

Clause 4.6 Variation Request

Clause 6.16 Maximum Building Height

Compass Centre – 83-99 North Terrace, Bankstown

Submitted to the City of Canterbury-Bankstown Council
on behalf of Barings Real Estate Australia



Prepared by Ethos Urban, a Colliers Company.

10 November 2025 | 2220681



'Gura Bulga'

Liz Belanjee Cameron

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



'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



'Gadalung Djarri'



Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

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

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

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

Contact:	Yvette Carr Director	Yvette.carr@colliers.com	
This document has been prepared by:	This document has been reviewed by:		
			
Ben Porges	10 November 2025	Costa Dimitriadis and Daniel Howard 10 November 2025	
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Contents

1.0	Introduction	4
1.1	Overview.....	4
2.0	Site and Proposed Development	6
2.1	Site Description	6
2.2	Description of the Proposed Development	6
3.0	Development Standard to be Varied	8
4.0	Justification for Contravention of the Development Standard	10
4.1	Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances.....	10
4.2	Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard.....	15
5.0	Conclusion	21

Figures

Figure 1	Site aerial.....	6
Figure 2	Sections showing elements exceeding the height limit i.e. plant, lift lobby/overrun and parapet.....	9
Figure 3	Height plane diagram identifying elements exceeding the maximum building height.....	9
Figure 4	East Elevation showing materials and finishes.....	12
Figure 5	Consistent materiality of Building B rooftop.....	13
Figure 6	Consistent materiality of Building C rooftop.....	13
Figure 7	Photomontage of Building C as viewed from Paul Keating Park to the north	16
Figure 8	Photomontage of Building B as viewed from Bankstown railway station to the south west	16
Figure 9	Height envisaged for the site under the Bankstown City Centre Master Plan.....	17
Figure 10	Shadow diagrams.....	18

Tables

Table 1	Legal description of the site.....	6
Table 2	Planning instrument, development standard and proposed variation.....	8
Table 3	Design excellence assessment	11
Table 4	Assessment of consistency of the proposed development with the Objects of the EP&A Act	19

Appendices

Appendix	Author
A. Aviation Assessment	Rehbein Airport Consulting

1.0 Introduction

1.1 Overview

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of Barings Real Estate Australia (Barings). It is submitted to Canterbury-Bankstown Council (Council) in support of a development application (DA) for the redevelopment of the Compass Centre at 83-99 North Terrace (the site).

Clause 4.6 of the Canterbury-Bankstown Local Environmental Plan 2023 (Canterbury-Bankstown LEP 2023) enables the consent authority to grant consent for development even though the development contravenes a development standard. This Clause 4.6 Variation Request relates to the maximum building height development standard under Clause 6.16(3)(a) of the Canterbury-Bankstown LEP 2023 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban dated 11 October 2024 and the Request for Information Response Letter prepared by Ethos Urban dated 19 June 2025.

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

This document demonstrates that compliance with the building height development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation).

Savings provisions apply to the proposed DA pursuant to clause 1.8A of the Canterbury-Bankstown LEP 2023, as the DA was lodged prior to the commencement of State Environmental Planning Policy Amendment (Bankstown Transport Oriented Development Precinct) 2024. As such, the maximum building height control is included in clause 6.16(3)(a) of the applicable version of the Canterbury-Bankstown LEP 2023, being the version that applied prior to the commencement of State Environmental Planning Policy Amendment (Bankstown Transport Oriented Development Precinct) 2024. The applicable maximum building height is 83m. The proposed development includes a maximum building height ranging from 83.12 (0.1% variation) to 85.85m (3.4% variation), which equates to RL 107.95 and therefore is consistent with the height of RL 108m envisaged for the site in the Bankstown City Centre Master Plan. It is noted that the proposal is consistent with the 83m height limit across much of the proposed development, with many of the exceeding elements to the height limit being caused by slope changes across the site that result in the proposal exceeding 83m in parts of the site.

This clause 4.6 variation request demonstrates that notwithstanding the non-compliance with the building height development standard, the proposed development:

- Achieves the objective of Clause 6.16 of the Canterbury Bankstown LEP 2023 as the exceedance to the site's mapped building height is within the maximum building height envisaged under the Bankstown City Centre Master Plan and corresponds with the adjacent height of the Bankstown Central development, in turn allowing the towers along each edge of 'The Avenue' character area to act as visual and directional markers to guide visitors into the Bankstown City Centre. Accordingly, the exceedance provides a significantly positive

contribution to the visual and built character values of Bankstown by allowing for consistency in building heights achieved along this key pedestrianised spine, in line with the strategic vision in the Master Plan.

