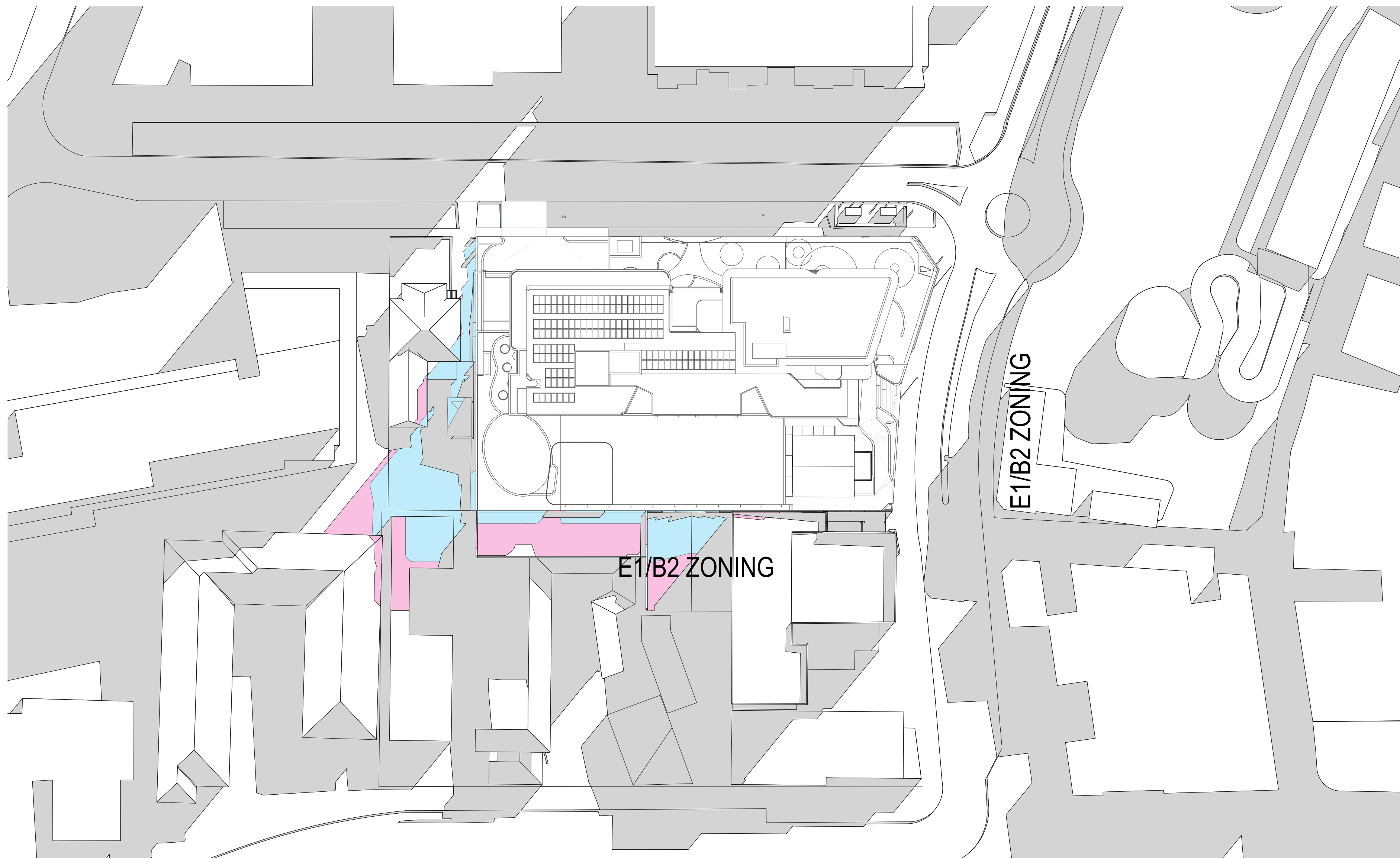
This written request seeks to vary the development standards for height of building contained in Clause 4.3 of the Lane Cove LEP and Section 175 of the Housing SEPP, the development standard for height in storeys contained in Section 175 of the Housing SEPP, and the non-discretionary development standard for height contained in Section 180 of the Housing SEPP.

