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URBIS

CLAUSE 4.6 VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

280-300 Lakemba Street and 64-70
King Georges Road, Wiley Park

Prepared for

LAKEMBA STREET DEVELOPMENTS PTY LTD

15 October 2021

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1. INTRODUCTION

This Clause 4.6 Variation Request ('the Request') has been prepared on behalf of Lakemba Street Developments Pty Ltd ('the applicant') and accompanies an amended Development Application ('DA') for shop top housing at 280-300 Lakemba Street and 64-70 King Georges Road, Wiley Park ('the site').

The Request seeks an exception from the height of buildings development standard prescribed for the site under clause 4.3 of *Canterbury Local Environmental Plan 2012* (CLEP). The variation request is made pursuant to clause 4.6 of CLEP.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 2 June 2021 and amended on 15 October 2021.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

2. SITE CONTEXT

2.1. SITE DESCRIPTION

The site is located within the suburb of Wiley Park in the Canterbury-Bankstown Local Government Area (LGA). The site is approximately 14km south-west from the Sydney CBD and 13km south-east of the Paramatta CBD. Wiley Park provides a variety of housing types, commercial space, public transport connections and employment opportunities within the South District. The site benefits from excellent access to Wiley Park Station and is located approximately 70 metres from the station entrance.

Wiley Park Station is currently undergoing upgrades in preparation for the Sydney Metro project, which will deliver fast and frequent train services between Bankstown and the CBD and north western Sydney making Wiley Park and the subject site more liveable, vibrant and connected.

Canterbury Bankstown Local Strategic Planning Statement (LSPS) notes that Council will continue to work with Department of Planning, Industry and Environment (DPIE) to investigate opportunities for further growth in the centres located along the Sydenham to Bankstown Corridor.

Figure 1 Site Aerial



Source: NearMap

The site includes the land described as 280-300 Lakemba Street and 64-70 King Georges Road, Wiley Park and comprises 11 individual lots described in **Table 1**. The site is zoned B2 Local Centre under the *Canterbury Local Environmental Plan 2012* and sits at a zone interface, as the properties to the east are zoned R4 High Density Residential. The site is not identified as a heritage item, nor is it located within a conservation area.

Table 1 Legal Description of The Site

Address	Legal Description
280 Lakemba Street, Wiley Park	Lot A DP962951
282-284 Lakemba Street, Wiley Park	Lot B DP402053
286 Lakemba Street, Wiley Park	Lot A DP402053
288 Lakemba Street, Wiley Park	Lot 1 DP 501587
288A Lakemba Street, Wiley Park	Lot 2 DP 501587

Address	Legal Description
288 Lakemba Street, Wiley Park	Lot 3 DP 501587
290 Lakemba Street, Wiley Park	Lot 2 DP6970
300 Lakemba Street, Wiley Park	Lot 2 DP 206965
64-66 King Georges Road, Wiley Park	Lot 1 DP 124635
68 King Georges Road, Wiley Park	Lot 1 DP124613
70 King Georges Road, Wiley Park	Lot 1 DP 124636

The key features of the site are summarised in the following table.

Table 2 Site Description

Feature	Description
Site Area	5,851 sqm
Site Dimensions	The site has a primary frontage to King Georges Road of 67.285m and a secondary frontage to Lakemba Street of 64.605m with a splay at the corner measuring 3.44m.
Site Topography	The site falls from its existing ground level of RL 42.78 at the southern portions of the site towards the Lakemba Street frontage at RL 38.65. The height difference of approximately 4 metres across the site is the reason for the minor breach to the building height control for the weather protection elements on Buildings 01-A and 1-0B.
Existing Development	The site currently accommodates low scale single storey commercial developments fronting King Georges Road (vacant and operating tenancies) and 5 single storey dwelling houses.
Vegetation	Vegetation is scattered across the site and includes 21 trees.