- There are sufficient environmental planning grounds to justify the contravention, as:
 - The proposed additional height of 0.12m (0.1% variation) to 2.85m (3.4% variation) only relates to the plant, lift overrun, lift lobby and parapet, none of which are habitable spaces, are required to service the building, and cause negligible visual impact.
 - To accord with the maximum building height would require the uppermost residential level to be removed to accommodate the plant, lift overrun, lift lobby and parapet within the 83m height limit, and would result in a reduction in housing in close proximity to public transport, contrary to the strategic need for additional well-located housing in line with the National Housing Accord and the recent Transport Oriented Development rezoning of Bankstown.
 - The additional height is not substantially noticeable and does not obstruct and key views compared to a compliant scheme.
 - The proposed additional height aligns with the vision for the maximum building height set for the site in Council's endorsed Bankstown City Centre Master Plan for a height of RL 108m in line with PANS-OPS, as the proposal reaches a maximum building height of RL 107.95m.
 - The proposed additional height results in negligible additional adverse overshadowing impacts, as the additional shadow is only cast over the railway station, streets and commercial uses to the south of the railway line, with no additional overshadowing caused to residential uses or public open space by this additional height.
 - The proposed additional height is below the PANS-OPS as it relates to the site, as confirmed in the Aviation Assessment prepared by Rehbein Airport Consulting included at **Appendix A**.
 - The additional building height allows for the achievement of a consistent building height along the western and eastern edge of The Appian Way, which is envisaged to form 'The Avenue' character area, and accentuates the importance of 'The Avenue', being Bankstown City Centre's key pedestrian spine with activated retail and connectivity from Bankstown Sports Club in the south through to Western Sydney University (WSU) Bankstown Campus in the north.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Canterbury-Bankstown 2023.

2.0 Site and Proposed Development

2.1 Site Description

The site is located at 83-99 North Terrace, Bankstown within the City of Canterbury Bankstown local government area (LGA). It is located to the north of Bankstown railway station, to the south of Paul Keating Park and forms part of the street block bounded by The Mall (north), The Appian Way (east), North Terrace (south), and Fetherstone Street (west), however does not comprise a street frontage to The Mall, given that its northern boundary interfaces with the former Bankstown City Library site and Phil Engisch Reserve.

The site is irregular in shape and has a site area of 8,175.4m². It comprises 13 allotments which are legally described in **Table 1**. An aerial photograph of the site is provided in **Figure 1**.

Table 1 Legal description of the site

Address	Lot and DP
99 North Terrace, Bankstown	Lot 15-17, 21-24, 27 DP 5541
	Lot 1, DP 507818
	Lot 1, DP 207810
85 North Terrace, Bankstown	Lot 18B, DP 412699
83 North Terrace, Bankstown	Lot 19-20, DP 5541



Figure 1 Site aerial

Source: Nearmap, Ethos Urban

2.2 Description of the Proposed Development

This DA seeks approval for the following development:

- Site preparation and early works, including demolition of all existing structures, bulk excavation, remediation and tree removal;
- Construction and use of mixed-use development comprising a five (5) storey mixed use podium, with three (3) towers above which are between 19-24 storeys. More specifically, the proposed development comprises:
 - a 19-storey hotel tower in the south-west corner of the site;
 - a 24-storey residential tower in the south-east corner of the site;
 - a 24-storey residential tower in the north-east corner of the site;
 - ground floor retail activating the ground plane;
 - a gym at the southeastern corner of levels 1 and 2;

- a medium sized supermarket at the west of level 1;
 - a childcare use at the north-east corner of the podium rooftop;
 - provision of common residential amenity spaces at level 5;
 - ancillary uses associated with the hotel in the hotel tower’s podium rooftop;
 - medical centre uses in the southeast tower’s podium rooftop; and
 - provision of an internal north-south through site link connecting The Mall to North Terrace, as well as additional internal east-west links from Fetherstone Street and The Appian Way, providing connections to both The Mall and North Terrace.
- Construction of a two (2) level basement car park, as well as the inclusion of car parking on levels 1, 2 and 3 of the podium, which are to be sleeved through façade activation, active uses, landscaping and active mezzanine floors. The proposal includes:
 - a total of 494 car spaces;
 - 185 bicycle spaces; and
 - two (2) HRV, one (1) MRV and one (SRV) loading space;
 - 24 motorcycle spaces.
 - Vehicular access from Fetherstone Street to the west of the site.
 - Inclusion of podium terraces and landscaping throughout the site, including deep soil.
 - Extension and augmentation of services and utilities to the development as required.

3.0 Development Standard to be Varied

A summary of the environmental planning instrument (EPI), development standard and proposed variation is summarised in **Table 2**.

Table 2 *Planning instrument, development standard and proposed variation*

Matter	Comment
Environmental planning instrument (EPI) sought to be varied	Canterbury-Bankstown Local Environmental Plan 2023
The site's land use zone	B4 Mixed Use
Development standard sought to be varied (our emphasis in bold italics)	<p>Savings provisions apply to the DA given that it was lodged prior to the commencement of State Environmental Planning Policy Amendment (Bankstown Transport Oriented Development Precinct) 2024. As such, the maximum building height control is in clause 6.16 of the applicable Canterbury-Bankstown LEP 2023.</p> <p>Clause 6.16 Design excellence at certain land in Bankstown</p> <p>(1) The objective of this clause is to ensure that development exhibits design excellence that contributes to the visual and built character values of Bankstown.</p> <p>(2) This clause applies to the following land in Bankstown—</p> <ul style="list-style-type: none"> (a) Lots 19–20, DP 5541, 83 North Terrace, (b) Lot 18B, DP 412699, 85 North Terrace, (c) Lots 15–17, 21–24 and 27, DP 5541, Lot 1, DP 207810 and Lot 1, DP 507818, 99 North Terrace, (d) Lot 9, DP 777510, 62 The Mall. <p>(3) If the consent authority is satisfied that development on land to which this clause applies exhibits design excellence, a building may be erected with—</p> <ul style="list-style-type: none"> (a) a maximum building height of 83m, and (b) a maximum floor space ratio of 5:1, and (c) the first floor of the building being used for the purposes of residential accommodation. <p>(4) In deciding whether the development exhibits design excellence, the consent authority must consider the following—</p> <ul style="list-style-type: none"> (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved, (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain, (c) how the development addresses the following matters— <ul style="list-style-type: none"> (i) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form, (ii) bulk, massing and modulation of buildings, (iii) street frontage heights, (iv) environmental impacts, including sustainable design, wind and reflectivity, (v) pedestrian, cycle, vehicular and service access, circulation and requirements, (vi) the impact on, and any proposed improvements to, the public domain, (vii) appropriate interfaces at ground level between the development and the public domain, (viii) integration of landscape design, including the configuration and design of communal access and communal recreation areas.
Type of development standard	Numerical development standard
Numeric value of the development standard	83m

Matter

Comment

Difference between standard and proposed numeric values.

