

Clause 4.6

Request to vary Section 16 of the *State Environmental Planning Policy (Housing) 2021*

19-25 Balfour Street, Lindfield

SSD 82709458

Prepared for Balfour Group Pty Ltd

Submitted to DPHI

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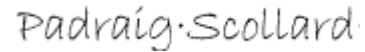
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Table of Contents

1. Introduction	5
2. Planning Overview	7
3. Proposed Development	10
3.1. Proposed variation	12
4. Legislative Context.....	16
4.1. Clause 4.6 Exceptions to Development Standards	16
4.1.1. Clause 4.6(3)	16
4.1.2. Clause 4.6(4)	16
4.2. Relevant Judgements - NSW Land and Environment Court	16
4.2.1. Wehbe v Pittwater Council (2007)	17
4.2.2. Initial Action Pty Ltd v Woollahra Municipal Council (2018)	17
4.2.3. Linfield Developments Pty Ltd v Cumberland Council (2019)	17
4.2.4. SJD DB2 Pty Ltd v Woollahra Council (2020)	17
4.2.5. Big Property Pty Ltd v Randwick City Council (2021)	18
4.2.6. HPG Mosman Projects Pty Ltd v Mosman Municipal Council (2021)	18
5. Assessment of the Variation to development standard	19
5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary	19
5.1.1. Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.....	20
5.1.2. Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.....	21
5.1.3. Wehbe Test 3: The underlying object or purpose would be defeated, thwarted or undermined if compliance was required and therefore compliance is unreasonable	21
5.1.4. Wehbe Test 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable	22
5.1.5. Wehbe Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That, particular parcel of land should not have been included in the zone ..	23
5.2. Clause 4.6(3)(b) – Environmental Planning Grounds to Justify Contravening the Development Standard	23
5.2.1. Topography.....	23
5.2.2. Environmental impacts	24
5.2.3. Intensity of development.....	28
5.2.4. Desired future character	28
6. Conclusion	31

Figures

Figure 1: Land zoning map (Source: KLEP 2015)	9
Figure 2: TOD Map (Source: Giles Tribe)	9
Figure 3: The site in its immediate context (Source: Nearmap)	11
Figure 4: South elevation (Source: Giles Tribe)	11
Figure 5: Northern elevation (Source: Giles Tribe)	12
Figure 6: Proposed height exceedance - southeast (Source: Giles Tribe)	13
Figure 7: Proposed height exceedance - northeast (Source: Giles Tribe)	14
Figure 8: Proposed overshadowing (Source: Giles Tribe)	28
Figure 9: Indicative future development (Source: Giles Tribe)	29
Figure 10: Proposed development viewed 7 Balfour St (Source: Balfour Group).	30
Figure 11: Proposed development viewed from 28 Bent St (Source: Balfour Group)	30

Tables

Table 1: Planning information and numeric overview	7
Table 2 surrounding height exceedances	22

1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Ku-ring-gai Local Environmental Plan 2015* (KLEP 2015) to support a State Significant Development Application (SSDA) for a residential flat building (including in-fill affordable housing) at 19-25 Balfour Street, Lindfield (the site) within the Ku-Ring-Gai Local Government Area (LGA).

The SSDA was publicly exhibited from 15 August 2025 to 11 October 2025. Following this, the proposed development has been amended and refined in response to receiving agency and public submissions. Details of the agency and public submissions are provided in the accompanying Submissions Report, prepared by Keylan Consulting.

The amendments and refinements made to the proposal have resulted in a reduction to the proposed height of the residential flat building. Details of these changes are provided and assessed in subsequent sections of this report.

The subject land is located in the Lindfield Transport Orientated Development (TOD) area pursuant to Chapter 5 of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). Clause 155(2) of Chapter 5 of the Housing SEPP prescribes a maximum building height of 22m for residential flat buildings in the TOD.

Importantly, the proposal incorporates 17% affordable housing pursuant to Chapter 2, Section 15C and Chapter 5, Section 156 of the Housing SEPP. The proposal seeks to utilise the incentive controls under Chapter 2, Part 2, Division 1, Section 16(3) of the Housing SEPP to achieve 30% additional building height, totalling a maximum building height control of 28.6m.

As such, this Request relates to Section 155(2) and Section 16(3) of the Housing SEPP.

