

Clause 4.6 Variation to Development Standard – Floor Space Ratio

2-8, 10 Finlayson Street Lane Cove

8 Finlayson Street Lane Cove Pty Ltd

Table of Contents

1.0	Executive Summary	2
2.0	Introduction	2
2.1	Background	3
2.2	Chapter 6: Low and Mid-Rise Housing (Housing SEPP)	3
3.0	Development Standard to be Varied	5
4.0	Nature of the Variation Sought.....	7
5.0	Clause 4.6 (3)(a): Compliance with the development standard is unreasonable or unnecessary	7
6.0	Clause 4.6 (3)(b): Environmental Planning Grounds	13
7.0	Other matters for consideration	14
7.1	The Public Interest.....	14
8.0	Conclusion	15

Figures

Figure 1: Low and Mid Rise Policy Indicative Map.....	4
Figure 2: Site Cadastre	5
Figure 3: Floor Space Ratio map (site outlined red)	6
Figure 4: Application of LMR and LEP height controls.....	6
Figure 5: The Site (red) adjacent to Area 1 (2.5:1) land	9
Figure 6: Existing Character of the Street	11
Figure 7: Proposed Material Palette.....	12
Figure 8: Proposed Street Elevations, North and South.....	12

Tables

Table 1: Summary of variation sought.....	7
Table 2: Comparison permitted & proposed FSR and GFA.....	7
Table 3 Assessment of proposed development against the Objects of the EP&A Act.....	13
Table 4: Consistency with the objectives of the R4 Zone	14

1.0 Executive Summary

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

The Site has a maximum permitted Floor Space Ratio (FSR) of 1.7:1 under the Lane Cove LEP. The Site is also identified as being within a Low and Mid Rise Housing Inner Area under Chapter 6 of the Housing SEPP. Chapter 6 provides a non-discretionary standard for FSR of 2.2:1. As a part of the Site (Lot 69) is a local heritage item, only the LEP FSR development standard applies to that part of the Site. For completeness, this clause 4.6 considers the proposed development against both the LEP and Housing SEPP FSR standards.

Using the non-discretionary standard for FSR in Chapter 6 of the Housing SEPP, the Site has a maximum permitted FSR of 2.2:1 to Lots 65-68 and 1.7:1 to Lot 69 of DP 10155 (the Lot where Chapter 6 does not apply). These FSRs equate to a total permitted Gross Floor Area (**GFA**) across the Site of 7,884.1sqm. The proposed development has a total GFA of 8,408sqm, exceeding the maximum permitted GFA by 523.9sqm (6.65%). If the permitted FSR of 1.7:1 under the LEP is applied to the whole of the Site, the total permitted GFA would be 6,397.1sqm.

The objectives of clause 4.6 of the LEP 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. This request seeks an appropriate degree of flexibility to achieve a better outcome for the development, as the additional FSR sought is in order to deliver a community facility to the lower and upper ground floors that will be shared between 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.

The proposed shared use arrangement may be formalised through a voluntary planning agreement. However, it is important to note that a VPA is a separate matter between the Applicant and Council, and any such agreement is not a consideration for the purposes of this clause 4.6 request. A VPA agreement, if entered into, must not influence or change a planning decision or approval granted by the Consent Authority.

This clause 4.6 request demonstrates that strict compliance with the FSR development standards of the LEP and the non-discretionary development standard for FSR in 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 objective of Clause 4.4 of the Lane Cove LEP, the request demonstrates that the bulk and scale of the development is compatible with the character of the locality, and specifically compatible with the future desired character of the area as established by the Housing SEPP Low and Mid Rise Provisions.
- 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 is 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 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 non-discretionary development standard for FSR 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 objective and aim of the standards and the R4 High Density Zone, and is in the public interest. Importantly, the proposed FSR 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 FSR is required.

To deliver the community facility, the Applicant seeks an appropriate degree of flexibility in applying the FSR 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 clause 4.4 of the Lane Cove Local Environmental Planning 2009 (**LEP**). For completeness, this clause 4.6

request also seeks to vary the non-discretionary development standard for FSR per Section 180 of Chapter 6 of State Environmental Planning Policy (Housing) 2021 (**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) 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:

- (a) That the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) 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 3.0);
- Identifies the variation sought (Section 4.0);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 5.0);
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (Section 6.0); and,
- Demonstrates that the proposed variation is in the public interest (Section 7.0);

Therefore, the DA 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 transition 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: Site Cadastre

Source: SDT Viewer

3.0 Development Standard to be Varied

This written clause 4.6 seeks to vary clause 4.4 of the Lane Cove LEP. For completeness, this clause 4.6 also seeks to vary Section 180 of the Housing SEPP at it relates to maximum FSR.

Lane Cove LEP Clause 4.4 Floor Space Ratio

This written clause 4.6 variation request also seeks to vary the floor space ratio development standard pursuant to Clause 4.4 of the Lane Cove LEP.