2.2. LOCALITY CONTEXT

The site is immediately surrounded by the following:

- **North:** On the opposite side of Lakemba Street is a six storey shop top housing development which is surrounded by single storey residential dwellings.
- **East:** Along Lakemba Street there is a mix of two-three storey residential flat buildings and single storey residential dwellings. Buses are also accessible via Lakemba Street.
- **South:** A range of 3-4 storey residential buildings are located along King Georges Road to the south. Further to the south is Wiley Park train station which is accessible along the western side of King Georges Road.
- **West:** A range of low scale commercial buildings (Wiley Park Hotel, local services) are located on the opposite side of King Georges Road, accessible via a traffic light controlled pedestrian walkway adjacent to the south west corner of the site.

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany an amended DA for shop top housing.

A detailed description of the proposed amended development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 2 June 2021 and amended on 15 October 2021. The proposal is also detailed within the architectural, civil and landscape drawings that form part of the DA.

The amended DA proposes demolition of any remaining structures, excavation, construction, and operation of a shop top housing development generally comprising:

- 3 storey basement cark parking including a mezzanine level and 242 car spaces.
- Basement and ground floor retail with a total area of 2,484.2sqm including a full line supermarket.
- Four residential podiums (maximum 7 storeys) with a total of 142 dwellings and 553.6sqm of rooftop communal open space and 47.2sqm of communal rooms.
- Removal of trees, augmentation of services and landscape works.
- Creation of a new 1,191sqm public plaza (which will also serve as communal open space for residents) and a service laneway.
- An FSR of 2.3:1 based on the existing site area (before land dedication).
- Construction of an 8.475m wide laneway (comprising 6.675 metre wide access lane and 1.8 metre footpath) along the eastern side of the site, extending from Lakemba Street to the southern boundary of the property.
- Construction of an additional traffic lane on Lakemba Street and extension of the existing central median island along the northern frontage of the site, facilitating the westbound left turn movement into King Georges Road.
- Construction of a 3 metre wide footpath along the site's Lakemba Street frontage.
- Relocation of in-ground services from within the current footpath alignment to the proposed footpath alignment.
- Torrens Title subdivision of land to enable dedication of the laneway and footpath areas to Council and result in amalgamation of the remaining land into a single lot.

The current development application (DA/452/2021) was lodged on 21 June 2021 seeking development approval for the redevelopment of the subject site for shop top housing. The application was compliant with the height of buildings development standard and provided rooftop communal space on all four podiums. Weather protection was only provided for two rooftops (Building 02-A and Building 2-0B), however, as detailed in the Rooftop Plan of Management submitted with the DA, access was to be available for all residents to access **all** rooftops.

The application was placed on public exhibition from 7 July to 3 August 2021. No public submissions were received during this period.

On 9 September 2021, Council issued a request for additional information, including revised architectural plans. A request for additional information letter from Water NSW was also issued by Council at this time.

The proponent and design team met with Council planners and engineers on 23 September 2021 to discuss the issues raised in the request for information letters. During the meeting, Council requested that all four communal rooftops required some form of weather protection. It was discussed in this meeting that due to the sloping topography of the site, any form of shade structure or the like would result in a non-compliance with the height of buildings development standard for Buildings B01-A and B01-B.

Nevertheless, Council advised that they required weather protection to be provided to all podium rooftops, which has resulted in the need to prepare a Clause 4.6 variation in relation to the shade structures on Buildings B01-A and B01-B.