The SSDA proposes an exceedance of the 28.6m building height development standard that applies to the site, seeking a maximum building height of 32.6m. This is a minor (0.1m) reduction to the maximum height and exceedance sought as part of the original SSDA (as exhibited). Despite this, it should be noted, that the overall building height has been significantly reduced from the original SSDA (as exhibited).

This Request has considered the detailed guidance within the NSW Department of Planning and Environment's (DPHI) *Guide to Varying Development Standards: November 2023*, and addresses the findings and established principles (as relevant) in the following judgements of the NSW Land and Environment Court (the Court):

- *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070
- *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Big Property Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] NSWLEC 1243
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131

The following sections of this Request critically analyse the proposed variation to the maximum height of building standard applying to the site, its impact and reasonableness.

This analysis demonstrates that an exception to the height of buildings development standard is warranted in this instance.

2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* (Standard Instrument) includes various development standards as a means of achieving environmental planning objectives.

Clause 4.6 of the Standard Instrument allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard.

The DPHI Guide recommends that any request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. Table 1 below provides a summary of the relevant planning context and provides an overview of the proposed variation.

Information Requirement	Comment
Relevant Applicable Planning Instrument	<i>State Environmental Planning Policy (Housing) 2021</i> (Housing SEPP)
Zoning of the Land	R4 High Density Residential, the site is also located within the Lindfield TOD Area meaning that, as per section 154(1) of the Housing SEPP, development for the purposes of residential flat buildings is permitted with development consent.
Objectives of the Zone	- The objectives of the R4 High Density Residential zone are: <i>To provide for the housing needs of the community within a high density residential environment.</i> <i>To provide a variety of housing types within a high density residential environment.</i> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <i>To provide for high density residential housing close to public transport, services and employment opportunities.</i>
Development Standard to be Varied	- Section 155(2) of the Housing SEPP; and - Section 16(3) of the Housing SEPP
Nature of the Development Standard	- The site is subject to a base height permitted by section 155 of the Housing SEPP and a bonus height control permitted by section 16 of the Housing SEPP. The numerical values are outlined below; - Section 155(2): 22m - Section 16(3): 22m + 30% = 28.6m - Therefore, the numerical value to be varied is 28.6m (refer to excerpt below (bold for emphasis))
Proposed Numeric Control	Maximum building height of 32.6m
Percentage Variation Between the Proposal and the Planning Instrument	The proposed increase of 4m represents a total 13.99% increase over the Housing SEPP development standard of 28.6m.

Table 1: Planning information and numeric overview

As noted, the standard to be varied is the height of buildings development standard, which is set out in section 155(2) of the Housing SEPP and the additional building height that may be applied to this standard under section 16(3) of the Housing SEPP, as follows (**bold** for emphasis):

155 Maximum building height and maximum floor space ratio

- (1) *This section identifies development standards for development under this chapter that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Note— See the Act, section 4.15(3), which does not prevent development consent being granted if a nondiscretionary development standard is not complied with.

- (2) ***The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m.***

- (3) *The maximum building height for a building containing an independent living unit or shop top housing in a Transport Oriented Development Area is 24m.*

- (4) *The maximum floor space ratio for the following in a relevant residential zone or relevant employment zone in a Transport Oriented Development Area is 2:5:1—*

(a) a residential flat building,

(b) a building containing an independent living unit or shop top housing.

- (5) *This section does not apply to the extent a provision of another chapter of this policy or another environmental planning instrument permits a greater maximum building height or floor space ratio for a residential flat building or building containing shop top housing on the land.*

16 Affordable housing requirements for additional floor space ratio

- (1) *The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).*

- (2) *The minimum affordable housing component, which must be at least 10%, is calculated as follows—*

$$\text{affordable housing component} = \frac{\text{additional building height}}{(\text{as a percentage})} \div 2$$

- (3) ***If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).***

- (4) *(This section does not apply to development on land for which there is no maximum permissible floor space ratio.*

Land Zoning (LZN)