Clause 4.4 of the LEP states;

4.4 Floor space ratio

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

(a) *to ensure that the bulk and scale of development is compatible with the character of the locality.*

(2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

(2A) *Despite subclause (2), the maximum floor space ratio for a building containing shop top housing on land in Area 1 on the Floor Space Ratio Map is 2.5:1.*

As shown in **Figure 3**, the maximum FSR shown for the land on the Floor Space Ratio Map is 1.7:1.

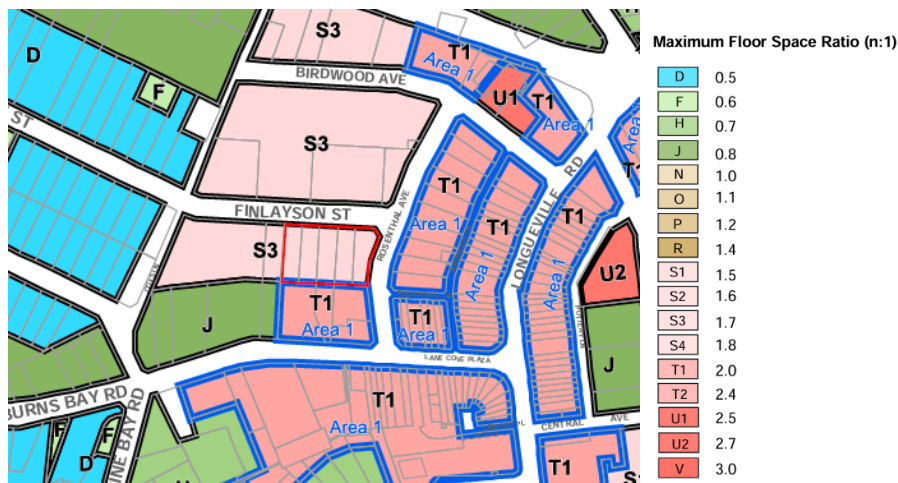


Figure 3: Floor Space Ratio map (site outlined red)

Source: Lane Cove LEP 2009 Floor Space Ratio Map

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

Chapter 6 of Housing SEPP applies to the Site, specifically to Lots 65-68 of DP 10155. Chapter 6 includes at s180 non-discretionary development standards for residential flat buildings and shop top housing in the Zone R3 or R4 within a low and mid rise housing inner area.

S180 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.

...

A summary of the application of the LMR and LEP maximum FSR is provided in **Figure 4**.

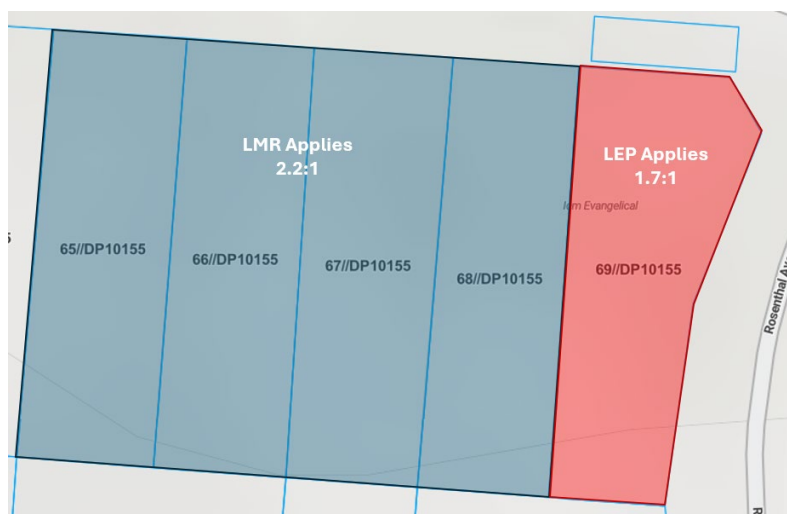


Figure 4: Application of LMR and LEP height controls

Source: Planning&Co

4.0 Nature of the Variation Sought

The proposed development has a maximum floor space ratio of 1.7:1.

The proposed development has a floor space ratio of 2.23:1, exceeding the LEP maximum FSR of 1.7:1 by 0.53:1 or approximately 31%.

The proposed FSR would exceed the maximum permitted Housing SEPP Chapter 6 FSR by 0.03:1 (1.4%) if it were applied across the whole Site. We note however that Chapter 6 does not apply to Lot 69 due to part of that Lot being a heritage item.

The following summary of GFA is provided in Table 1, which determines that the maximum permitted gross floor area (GFA) at the Site is 7,884.1sqm, when the non-discretionary development standard for FSR in Chapter 6 of the Housing SEPP is applied to Lots 65-68, and the Lane Cove LEP FSR is applied to Lot 69. The proposed development has a total GFA of 8,408sqm, exceeding the maximum permitted GFA by 523.9sqm (6.65%).

