

Cl. 4.6 of the
Bankstown Local Environmental Plan 2015
Request to vary the maximum
height of buildings development standard



Proposed redevelopment of the Croatian Club and
development of shops, office and business premises
921, 921A, 921B, 923 and 925 Punchbowl Road,
and 21 Canterbury Road, Punchbowl

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For
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December 2019

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A handwritten signature in black ink, appearing to read 'Michael Gheorghiu', written in a cursive style.

Date:

11 December 2019

Disclaimer:

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1 Introduction

1.1 Overview

This Clause 4.6 of the *Bankstown Local Environmental Plan 2015* (LEP) exceptions to development standards report (Clause 4.6 Report) requests a variation to the maximum height of buildings development standard for the proposed development located at 921, 921A, 921B, 923 and 925 Punchbowl Road, and 21 Canterbury Road, Punchbowl (the site).

Currently located on the site is the Croatian Club and at-grade car parking to support the function of the club. The proposed development seeks consent for demolition of existing structures on the site and redevelopment of the Croatian Club, shops, office, business premises, on-site at-grade and basement car parking, associated landscaping and associated civil engineering works.

This Clause 4.6 Report supports the Statement of Environmental Effects (SEE) report that provides the urban planning assessment and justification for the proposed development. This Clause 4.6 Report and SEE have been prepared on behalf of the Croatian Club Limited Pty Ltd (the Club).

The SEE supporting this Clause 4.6 Report includes an assessment of the proposed works in terms of the matters for consideration as listed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act) and Clause 50 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations).

1.2 Clause 4.6 of the Bankstown LEP 2015

Clause 4.6 of the LEP provides the mechanism to vary development standards, which states:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (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.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard 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.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must 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.*

2 The Site

This section of the report provides a review of the subject site.

2.1 Site Location

The site is located at 921, 921A, 921B, 923 and 925 Punchbowl Road, and 21 Canterbury Road, Punchbowl (the site). The legal description of the site is provided in the table below and the site has an area of 17,880sqm.

Table 1. Land Legal Description

Address	Lot and DP
921 Punchbowl Road	Lot 6 DP5245
921A Punchbowl Road	Lot A DP378634
921B Punchbowl Road	Lot D DP382627
923 Punchbowl Road	Lot 15 DP132440
925 Punchbowl Road	Lot 1 DP236825
21 Canterbury Road	Lot 14 DP132440

The site is an irregular shape located on the corner of Punchbowl Road and Canterbury Road. To the east of the site is located residential development and Punchbowl Park. Low scale residential development of up to two storeys is located on the western, northern and north-eastern boundary of the site. Additionally, immediately adjoining the site on the western boundary is a large light business premises consisting of storage area and warehouse buildings. To the east of the site are located a variety of developments including business premises, low scale residential development and recently constructed multi-storey residential development. Refer to Figure 1 for site location.



Figure 1. Subject site (source: base map from Nearmap)

The site is located within 1.7 kilometres of the Bankstown Town Centre and Bankstown Train Station, which is on the existing T3 Railway Line that provides train services between Sydney-Liverpool and Lidcombe. The T3 Railway Line is being converted to a Metro Railway Line thus converting Bankstown to a Metro Train Station that will provide faster and more frequent train services. Bankstown Town Centre is identified as a Strategic Centre under the Greater Sydney Commission's South District Plan.

The closest train station to the site is actually Punchbowl, which is located within 1.2 kilometres. Punchbowl Train Station is also on the T3 Railway Line that as mentioned above is being converted to a Metro Railway Line. Hence, Punchbowl Train Station will be converted to a Metro Station.

The other largest shopping precinct that is located near the site is the Roselands Shopping Centre, which is situated within 2.2 kilometres. The site is also within 1 kilometre of large employment areas. Therefore, providing a large catchment of workers and people that are likely to use the proposed uses on the site.

The site as shown in Figures 3 and 4 shows the location of the site within its regional context.