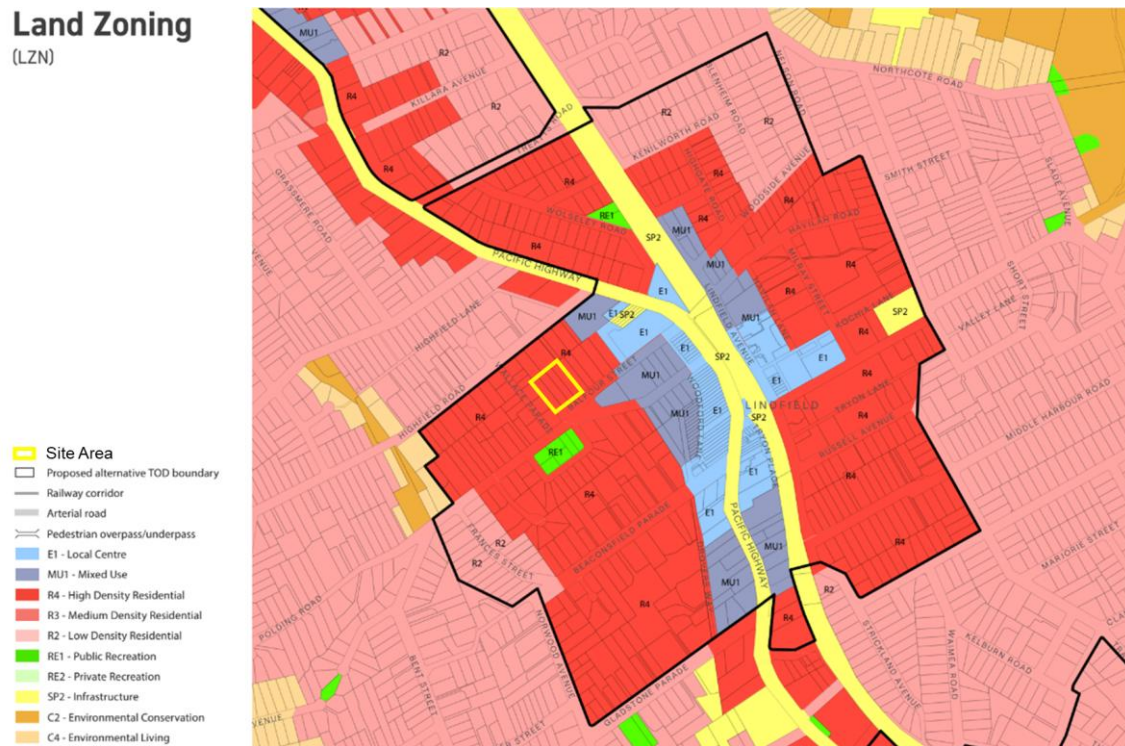


Figure 1: Land zoning map (Source: KLEP 2015)



Figure 2: TOD Map (Source: ESpatial Viewer)

3. Proposed Development

This Request supports a SSDA for the demolition of existing buildings on site and the construction of a 10-storey residential flat building at the site.

Specifically, the proposed development comprises the following:

- demolition of existing buildings and structures on site
- construction of a 10-storey residential flat building featuring:
 - basement level car parking
 - approximately 90 market residential units
 - approximately 30 affordable housing units
- associated landscaping works, including communal open spaces, lower ground/level 1, level 8 and 9.
- associated infrastructure and services.

The SSDA proposes an exceedance of the 28.6m building height development standard that applies to the site, seeking a maximum building height of 32.6m. This is a minor (0.1m) reduction to the maximum height and exceedance sought as part of the original SSDA (as exhibited).

The proposed maximum building height (32.6m) exceeds the maximum standard within the Housing SEPP of 28.6m by 4.0m (13.99%).

Despite this, it should be noted, that the overall building height has been significantly reduced from the original SSDA (as exhibited).

The proposed Floor Space Ratio (FSR) of 3:23:1 is compliant with the maximum FSR controls pursuant to Section 16 and Section 155 of the Housing SEPP.

An overview of the subject site and extent of this non-compliance is shown in the figures below and within the Architectural Plans prepared by Giles Tribe.