Table 1: Summary of variation sought

Consideration	Lots 65-68	Lot 69
Relevant Planning Instrument	Housing SEPP	Lane Cove LEP
Maximum permitted FSR	2.2:1	1.7:1
'Site' area	2,974 sqm	789 sqm
Maximum permitted GFA	6,542.8 sqm	1,341.3 sqm
Proposed GFA	6,945 sqm	1,463 sqm
Proposed FSR	2.34:1	1.85:1
Variation Sought	402.2 sqm (6.1%)	121.7 sqm (9.1%)

Relevantly, the land is also immediately adjacent the land shown as 'Area 1' per LEP cl 4.4(2A), which permits an FSR up to 2.5:1 for shop-top development. As noted above, the total FSR expressed across the entire Site is 2.23:1.

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.

The total GFA proposed to the community facility performance space is approximately 369sqm. This does not include the ancillary floor area attached to the community facility, such as kitchen facilities, lobby areas, parent's room and bathrooms. The proposed development, if the community facility were not provided, would have an FSR across the entire site of 2.14:1, as demonstrated in Table 2.

Table 2: Comparison permitted & proposed FSR and GFA

Consideration	Total
Total Site Area	3,763 sqm
Maximum permitted GFA	7,884.1 sqm
Proposed GFA	8,408 sqm
Proposed community facility	369 sqm
Proposed GFA less community facility	8,039sqm
FSR of total building less community facility	2.14:1

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. Whilst Chapter 6 of the Housing SEPP does not include objectives, the Chapter does provide a single aim, which is also addressed below.

Clause 4.4 of the LEP includes a single objective:

(a) to ensure that the bulk and scale of development is compatible with the character of the locality.

The locality of the site is the Lane Cove Town Centre and surrounding land. The bulk and scale of the proposed development is compatible with the character of the locality as set out in the following paragraphs.

In establishing that the bulk and scale of the development is compatible with the character of the locality, we refer to *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191 at 22-31. His Honor found that:

- It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance.
- There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing.

In this case, Chapter 6 of the Housing SEPP (the Low and Mid Rise Housing provisions) envisages a change of character. Therefore, the proposed development's compatibility with the future character is more appropriate than with the existing.

The provisions of Chapter 6 provides a greater floor space ratio than the Lane Cove LEP. The proposed development is compatible with the aim of Chapter 6, which 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."*

The aim is 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.

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 proposed FSR is also compatible with the character of its broader locality, the surrounding Town Centre land noted 'Area 1', which is immediately adjacent the Site to the south and west and which permits shop-top development with an FSR up to 2.5:1, as shown in **Figure 5**. Chapter 6 of the Housing SEPP does not apply to land within the Town Centre, and therefore the existing character is relevant in this case. The total proposed FSR of 2.23:1 is lesser than that which is anticipated to the immediately adjacent sites. The existing character of the locality, per the LEP, to at least 50% of the adjoining lands is to be of a higher FSR than the proposed development.

The site is also identified in the Lane Cove DCP as being within a residential locality (Finlayson Street Block 2) that is anticipated for higher density immediately adjacent to the Lane Cove Town Centre. The proposed development also satisfies the objectives of the R4 Zone, specifically the objectives relating to the bulk and scale of development, as discussed in Section 7.1.1.

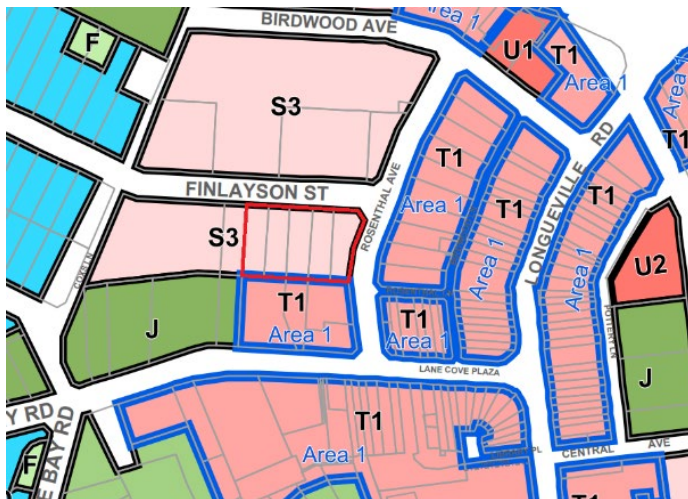


Figure 5: The Site (red) adjacent to Area 1 (2.5:1) land

Source: Lane Cove LEP 2009 Map - Sheet FSR_001

Project Venture Developments Pty Ltd v Pittwater Council at [24] also clarifies that to establish whether a proposal is compatible with its context, two questions should be asked:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

These two questions are addressed below.