The proposed development reaches a maximum building height of 85.85m, exceeding the development standard by up to 2.85m (3.4% variation). The proposed minor variation only includes non-habitable elements including plant, lift overrun, lift lobby and the parapet.

Visual representation of the proposed variation

Refer to **Figure 2** and **Figure 3**.

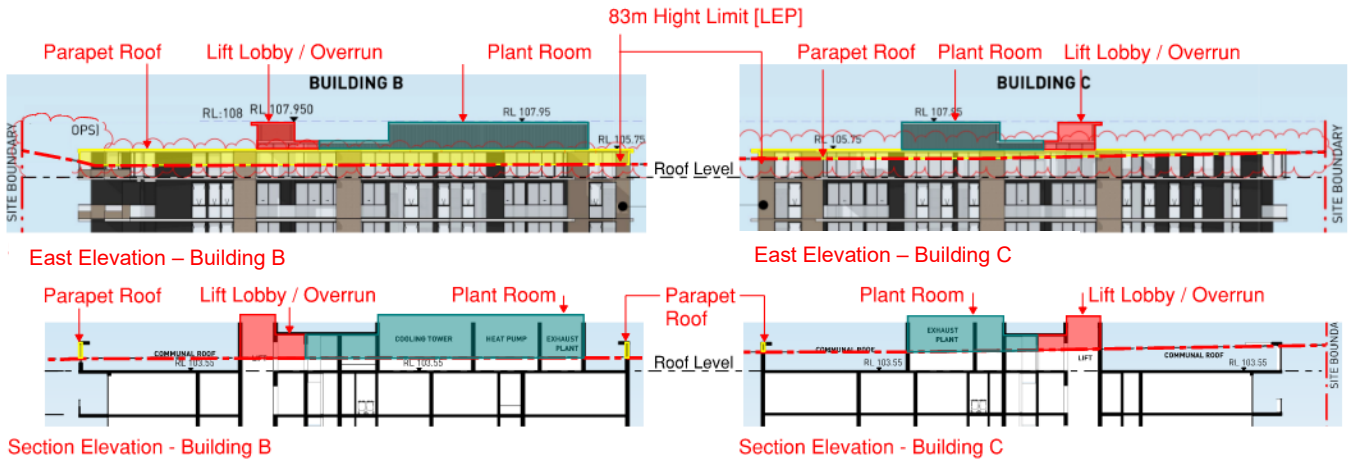


Figure 2 Sections showing elements exceeding the height limit i.e. plant, lift lobby/overrun and parapet

Source: PTW

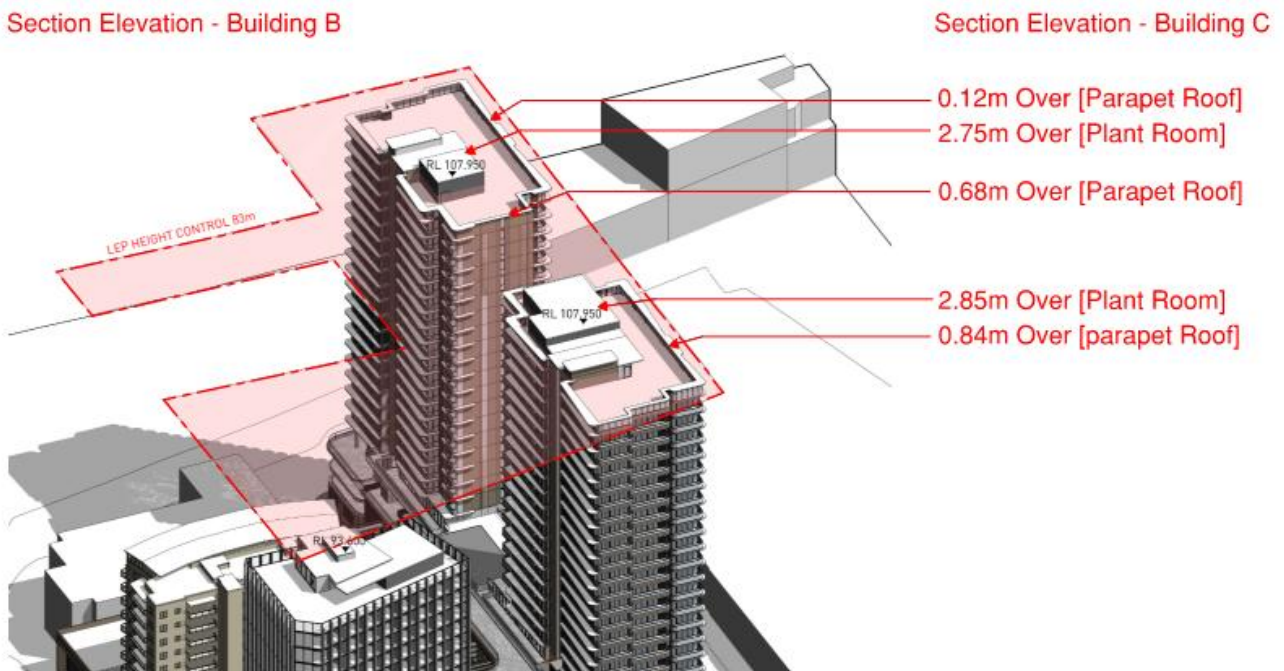


Figure 3 Height plane diagram identifying elements exceeding the maximum building height

