

GYDE

Amended Clause 4.6 Request - Height of Building

Georges River Local Environmental Plan
2021

59-69 Princes Highway and 36-38 Gladstone Street, Kogarah

Submitted to Willoughby City Council
on behalf of The Andary Group

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1. EXECUTIVE SUMMARY

This is a written request prepared in accordance with Clause 4.6 of the Georges River Local Environmental Plan 2021 (GRLEP 2021) to justify a variation to the Height of Building development standard. This Development Application (DA) is submitted to Georges River Council for a mixed use development at 56-69 Princes Highway and 36-38 Gladstone Street, Kogarah (the site). The Clause 4.6 Variation Request has been amended during the assessment period of the DA to reflect changes to the proposed height breach.

The proposal involves the demolition of existing buildings on site and construction of a 10 storey mixed used development with 2 levels of basement parking, and associated landscaping including rooftop communal open space.

The proposed building has a maximum height of 37.544m. This equates to a 4.544m (13.8%) variation to the current numerical height standard of 33m. The variation to the standard relates to services, roof elements including parts of the roof slab and structures on the roof including the roof plant, awnings, architectural roof feature, lift overruns which facilitate equitable access to the rooftop communal open space. No residential floor space is proposed above the Building Height Development Standard.

The lift overruns and associated awnings are generally located centrally on the roof plant away from the building edges, where possible, to minimise any perception of bulk and scale from the streetscape and reduce potential overshadowing as a result of the height variation. The architectural roof feature around the edge of the building and predominately at the Princes Highway and Gladstone Street corner exceeds the maximum building height. However, this exceedance assists in articulating the corner of the building which is a gateway site to the Kogarah North Precinct.

The objectives of Clause 4.6 are to provide an appropriate level of flexibility in applying certain development standards to particular development, and to achieve better outcomes for and from development, by allowing flexibility in particular circumstances.

This request has been prepared having regard to the Department of Planning and Environment's Guidelines to Varying Development Standards (August 2011) and various recent decisions in the New South Wales Land and Environment Court (LEC) and New South Wales Court of Appeal (Appeals Court).

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130) and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

This request considers that compliance with the Height of building development standard is unreasonable and unnecessary in the circumstances of the proposed development because the objectives of the development standard are achieved

notwithstanding non-compliance with the standard.

There are sufficient environmental planning grounds to justify the variation. These include the elements being centrally designed on the roof top which minimises any perception of bulk and scale, the architectural roof feature articulating the street corner, the lift overruns providing equitable access to the roof top communal open space and consistency with the relevant aims of the GRLEP 2021 sought in the height variation. Specifically, the development satisfies the objectives of the height standard, as well as the objectives of the R4 High Density Residential Zone and is therefore in the public interest.

This request also addresses the requirement for concurrence of the Secretary as required by Clause 4.6(4)(b).

It is therefore considered appropriate in these circumstances to grant the Clause 4.6 variation request.

2. STANDARD TO BE VARIED

The standard that is proposed to be varied is the Height of Building development standard which is set out in clause 4.3 of the GRLEP 2021 as follows:

(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.

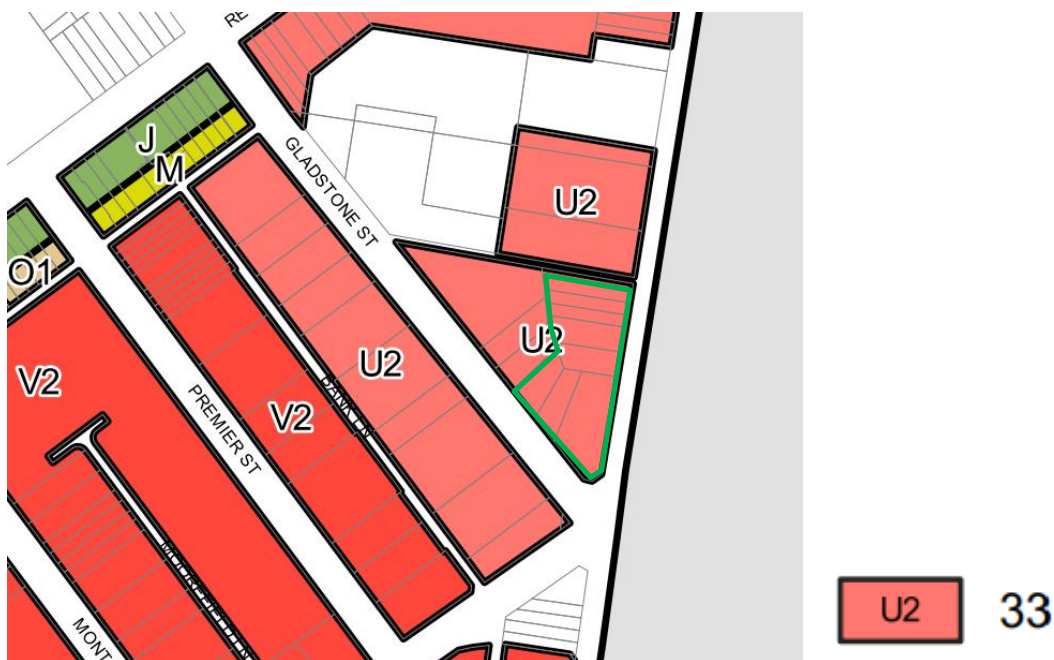


Figure 1: Extract of Height of Building Map, subject site outlined in green. (Source: NSW Legislation)

The numerical value of the development standard applicable in this instance is 33 metres.

The development standard to be varied is not excluded from the operation of clause 4.6 of the LEP.

3. EXTENT OF VARIATION

Pursuant to Clause 4.3(2) of the GRLEP 2021, the maximum height for development on the subject site is 33m. The proposed building has a maximum height of 37.544m from existing ground level to the highest point being the top of the architectural roof feature at the Gladstone Street and Princes Highway corner. This equates to a 4.544m (13.8%) variation to the current numerical height standard. The variation to the standard relates to services, roof elements including parts of the roof slab and structures on the roof including the roof plant, awnings, architectural roof feature and lift overruns which facilitate equitable access to the rooftop communal open space. No residential floor space is proposed above the Building Height Development Standard.