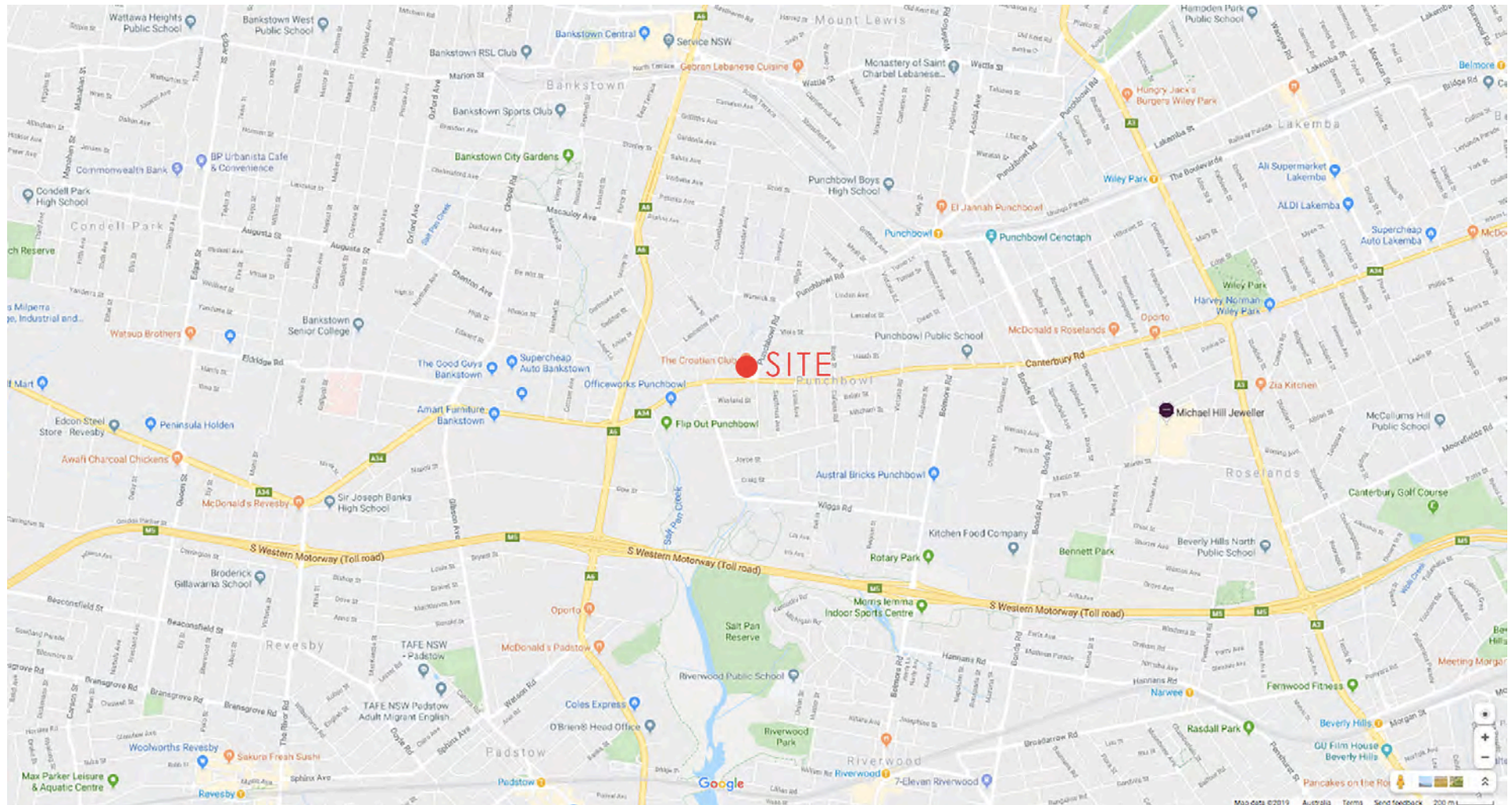


Figure 3. Subject site in its regional context (source: base map from Google Maps)

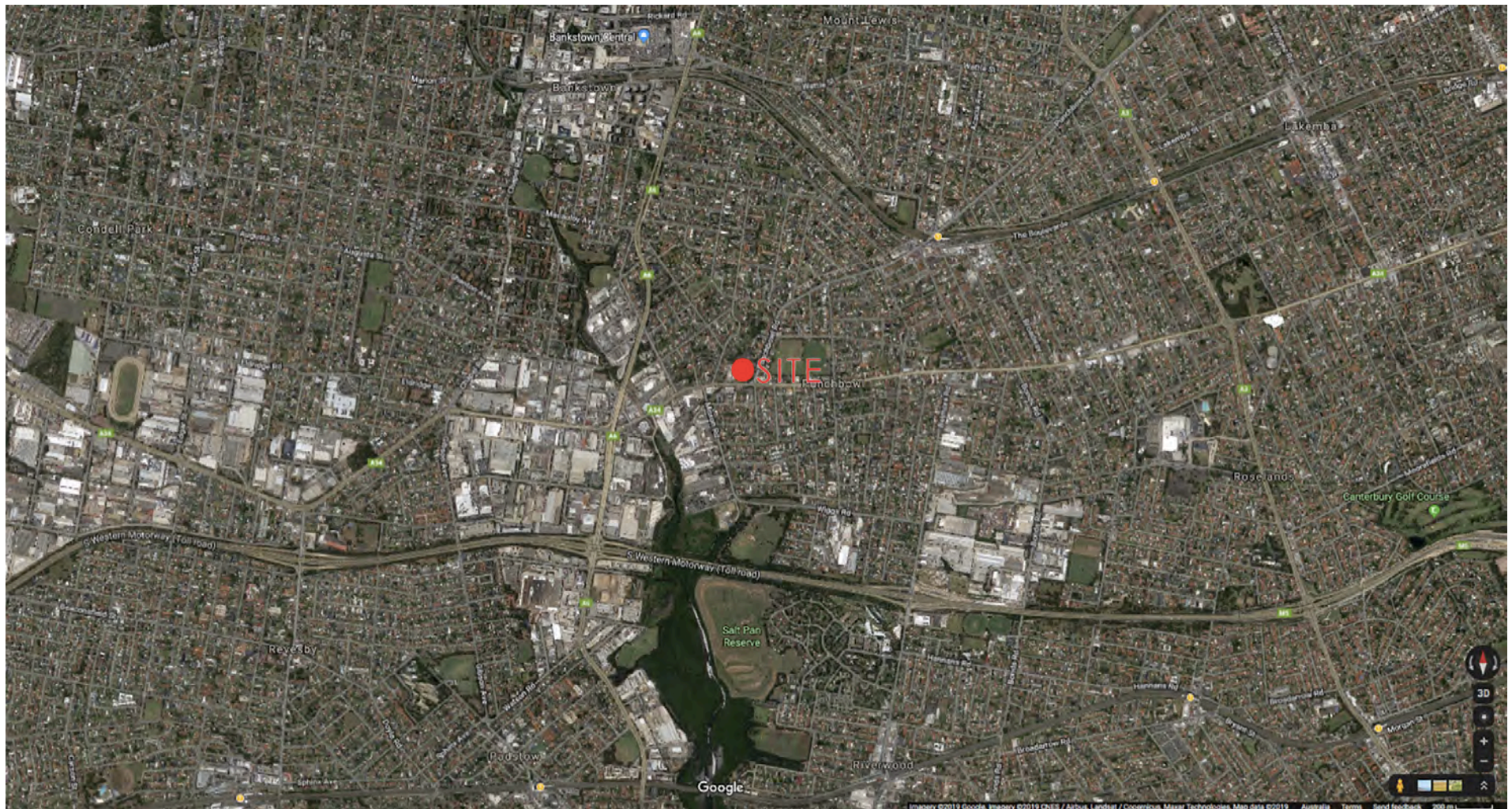


Figure 4. Site in its regional context - aerial (source: base map from Google Maps)