Pursuant to clause 4.6 of the Lane Cove LEP, this request demonstrates that:

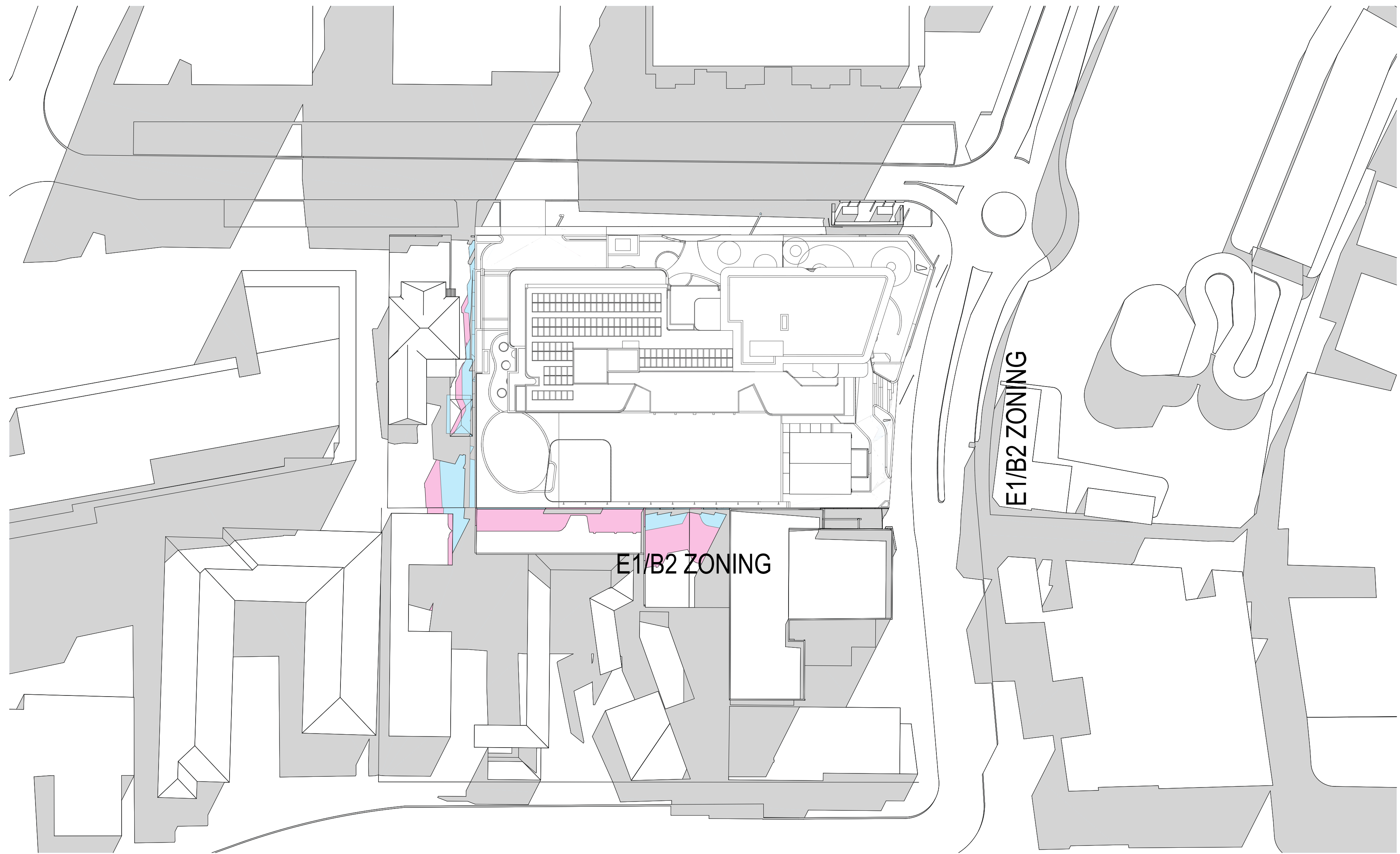
- Compliance with the development standard is unreasonable or unnecessary in the circumstances as the proposed development satisfies the objectives of the LEP height of building clause 4.3 and the aim of Chapter 6 of the Housing SEPP, notwithstanding the exceedance of the development standard, and
- There are sufficient environmental planning grounds to justify the contravention of the development standard in the particular circumstances of the proposed development, as the proposed development is consistent with the objectives of the Act and the written request to vary the development standard is particular to the developments circumstances in that it is in order to deliver a significant public benefit.
- In the event that Chapter 6 of the Housing SEPP is considered a draft instrument, the development standard for height remains relevant and can be considered as an environmental planning ground.