The extent of height variation is summarised as follows:

- Block A:
 - 1.145m to the top of the edge of architectural roof feature.
 - 0.905m to the top of the roof plant area.
 - 3.436m to the top of the lift overrun.
 - 1.969m to the top of the lift overrun awning.
 - 2.956 to the top of the stairs.
- Block B:
 - 2.299m to the top of the corner architectural roof feature.
 - 1.417m to the top of the planter.
 - 4.544m to the top of the stairs.
 - 3.814m to the top of the lift overrun.
 - 3.168m to the top of the lift overrun awning.

The parts of the building above the 33m maximum building height are illustrated in the building height plane diagram in Figure 2 and Figure 3.

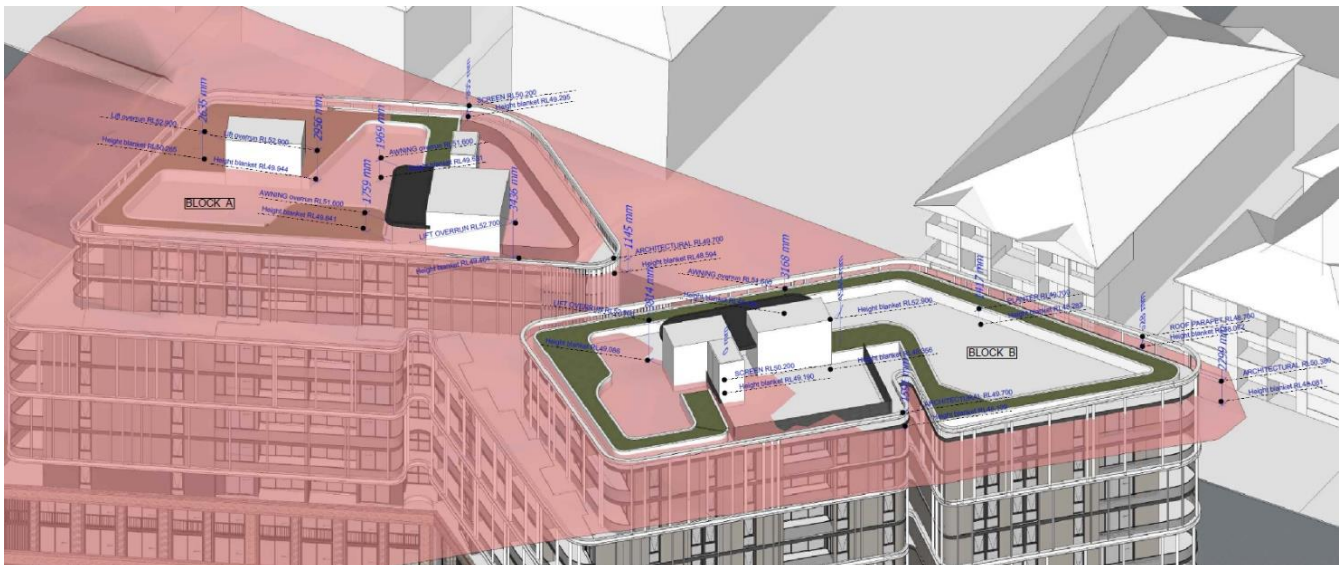


Figure 2: Building Height Plane diagram (Source: PBD Architects)

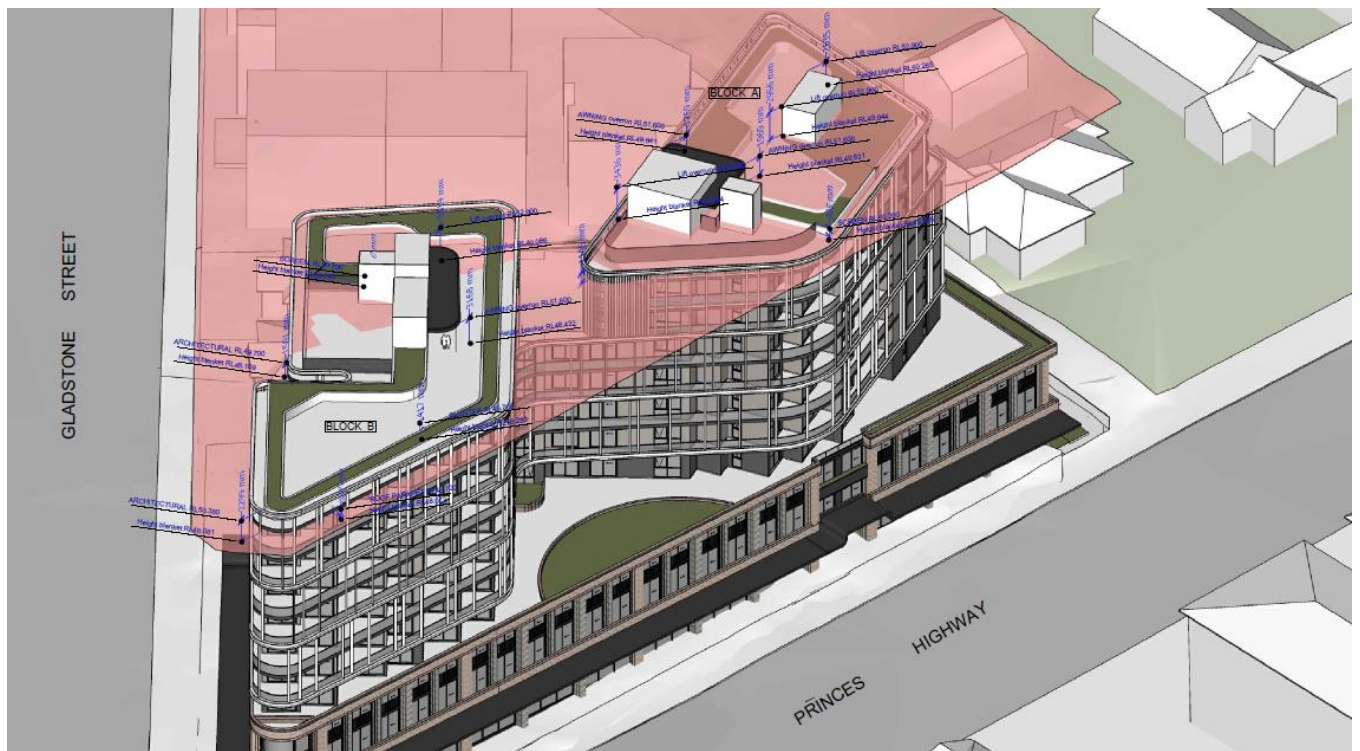


Figure 3: Building Height Plane Diagram (Source: PBD)

No habitable floor space is proposed to be located above the maximum building height. As demonstrated Figure 4, the habitable floor space for the upper level is located entirely below the maximum 33m height plane.