2.2 Site Description

The site comprises of six allotments. The site is irregular in shape and generally flat. One large building is found on the site that is currently being used by the Croatian Club. At-grade car parking is provided on the site to service the Croatian Club. The site currently has a minimal amount of landscaping, generally to the perimeter of the site. Table 2 below provides a summary of the site.

Table 2. Site Description

Item	Details
Legal Description	<ul style="list-style-type: none">• 921 Punchbowl Road - Lot 6 DP5245,• 921A Punchbowl Road - Lot A DP378634,• 921B Punchbowl Road - Lot D DP382627,• 923 Punchbowl Road - Lot 15 DP132440,• 925 Punchbowl Road - Lot 1 DP236825 and• 21 Canterbury Road - Lot 14 DP132440
Existing Development on Site	Croatian Club and car parking
Site Area	1.788 hectares
Punchbowl Road Frontage	Approx. 110 metre
Canterbury Road Frontage	Approx. 90 metres

3 The Proposal

CMT Architects Australia Pty Ltd (CMT Architects) are the architects of the proposal. This section describes the proposed development. Refer to architectural plans prepared by CMT Architects enclosed with this Clause 4.6 report.

3.1 Proposed Development

The proposed development seeks consent for a three storey building consisting of the redevelopment of the Croatian Club, and development of shops, office and business premises. Additionally, consent is sought for on-site at-grade and basement car parking. Generally, the following works are proposed:

- Demolition of all existing structures on site;
- Construction of a development, consisting of:
 - Car parking for a total of 423 car parking spaces including:
 - Lower basement level car parking for 207 car parking spaces,
 - Upper basement level car parking for 16 car parking spaces
 - At-grade car parking for 200 spaces;
 - Upper basement
 - Shop - 3,000sqm gross floor area (GFA),
 - Storage – 200sqm,
 - Waste room – 350sqm,
 - Loading are – 425sqm,
 - Central pedestrian circulation area with landscaping and escalators to ground level above,
 - Ground level:
 - Croatian Club – 1,500sqm GFA,
 - Shops and business premises – 1,800sqm GFA,
 - Outdoor public area and open space,
 - Internal road with access from Punchbowl Road,
 - Basement vehicular access on-site from proposed internal road,
 - First level office space – 3,375sqm GFA;
 - Second level office space – 3,375sqm GFA;
- Associated civil engineering works including stormwater and drainage infrastructure works; and
- Associated landscaping works.

3.2 Photomontages

This application and enclosed architectural plans are supported by a photomontage of the proposed development. Refer to Figure 4, 5 and 6 for the photomontages.



Figure 5. View to proposal from corner of Canterbury Road and Punchbowl Road



Figure 6. View to site and proposed internal road from Punchbowl Road



Figure 7. View to publicly accessible internal courtyard

4 Development Standards

This section identifies the development standard that is requested to be varied. The key environmental planning instrument that applies to the site is the *Bankstown Local Environmental Plan 2015* (LEP) under which the development standard is found.

4.1 Maximum Height of Buildings

In accordance with Clause 4.3 of the *Bankstown Local Environmental Plan 2015* the site is subject to two maximum height of buildings (HOB) development standards being 11 metres over the land zoned as B1 Neighbourhood Centre and 9 metres over the land zoned as R2 Low Density Residential. Refer to Figure 7 below that shows that location of the site in relation to the LEP maximum height of buildings development standards.

The LEP defines building height as follows:

“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 8. Extract from LEP heights of buildings development standard map

5 Proposed Variation

This section describes the variation being requested.

5.1 Maximum Height of Buildings

The proposed development is non-compliant with the portion of site that is subject to the 11 metres maximum building height development standard under Clause 4.3 of the LEP.

The non-compliance is being generated by predominately the roof and partially by the upper most sections of the building. The proposal is non-compliant with the development standard by 0.30 metres to 1.50 metres. This equates a total non-compliance of between 2.7% to 13.6% over the development standard.

However, the proposal is lower in height than the existing development on the site. The current building on the site has a height at the roof level between RL19.89 and RL20.02. The existing ground level around the building varies from between RL6.40 to RL7.60. Therefore, at the correlating points between the ground level and highest points on the existing development, the existing building has an overall height of between 12.42 metres and 13.49 metres. Hence, the existing development exceeds the LEP 11 metres maximum height of buildings development standard by between 1.42 metres and 2.49 metres, or 12.9% and 22.6%, respectively.

Further, while the proposal is non-compliant with the current LEP development standard, the proposal is compliant with the proposed 17 metres height of buildings development standard in the Planning Proposal.

Refer to Figures 9 to 16 in this report that show the extent of the non-compliance generated by the proposed development.