Source: PTW

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Canterbury Bankstown LEP provides that:

4.6 Exceptions to development standards

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
 - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

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

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*);
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (*Al Maha*);
5. *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 (*Micaul*);
6. *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46 (*Winten*); and
7. *WZSydney Pty Ltd v Ku-ring-gai Municipal Council* [2023] NSWLEC 1065 (*WZSydney*).

The relevant matters contained in clause 4.6 of the Canterbury Bankstown LEP, with respect to the building height development standard, are each addressed below, including with regard to these decisions.

Role of the consent authority

The role of the consent authority in considering this request for a clause 4.6 variation has been explained by the NSW Court of Appeal in *Initial Action*. This requires the consent authority to be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clauses 4.6(3)(a) and (b).

This document provides the basis for the consent authority to reach this level of satisfaction. The relevant matters required to be demonstrated in accordance with clause 4.6 of the Canterbury-Bankstown LEP 2023 with respect to the height of buildings development standard are each addressed below, including with regard to the above decisions.

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

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

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), it is equally applicable to a written request under clause 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary (*Initial Action* [16]).

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

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).

- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the building height development standard pursuant to the First Method.

4.1.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard

The development standard contained in clause 6.16(3)(a) of the Canterbury Bankstown LEP 2023 includes one objective which seeks:

‘to ensure that development exhibits design excellence that contributes to the visual and built character values of Bankstown’.

This objective is addressed in relation to the proposed variation to the building height development standard in the following subsection.

Additionally, as detailed in **Table 2**, clause 6.16(4) of the Canterbury-Bankstown LEP 2023 includes a number of design excellence requirements that are to be satisfied as part of a development on the site in order to access the maximum building height of 83m. These are addressed in **Table 3** below, demonstrating that the proposal exhibits design excellence in accordance with clause 6.16 of the Canterbury-Bankstown LEP 2023.

In this regard, the proposal has undergone design review by Council's design review panel (DRP) to develop a well-considered development outcome that aligns with the strategic intent for Bankstown City Centre. To this end, following the latest DRP meeting, feedback received noted that the proposal presented to the DRP achieves *‘a potential development that could set a high standard for the nature of new developments in the centre of Bankstown’* and that *‘the Panel does not feel the need to fully review the project again’*. While the DRP is advisory, this is a clear indication of an impartial professional review as commissioned by Council which should be taken into consideration in the independent preparation of the proposal's assessment report.

A detailed assessment of the proposal's consistency with the design excellence requirements in clause 6.16(4) is provided in **Table 3** below.

Table 3 Design excellence assessment

Criteria	Assessment
(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	<p>A high standard of architectural design and materials have been used in the development, and this is continued for the elements exceeding the building height. This is illustrated in the east elevation and the associated materials and finishes schedule, for which an extract is provided at Figure 4, where it is clearly shown that the materiality of the rooftop element that exceeds the maximum building height is a continuation of the materiality used in the lower levels. In this regard, the parapet involves a solid and glass balustrade that presents consistently with the lower level materials including a combination of finishes with clear glass, combined with painted Dulux ‘Bedbox’ for design continuity and consistency. The rooftop plant, lift overrun, and lift lobby include a combination of painted finishes, concrete and glass, all of which are finishes adopted for the lower levels and therefore allows for design continuity in presentation. This is illustrated through a comparison of Figure 4 with the identified materiality of the rooftop elements shown in Figure 5 and Figure 6. This materiality is consistent with the approaches taken on the Flinders Centre and Spring Square developments.</p> <p>Furthermore, the DRP did not raise any comments regarding the materiality and detailing of the proposal following the final meeting that took place where it</p>

strongly endorsed the design, noting that it achieves "a potential development that could set a high standard for the nature of new developments in the centre of Bankstown" and that "the Panel does not feel the need to fully review the project again". It is reiterated that while the DRP is advisory, this is a clear indication of an impartial professional review as commissioned by Council which should be taken into consideration by the consent authority.