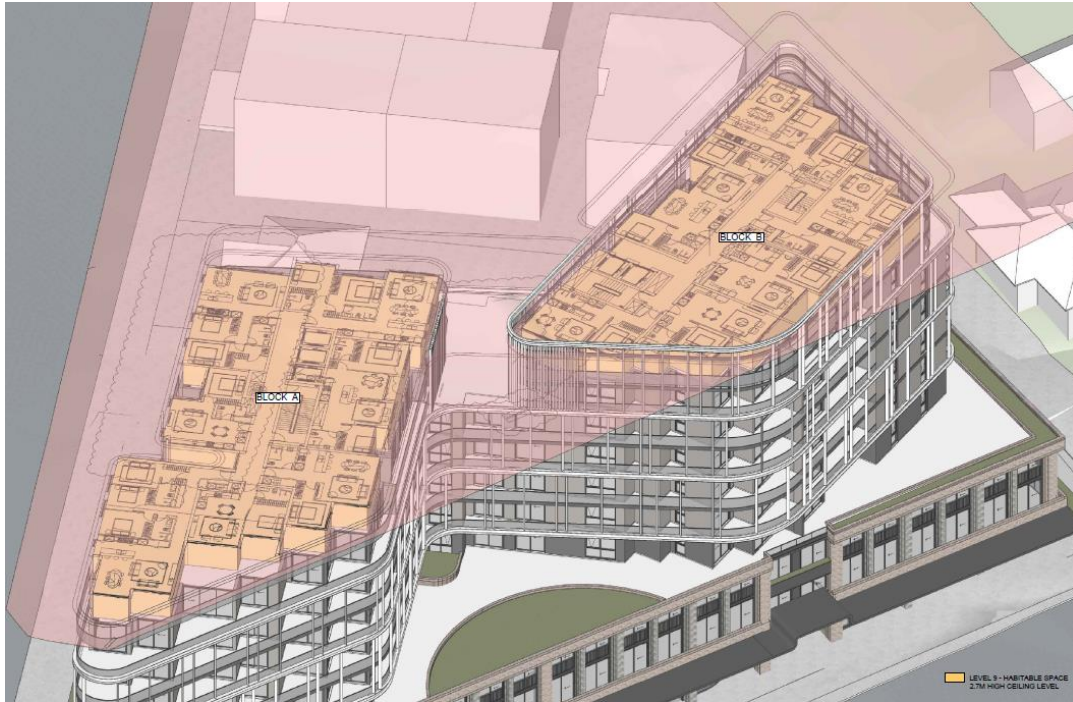


Figure 4: Habitable Space Diagram (Source: PBD)

The location of the habitable floor space, below the maximum building height, is also demonstrated on the following section extract, with the maximum building height shown by the dashed red line.

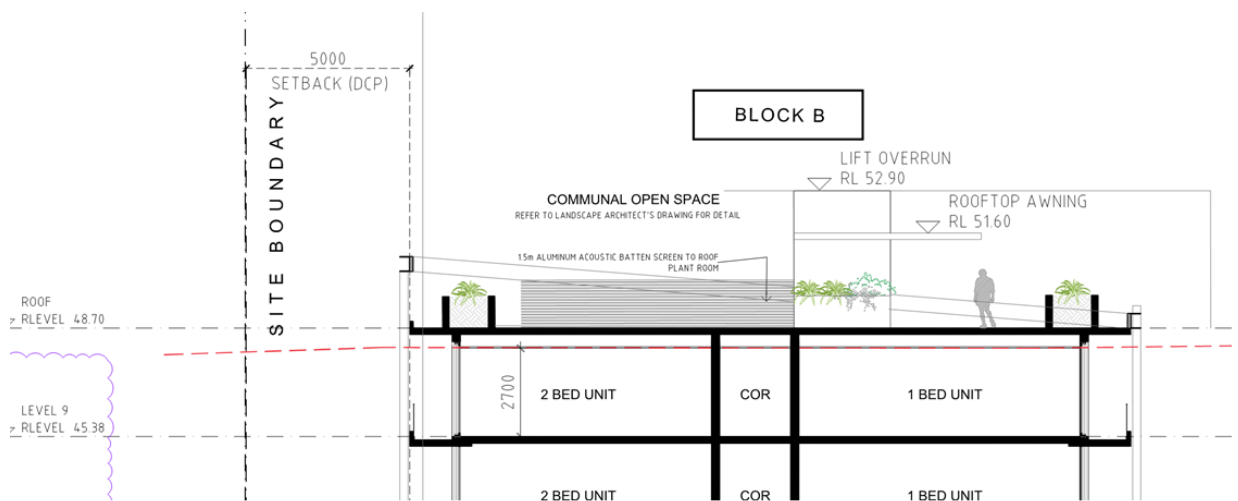


Figure 5: Extract of Section A (Source: PBD)

4. UNREASONABLE OR UNNECESSARY

In this section it is demonstrated why compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by clause 4.6(3)(a) of the LEP.

The Court has held that there are at least five different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. See *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

The five ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard; (First Test)
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary; (Second Test)
3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable; (Third Test)
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 the standard is unreasonable and unnecessary; (Fourth Test) and
5. The zoning of the land is unreasonable or inappropriate. (Fifth Test)

It is sufficient to demonstrate only one of these ways to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

Nonetheless, we have considered each of the ways as follows.

4.1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The following table considers whether the objectives of the development standard are achieved notwithstanding the proposed variation (First test under Wehbe).

Table 1 Consistency with Objectives of Clause 4.3 of HLEP.