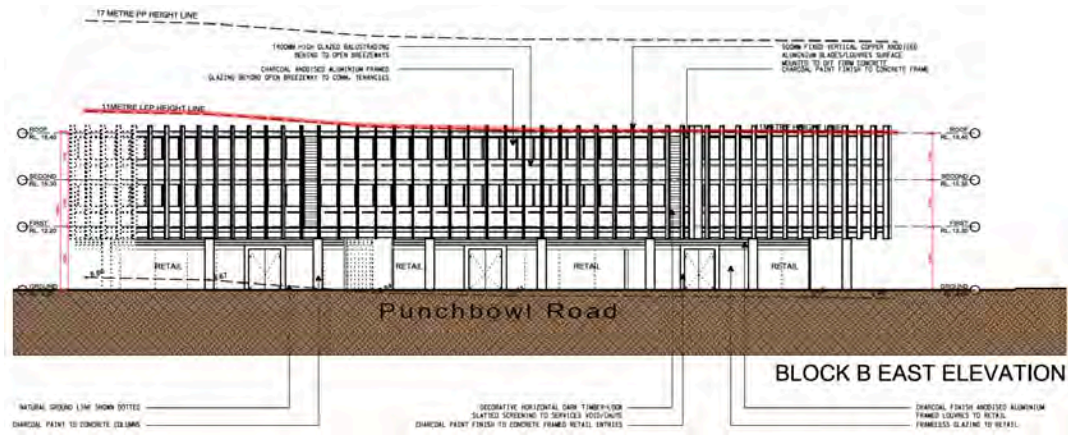


Figure 9. East Elevation

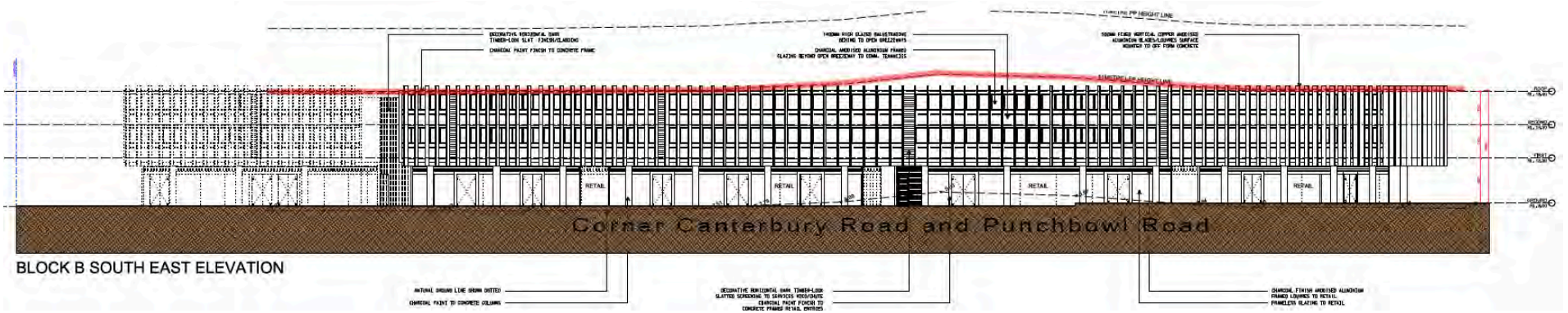


Figure 10. South East Elevation

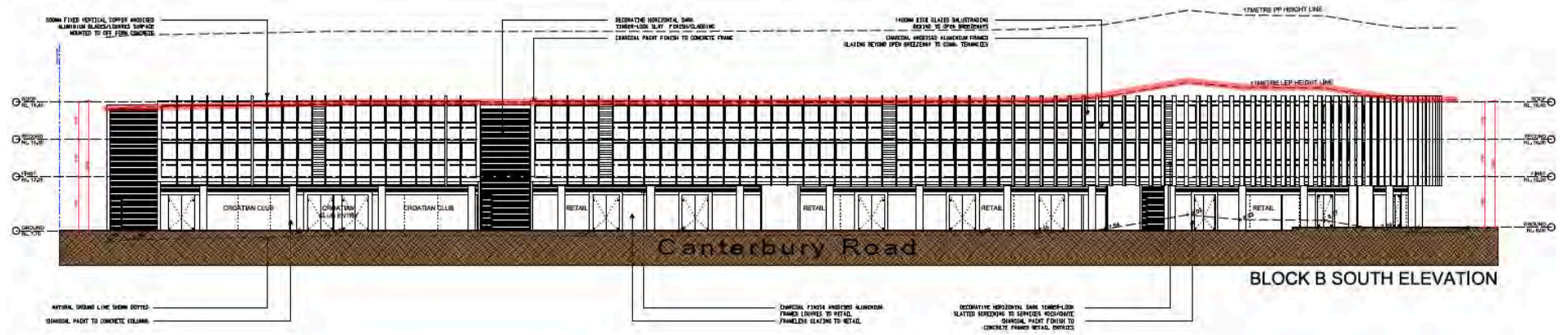


Figure 11. South Elevation

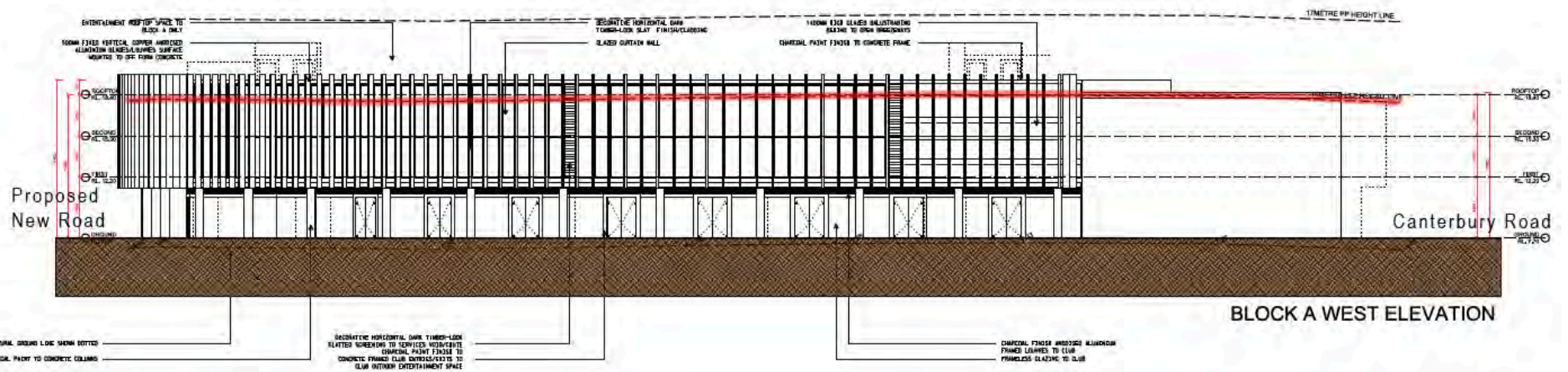


Figure 12. West Elevation

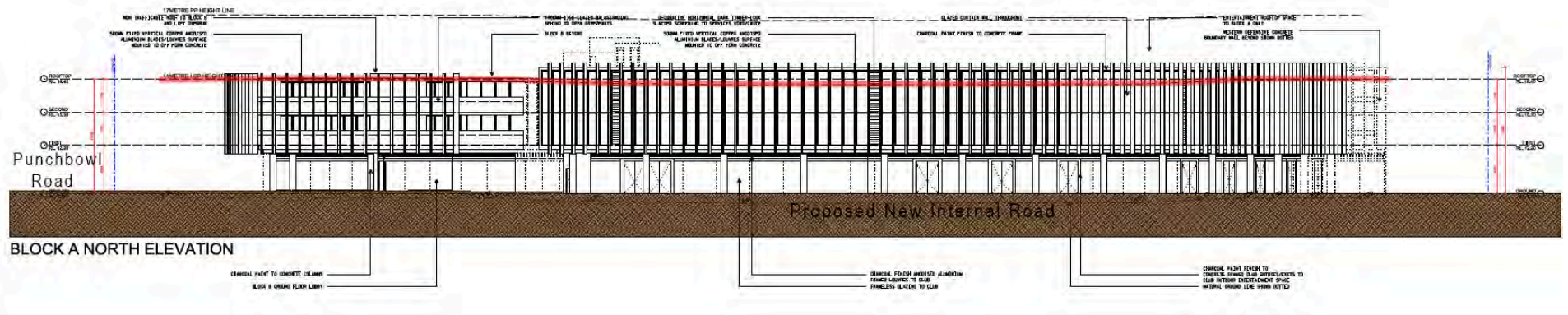


Figure 13. North Elevation

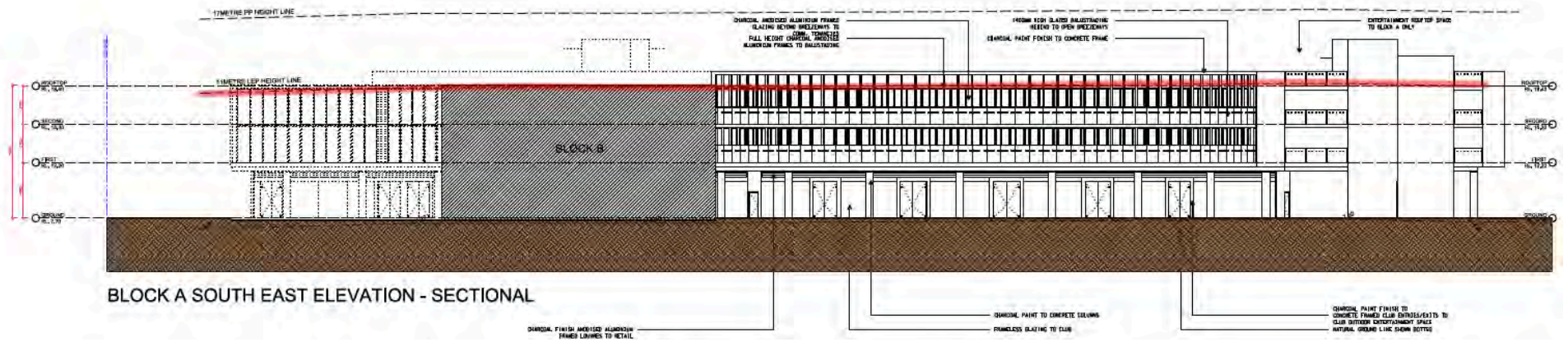


Figure 14. South East Elevation Sectional

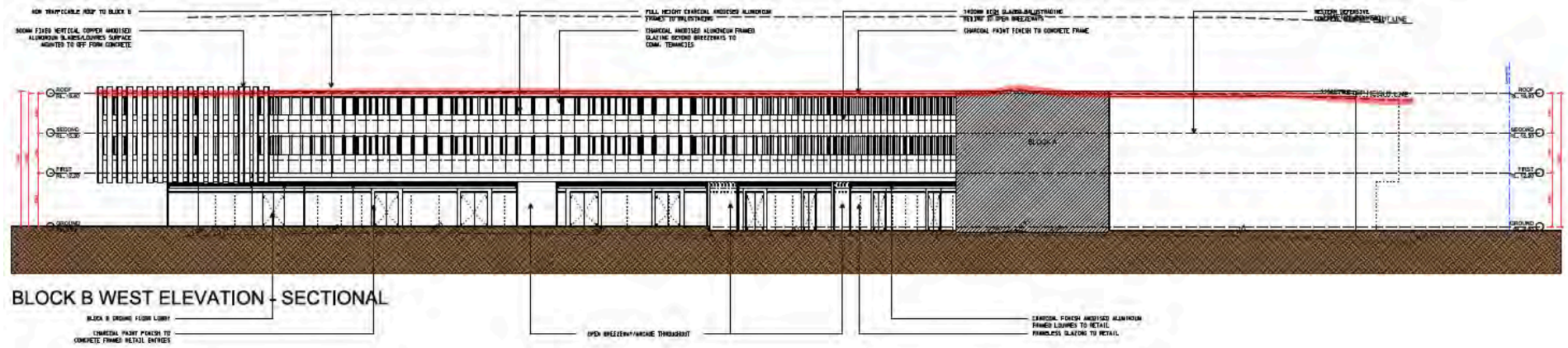


Figure 15. West Elevation Sectional

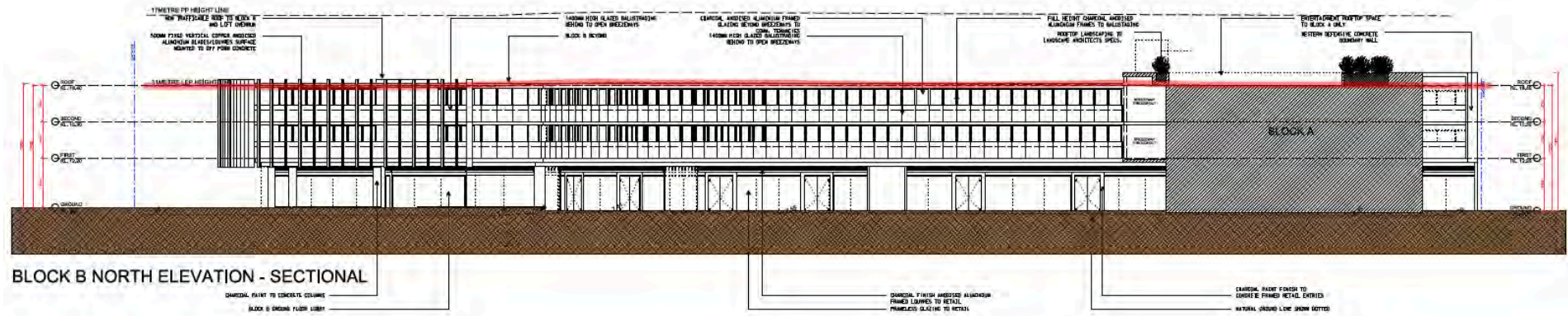


Figure 16. North Elevation Sectional

6 Justification for Request the Development Standards

This Clause 4.6 Report seeks to amend the maximum building height development standard in Clause 4.3 of the LEP in support of the proposal. This section provides the justification for the variation.

6.1 Assessment of the Objectives of the Building Height Standard

The objectives of Clause 4.3 are provided below with an assessment of the objectives.

Maximum Height of Buildings

Clause 4.3 of the LEP states:

“4.3 Height of buildings

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

- (a) to ensure that the height of development is compatible with the character, amenity and landform of the area in which the development will be located,*
- (b) to maintain the prevailing suburban character and amenity by limiting the height of development to a maximum of two storeys in Zone R2 Low Density Residential,*