Further, this request has demonstrated that the proposed development, notwithstanding the variation to the height of buildings standard, remains consistent with the objectives of the standard and with the objectives of the zone and is in the public interest. Importantly, the proposed variation to the maximum height permitted is sought in order to facilitate the delivery of a community facility that would otherwise may not be delivered if strict compliance is required. The minor impacts of the additional height are acceptable when considering the Site's context in an urban centre identified by State Government as a Town Centre undergoing change as a result of the Low and Mid Rise Housing Reform.

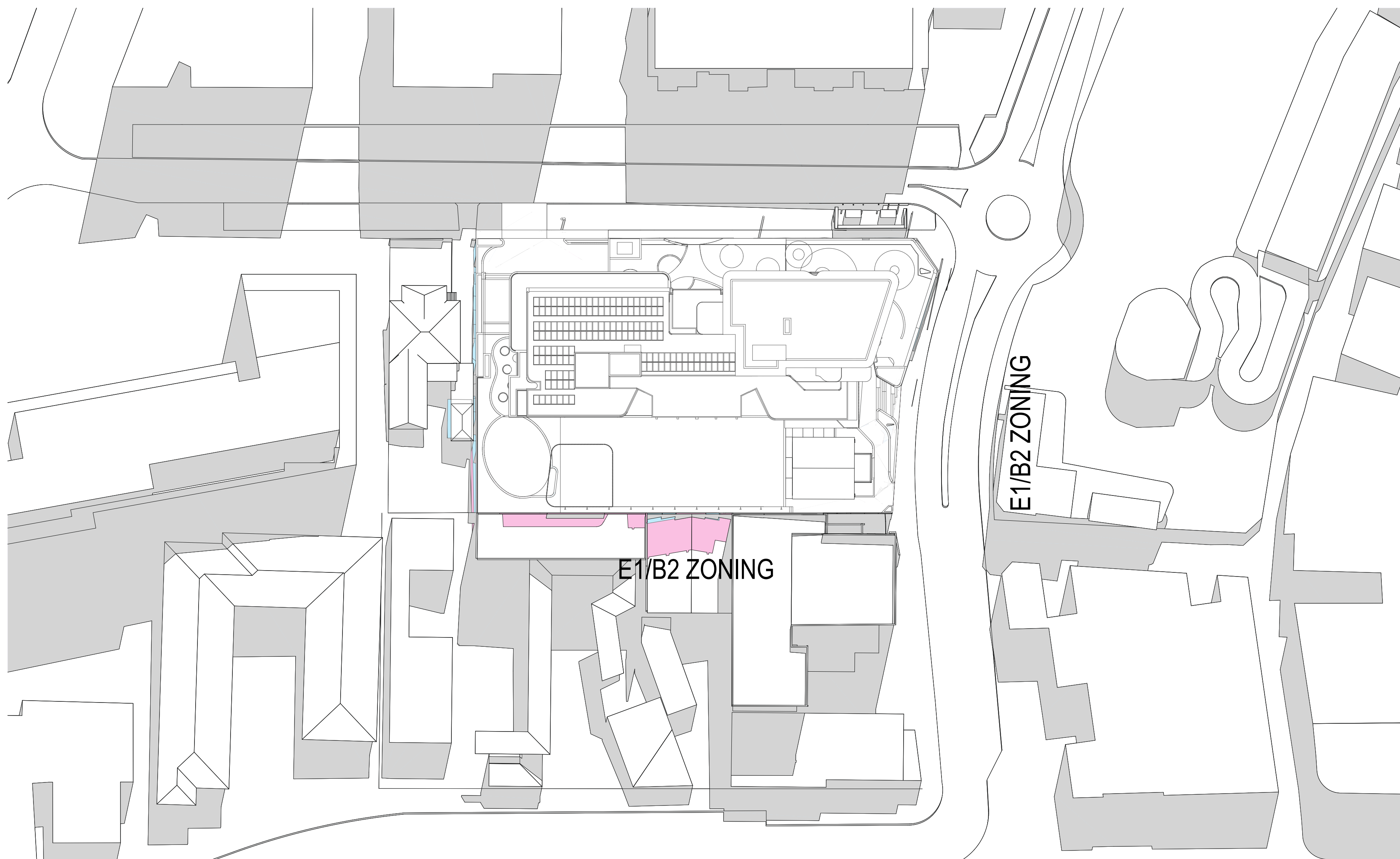
Appendix A Shadow Diagrams



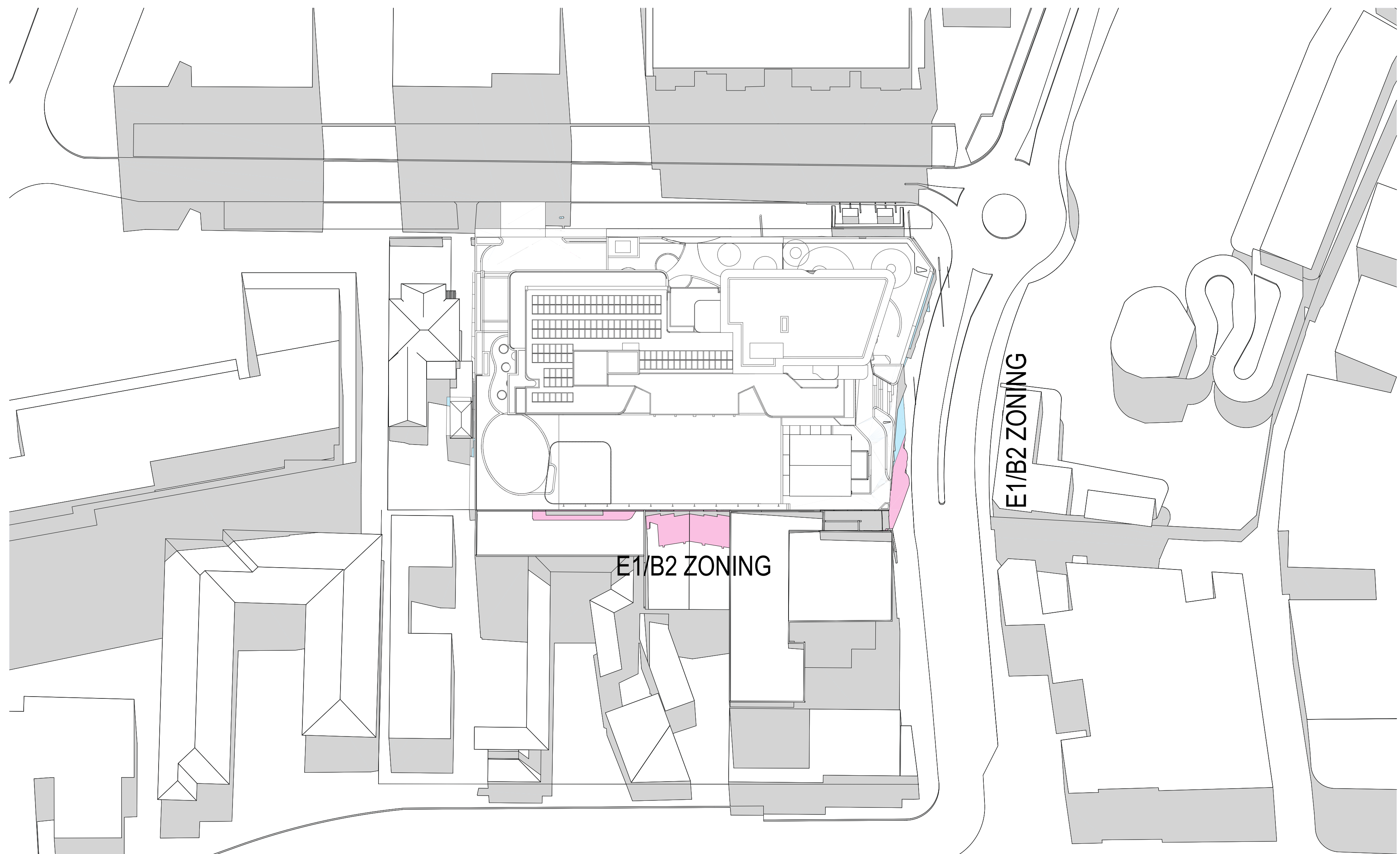
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SCALE: 1:500@A0