OBJECTIVE	DISCUSSION
4.3 Height of buildings	
(1) The objectives of this clause are as follows—	
(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character	<p>The existing character of the locality is a mix of low density, single storey residential dwellings and medium density residential flat buildings ranging from three to four storeys in height. However, the existing character has started to transition as a result of the LEP and DCP controls for Kogarah North which permit high density residential development with heights up to 12 storeys. Nearby developments that have been constructed in response to the current controls for the precinct include:</p> <ul style="list-style-type: none">• 12 storey mixed use building at 79-87 Princes Highway, Kogarah which is located 100m south of the subject site.

OBJECTIVE	DISCUSSION
of the locality,	<ul style="list-style-type: none"> • 7 storey shop top housing developments along Kensington Street which are located approximately 100m south east of the site. • 10 storey residential flat building at 21-25 Princes Highway, Kogarah located 200m north of the site. • 11 storey residential flat building at 12-24 Stanley Street, Kogarah which is located 250m north of the site. <p>Similar scale developments have been approved along Regent Street and are currently being constructed or are nearing completion. These examples of nearby development demonstrate that although the existing character of the locality contains low to medium density residential development, the transition to higher density development has commenced which is altering the existing character. The developments identified above range from 7 to 12 storeys in height and are consistent with the bulk and scale proposed under this application, notwithstanding the proposed height variation.</p> <p>The desired future character of the area is envisaged through the relevant planning controls. "Compatibility" as established in <i>Project Venture Developments Pty Ltd v Pittwater Council</i> [2005] NSWLEC191 at 22-31, does not mean "sameness" but rather "capable of existing together in harmony." Further, with reference to <i>(Woollahra Municipal Council v SJD DB2 Pty Ltd</i> [2020] NSWLEC 115 p63). In that decision, Preston CJ commented that the desired future character of the neighbourhood or area exists before and informs the establishment of the maximum height and FSR for buildings, and the height and scale of developments, in the neighbourhood or area. This necessarily means that the desired future character of the neighbourhood or area can be evaluated by reference to matters other than only the provisions of LEP establishing the zoning, the permitted and prohibited development, and the development standards for permitted development in the zone.</p> <p>The site is located within the Kogarah North Precinct, the controls for which are outlined in the GRLEP and GRDCP. Pursuant to the GRDCP the vision for the Kogarah North Precinct is:</p> <p><i>Kogarah North offers high density living within an excellent public domain. Kogarah North will consist of residential and community uses in the form of apartment buildings that will deliver a diversity of heights but will maintain a human scale built form at street level creating a balance between increased housing opportunities, public and private amenity and an active and safe pedestrian environment. The built form will be complemented by generous public domain with a strong landscape character to create a verdant, attractive and high quality landscape for the amenity of residents, neighbours and visitors to Kogarah North.</i></p> <p><i>A variety of apartments help to build a community made up of many kinds of households. Importantly, this enables people to pass through life's different stages while remaining within the neighbourhood. The convenience of having work, services, entertainment and the station nearby means people rarely need a car to meet their daily needs, or to access the rest of Sydney.</i></p> <p><i>The area's leafy streets, beautiful public and hidden parks, community facilities and visible heritage features make for an attractive, people-friendly environment. There are many pleasant places to stop</i></p>

OBJECTIVE	DISCUSSION
	<p><i>awhile and chat to neighbours, providing the setting for a rich and varied community life.</i></p> <p>The portion of the building that exceeds the maximum building height will not increase the height, bulk or scale of the development beyond that envisaged under the LEP and DCP controls. A large portion of the structures located above the building height are positioned away from the building edge including the lift overruns, plant area, awning and planters. This reduces the visibility of these structures from the public domain. The part of the height breach that is more clearly visible from the public domain is the architectural roof feature that is located around the edge of the rooftop communal open space and increases in height at the corner of Princes Highway and Gladstone Street. It is noted that Clause 5.6 'Architectural Roof Features' has not been adopted under the GRLEP 2021. This structure is not solid but rather acts as a frame which accentuates the corner of the building and creates a continuous design element on the tower form. This part of the height breach has a positive visual impact by accentuating the corner of the site which is identified as a major corner in the GRDCP. Further, the architectural feature at the roof level will create visual interest and façade articulation to break the visual form of the building. Section 9 in Part 10 of the DCP includes the following control for the Kogarah North Precinct:</p> <p><i>'7. Street corners must be addressed by giving visual prominence to parts of the building façade, such as a change in building articulation, materials, colour, roof form or height.'</i></p> <p>Further, Section 13 of Part 10 of the DCP identifies the following control which specifically relate to roofs:</p> <p><i>'12. Design large projections, shade structures and pavilions to enhance the appearance of flat roofed buildings.'</i></p> <p>The proposed architectural roof feature around the roof edge which increases at the corner of the site addresses both of the DCP controls identified above. Specifically, the structure will enhance the street corner at a major corner in the Kogarah North Precinct and also enhance the appearance of the proposed flat roof. Therefore, the proposed breach assists in achieving compliance with these DCP controls.</p> <p>The proposed height breach is further accentuated at the Gladstone Street and Princes Highway corner due to the gradual slope of the site down from north to south. This can be seen in Figure 6 below which demonstrates that the height breach increases towards the south of the site.</p>