1) Are the proposal's physical impacts on surrounding development acceptable?

The proposed variation to the FSR standard does not result in unreasonable physical impacts on surrounding development. The physical impact of the proposed development on surrounding development is acceptable with regard to solar impacts and overshadowing, privacy, view loss and visual bulk.

It is considered that there are no iconic or significant district views that will be affected by the proposed development, notwithstanding the exceedance in FSR.

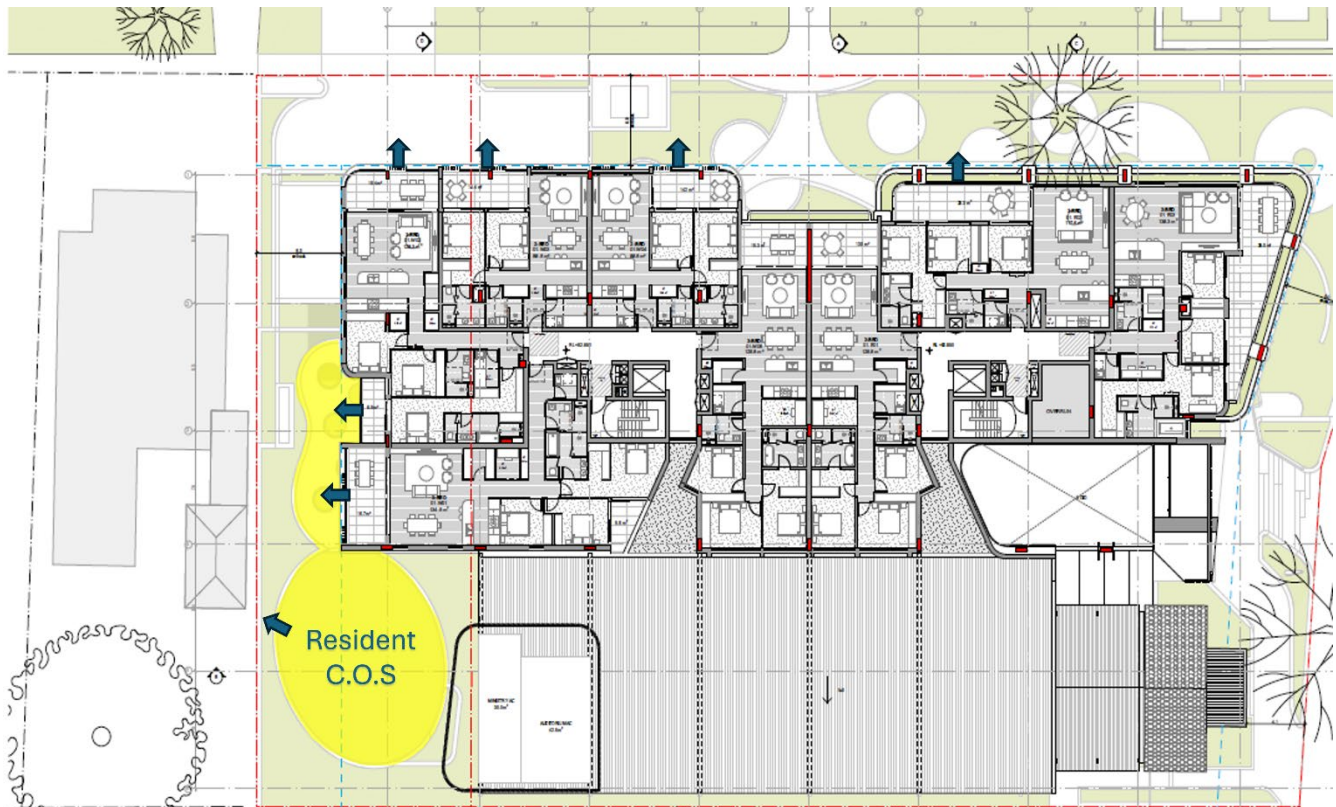
With regard to solar impacts and overshadowing, the shadow diagrams prepared by Plus Architecture, attached as Appendix F to the Statement of Environmental Effects and shown below in **Figure 6** demonstrate that the proposed developments solar impact on surrounding development on 21 June (the Winter solstice) is acceptable, particularly when compared to a compliant LEP building envelope.

The shadow diagrams demonstrate that the proposed has no additional solar impact on surrounding development to the north or west between 11am and 3pm on 21 June. The proposed has very minor additional solar impacts compared to a compliant building envelope to surrounding commercial development to the south, which is predominately limited to additional overshadowing of the rooftops of those commercial buildings, which are built to boundary.

The proposed development has no solar impact on the Canopy public open space and commercial development to the east between 9am and 1pm, and only minor shadow impacts compared to a compliant envelope from 2pm to 3pm on 21 June.