Figure 2 Site Plan with Building References

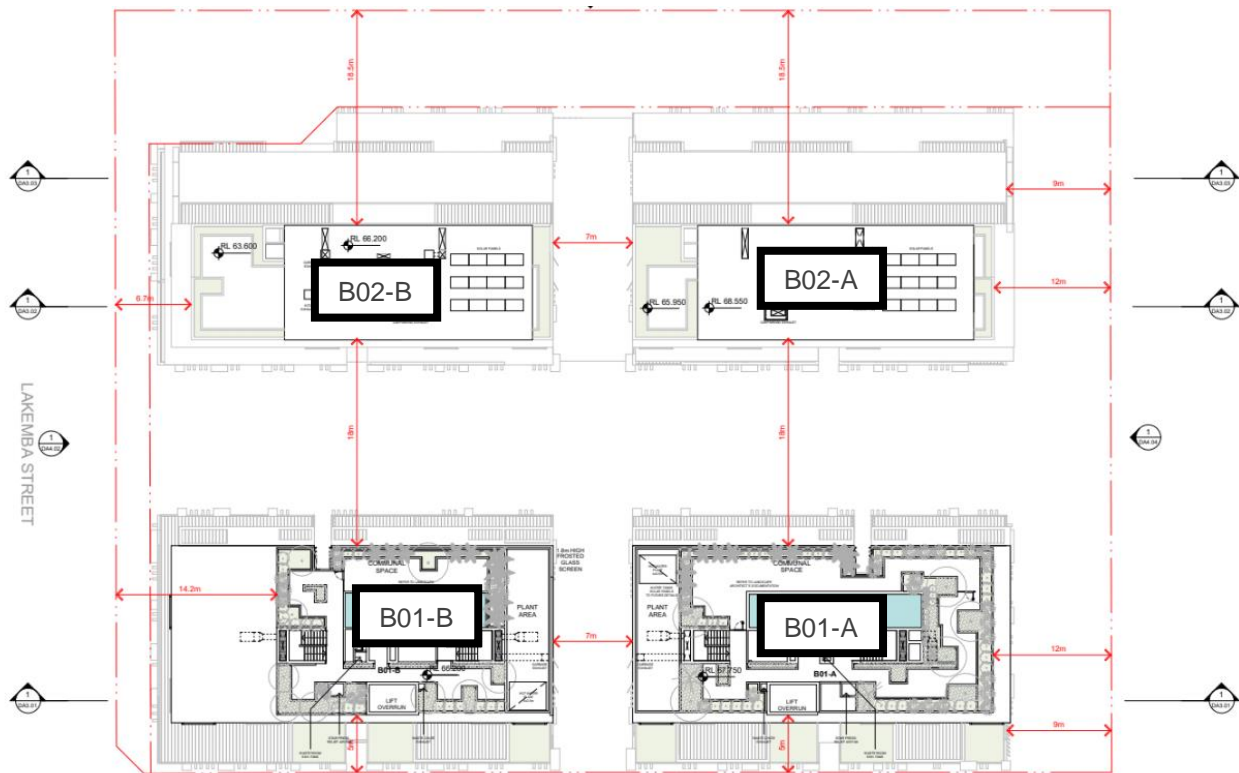


Figure 3 Photomontage of communal rooftop facilities for Buildings B01-A and B01-B



Source: Marchese Partners

4. VARIATION OF HEIGHT OF BUILDINGS STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

4.1. DEVELOPMENT STANDARD

Clause 4.3(2) of CLEP sets out the maximum building height for development as shown on the Height of Buildings Map. The site is subject to a maximum building height of 27 metres as illustrated in **Figure 2**.

The objectives of clause 4.3 as set out in clause 4.3(1) of the CLEP are:

- (a) to establish and maintain the desirable attributes and character of an area,
- (b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,
- (c) to support building design that contributes positively to the streetscape and visual amenity of an area,
- (d) to reinforce important road frontages in specific localities.