- (c) to provide appropriate height transitions between development, particularly at zone boundaries,*
- (d) to define focal points by way of nominating greater building heights in certain locations.*

Assessment

The proposal meets the above by:

- The proposed height of the development is appropriate to the conditions of the site and its context as the surrounding context already consists of a wide range of built forms and building heights. The proposal meets this objective from a number of different perspectives, including:
 - The proposal reinforces the corner of Canterbury Road and Punchbowl Road and clearly aligns with the land use zone intent of the Centre on the site,
 - The proposal contributes positively to the skyline of the area and in particular to the treatment of the corner. Specifically, on the southern side of the site a large seven storey residential development has been constructed that dominates the surrounding built form. Due to the shape and orientation of the proposal, the proposal provides a consistent built form profile to both frontages on Canterbury Road and Punchbowl Road,
 - In essence the proposal positively contributes to the character of the area and creates a landmark building on a major intersection;
- The proposal reinforces the uses on the site for a Neighbourhood Centre, positively aligning with the existing land use zone, while providing a large transition area by way of at-grade car parking to the nearby R2 Low Density Residential development;
- Give the nature of surrounding development which ranges from light industrial, commercial and residential, which are of varying built forms and heights, the proposal is considered to achieve a height that contributes to the creation of a

landmark building on the site. The proposed height forms part of the interesting diverse character of the existing development in the area; and

- The site and proposal is clearly a focal point. The proposal achieves a unique development for the site and for the entire Council area, and is expected to become a landmark development.

Therefore, the proposed non-compliance is considered to be reasonable for the site and strict compliance with the development standard unnecessary.

6.2 Assessment of the Objectives of the Land Use Zone

The site is zoned B1 Neighbourhood Centre. The objectives of the land use zone in the LEP are as follows:

“Zone B1 Neighbourhood Centre

1 Objectives of zone

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To provide for certain residential uses that are compatible with the mix of uses in neighbourhood centres.*

Assessment

The proposal meets the above by:

- The proposal provides a range of uses that reinforce the role the Centre and intent of the land use zone providing much needed retail and commercial services in the area to support the local community. The proposal also achieves a significant amount of employment from the proposed uses including retail/commercial jobs, cleaning and administration jobs, as well as construction jobs.
- The proposal does not include any residential uses.