Figure 4 East Elevation showing materials and finishes

Source: PTW

Building B

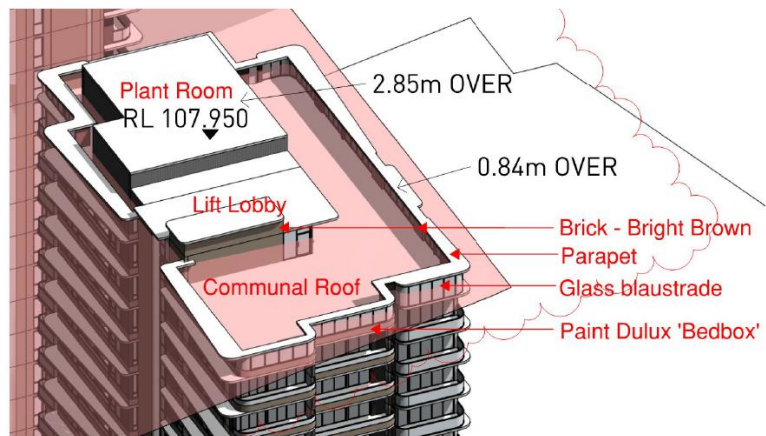


Figure 5 Consistent materiality of Building B rooftop

Source: PTW

Building C

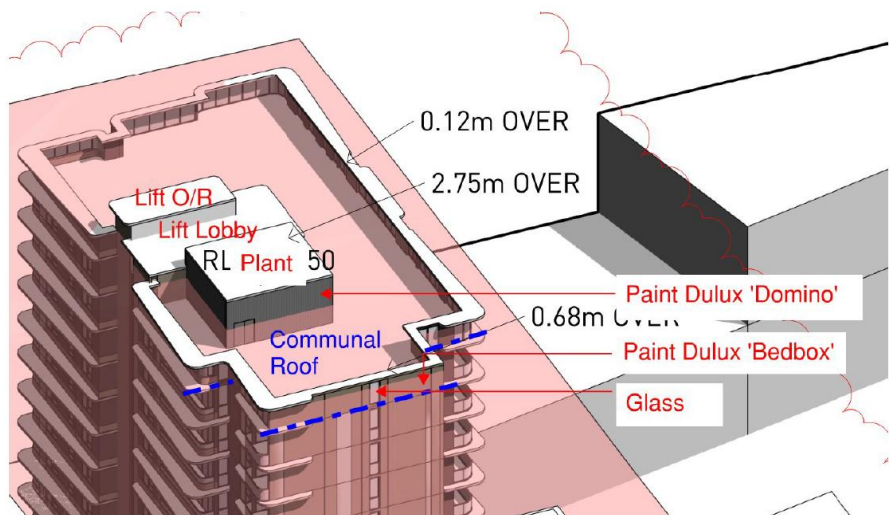


Figure 6 Consistent materiality of Building C rooftop

Source: PTW

(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,

The proposal adopts a built form that is consistent with the strategic vision for the site, including tower forms along North Terrace that will act as visual and directional markers to guide visitors to the site and to Bankstown City Centre more generally. It will also contribute to The Appian Way's activation as the key pedestrian spine that runs through Bankstown City Centre connecting Bankstown Sports Club in the south through to WSU Bankstown Campus in the north. This will be achieved through the inclusion of retail tenancies and continuous awnings along this frontage that will offer highly improved amenity outcomes. Further, the additional height reaches a maximum of RL 107.95 that is within the maximum height of RL 108m envisaged for the site in the Bankstown City Centre Master Plan.

The proposed built form also includes a mixture of high quality materials combined with significant landscaped elements to create an external appearance that improves the quality and amenity of the public domain. The provision of additional through-site links will also considerably improve the amenity of the public domain, as it will afford residents, visitors and workers with convenient connections through the site to key locations such as Bankstown railway station, the future metro station, Paul Keating Park, Bankstown Library and Knowledge Centre, WSU, Bankstown Central, Bankstown City Plaza and Saigon Place.

The proposed additional height results in negligible additional adverse overshadowing impacts, as the additional shadow is only cast over the railway station, streets and commercial uses to the south of the railway line, with no

Criteria	Assessment
	<p>additional overshadowing caused to residential uses or public open space by this additional height. This is detailed further in Section 4.2.1 under the subheading 'overshadowing'.</p>
<p>(c) how the development addresses the following matters— (i) the relationship of the development with other existing or proposed development on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</p>	<p>The proposed development has been designed to achieve appropriate setbacks with neighbouring developments in terms of separation, setbacks, amenity and urban form. It includes separation distances that comply with the Apartment Design Guide and setbacks and separation distances that are in accordance with Council's relevant controls in the Canterbury-Bankstown DCP 2023. The additional building height does not contravene the relevant setback or separation distances as set out in the applicable Canterbury-Bankstown DCP 2023 or the Apartment Design Guide.</p> <p>The proposal also results in acceptable overshadowing impacts as detailed in Section 4.2.1, with the slight exceedance in building height causing negligible additional adverse environmental impacts. The built form has also been designed to appropriately respond to the strategic vision in the Bankstown City Centre Master Plan to include a maximum building of RL 108m for the site. It also aligns with the maximum building height applied to Bankstown Central on the eastern side of The Appian Way and 'The Avenue' character area, at Bankstown Central. This importantly delivers a consistent height along the western edge of 'The Avenue' which is the key pedestrian spine that will run through Bankstown City Centre connecting Bankstown Sports Club in the south through to the future metro station plaza and the site up to Paul Keating Park and WSU Bankstown Campus in the north.</p>
<p>(ii) bulk, massing and modulation of buildings,</p>	<p>The proposed development's massing has been guided by the floor space provisions of the Canterbury-Bankstown LEP 2023, the envisaged height in the Bankstown City Centre Master Plan, and the Apartment Design Guide design criteria relating to building separation. The proposal delivers a built form outcome consistent with that envisaged in the Bankstown City Centre Master Plan. The additional building height is confined to rooftop elements including plant, lift overrun, lift lobby and the parapet, all of which have been carefully modulated so as to not be substantially noticeable, nor cause any significant visual impact compared to a compliant scheme, as is detailed in Section 4.2.1 under the subheading 'good design'. Also, as detailed in Section 4.2.1, the additional building height has been carefully modulated to result in negligible additional adverse overshadowing impacts. Namely, the minor additional shadow is only cast over the railway station, streets and commercial uses to the south of the railway line, with no additional overshadowing caused to residential uses or public open space by this additional height.</p>
<p>(iii) street frontage heights,</p>	<p>The proposal includes a street frontage height that generally aligns with the intent of the Bankstown City Centre Master Plan's street wall and tower typology that applies to the site. The variation to the building height control does not impact the development's compliance with the relevant street frontage height.</p>
<p>(iv) environmental impacts, including sustainable design, wind and reflectivity,</p>	<p>The proposal achieves a high level of sustainability and does not result in adverse reflectivity or wind impacts. The balustrade/parapet that is provided on the rooftop is recommended by the Wind Tunnel Report to achieve the required wind comfort criteria and results in a minor variation to the building height control of between 0.12m (0.1%) and 0.84m (1%). Notwithstanding this, the parapet is designed with the same materials and finishes as the below levels to achieve design continuity. It is noted that this exceedance to the building height does not negatively impact the development's sustainability initiatives or reflectivity impacts, and with regard to the parapet/balustrade helps effectively mitigate adverse wind impacts.</p>
<p>(v) pedestrian, cycle, vehicular and service access, and circulation requirements.</p>	<p>The proposal is well integrated with the surrounding pedestrian, cycle and vehicular transport infrastructure. The variation to the building height control does not impact how the development responds to pedestrian, cycle, vehicular and service access, and circulation requirements.</p>
<p>(vi) the impact on, and any proposed improvements to, the public domain,</p>	<p>The proposed development significantly enhances the public domain on the site by replacing the existing ageing and dark through-site link connections with inviting and activated connections. It also includes a variety of uses throughout the podium that will help to activate this part of the Bankstown City Centre and combined with the intended safety measures. The proposal also includes significant landscaped</p>