The definition of building height under clause 4.3 of CLEP is:

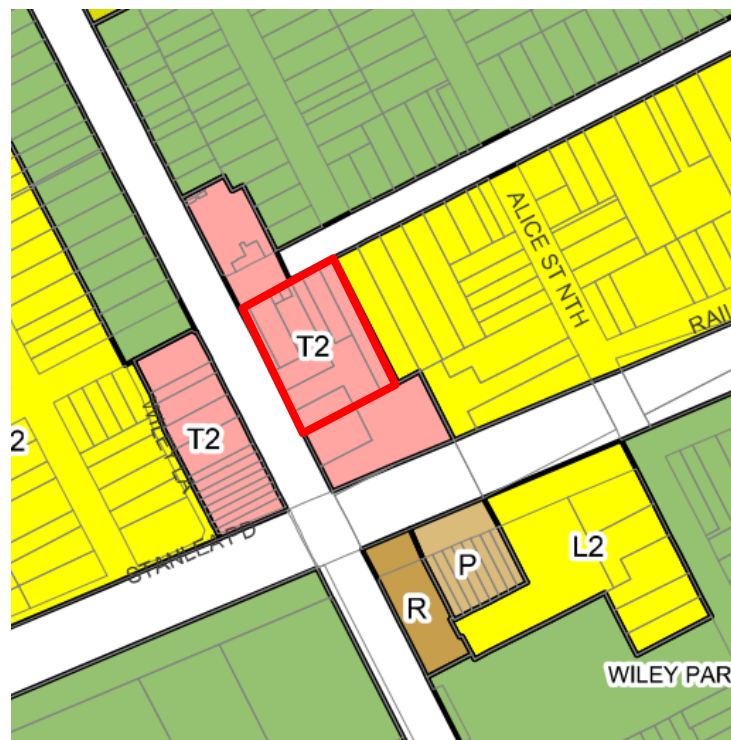
building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
 - (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,
- including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Figure 4 Height of Buildings Map with site boundary identified in red

Maximum Building Height (m)