3 SHADOW PROPOSED 11AM - 21 JUNE
- SCALE: 1:500@A0



4 SHADOW PROPOSED 12PM - 21 JUNE
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LEGEND:

-  EXISTING BUILDINGS SHADOW
 4 STOREY BUILDING SHADOW (CURRENT LEP)
 PROPOSED BUILDING SHADOW

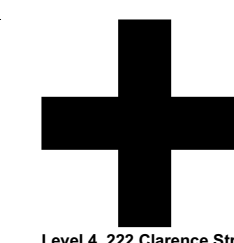
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CONSULTANTS							
Architect	<input type="checkbox"/>	Bora Bora	T Gordon Bora (04 3999 1102)	Landscapes	<input type="checkbox"/>	Land and Form	T Charles Robinson (04 957 9371)
BCA	<input type="checkbox"/>	Certitude	T Kurla Laran (02 9250 5555)	Planner	<input type="checkbox"/>	PlanningCo	T Tam Gooch (04 842 3405)
Heritage Architect	<input type="checkbox"/>	Wen Phillips Heritage and Planning	T Alice Palmer (08 933 5515)	Structure	<input type="checkbox"/>	TTM group	T Thomas Isaac (04 5491 9319)
Civil	<input type="checkbox"/>	Intrex Projects	T Sam McCarthey (04 833 4006)	Wade	<input type="checkbox"/>	Neuron	T Paul Moon (04 656 0552)
Mechanical, Hydraulic, Pna, Electrical	<input type="checkbox"/>	Neuron	T Conny Moore (01 437 654 141)	Traffic	<input type="checkbox"/>	Asan Group	T Jay Wu (01 290 550 91)

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Sydney, NSW 2000 Australia
Plum Architecture Pty. Ltd.
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Nominated Architect (NSW):


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Brisbane Western Australia
Christchurch Auckland