Therefore, the proposed non-compliance is considered to be reasonable for the site and clearly meets the objectives of the zone.

6.3 Clause 4.6 Assessment

In order for development consent to be granted to a non-complying development, Council must be satisfied that the provisions of Clause 4.6(3)-(5) of the LEP have been satisfied. The proposed development has been assessed under these provisions, having regard to the application of these provisions established by the NSW Land and Environment Court in:

- *Wehbe v Pittwater Council [2007] NSW LEC 82*
- *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 ('Four2Five No 3')*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.*

Accordingly, the following assessment is made:

Clause 4.6(1)(a) and (b)

The first test of Clause 4.6, is whether the proposal meets the objectives of Clause 4.6, which area:

- (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.*

It is believed that the proposal does meet the above objectives as the proposal offers a development that does not generate any significant environmental impacts, achieving a design with a good outcome for the site. The environmental assessment and justification for supporting the flexible application of the development standard is discussed below.

Clause 4.6(3)

Clause 4.6(3)(b) requires the proposal to be justified in regard to:

- (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.*

Unreasonable or Unnecessary Assessment

Preston CJ in *Wehbe v Pittwater Council* [2007] NSW LEC 827 outlined five criteria, which may demonstrate that compliance with a development standard is "unreasonable or unnecessary".¹ The criteria are articulated as follows:

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

An assessment of the above criteria in relation to the subject development is outlined on the following pages.

(i) The objectives of the standard are achieved notwithstanding non-compliance with the standard

Consistency with the objectives of the height of buildings development standard, and absence of any adverse environmental impacts and significant material impacts, would demonstrate that strict compliance with the development standard is both unreasonable and unnecessary in this instance.

The proposal is consistent with the objectives at Clause 4.3 of the LEP satisfying *Wehbe* test (i). As such, it is unreasonable and unnecessary in this circumstance to comply with the development standard.

¹ *Wehbe v Pittwater* [2007] NSW LEC 827, [42-49]

² *Ibid*

(ii) The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not applicable. The underlying objectives or purpose of the development standard is relevant to the development and are achieved as outlined in (i) above.

(iii) The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

Not applicable. The underlying object or purpose of the development standard would not be defeated or thwarted if compliance was required.

(iv) 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

Not applicable. Council has not abandoned or destroyed the development standard by its own actions. Notwithstanding this, strict compliance with the development standard is considered to be unnecessary and unreasonable in the circumstance, as the proposal does not generate any adverse environmental impacts.

(v) 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.

Not applicable. Zone B1 Neighbourhood Centre is an appropriate zone given the site's location. The proposed uses are also consistent with the land use zone. As such this exception to development standard request does not rely on this reason.

Further Discussion on Unreasonable or Unnecessary Assessment and Environmental Planning Grounds

The proposed development is subject to a maximum building height of 9 metres and 11 metres under the LEP. The part of the development on the site that is causing a non-compliance is subject to the 11 metre height of building development standard.

As identified in Section 5 of this report, the proposal exceeds the maximum height of buildings development standard by between 2.7% and 13.5%. However, these numerical non-compliances translate into negligible environmental impacts.

Clause 4.6(3)(b) requires sufficient environmental planning grounds to be demonstrated to justify a contravention of the development standard.

The non-compliance with the maximum height of building development standard generates two issues of concern, which include overshadowing and view loss.

Overshadowing Assessment

In relation to overshadowing, the shadow analysis diagrams provided at Figures 14, 15 and 16 of this report shows the extent of overshadowing cast by the proposal in comparison with the existing development on the site.

Analysis of the shadow diagrams found that the proposal would not generate adverse overshadowing impacts on adjoining properties and in particular no overshadowing impacts on any existing residential properties.

View Impact Assessment

With respect to view loss and view impacts on surrounding development the proposal does not obstruct any views from surrounding development to any iconic views and/or vistas. Development in the local area predominately has views to the relevant streets the properties front onto or to roof-tops or if potentially to a park. The proposal does not have any impact on views that might currently be enjoyed by any residents to a park and overall does not generate any adverse view impacts to the surrounding area.

Moreover, the proposal enhances the aesthetic quality of the streetscape by reinforcing the corner of Canterbury Road and Punchbowl Road with a contemporary architecturally designed building, planting of landscaping and street trees and encouragement of greater street activation.

Additionally, the inclusion of a pocket park at the end of the proposed internal road creates a positive vista for the site and area. Also, the creation of an internal courtyard enveloped by the proposed building provides increased amenity for users of the proposal reducing the impact from vehicular noise, dust and pollution currently experienced off Canterbury Road and Punchbowl Road, while also creating a new visual experience.

Summary

It is evident that the proposed development is a positive contribution to the site. Therefore, in consideration of, 1) the orientation and siting of the proposed development, 2) the proposed built form, 3) interesting built form contributing to the skyline, 4) views and pedestrian experience at street level, and 5) overall lack of environmental impacts, it is considered that the variation to the development standard is completely acceptable. Hence, strict compliance with the development standard in the circumstance is unnecessary and unreasonable.