B	4
I	8.5
J	9.5
K	10
L1	11
L2	11.5
M	12
N1	13.5
N2	14
P	18
Q	20
R	21
S	24
T1	26
T2	27
U1	30



4.2. PROPOSED VARIATION TO DEVELOPMENT STANDARD

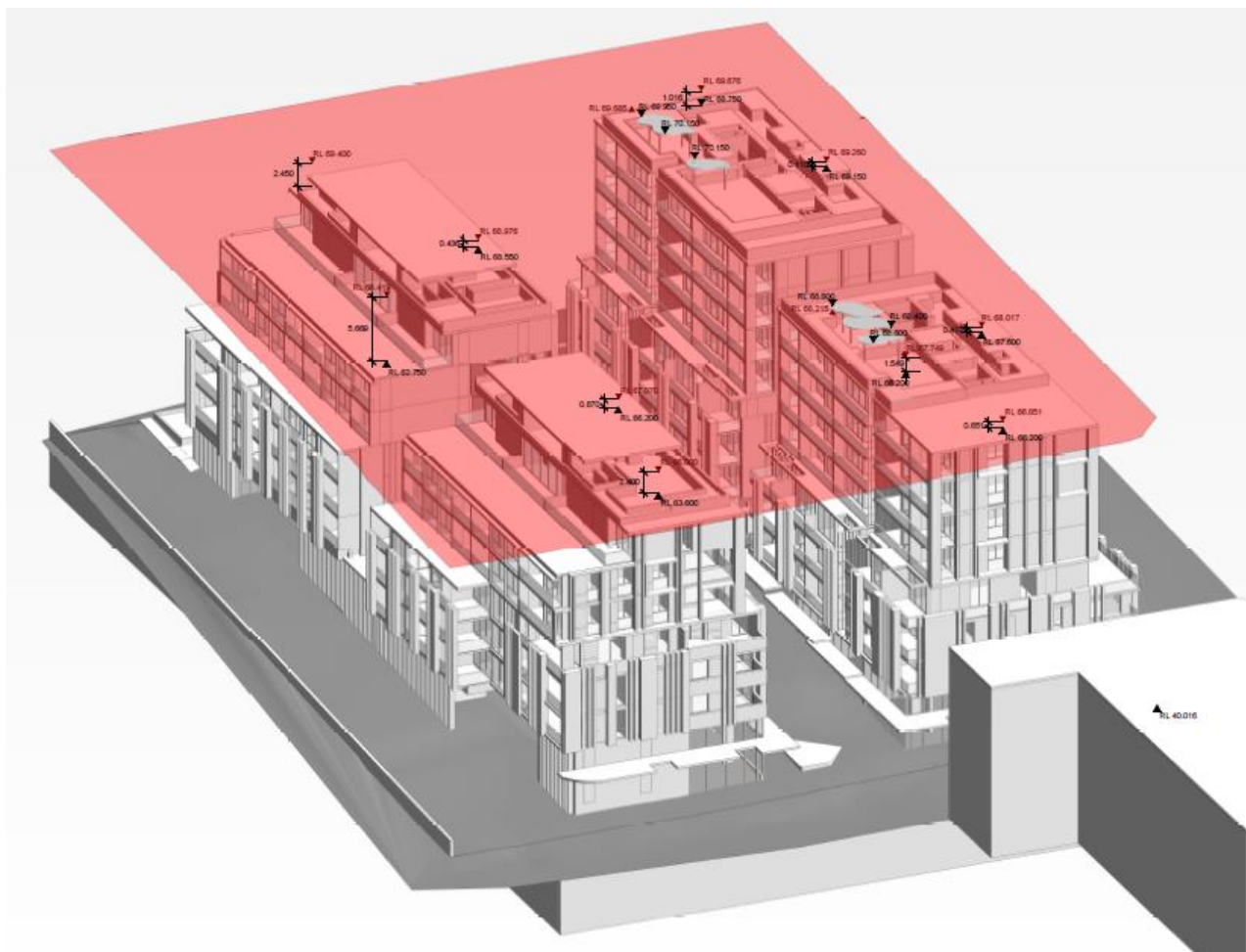
The proposed development presents a varied maximum building height of 28.02 metres for Building 01-A and 28.99 metres for Building 01-B for three shade structures on both buildings. It is important to note that the majority of the roof, including all other elements such as mechanical plant and communal facilities remain compliant with the building height development standard.

Buildings 02-A and 02-B along the south west boundary of the site remain compliant with the height of buildings development standard. The variations to the height controls are outlined in the **Table 3** below.

Table 3 Proposed Variation to Height of Buildings development standard

Building	CLEP 2012 Development Standard	Proposed Maximum Height	Variation to CLEP 2012
Building 01-A	27 metres	28.02 metres (top of shade structure) 26.89 metres (top of plant room complies)	1.02 metres (3.7%)
Building 1-0B	27 metres	28.99 metres (top of shade structure) 26.58 metres (top of plant room complies)	1.99 metres (7.3%)
Building 2-0A	27 metres	26.564 metres (top of awning)	Complies
Building 2-0B	27 metres	26.13 metres (top of awning)	Complies

Figure 5 Photomontage of proposed rooftop communal space



Source: Marchese Partners

Figure 6 Elevations of Proposed Development



Picture 1 Buildings 02-B and 02-A from internal laneway facing south west



Picture 2 Buildings 01-B and 01-A from internal laneway facing north-east

Source: Marchese Partners

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of CLEP includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of CLEP are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

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

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of buildings development standard prescribed for the site in clause 4.3 of CLEP is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of buildings development standard be varied (subject to the applicant's position that such a request should not actually be necessary).

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of buildings development standard in accordance with clause 4.3 of CLEP.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following section of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The maximum height of building prescribed by clause 4.3 of CLEP is a development standard capable of being varied under clause 4.6(2) of CLEP.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of CLEP.