Figure 3: The site in its immediate context (Source: Nearmap)



Figure 4: South elevation (Source: Giles Tribe)



Figure 5: Northern elevation (Source: Giles Tribe)

3.1. Proposed variation

This Clause 4.6 request has been prepared in accordance with the position adopted by the Court in *Bettar v Council of the City of Sydney* [2014] and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] in relation to measuring building height. A portion of the building exceeds the 28.6m building height plan when measured from natural ground level. This portion, which comprises the lift overrun, parapet, plant, and portions of the 10 storey on the western tower element is located on the rooftop of the eastern and western tower elements of the building and is proposed to exceed the 28.6m height plan (as measured from natural ground level) by 4m.

The proposed height of building (above the height plane) varies from 28.6m to 32.6m, most part of the building is below the 28.6m height plane. The height of the building envelopes has been designed to follow the site's sloping topography and to take full advantage of the development potential of the site.

As such, the proposal seeks to increase the maximum height of buildings development standard by 4m (13.99%). The proposed height exceedance relates to lift overruns, parapet, roof and portions of the 10 storey on the western tower element. To clarify, the height exceedance primarily results from building elements such as:

Height exceedance	Approximate contribution
Lift overrun	4m
Primary communal open space (Levels 8 and 9)	Included within roof design
Rooftop plant and services	Approximately 1.2-1.8m
Parapet elements	0.4-1m
Natural site topography	Slopes from the northeast (89.54 RL) to southwest (78.14 RL) direction with a total fall of 11.4m

Table 2 Height exceedance summary

These elements collectively represent a minor portion of the building envelope. A breakdown of their vertical extent and horizontal coverage demonstrates that less than 10% of the total rooftop area exceeds the 28.6m threshold, further supporting the argument that the breach is non-material in its visual and environmental impact.

The extent of the height exceedance is 4m (lift overrun), however, transitions to a minimum exceedance of 1.6m in the southwest corner, a significant reduction from the previous 4.1m exceedance. A comparison of the previous height of building exceedance (as exhibited) and the proposed height of building exceedance is provided in Figure 6 and 7, respectively.

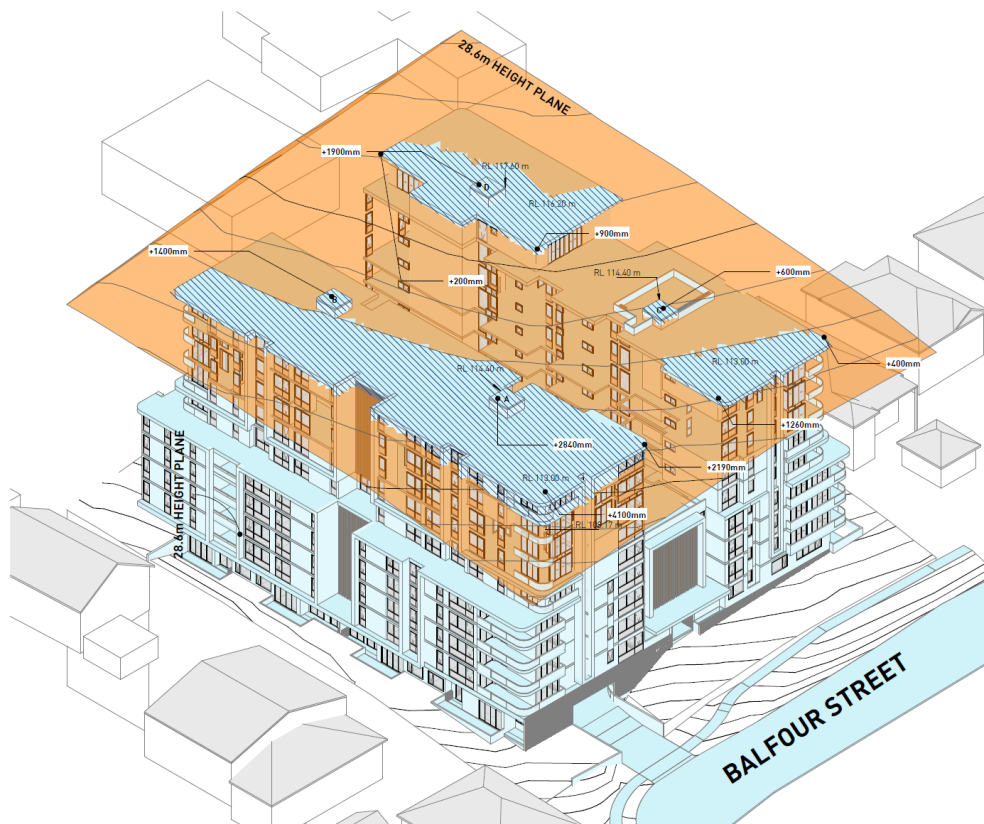


Figure 6: Previous height exceedance (as exhibited) - southwest (Source: Giles Tribe)