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

With regard to privacy impacts, potential opportunities for 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 provides building separation per the ADG to upper levels, where potential overlooking may occur.



Any opportunities for casual overlooking toward 12 Finlayson Street 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 FSR standard has no additional privacy impact and does not create additional opportunities for casual looking from communal open space compared to a compliant development. The FSR exceedance is focused to the 6th storey at the corner of Finlayson and Rosenthal Avenue, away from neighbouring residential development and as an urban design response to address the 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.

As noted above, the greatest visual bulk of the building is located to the corner of Finlayson and Rosenthal. The proposed uses articulation, deep soil planting and landscaping on structures to reduce the visual impact of the development when viewed from surrounding development and is acceptable given the expected future context as established by the incoming planning controls.

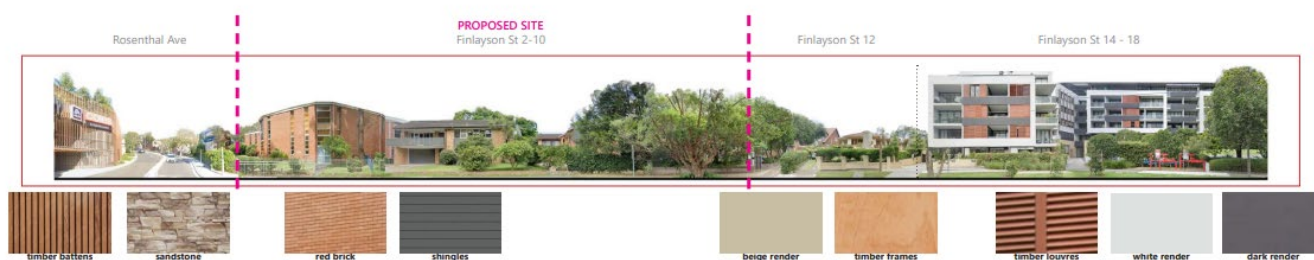
2) Is the proposal's appearance in harmony with the buildings around it and the character of the street?

It is our opinion that the proposed development's appearance is in harmony with its surrounds, notwithstanding the variation sought to the FSR standard.

The scheme has been developed through extensive consultation with Council, heritage expertise and through the Design Review Panel process in order to design a development that is in harmony with buildings around it and that has an appearance compatible with the character of the street, notwithstanding the FSR exceedance. The Design Report prepared by Plus Architecture and attached to the Statement of Environmental Effects as Appendix D considers the existing site character of Finlayson Street and Rosenthal, as shown in **Figure 7**. The below demonstrates the existing materials, built form and topography that establish the character of the street.

The design review panel provided feedback regarding context and neighbourhood character in response to the proposed scheme presented at the first DRP meeting, and noted that "the site is thereby well situated for a larger scale mixed use development, building upon "The Canopy" and St Andrews Anglican Church." This feedback was actioned and taken into account for the scheme presented at the second DRP.

NORTH ELEVATION



SOUTH ELEVATION



WEST ELEVATION



EAST ELEVATION



Figure 6: Existing Character of the Street

Source: Plus Architecture

The proposed development utilises materials compatible with the existing character of the street and is in harmony with the buildings around it, notwithstanding the exceedance of FSR, as shown in **Figure 8** and **Figure 9**.

FACADE CONCEPT MATERIAL PALETTE



Figure 7: Proposed Material Palette
Source: Plus Architecture

FINLAYSON STREET - NORTH ELEVATION



SOUTH ELEVATION



Figure 8: Proposed Street Elevations, North and South
Source: Plus Architecture

As established in *Project Venture Developments Pty Ltd v Pittwater Council*, buildings can exist together in harmony without having the same density, scale or appearance. The proposed is in harmony with the existing and future expected character of the street, which is predominately existing residential flat buildings with long, articulated front facades with landscaped front setbacks and pedestrian access at street level. The proposed exceedance of the development standard does not prevent the proposed development from being in harmony with the buildings around it and the character of the street.

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 of 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 particularly circumstances of the proposed development are assessed in the below **Table 3**. In summary, there are sufficient environmental planning grounds to justify a flexible approach to the application of the FSR control as it applies to the site, based on the particularly circumstances of the proposed development on the site, which seeks development consent to deliver a mixed use development that includes a community facility delivered through a voluntary planning agreement.

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 3** proposed developments consistency with each object is considered, notwithstanding the proposed variation of the floor space ratio development standard.