6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standard as specified in clause 4.3 of CLEP are detailed in **Table 4** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 4 Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
<p><i>(a) to establish and maintain the desirable attributes and character of an area,</i></p>	<p>The site is located in Wiley Park. Wiley Park is identified in <i>Canterbury Bankstown Local Strategic Planning Statement</i> (LSPS) as a Village Centre. Village Centres will be home to a range of local urban services and will provide opportunities for daily and weekly shopping needs. Where rail and mass transit/train services are available, these centres will also see an increase in housing. In Wiley Park this will likely be in the form of shop top housing.</p> <p>The LSPS states that Centres that will be investigated for additional housing (subject to master plans, structure planning, community consultation, and environmental and urban design studies) include Bankstown, Campsie firstly and then Belmore, Lakemba, Wiley Park, Punchbowl, Canterbury, Yagoona, Chester Hill, Revesby and Padstow. This is likely to result in additional height and density around the Wiley Park station.</p> <p>Wiley Park currently provides a variety of housing types, commercial space, public transport connections and employment opportunities. The subject site benefits from excellent access to Wiley Park Station and is located approximately 70 metres from the station entrance. Wiley Park Station is currently undergoing upgrades in preparation for the Sydney Metro project, which will deliver fast and frequent train services between Bankstown and the CBD and north western Sydney making Wiley Park and the subject site more liveable, vibrant and connected.</p> <p>The proposed development has been designed with 4 x seven storey podiums above an activated ground floor providing a range of retail and food and drink premises and an activated public plaza. Private communal open space is located on the roof of each podium. To ensure that residents receive adequate amenity of the roof, weather protection is provided which exceeds beyond the height control by 1.02 metres on Building 01-A and 1.99 metres on Building 1-0B. Buildings 02-A and 02-B which also provide weather protection on the roof comply with the building height control.</p> <p>Overall, the proposed development remains entirely consistent and compatible with the existing and desired future character of the area despite the minor height non-compliance for the rooftop weather protection elements. The proposal provides shop top housing which will activate the streetscape and provide high quality and high amenity communal space for future residents at roof level.</p>
<p><i>(b) to minimise overshadowing and ensure there is a desired level of solar access and public open space,</i></p>	<p>The design of the rooftop communal space has been designed, positioned and orientated to ensure the minor additional height for the weather protection elements does not adversely impact on the</p>

Objectives	Assessment
	<p>amenity of adjoining and neighbouring properties and has been carefully located to ensure there is minimal adverse environmental impacts.</p> <p>Amended shadow diagrams for the proposed development have been prepared Marchese Partners as part of the Architectural Package. These diagrams demonstrate that the non-compliant elements of the rooftop do not result in any additional overshadowing impacts on neighbouring properties or public open space including the public plaza.</p>
<p><i>(c) to support building design that contributes positively to the streetscape and visual amenity of an area,</i></p>	<p>As noted previously, the only non-compliant element of the rooftop communal space is the weather protection elements on Building 01-A and Building 01-B which are integrated into the overall landscape design to provide a high quality design which is useable for residents, illustrated in Figure 7. These rooftop weather protection elements have been well setback from the street frontage to ensure there are not visible from the streetscape.</p> <p>Overall, the minor non-compliant elements of the rooftop on 2 out of 4 podium rooftops are not visible from the streetscape, do not comprise any gross floor area and do not contribute to the overall bulk and scale of the proposed development.</p>

Figure 7 Photomontage of proposed rooftop communal space



Source: Marchese Partners

(d) to reinforce important road frontages in specific localities.	<p>The proposed development addresses both Lakemba Street and King Georges Road frontages and provides activation at the ground plane as required in Canterbury Development Control Plan 2012 (CDCP 2012) with retail premises located along both frontages.</p> <p>The rooftop weather protection elements which exceed the building height control form part of the overall design of the rooftop communal space on Building 01-A and 01-B and will not detract from the development's ability to reinforce the road frontages along Lakemba Street and King Georges Road.</p>
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The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

The proposal provides high quality communal open space on each of the four rooftops with a range of facilities including BBQ areas, children's play areas and water play. Given the topography of the site, the three shade structures within the rooftop communal space of both Buildings 01-A and 01-B exceed the height of buildings development standard. It is noted that the weather protection elements within the rooftop communal space of Buildings 02-A and 02-B fully comply with the height of buildings development standard.