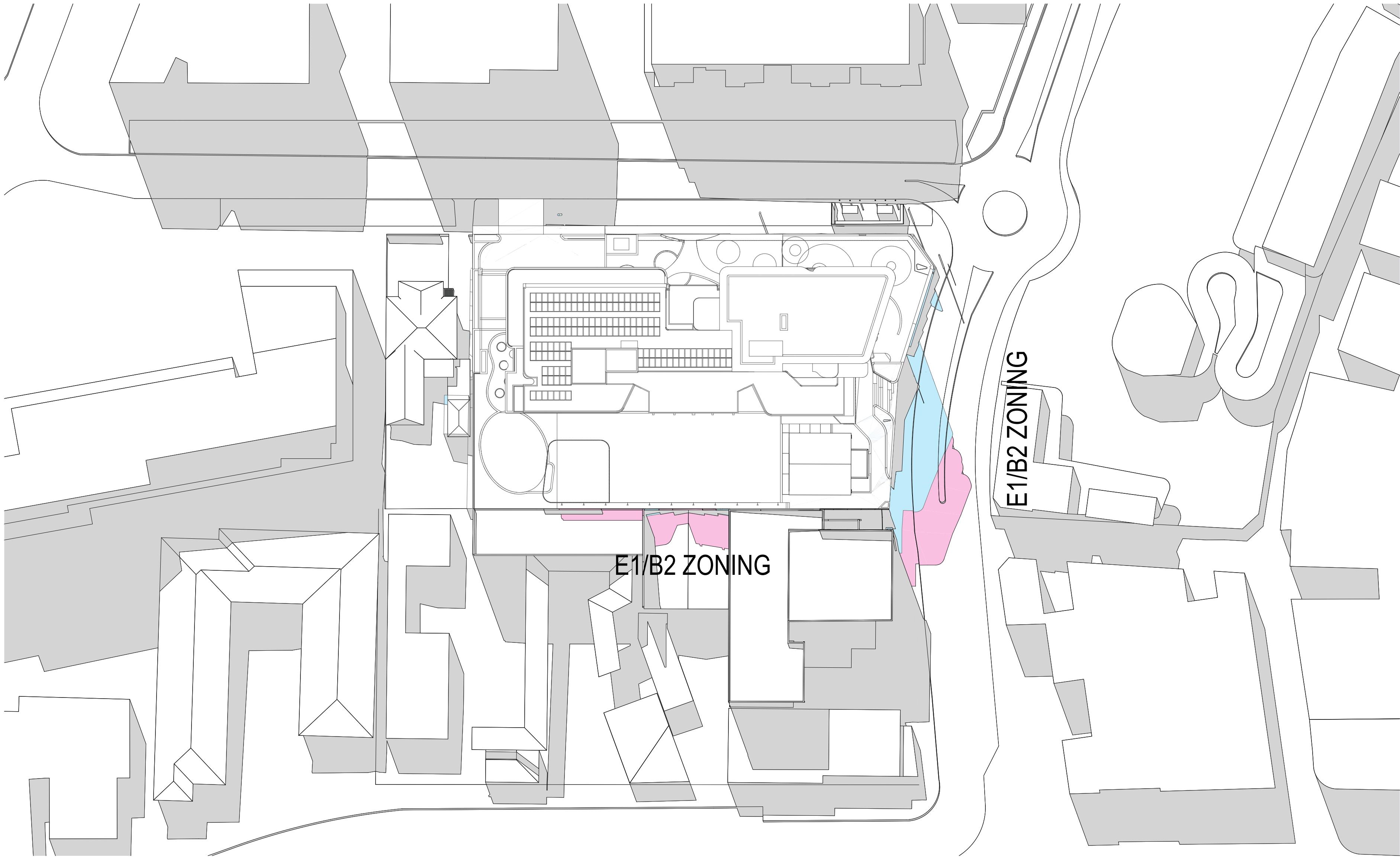
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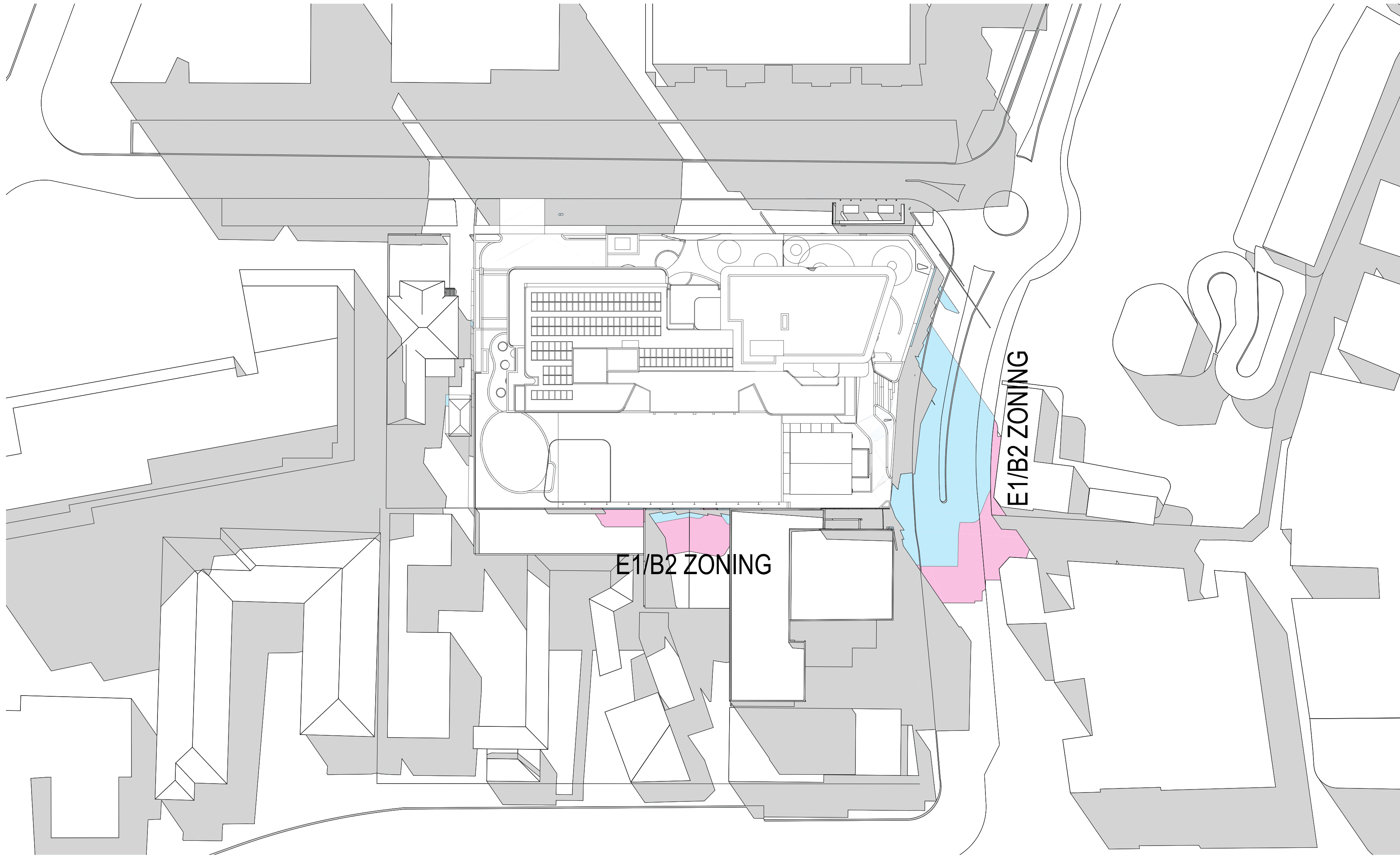
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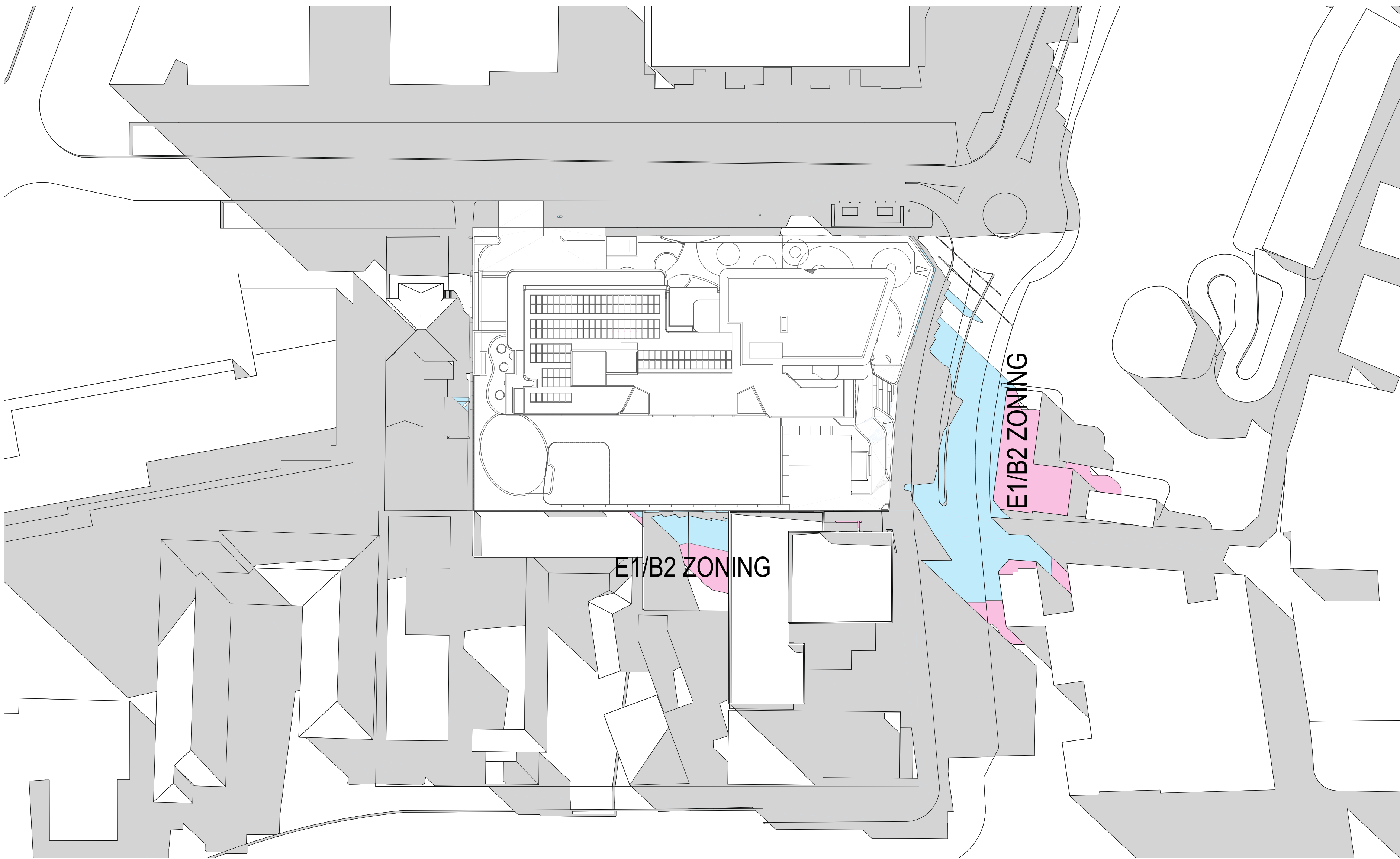
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2 SHADOW PROPOSED 2PM - 21 JUNE
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3 SHADOW PROPOSED 3PM - 21 JUNE
SCALE: 1:500@A0