Table 3 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 FSR 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 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 by effectively 'transferring' the gross floor area of the community facility to the residential flat building above.</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 to facilitate ecologically sustainable development, notwithstanding the proposed exceedance of the FSR standard.</p> <p>Refer to the ESD Report prepared by Jensen Hughes and attached as Appendix N to the Statement of Environmental Effects.</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 zone.</p> <p>The proposed development will facility 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 FSR variation will have no impact on threatened species or ecological communities.</p>

(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	<p>The proposed development including the breach of the FSR standard will promote and facilitate the sustainable management of the existing heritage item at the site, by facilitating the integration of the item into the proposed new development.</p> <p>Significant consultation with Council over a long period of time including two design review panels has enabled the project to respond to the unique built and cultural heritage features of the site as the proposed has evolved during design development.</p>
(g) to promote good design and amenity of the built environment,	<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 FSR standard.</p> <p>Refer to the Design Report and Design Verification Statement prepared by Plus Architecture and attached as Appendix D and E to the Statement of Environmental Effects.</p>
h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed building will meet all relevant Australian Standards and the BCA in order to protect the health and safety of occupants.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	This object is not relevant to this proposed development.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	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 Zone

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

Table 4: 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 FSR exceedance will facilitate the delivery of facilities and services (community auditorium and church) at the site, that would otherwise could not be feasibly delivered.
<i>To provide for a high concentration of housing with good access to transport, services and facilities.</i>	The exceedance of FSR 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 and col-located with important community 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 variation sought to the FSR standard.

To avoid the isolation of sites resulting from site amalgamation.

Site isolation is addressed in the Statement of Environmental Effects supporting the proposed development.

To ensure that landscaping is maintained and enhanced as a major element in the residential environment.

The variation sought to the FSR standard will not impact on the proposed developments ability to provide landscaping and deep soil planting at the site.

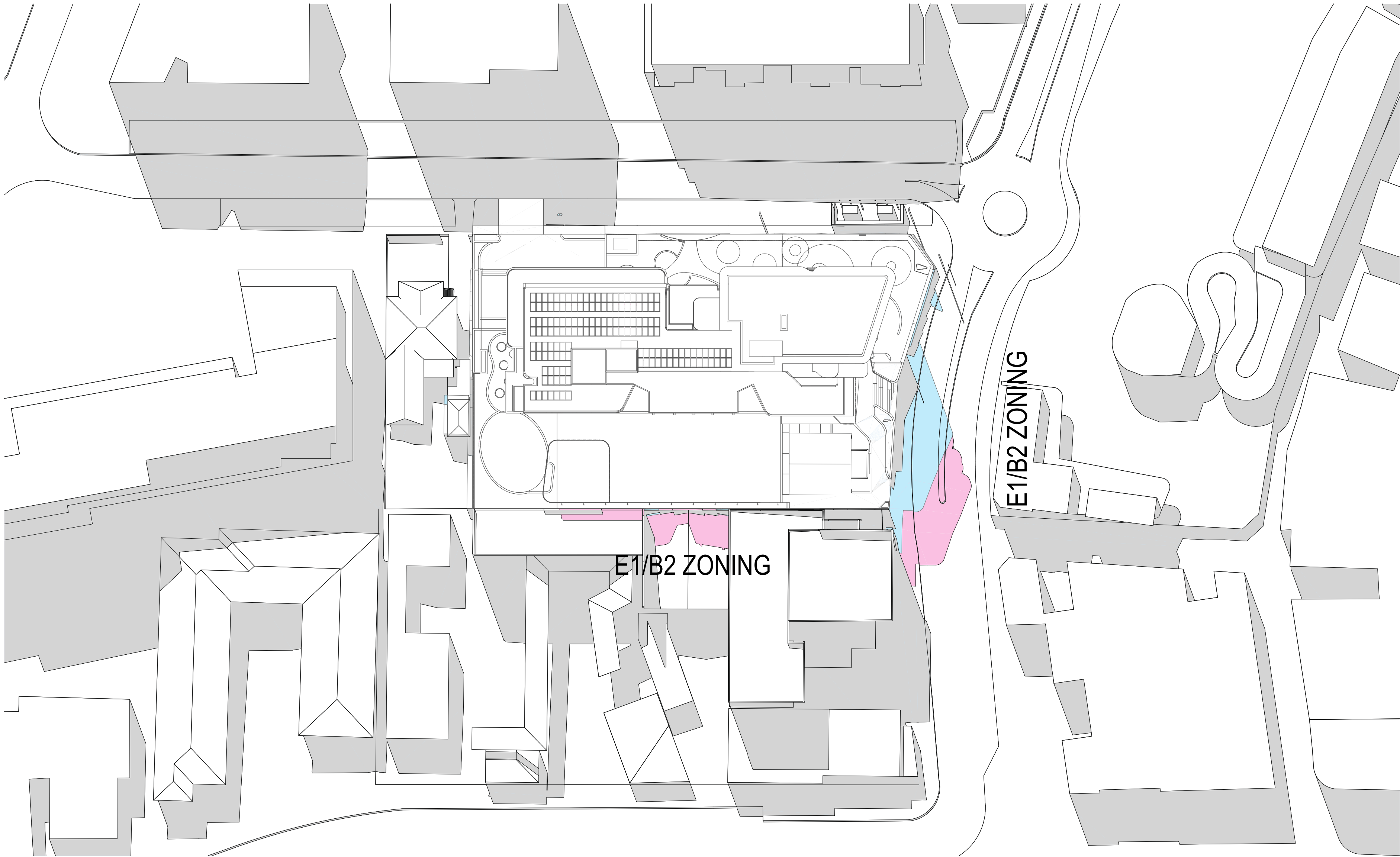
8.0 Conclusion

This written request to vary the floor space ratio development standard pursuant to cl. 4.6 of the Lane Cove LEP demonstrates that:

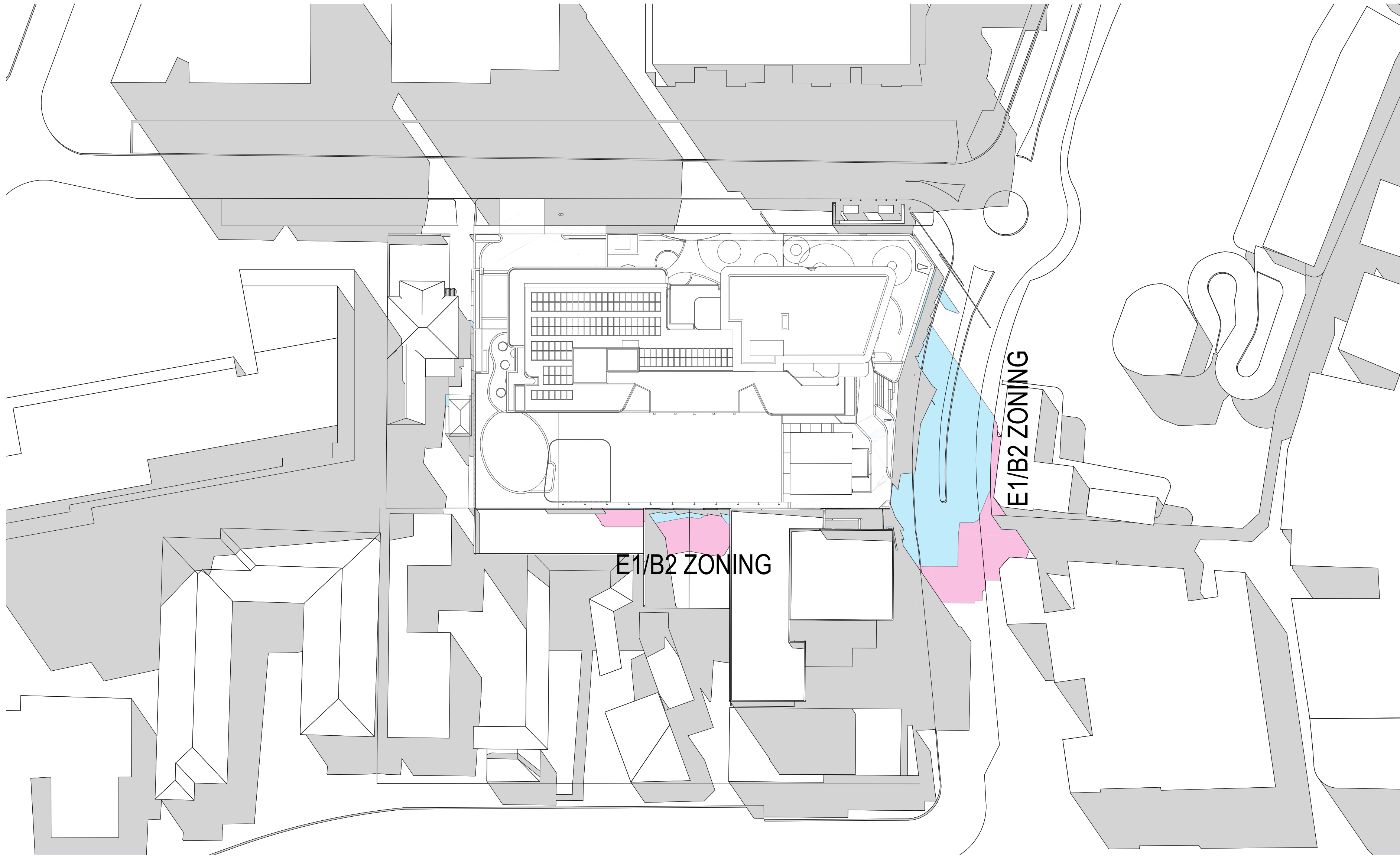
- Compliance with the development standard is unreasonable or unnecessary in the circumstances as the proposed development satisfies the objective of the LEP floor space ratio clause 4.4 notwithstanding the exceedance of the development standard, and
- There are sufficient environmental planning grounds to justify the contravention of the development standard in the particular circumstances of the proposed development on the site 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 FSR 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 floor space ratio 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 FSR 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.