If the proposed buildings were to be fully compliant with the building height, weather protection would not be provided on two of the communal rooftops (Building 01-A and 01-B). This would result in a loss of amenity for residents and does not reflect the design criteria of Part 3D Communal and Public Open Space of the Apartment Design Guide.

Compliance in the circumstances is therefore unreasonable.

- **The burden placed on the community (by requiring strict compliance with the development standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The proposed development provides an activated ground floor with a range of retail and food and drink tenancies and a new public plaza. The proposed plaza, while providing a high level of street activation and publicly accessible open space within the Wiley Park Village Centre, does not provide private communal open space specifically for residents of the site. To ensure that there is private communal open space and recreational amenity specifically for residents, rooftop communal space is located on each podium.

Based on the topography of the site, any shade structure or weather protection located on the roofs of Building 01-A and 01-B would exceed the height of buildings development standard, as illustrated in **Figure 5**. The variation in height relates specifically to three shade structures located within the communal rooftop area of both Buildings 01-A and 01-B which provide weather protection for residents accessing the roof facilities. If strict compliance was required, communal space would be required at ground level which would reduce the area available for public use.

Figure 8 Potential height of shade structure/weather protection for Buildings 01-A and 1-0B



Source: Marchese Partners

Given that the shade structures exceeding the height limit do not result in any amenity impacts to surrounding neighbours, nor do they contribute to the building's overall bulk and scale, it would be unreasonable to require strict compliance with the development standard. Strict compliance would unnecessarily diminish the quality of the rooftop space and amenity for residents. Strict compliance would also require the reduction in publicly accessible plaza space at the ground level in order to provide an adequate area of communal open space on the site.

In summary, the proposed non-compliance is inconsequential and will not result in any adverse impacts on residents or neighbouring properties.

6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and

...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposal is consistent with the objectives of the development standard and objectives of the B2 Local Centre zone.
- The proposed non-compliance arises directly from the sloping topography of the site. Buildings 02-A and 02-B both provide adequate weather protection which is compliant with the height of buildings development standard. To provide weather protection on Buildings 01-A and 01-B as requested by Council in September 2021, a minor non-compliance is required.
- The shade structures which exceed the height standard do not comprise any gross floor area, rather they comprise rooftop elements which ensure weather protection is provided for all rooftop communal open spaces. Without these elements the space would be less usable for residents, would provide less amenity and would not achieve compliance with the relevant design criteria in the Apartment Design Guideline.
- The location and design of the shade structures have been organised to ensure the non-compliance is not visible from the streetscape and does not result in any impacts on neighbouring properties. The non-compliant elements of the rooftop communal space improve the overall amenity of rooftop communal space without impacting on the amenity of the proposed development or neighbouring sites. All other elements of the rooftop including mechanical plant and rooftop amenities are compliant with the height of buildings development standard.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliance to the maximum height of buildings in this instance.

6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 3** above. The proposal is also consistent with the land use objectives that apply to the site under CLEP. The site is located within the B2 Local Centre zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 5** below.

Table 5 Assessment of compliance with land use zone objectives

Objective	Assessment
<i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i>	The proposal provides a mix of retail and residential uses that are appropriate for the site and its close proximity to Wiley Park Station. The retail