Criteria	Assessment
	<p>elements which will improve the visual amenity of the site. These improvements to the public domain will not be impacted by the proposed additional height.</p> <p>The proposed additional height is not substantially noticeable and does not obstruct any key views compared to a compliant scheme, as detailed in Section 4.2.1.</p>
(vii) appropriate interfaces at ground level between the development and the public domain,	<p>The proposal includes appropriate interfaces at ground level between the development and the public domain. It generally interfaces with the public domain with activated retail uses that will help activate and invite visitors throughout the Bankstown City Centre to visit the site and its surrounds.</p> <p>The proposed variation to the building height control does not impact on the development's positive interface with the public domain.</p>
(viii) integration of landscape design, including the configuration and design of communal access and communal recreation areas.	<p>The proposed development seamlessly integrates significant landscaped elements into the design of the façade, communal access and communal recreation areas.</p> <p>The proposed variation to the building height control does not impact on the development's attractive landscape design.</p>

Objective (1): to ensure that development exhibits design excellence that contributes to the visual and built character values of Bankstown

The proposed building height exceedance reaches a height of RL 107.95 (3.4% variation) and therefore aligns with the height of RL 108m that is envisaged for the site in the Bankstown City Centre Master Plan. In addition to the alignment with the height envisaged in the Master Plan, this also aligns with the maximum building height applied to Bankstown Central on the eastern side of The Appian Way and 'The Avenue' character area, at Bankstown Central. This importantly delivers a consistent height along the western and eastern edges of this part of 'The Avenue', which is Bankstown City Centre's key pedestrian spine envisaged in the Master Plan that will connect Bankstown Sports Club in the south through to the future metro station plaza and the site up to Paul Keating Park and WSU Bankstown Campus in the north.

The provision of consistent tall tower forms along each side of The Appian Way will act as visual and directional markers to guide visitors to the site, Bankstown's civic precinct, and to Bankstown City Centre more generally. This will contribute to 'The Avenue' and The Appian Way's activation as the key pedestrian spine that runs through Bankstown City Centre. Accordingly, the proposed building height exceedance includes a design outcome that provides a significantly positive contribution to the visual and built character values of Bankstown by allowing for consistency in building heights achieved in this key location, in line with the strategic vision in the Bankstown City Centre Master Plan.

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

Clause 4.6(3)(b) of the Canterbury Bankstown LEP 2023 requires the consent authority to be satisfied that the applicant has demonstrated that *'there are sufficient environmental planning grounds to justify the contravention of the development standard'*. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds (*Initial Action* [24]). The environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* [24]) and be particular to the circumstances of the proposed development (*Four2Five* [60]).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site for the reasons set out below.

4.2.1 Built form considerations

Good design

The proposal includes building height exceedances ranging from 0.12m (0.1% variation) to 2.85m (3.4% variation). The only built form elements exceeding the maximum building height include plant elements, the lift overrun, lift lobby and parapet. The proposal has been carefully designed to ensure that these elements seamlessly integrate with the design of the development to exhibit design excellence, with materials that are a continuation of the materiality used in the lower levels as detailed in **Table 3** above with respect to clause 6.16(4)(a). To this end, the rooftop plant elements have also been located centrally within the site and are not visually dominant features that are noticeable from the public domain, as demonstrated through the photomontages from key public domain viewpoints included at **Figure 7** and **Figure 8** in which the rooftop plant elements cannot be seen from these key vantage points. Accordingly, the proposed variation will have a negligible visual impact.