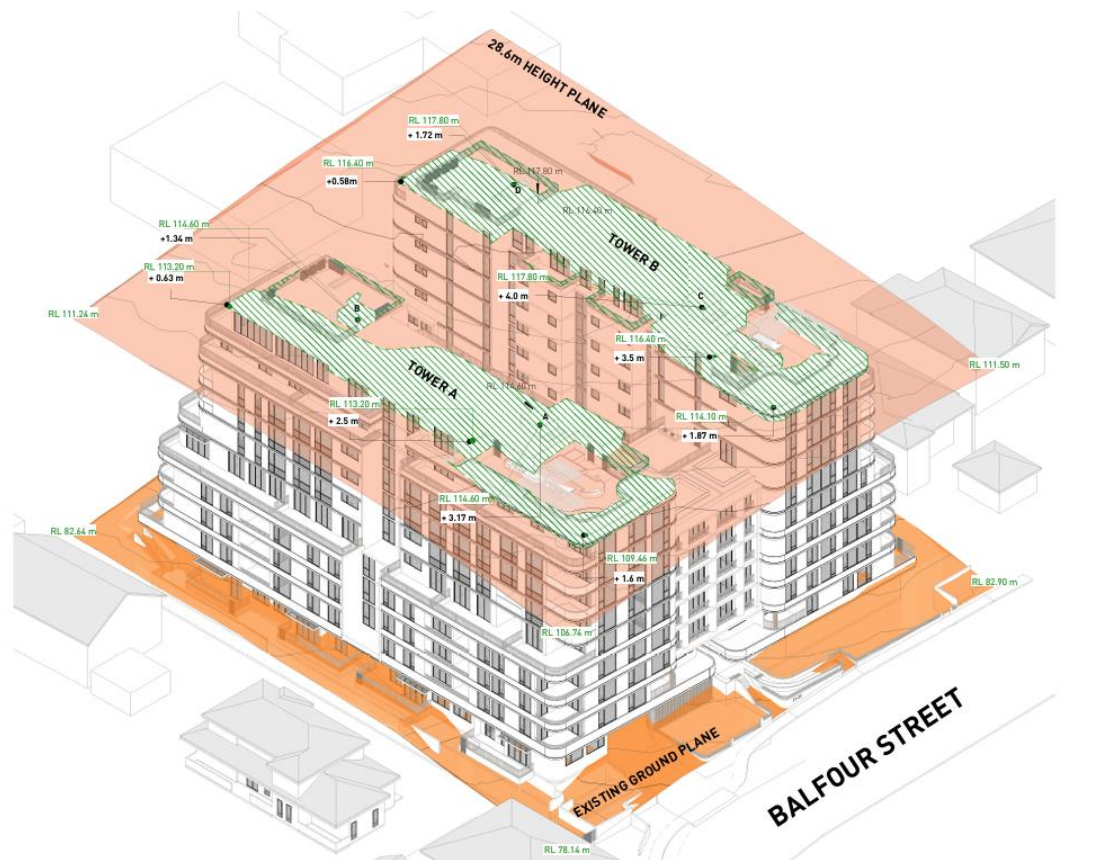


Figure 7: Proposed height exceedance - southwest (Source: Giles Tribe)

A conventional merit-based approach to measuring building height is based on the existing topography of the site and ground floor of an existing building.

The extent of the height exceedance is primarily to service-related elements, including lift overruns and plant. These elements are essential to the operation of the building and are consistent with surrounding SSDA's in the area.

The size and extent of these elements have been minimised where practicable since the exhibition. The exceedance from these elements is not indicative of additional habitable floor space or and increase in development intensity but is required for building services.

The conventional approach is traditionally adopted by consent authorities, including (in the past) the Court. In *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (Bettar) and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 (Stamford), the Court found that existing ground level should not be taken literally and that a building should be considered in its context. In *Bettar*, the level of the footpath at the boundary of the site was taken as the existing ground level, and in *Stamford*, the Court took an average between the ground level of the public domain and the level of the excavated portion of the site.