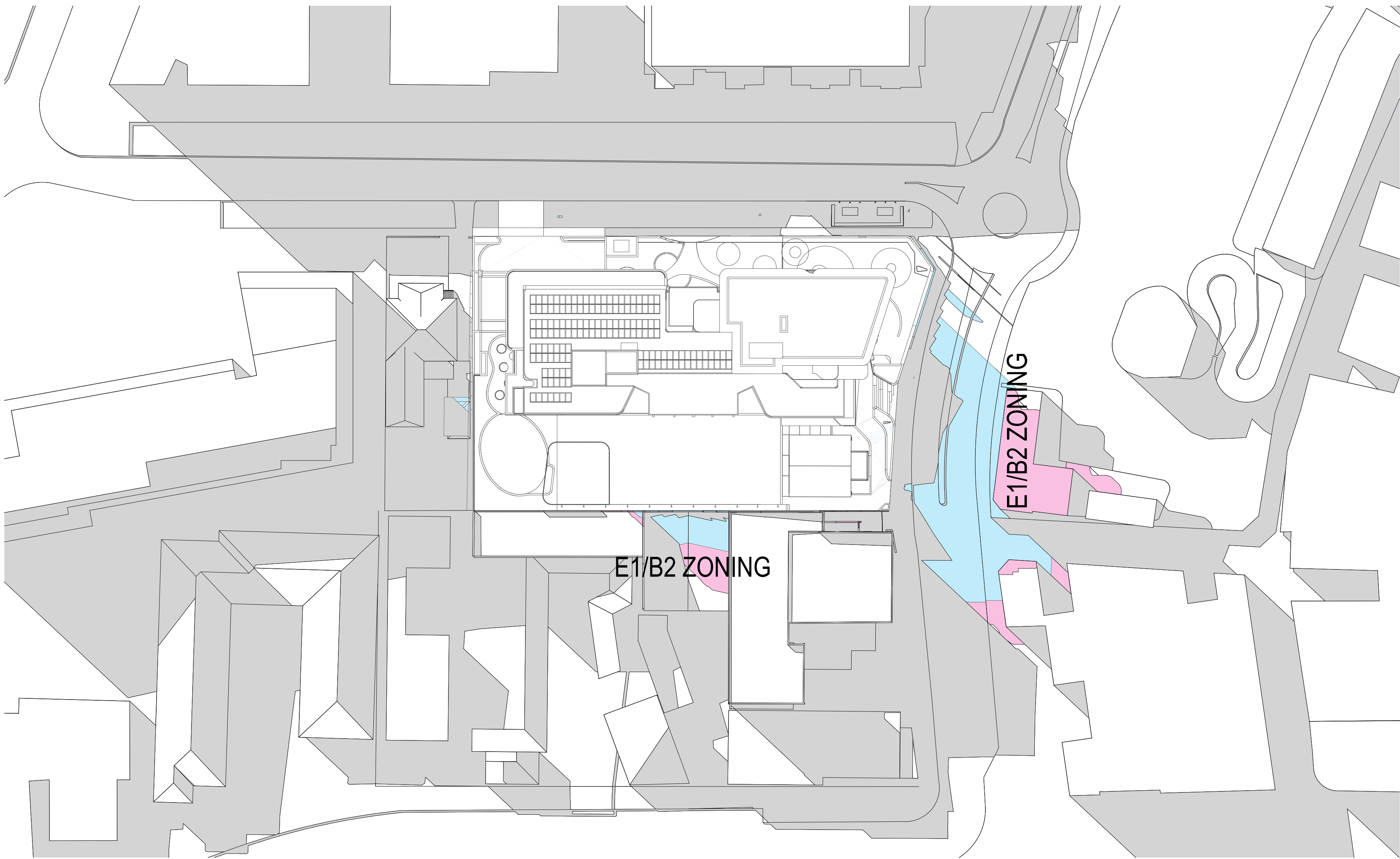
Appendix A Shadow Diagrams



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



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



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					
Advertiser	<input type="checkbox"/> Biese Bros	T Gordon Wiers (04 3899 1120)	Landscape	<input type="checkbox"/> Land and Form	T Charles Robinson (04 5707 1011)
BCA	<input type="checkbox"/> Carstairs	T Kevin Lenehan (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 8076 9317)	Water	<input type="checkbox"/> ETM group	T Thomas Isaac (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, Pwr, 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

FOR DA NOT FOR CONSTRUCTION			
SCALE 1:500, 1:1.43 @A0			
DATE 17/06/2025	PLOT DATE 19/06/2025		
DRAWN WS, BA, AS	CHECKED RP		
JOB NO. 20763	DRAWING NO. PLA-DA-4101	REVISION C	