Figure 7 Photomontage of Building C as viewed from Paul Keating Park to the north

Source: PTW



Figure 8 Photomontage of Building B as viewed from Bankstown railway station to the south west

Source: PTW

Additionally, a portion of the parapet of Buildings B and C exceeds the building height development standard. This variation ranges between 0.12m (0.1%) and 0.84m (1%) and is required to be of a height of approximately 2.1m contributing to these elements exceeding the height limit. Notwithstanding this, these elements have been carefully integrated into the design of the development to provide a seamless transition between portions of the building that comply with the building height control and the parapet which marginally exceeds the building height control. The parapet only exceeds the building height control by up to 0.84m (1%), predominantly at the eastern edge of the site where it interfaces with the future development in the Bankstown Central Town Centre Precinct, which is mapped with a maximum building height of 86m.

Given the greater height mapped for the future Bankstown Central development in the Town Centre Precinct, the increased height of the parapet in this location allows for a positive built form outcome, that responds to the greater height of the adjacent Town Centre Precinct of Bankstown Central. It also accentuates the importance of 'The Avenue' by positioning a slightly taller element in this location that corresponds with a future even greater height to be delivered along the eastern edge in Bankstown Central's Town Centre Precinct. This will importantly

allow these towers to act as visual and directional markers to guide visitors through 'The Avenue' which is the key north-south pedestrianised spine of the Bankstown City Centre connecting from Bankstown Sports Club through the future metro plaza to the ground plane retail at The Appian Way and to the civic precinct including Paul Keating Park and WSU Bankstown Campus.

Moreover, the development has been subject to a comprehensive review by Council's DRP to demonstrate how the development exhibits design excellence in accordance with Clause 6.16 of the Canterbury-Bankstown LEP 2023. Feedback received from the DRP was generally supportive, noting that the development promises 'a potential development that could set a high standard for the nature of new developments in the centre of Bankstown'.

Consistency with the envisaged height for the site and airspace requirements

The proposed building heights of Buildings B and C reach a maximum height of RL 107.95m, which is within the envisaged maximum building height of RL 108m for the site as set out in the Bankstown City Centre Master Plan, as illustrated in **Figure 9** below. As detailed in the above subsection, this allows for an improved streetscape relationship with the future development in Bankstown Central's Town Centre Precinct which also had RL 108 envisaged as its maximum height, and which now includes a mapped height of 86m in the Canterbury-Bankstown LEP 2023. This also positively impacts 'The Avenue' character area as detailed in the above subsection.

Furthermore, the proposed additional building height is estimated to be below the Bankstown Airport PANS-OPS surface elevation as confirmed by Rehbein Airport Consulting in the Aviation Assessment included at **Appendix A**.



Figure 9 Height envisaged for the site under the Bankstown City Centre Master Plan

Source: Canterbury-Bankstown Council

Overshadowing

PTW has prepared shadow diagrams within the Architectural Drawings and shown below in **Figure 10** identifying the additional overshadowing caused by the proposed exceedance on the winter solstice, representing the worst case scenario. Shadows cast by the compliant elements are shown in grey and the additional overshadowing caused by the non-compliant rooftop elements is shown with a red outline. The shadow diagrams demonstrate that the proposed exceedance will result in minimal additional shadow and negligible additional adverse impacts, given the following:

- It only cast additional shadows over the railway station, streets, and commercial uses to the south of the railway line.
- The primary public open space in the vicinity of the site is Paul Keating Park which is situated to the north of the site and therefore will not be affected.
- Swane Reserve to the south of the site will not be impacted by the additional proposed height.
- The additional height will not cause overshadowing to any residential uses to the south.

It is noted that this analysis also shows the components of the development that do not reach the maximum building height (refer to blue outline in **Figure 10**) and therefore result in a reduced overshadowing impact.



Figure 10 Shadow diagrams

Source: PTW

4.2.2 Housing delivery in line with overarching strategic planning objectives

The additional building height allows for the plant, lift overrun, lift lobby and parapet to achieve a height that is within the maximum height envisaged for the site by the Bankstown City Centre Master Plan, without requiring a reduction in height to accommodate these elements. As such, this prevents a decrease in the number of dwellings provided in the development and therefore maximises the delivery of housing in such a key location adjacent to Bankstown railway station (and future metro station), Paul Keating Park, WSU Bankstown Campus and Bankstown Central Shopping Centre. This directly aligns with the Federal Government's target with the National Housing Accord to deliver 1 million houses in well-located areas within five years from the starting year in 2024, as well as the State government's rezoning of Bankstown City Centre as part of the TOD reforms to deliver additional housing in this strategic centre.

4.2.3 Consistency with objects of the EP&A Act

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 EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed contravention should be consistent with the objects of the Act, as set out in **Table 4** we consider the proposed contravention is broadly consistent with each of the relevant objects, notwithstanding the proposed variation of the height of buildings development standard.