This Clause 4.6 addresses the approach taken in the *Bettar* and *Stamford*, and also adopted by the Department of Planning, Housing and Infrastructure (DPHI) which is considered to be a more appropriate method to assess the merits of the building height.

Accordingly, this Clause 4.6 request demonstrates that compliance with the height of buildings development standard, as measured in accordance with *Bettar*, is unreasonable and unnecessary, and that there are sufficient planning grounds to justify this contravention.

4. Legislative Context

4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the KLEP 2015 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (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.*

Subclauses (3) and (4) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

4.1.1. Clause 4.6(3)

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—

- (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.*

4.1.2. Clause 4.6(4)

Clause 4.6(4) requires the consent authority to keep a record of its assessment carried out under subclause (3).

4.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Big Property Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] NSWLEC 1243

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

4.2.1. **Wehbe v Pittwater Council (2007)**

This case establishes five potential grounds ‘Wehbe tests’ to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, 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; or
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

4.2.2. **Initial Action Pty Ltd v Woollahra Municipal Council (2018)**

Initial Action Pty Ltd v Woollahra Municipal Council [2018] (Initial Action) further clarifies the correct approach for the consideration of clause 4.6 requests. Clause 4.6 does not require a development that contravenes a development standard to have a *neutral or better* environmental planning outcome than a fully compliant development.

A legal consequence of the decision in *Initial Action* is that Clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

In *Initial Action*, the Court also confirmed that the five common ways of establishing that compliance with a development standard is unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007)* continue to apply.

4.2.3. **Linfield Developments Pty Ltd v Cumberland Council (2019)**

The ‘third’ Wehbe test is concerned with the underlying object or purpose of the development standard and that it would be defeated, thwarted or undermined if strict compliance was required. The reference to ‘undermined’ is an extension of Wehbe which was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]) (Linfield). In Linfield, the court found that:

“...requiring compliance would thwart or undermine at least one of the objectives of the height control development standard...”

4.2.4. **SJD DB2 Pty Ltd v Woollahra Council (2020)**

The *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 (SJD) established greater flexibility in applying clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site. This case concluded that the numerical controls and objectives associated with development standards should not be used to strictly define desired future character. One relevant outcome of

the case was that other provisions of the local environmental plan as well as development in the area that contravenes the development standard can indicate the desired future character of an area.

4.2.5. Big Property Pty Ltd v Randwick City Council (2021)

Big Property Pty Ltd v Randwick City Council [2021] NSWLEC 1161 (Big Property) is also a relevant case associated with a clause 4.6 request in the context of the desired future character of an area. This judgement followed *SJD DB2* and affirmed that the desired future character should not solely be determined by the development standards that control building envelopes, stating:

“...As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development...”

4.2.6. HPG Mosman Projects Pty Ltd v Mosman Municipal Council (2021)

Similar to the *Big Property* case, in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243* (HPG) a clause 4.6 request was considered in the context of desired future character. This case determined that desired future character of an area can be evaluated by reference to matters other than the controls and objectives of the development standard.

“...The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site”.

5. Assessment of the Variation to development standard

Section 155(2) of the Housing SEPP sets a maximum height of building for residential flat buildings in a TOD area of 22m. Chapter 2, Part 2, Division 1, Section 16(3) of the Housing SEPP allows for an additional 30% building height for residential flat buildings that include affordable housing, allowing for a total building height of 28.6m for the proposal.

The proposed height of building varies (above the height plane) from 28.6m to 32.6m. The height of the building envelopes has been designed to follow the site's sloping topography and to take full advantage of the development potential of the site whilst minimising environmental and amenity impacts.

As such, the proposal seeks to increase the maximum height of buildings development standard by 4m (13.99%). The proposed height exceedance relates to lift overruns, parapet, roof and portions of the tenth storey on the western tower element. The extent of the height exceedance is 4m, however, transitions to a minimum exceedance of 0.58m, as shown in Figure 7 .