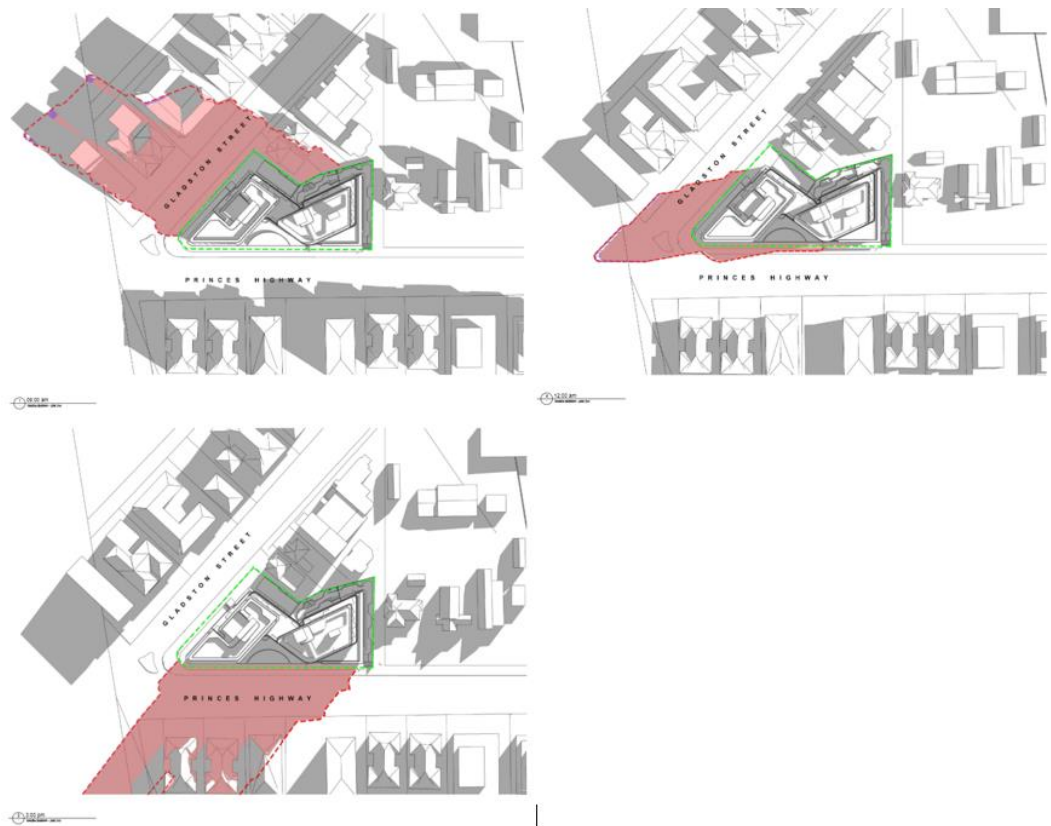


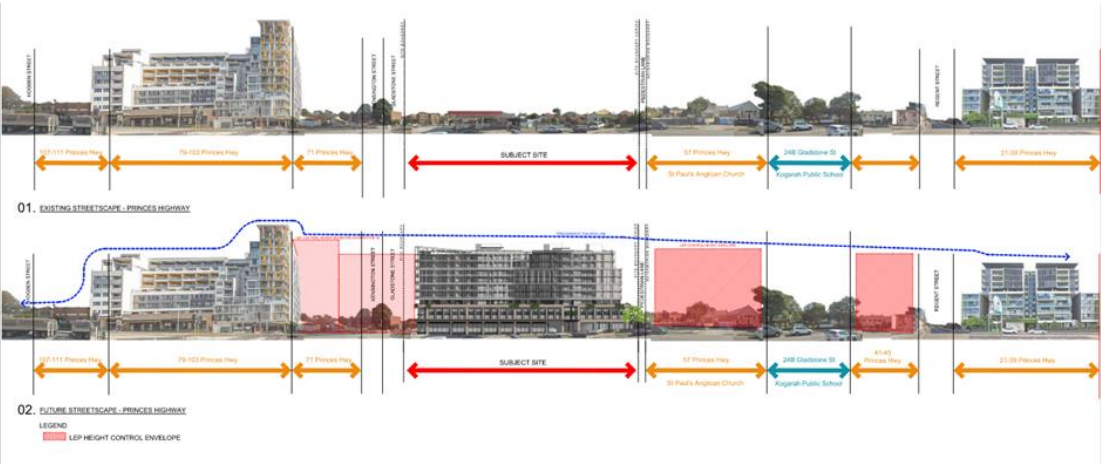
Figure 7: Shadow Diagrams 9am, midday and 3pm midwinter (Source: PBD)


As discussed, the structures above the building height (towards the building edge) have been designed to allow sunlight to pass through and therefore minimise overshadowing impacts on adjoining sites and the public domain. The roof structures including the lift overruns and stairs have been centrally located to minimise potential shadow impacts. Overall, all surrounding sites will receive at least 3 hours solar access in mid-winter between 9am and 3pm, notwithstanding the proposed height variation.

Visual Impact

As discussed, a large portion of the structures located above the building height are positioned away from the building edge including the lift overruns, plant area, awning and planters. This reduces the visibility of these structures from the public domain. The part of the height breach that is more clearly visible from the public domain is the architectural roof feature that is located around the edge of the rooftop communal open space and increases in height at the corner of Princes Highway and Gladstone Street. This part of the height breach is considered to have a positive visual impact by accentuating the corner of the site which is identified as a major corner in the GRDCP. Further, the architectural feature at the roof level will create visual interest and façade articulation to break the massing of the building. The proposed landscaping at the roof level will further minimise any potential visual impacts of the height breach from adjoining properties by screening parts of the roof structure.

OBJECTIVE	DISCUSSION
	<p>Views</p> <p>The elements of the building which vary the height limit will have little to no impact on the views from the adjoining buildings. The structures which vary the height standard are generally situated in the center of the proposed building and the structure around the building edge is not solid so views can be seen through it. At best, the structures above the building height may obstruct views of the skyline or other high-rise development nearby including the 12 storey mixed use building at 79-87 Princes Highway, Kogarah which is located 100m south of the subject site. As well as the 7 storey shop top housing developments along Kensington Street which are located approximately 100m south east of the site.</p> <p>The proposal has been designed to with consideration of views to the adjoining St Paul's Anglican Church heritage item. The proposed curved design and increased upper level setback towards the north of the site assists in maintaining the view corridor to the Church and Hall from points along Princes Highway.</p> <p>Privacy</p> <p>The proposed height variation relates to structures on the roof which are associated with the communal open space. This space has been designed to be setback from the building edge through the inclusion of planters around the perimeter of the communal open space. These planters will contain a range of trees, shrubs and accent plants that will assist in screening the communal space from nearby properties.</p> <p>The proposed design and landscape scheme will ensure overlooking from the roof level is minimised, while also improving privacy for the future residents of the site. No habitable floor space is located above the maximum building height.</p> <p>Summary</p> <p>In <i>Ricola Pty Ltd v Woollahra Municipal Council</i> [2021] NSWLEC 1047, it is noted that the Clause 4.6 Request relevant to the case provided no means by which an actual and measurable impact is minimised by the proposed development. <i>"To demonstrate that the objectives are met notwithstanding the non-compliance, the request needs to put forward the means by which the proposed development will "minimise impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion"</i>. This objective is similar to that discussed in <i>Ricola Pty Ltd v Woollahra Municipal Council</i> and as demonstrated above design measures have been implemented which clearly minimise potential impacts of the new development. To summarise, the steps taken to minimise potential impacts as a result of the proposed building include:</p> <ul style="list-style-type: none"> - The structures exceeding the building height have been setback from the building edge where possible to minimise overshadowing, visual and view impacts. Further, the proposed light weight frame-like structure around the edge of the building has been designed to allow sunlight to pass through rather than a solid structure at the building edge. <p>The communal open space on the roof and associated landscaping has been positioned to minimise potential privacy impacts.</p>
(c) to ensure an appropriate height transition between new	<p>The site is immediately surrounded by Gladstone Street, Princes Highway and to the north is residential dwellings and across the pedestrian walkway to the north of the site is St Paul's Anglican Church and hall which is a local heritage item under the GRLEP 2021. It is important to note that this part of the Kogarah North Precinct is undergoing a significant and gradual transition from lower density dwellings to</p>