LEGEND:

- EXISTING BUILDINGS SHADOW
- 4 STOREY BUILDING SHADOW (CURRENT LEP)
- PROPOSED BUILDING SHADOW

DATE	REVISION	BY	CHK	NO.
23/10/2024	Issue	01	01	01
31/10/2024	Issue	02	02	02
01/11/2024	Issue	03	03	03
13/11/2024	Issue	04	04	04
19/11/2024	Issue	A	A	A
23/05/2025	Issue	B	B	B
17/06/2025	Issue	C	C	C

DATE	REVISION	BY	CHK	NO.

CONSULTANTS						
Adviser	<input type="checkbox"/>	Bleas Bros	T Gordon Wiers (04 3899 1120)	Landscape	<input type="checkbox"/> Land and Form	T Charles Robinson (04 5707 1011)
BCA	<input type="checkbox"/>	Catalysts	T Kuria Lencova (02 9299 9090)	Planner	<input type="checkbox"/> PlanningLink	T Tim Gaudy (04 0403 8440)
Heritage Architect	<input type="checkbox"/>	West Phillips Heritage and Planning	T Alice Foster (02 8070 9317)	Waste	<input type="checkbox"/> ETM group	T Thomas Iscoe (03 9419 9911)
Civil	<input type="checkbox"/>	Intraus Projects	T Sam McCartney (04 9033 4066)	Structure	<input type="checkbox"/> Neuron	T Paul Moore (04 8466 0062)
Mechanical, Hydraulic, Pms, Electrical	<input type="checkbox"/>	Neuron	T Corey Morris (041 437 654 141)	Traffic	<input type="checkbox"/> Asom Group	T Jay Wu (041 290 936 901)

Traders In Purple



plus
architects

PROJECT
2 - 10 FINLAYSON
STREET LANE COVE
NSW 2066
AUSTRALIA

DRAWING TITLE
SHADOW DIAGRAMS -
SHEET 02

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DRAWN WS, BA, AS	CHECKED RP		
JOB NO. 20763	DRAWING NO. PLA-DA-4101	REVISION C	