Objective	Assessment
	<p>will serve the needs of the residents of the development and the surrounding community.</p> <p>The ground floor retail and public domain improvements will create a vibrant, active and safe environment for the benefit of the greater community as well as for residents.</p> <p>Location of the private communal open space on the roof assists in the delivery of the public plaza at ground level, which provides significant public benefit.</p>
<i>To encourage employment opportunities in accessible locations.</i>	<p>The proposal will make a positive contribution to the Wiley Park Station Precinct and notwithstanding the minor breaches to the height control will significantly enhance the visual amenity of the site and be a catalyst for much needed investment in Wiley Park.</p> <p>The proposal incorporates a diversity of uses, provides an active street frontage and will enhance the public domain with a central plaza and retail offering at ground level.</p>
<i>To maximise public transport patronage and encourage walking and cycling.</i>	<p>The proposal encourages pedestrian movement via the through-site links of the central public plaza.</p>
<i>To facilitate and support investment, economic growth and development for active, diverse and well-designed centres.</i>	<p>The development supports the revitalisation and economic growth of the Wiley Park local centre, which has a number of vacant commercial uses. The proposal is a significant investment in the town centre and will be a catalyst for future redevelopment. Importantly the proposal will create 109 direct operational jobs, with a further 23 indirect supply chain jobs both within and beyond the trade area as a result of flow-on effects of the proposed development</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed minor variation to the height of buildings development standard as 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.

6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed minor non-compliance with the height of buildings development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of buildings development standard and the land use zone objectives despite the technical non-compliance.

It is considered that the strict maintenance of the standard in this instance is not in the public interest as the proposal will provide high levels amenity for all future residents in each podium by ensuring that weather protection is provided on all four podiums without any adverse impacts on the public domain or neighbours. This could not be achieved by compliance with the height of building standard due to the topography of the site, which slopes from RL 42.78 to RL 38.65 by approximately 4 metres. It is further noted that the proposal will provide a high quality development adjacent to the Wiley Park station, which is being upgraded to a metro station. This is critical for the site, as the proposed development will act as a catalyst for high quality investment Wiley Park (which is currently lacking). There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

7. CONCLUSION

For the reasons set out in this written request, strict compliance with the height of buildings development standard contained within clause 4.3 of CLEP is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the height of buildings development standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- It is a minor variation of 1.02 metres (3.7%) at its highest point which relates specifically to the introduction of three shade structures on Buildings 01-A and 1-0B. The scheme which was originally lodged with Council in June 2021 provided weather protection provided on two out of the four rooftop communal spaces and was fully compliant with the building height control. A Rooftop Management Plan was also submitted with the DA which required that all residents could access all four rooftop to ensure equitable access to rooftops with and without weather protection. The amended scheme directly responds to a request from Council (provided in a RFI in September 2021) which requires all four communal rooftop space to provide weather protection. Due to the sloping topography of the site, the proposed shade structure for Buildings B01-A and B01-B will result in a minor non-compliance with the height of buildings development standard. It is important to note that the majority of the roof and the shade structures on Buildings 02-A and 02-B fully comply with the building height control. Further, no other elements of the building, including other elements on the rooftop (such as plant and lifts) exceed the height of buildings development standard.
- Compliance with the height of building development standard is unreasonable and unnecessary in the circumstances of the proposed development.
- The proposal, notwithstanding the non-compliance, is consistent with the objectives of the height of building standard and the B2 Local Centre zone.
- There are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- There are unique circumstances arising from the site, as the sloping topography of the site results in the shade structures located on Buildings 01-A and 01-B to exceed the development standard. Overall, the location and of shade structures has been prepared to ensure minimal impacts with no additional overshadowing impact and limited visibility from neighbours or the public domain.
- The proposal will deliver significant public benefits, including the reinvigoration of the Wiley Park village centre by providing a high quality, high amenity architecturally designed development (in an area with building stock in average condition), activated street frontages, much needed retail convenience on the ground plane (in an area with limited range of retail and food and drink premises) delivery of a publicly accessible public plaza and a significant dedication of the site (with no developer contribution offset) for a public lane (which only benefits the adjoining site and a slip lane along Lakemba Street).
- There is an absence of any environmental impacts arising from the proposed variation.
- The proposed non-compliance with the height of building standard will not result in any matter of significance for State or regional environmental planning

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the height of buildings development standard should be applied.

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