OBJECTIVE	DISCUSSION
<p>buildings and—</p> <p>(i) adjoining land uses, or</p> <p>(ii) heritage items, heritage conservation areas or Aboriginal places of heritage significance.</p>	<p>high density residential uses in line with the zoning and building controls under the GRLEP 2021. Therefore, consideration has been given to the future development of adjoining sites and how the proposal will relate to the future buildings. A Streetscape Analysis has been undertaken by PBD Architects and an extract is provided in the figure below.</p>  <p>The extract above shows the existing streetscape (top) and future streetscape (bottom) along Princes Highway. The red boxes indicate height compliant future redevelopment on nearby sites. The analysis shows that the proposal and any variation will sit comfortably in the future streetscape of Princes Highway transitioning from low density one to four storey developments to high density buildings up to 12 storeys high. A streetscape analysis has also been undertaken for Gladstone Street which reaches the same conclusion.</p> <p>The proposed building height variation maintains an appropriate transition between the site and future buildings on adjoining properties. The proposed breach relates predominately to structures on the roof, many of which are setback from the building edge. Therefore, the bulk of the building is located below the maximum building height and consistent with the number of storeys anticipated on the site and adjacent sites. As the proposed structures above the maximum building height are minor, they still ensure there is an appropriate height transition between new buildings and adjoining land uses including future land uses.</p> <p>In relation to the adjacent heritage item to the north, the proposal has been designed to protect and preserve the heritage significance of St Paul's Anglican Church. This is achieved through the proposed curved design which maintains a view corridor to the Church and Hall from Princes Highway. Further, the proposed stepping of the building away from the north boundary creates a transition between the heritage item and the site. It is noted that the height variation towards the north of the site (adjacent to the heritage item) is limited as the site then slopes away towards the south. This minimises potential impacts on the heritage item as a result of the height breach. The figure below demonstrates that the extent of the height breach towards the north boundary (adjacent to the heritage item) only relates to the</p>

OBJECTIVE	DISCUSSION
	<p>lift overrun which is setback 5.5m from the northern building edge.</p>  <p>The diagram shows the East Elevation of Block A. A red-shaded area at the top of the building indicates the lift overrun, which is setback 5.5m from the northern building edge. A horizontal dashed line marks the 5.5m height limit. The building has multiple floors with large windows and balconies. The ground level shows a sidewalk, trees, and a lane. The drawing is labeled with 'BLOCK A', 'TOF OF LIFT', '5.5m HEIGHT LIMIT', 'SITE BOUNDARY VARIATION', and 'NEIGHBORING BOUNDARY'.</p> <p><i>Figure 8: East Elevation, structures above height limit shaded red (Source: PBD)</i></p>

As demonstrated in Table 1 above, the objectives of the Height of building development standard are achieved notwithstanding the proposed variation.

In accordance with the decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra*

Municipal Council [2018] NSWLEC 118, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245 and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], therefore, compliance with the Height of building development standard is demonstrated to be unreasonable or unnecessary and the requirements of clause 4.6(3)(a) have been met on this way alone.

For the sake of completeness, the other recognised ways are considered as follows.

4.2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;

The underlying objective or purpose is relevant to the development and therefore is not relied upon.

4.3. The objective would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;

The objective would not be defeated or thwarted if compliance was required. This reason is not relied upon.

4.4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary;

The standard has not been abandoned by Council actions in this case and so this reason is not relied upon.

4.5. The zoning of the land is unreasonable or inappropriate.

The zoning of the land is reasonable and appropriate and is therefore not relied upon.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site.

As discussed in Section 3, the elements of the development which contravene the Height of Building development standard relate to structures on the roof including the architectural roof feature, roof plant area, lift overrun, stairs and associated awning and planters and communal open space.

The environmental planning grounds to justify the departure of the Height of Building standard are as follows:

- The height variation will provide quality, safe and equitable access to the rooftop communal open space for all

residents of the development. The communal area is located above ground level which is considered suitable in the context of the area which is zoned for high density residential development. The provision of communal open space that achieves high levels of amenity and is accessible to all residents of the building is a better planning outcome that is compliance were to be achieved and the communal area be deleted or removed. The structures on the roof associated with the communal open space including the awnings and planters will improve amenity for residents while also minimising visual and acoustic impacts on adjoining sites by setting back the communal space from the building edge and incorporating landscape screening.

- The proposed roof plant areas are setback greater than 2m from the building edge to minimise any visual impacts associated with the structures. The plant area will be screened by a 1.5m high aluminium batten screen to meet the relevant acoustic requirements and further minimise potential visual impacts. Similarly, the proposed stairs and lift overruns have been located centrally on the roof and do not contribute to distinguishable bulk or scale of the building.
- Part of the variation in the southern part of the site occurs as a result of the slope of the land down from north to south. The existing levels drop by around 300mm in the southern corner of the site (Princes Hwy and Gladstone St corner) and this slight variation change in this location contributes to the height breach in the corner.
- As discussed in Section 4.1, the structures above the building height (towards the building edge) have been designed to allow sunlight to pass through and therefore minimise overshadowing impacts on adjoining sites and the public domain. Overall, all surrounding sites will receive at least 3 hours solar access in mid-winter between 9am and 3pm, notwithstanding the proposed height variation.
- No habitable floor space is proposed to be located above the maximum building height. As demonstrated in the figure below, the habitable floor space for the upper level is located entirely below the maximum 33m height plane.