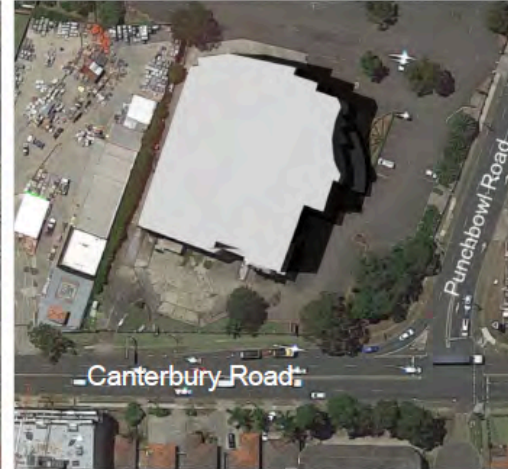
December 22, 9am



December 22, 12pm



December 22, 3pm



Existing

December 22, 9am



December 22, 12pm



December 22, 3pm



Proposed

Figure 17. Shadow diagrams – December

March 21/September 23, 9am



March 21/September 23, 12pm



March 21/September 23, 3pm



Existing

March 21/September 23, 9am



March 21/September 23, 12pm



March 21/September 23, 3pm



Proposed

Figure 18. Shadow diagrams – March/September

June 22, 9am



June 22, 12pm



June 22, 3pm



Existing

June 22, 9am



June 22, 12pm



June 22, 3pm



Proposed

Figure 19. Shadow diagrams – June, mid-winter

Further, pursuant to the decision in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* it needs not be demonstrated that the non-complying development has a "neutral or beneficial effect relative to a complaint development."³ Should the design be amended to comply, it would cause an inferior design and planning outcome with no substantial better environmental outcome. Accordingly, the proposal is optimal as it stands. Furthermore, in *Initial Action*, at [23], Preston CJ held:

"... The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purposes of the EPA Act, including the objects in Section 1.3 of the EPA Act."

An assessment of the Objects Section 1.3 of the Act is provided in the table below. The assessment found that the proposal does offend any of the Objects of the Act.

Table 3. Section 1.3 of the Act Assessment

Objects under Section 1.3 of the Act	Assessment
(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,	Not applicable. The proposal does not impact any of the State's natural and other resources.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal meets the objectives of the B1 Neighbourhood Centre zone and Council's inherent desired future character for the area, as provided in the Planning Proposal. The proposal is considered suitable for the site in that it meets this object because, <ul style="list-style-type: none"> • it does not generate any significant adverse environmental impact; • provides increased economic activity in the area and supports the local community; and • provides greater employment opportunities for the site.
(c) to promote the orderly and economic use and development of land,	The proposal achieves an orderly and economic use of the land. Refer to above assessment under Object (b).
(d) to promote the delivery and maintenance of affordable housing,	The proposal does not include affordable housing and there is no requirement or mechanism under Council's LEP to provide affordable housing.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	Not applicable. The site does not include any threatened and other species of native animals and plants, ecological communities and their habitats

³ *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 [86]*

Objects under Section 1.3 of the Act	Assessment
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	Not applicable. The site does not include any built and cultural heritage, including Aboriginal cultural heritage.
(g) to promote good design and amenity of the built environment,	The proposal is considered to be an excellent design outcome for the site, as it achieves a high quality amenity for future users. The proposal does diminish the architectural design and character of the existing development but in turn enhances the design and aesthetic quality of development on the site. The proposal promotes an enhanced streetscape and creates a landmark development on the site and for the entire Council area.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposal seeks to achieve the proper construction and maintenance of the building. Any development consent would be subject to strict Conditions of Consent that the developer and building contractor would need to adhere to and demonstrate compliance with relevant Council requirements, National Construction Code requirements and Australian Standards.
i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	In accordance with the NSW State Government's District Plan the key strategic direction in the District Plan that applies to the site is <i>'jobs and skills for the city'</i> where the potential indicator is <i>'Increased jobs in metropolitan and strategic centres'</i> . The realisation of the proposal would meet the NSW State Government's strategic will also reinforcing the economic role of site.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposal is subject to standard planning process for development consent.

As such, given the assessment of the Objects of the Act and assessment of potential environmental impacts, there is sufficient justification for the proposal on environmental planning grounds, which are particular to the subject site, to allow for the contravention of the development standard.⁴ Accordingly, the proposed development will be in the public interest because it is consistent with the objectives of the development standard and land use zone.

⁴ *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009, [60]; *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90,[29].

Assessment of Clause 4.6(5)

Further to the above, the NSW Department of Planning and Environment (DP&E) issued a Planning Circular (PS17-006) dated 15 December 2017 that provides guidance with respect to assumed concurrence when determining a development application that is supported by a Clause 4.6. The Planning Circular outlines the procedural and reporting requirements.

Therefore, the Clause 4.6 also includes an assessment under Clause 4.6(5) of the LEP as required by the Planning Circular. Clause 4.6(5) states:

“4.6 Exceptions to development standards

(5) In deciding whether to grant concurrence, the Secretary must 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.”*

An assessment of Clause 4.6(5) of the LEP is provided below.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The proposed non-compliance with the maximum building height development standard does not raise any matters of significance for State or regional environmental planning. The contravention only relates to local environmental planning matters and controls.

(b) the public benefit of maintaining the development standard, and Maintaining the development standard in the circumstance would result in a poorer public benefit with respect to the streetscape.

Should the proposal comply with the development standard, it would result in an inferior architectural and urban design outcome, as well as result in a less economic viable outcome for the area.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

There are no other matters to be taken into consideration by the Secretary before granting concurrence. The proposal results in an orderly and economic development for the site.

Conclusion

The proposed development is within the public interest because it is consistent with the objectives of the particular standard, providing a particularly high level of amenity for future users whilst maintaining the current level of amenity to surrounding development.

This Clause 4.6 Report provides a well-founded justification for the proposed non-compliance to the maximum height of building development standard under Clause 4.3 of the LEP respectively.

Therefore, it is considered that strict compliance with the development standard is unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard for Council to support the proposed development.

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