Table 4 *Assessment of consistency of the proposed development with the Objects of the EP&A Act*

Object	Comment
(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	The proposed building height will promote the economic and social welfare of the community through the appropriate redevelopment of the existing site which is prime for rejuvenation, including increased activation and delivery of housing. Further, the proposed height exceedance helps to respond to the strategic need for additional housing supply, contributing to the Federal Government’s target with the National Housing Accord to deliver 1 million houses in well-located areas within five years from the starting year in 2024 by delivering 336 apartments. The height exceedance allows for the plant, lift overrun, lift lobby and parapet to be accommodated within the envisaged height under the Bankstown City Centre Master Plan without requiring a reduction in height and removal of additional dwellings in this prime location in close proximity to public transport including Bankstown railway station, future metro station and the Bankstown bus interchange.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The proposed exceedance to the building height development standard will not preclude the development from achieving ecologically sustainable development by ensuring compliance with the performance standards for the energy efficiency of buildings. Further, the height variation will have no negative impact on environmental and social considerations and will support the economic health of Bankstown.
(c) to promote the orderly and economic use and development of land	<p>The site is significantly underutilised, and the existing development includes a large quantum of unused office space, a lack of activation of the ground plane, and no residential accommodation in this key location adjacent to Bankstown railway station (and future metro station), WSU Bankstown Campus and Bankstown Central Shopping Centre. The proposal includes an array of retail uses and appropriate CPTED measures that will galvanise Bankstown’s nighttime economy and contribute to transforming the Bankstown City Centre into a genuine destination in Greater Sydney.</p> <p>The additional building height will allow for the plant, lift overrun, lift lobby and parapet to reach the maximum height envisaged for the site by the Master Plan, without requiring a reduction in height to accommodate these elements and therefore this prevents a decrease in the number of dwellings provided in the development. As such, it will maximise the delivery of housing, which is the highest and best economic use for the site, as demonstrated through the State government’s rezoning of Bankstown City Centre as part of the TOD reforms to deliver additional housing in this strategic centre.</p> <p>Furthermore, given the proposed additional height aligns with the envisaged height of RL 108m set out in the Master Plan, and is consistent with the height of the adjacent Bankstown Central site to the east of The Appian Way and ‘The Avenue’ character area, it represents orderly development of the land.</p>
(d) to promote the delivery and maintenance of affordable housing	This object is not relevant to the proposed development and the exceedance to the building height development standard.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	The proposed exceedance to the building height development standard will have no impact on threatened species or ecological communities.
(f) to promote the sustainable management of built and cultural	The proposal and the building height exceedance will not impact the sustainable management of built and cultural heritage (including Aboriginal cultural heritage).

Object	Comment
heritage (including Aboriginal cultural heritage)	
(g) to promote good design and amenity of the built environment	The proposed development has been designed by renowned architects PTW and has been subject to reviews from Council's Design Review Panel. The proposed development is consciously good design in this regard. The proposed variation to the height of buildings development standard will result in an appropriate outcome that aligns with the objectives of the development standard as detailed in Section 4.1.1 and will result in a negligible additional adverse environmental impact on the surrounding area compared to a compliant scheme.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	The proposed development will comply with all relevant BCA codes and will promote 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 will have no impact on community participation in environmental planning and assessment.

5.0 Conclusion

The assessment above demonstrates that compliance with the building height development standard contained in clause 6.16 of the Canterbury Bankstown LEP 2023 is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allowing for a better outcome in planning terms.

This clause 4.6 variation demonstrates that notwithstanding the non-compliance with the building height development standard, the proposed development:

- Achieves the objective of Clause 6.16 of the Canterbury Bankstown LEP 2023 as the exceedance to the site's mapped building height is within the maximum building height envisaged under the Bankstown City Centre Master Plan and corresponds with the adjacent height of the Bankstown Central development, in turn allowing the towers along each edge of 'The Avenue' character area to act as visual and directional markers to guide visitors into the Bankstown City Centre. Accordingly, the exceedance provides a significantly positive contribution to the visual and built character values of Bankstown by allowing for consistency in building heights achieved along this key pedestrianised spine, in line with the strategic vision in the Master Plan.
- There are sufficient environmental planning grounds to justify the contravention, as:
 - The proposed additional height of 0.12m (0.1% variation) to 2.85m (3.4% variation) only relates to the plant, lift overrun, lift lobby and parapet, none of which are habitable spaces, are required to service the building, and cause negligible visual impact.
 - To accord with the maximum building height would require the uppermost residential level to be removed to accommodate the plant, lift overrun, lift lobby and parapet within the 83m height limit, and would result in a reduction in housing in close proximity to public transport, contrary to the strategic need for additional well-located housing in line with the National Housing Accord and the recent Transport Oriented Development rezoning of Bankstown.
 - The additional height is not substantially noticeable and does not obstruct and key views compared to a compliant scheme.
 - The proposed additional height aligns with the vision for the maximum building height set for the site in Council's endorsed Bankstown City Centre Master Plan for a height of RL 108m in line with PANS-OPS, as the proposal reaches a maximum building height of RL 107.95m.
 - The proposed additional height results in negligible additional adverse overshadowing impacts, as the additional shadow is only cast over the railway station, streets and commercial uses to the south of the railway line, with no additional overshadowing caused to residential uses or public open space by this additional height.
 - The proposed additional height is below the PANS-OPS as it relates to the site, as confirmed in the Aviation Assessment prepared by Rehbein Airport Consulting included at **Appendix A**.
 - The additional building height allows for the achievement of a consistent building height along the western and eastern edge of The Appian Way, which is envisaged to form 'The Avenue' character area, and accentuates the importance of 'The Avenue', being Bankstown City Centre's key pedestrian spine with activated retail and connectivity from Bankstown Sports Club in the south through to Western Sydney University (WSU) Bankstown Campus in the north.

Therefore, the consent authority can be satisfied that there are sufficient grounds for the variation to the building height development standard as proposed in accordance with the flexibility allowed under clause 4.6 of the Canterbury-Bankstown LEP 2023.