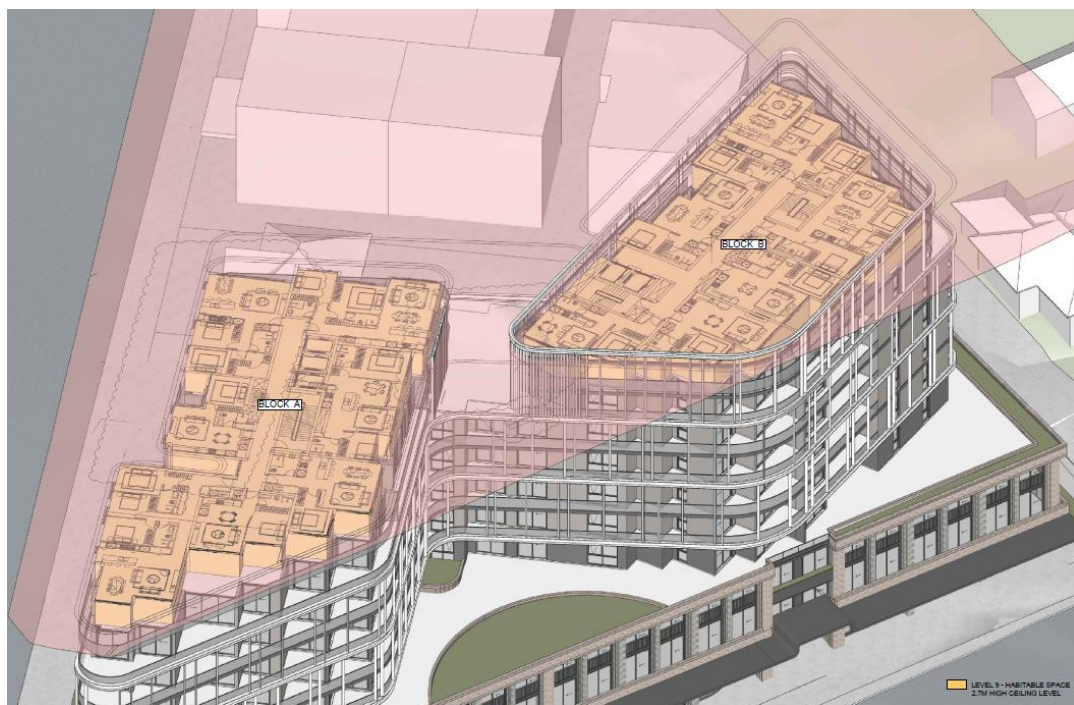


Figure 9: Habitable Space Diagram (Source: PBD)

The location of the habitable floor space, below the maximum building height, is also demonstrated on the following section extract, with the maximum building height shown by the dashed red line.

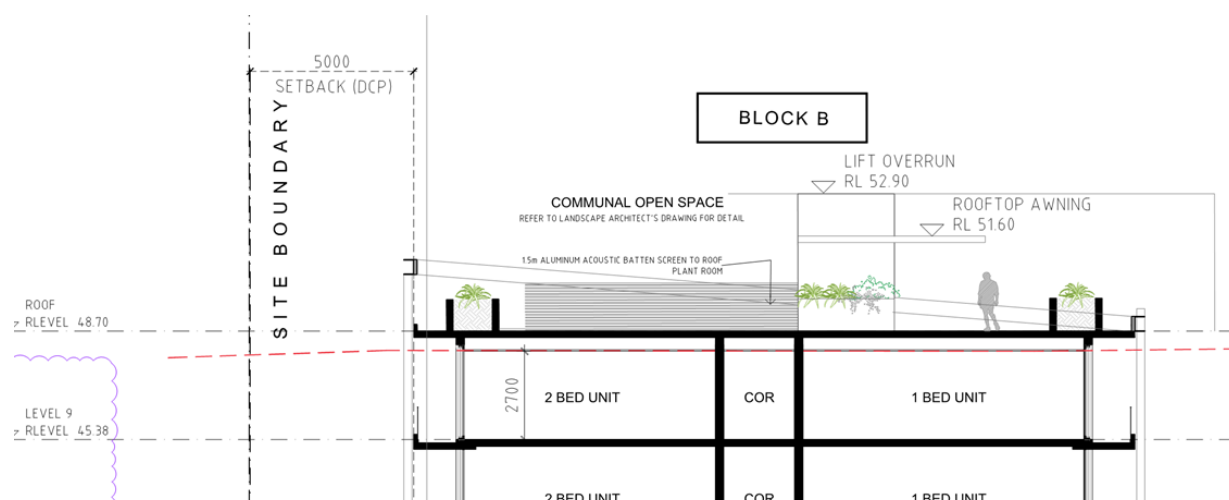


Figure 10: Extract of Section A (Source: PBD)

- There are no adverse environmental impacts as a result of the proposed height breach.

Further to the above, multiple applications to vary the height standard for other developments in the vicinity of the site for breaches of a similar nature have been approved. Whilst these DAs have been assessed on their own merits, various examples are as follows:

1. 80 Regent Street, Kogarah (DA2018/0368) – the application breached the 33m height standard by 4.228m (12.78%) and related to a residential flat building. The justification for the variation in height was that it relates generally to the lift overrun and stairs providing access to the communal open space on the roof top. The height exceedance does not cause any additional overshadowing, visual impact or loss of privacy on adjoining properties and open space areas. This application related to a site with the same zoning and maximum height limit to the subject application.
2. 7-11 Derby Street, Kogarah (DA2018/0137) – This application related to a mixed use building that varied the maximum building height by 6%. The justification for this variation was that the height non-compliance relates to communal open space on the roof level and the lift overruns.
3. 58-68 Regent Street, Kogarah (DA2020/0022) – This application was for a residential flat building which varied the maximum building height by 5.46m (16.5%). The justification for this variation was that it related to the lift overrun and roof top communal open space.
4. 44-52 Regent Street, Kogarah (DA2020/0132) – This application was for a residential flat building in the R4 zone that exceeded the maximum building height by 8.78%. The justification for the proposed variation was that it related to the lift overrun and fire stairs associated with the roof top communal open space.

The above DAs are mapped in the figure below in relation to the subject site.

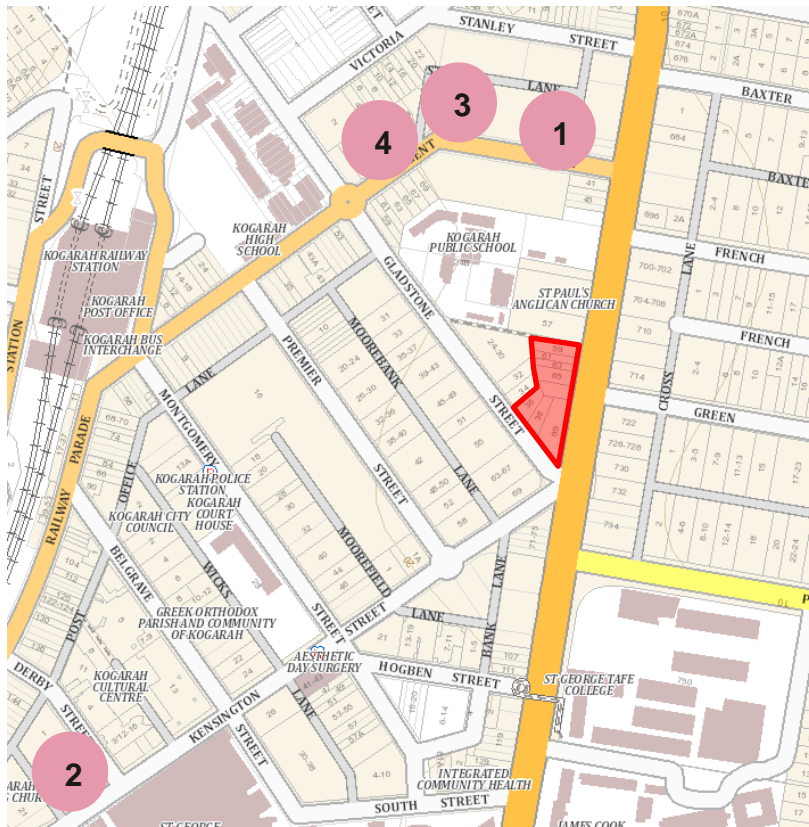


Figure 11: Mapped 4.6 Requests (Source: Six maps)

The approved DAs above demonstrate that similar height breaches have been approved within Kogarah containing similar justification to that proposed under this application, thereby providing consistency in planning approach to the built form in the locality.

6. PUBLIC INTEREST

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. This is required by clause 4.6(4)(a)(ii) of the LEP.

In section 4 it was demonstrated that the proposed development overall achieves the objectives of the development standard notwithstanding the variation of the development standard (see comments under "public interest" in Table 1).

The table below considers whether the proposal is also consistent with the objectives of the zone.

Table 2: Consistency with R4 High Density Residential Zone Objectives

OBJECTIVES OF R4 ZONE	DISCUSSION
To provide for the housing needs of the community within a high density residential environment.	The proposed mixed use development will contribute towards the housing needs of the community by providing a building scale that is consistent with the high-density zoned residential area. Specifically, the proposal will result in 106 residential units on the site to meet the demand for housing in the transforming Kogarah North Precinct.
To provide a variety of housing types within a high density residential environment.	This application seeks consent for 106 residential apartments including: <ul style="list-style-type: none"> - 52 x 1 bedroom apartments, - 37 x 2 bedroom apartments; and - 17 x 3 bedroom apartments. The proposed apartment mix will provide a variety of dwelling types in the locality to meet the needs of different groups.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal includes a shop and neighbourhood shop on the ground floor of the building. These land uses will meet the day to day need of residents by providing retail and food and drink premises in close proximity to local residents.
To enable other land uses that contribute to the vibrancy of the neighbourhood while ensuring that business centres remain the focus for business and retail activity.	The site is not located in a business centre. Notwithstanding the proposed mix of uses including the ground floor neighbourhood shops, residential apartments and serviced apartments will activate the site by encouraging pedestrian activity. The serviced apartments and residential apartments will also assist in activating the site at all times of day. The proposal seeks to enhance and activate the sites street frontages as well as providing a widened footpath to improve the public domain.
To encourage development that maximises public transport patronage and promotes walking and cycling.	The site is highly accessible by public transport being located in close proximity to train and bus services. Further

OBJECTIVES OF R4 ZONE	DISCUSSION
	the proposed improvements to the footpath and provision of bicycle spaces on site will encourage active transport options for residents, staff and visitors.

As demonstrated in Table 2, the proposal is consistent with the objectives of the zone and in Section 4 it was demonstrated that the proposal is consistent with the objectives of the development standard. According to clause 4.6(4)(a)(ii), therefore, the proposal is in the public interest.

7. STATE OR REGIONAL ENVIRONMENTAL PLANNING

This section considers whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters required to be taken into consideration by the Secretary before granting concurrence required by clause 4.6(5).

There is no identified outcome which would be prejudicial to planning matters of state or regional significance that would result as a consequence of varying the development standard as proposed by this application.

As demonstrated already, the proposal is consistent with the objectives of the zone and the objectives of the development standard and in our opinion, there are no additional matters which would indicate there is any public benefit of maintaining the development standard in the circumstances of this application.

Finally, we are not aware of any other matters required to be taken into consideration by the Secretary before granting concurrence.

8. CONCLUSION

This submission requests a variation, under clause 4.6 of the *Georges River Local Environmental Plan 2021*, to the Height of building development standard and demonstrates that:

- Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- The development achieves the objectives of the development standard and is consistent with the objectives of the name zone.
- There are sufficient environmental planning grounds to justify the contravention;

The consent authority can be satisfied to the above and that the development achieves the objectives of the development standard and is consistent with the objectives of R4 High Density Residential Zone notwithstanding non-compliance with the name standard and is therefore in the public interest.

The concurrence of the Secretary can be assumed in accordance with Planning Circular PS 18-003.

On this basis, therefore, it is appropriate to exercise the flexibility provided by clause 4.6 in the circumstances of this application.