The proposed additional height is considered necessary to align with the maximum FSR of 3:23:1 applying to the site, demonstrating the proposal is not an overdevelopment of the site given its current controls. The additional 120 new homes will greatly assist in alleviating the pressure of the Ku-ring-gai LGA housing targets and help to further provide a mix of affordable and market dwelling types in an area identified for uplift.

Due to the site's pronounced topography, with an approximate fall of 11.4m across the site, the ability to accommodate the permissible GFA within a compliant 28.6m building envelope is constrained. A compliant scheme would necessitate either a reduction in achievable GFA or a redistribution of floor space into a bulkier and less articulated form.

The variation to the height of building development standard is included below in the assessment. The following assessment comprehensively considers the provisions of Clause 4.6 with regard to the relevant case law.

5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

This section demonstrates why compliance with the development standard as required by Chapter 5, Section 155(2) and Chapter 2, Section 16(3) of the Housing SEPP is considered unreasonable and unnecessary. *Wehbe* establishes at least five potential alternative grounds to ascertain whether strict compliance with a development standard is unreasonable or unnecessary. An assessment against the relevant tests is provided below.

The five methods outlined in *Wehbe* were:

- 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).

5.1.1. Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

Whilst the relevant sections of the Housing SEPP do not explicitly identify objectives of the development standard to be varied, they outline the aims and objectives of the policies which are relevant to the proposal.

The aims of Chapter 5 of the Housing SEPP are:

150. Aims of chapter

The aims of this chapter are as follows—

- (a) *to increase housing density within 400m of existing and planned public transport,*
- (b) *to deliver mid-rise residential flat buildings, seniors housing in the form of independent living units and shop top housing around rail and metro stations that—*
 - (i) *are well designed, and*
 - (ii) *are of appropriate bulk and scale, and*
 - (iii) *provide amenity and liveability,*
- (c) *to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.*

Additionally, the objective of Chapter 2, Part 2, Division 1 is to:

Facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

The proposed development proposes a residential flat building, comprising 120 residential units, 30 of which, are dedicated for affordable housing. As such, the proposal directly responds to and aligns with the aims and objectives outlined above.

This is a considerable uplift from the four low density residential dwellings which currently existing on the site. Whilst the proposed development will result in a marginal height exceedance, the environmental impacts as a result of this exceedance are minimal.

In this respect, the objectives of the development standard are achieved and notwithstanding non-compliance with the standard.

5.1.2. Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

Not Applicable.

The underlying objective or purpose is to deliver new in-fill affordable housing in highly accessible locations. As such, the underlying objective or purpose is relevant and therefore is not relied upon in this instance.

5.1.3. Wehbe Test 3: The underlying object or purpose would be defeated, thwarted or undermined if compliance was required and therefore compliance is unreasonable

Strict compliance with the development standard would defeat, thwart and undermine the underlying object or purpose of the development standards. This was applied in *Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131 (at [24])*.

As discussed above, the underlying objectives of Chapter 2, Part 2 and Chapter 5 is to deliver both market and affordable housing typologies that provide a high-quality built form for residents.

If the maximum building height standard is not varied, the additional floor area provided by Section 16(3) and required to deliver the new in-fill affordable housing sought by Division 1, Part 2, Chapter 2 of the Housing SEPP could not be achieved.

In the case that strict compliance with the height control was required, this would reduce the amount of affordable housing GFA proposed, relative to the total housing yield, which is contrary to the objectives of the Housing SEPP, therefore, the underlying objective and purpose of the standard would be undermined.

Furthermore, the need to increase the height of building above the height control is due to the undulating topography of the site, which slopes from the northeast to southwest direction with a total fall of 11.4m. Compliance with the development standard is unattainable to achieve the desired FSR due to the drop in level. If compliance with the maximum height standard for this site was required, the underlying objective and purpose of the standard would not be able to be fully achieved.

Overall, strict compliance with the height control will adversely impact the number and quality of market and affordable units, therefore, defeating the objectives and aims of the relevant sections of the Housing SEPP. For this reason, strict compliance with the provisions of the Housing SEPP is considered unreasonable and unnecessary for this reason.

5.1.4. Wehbe Test 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

Council and DPHI have granted a number of consents within the Ku-ring-gai LGA, which demonstrate that height of building development standard has been applied flexibly and well-founded variations to the height of building development standard have been supported, including but not limited to:

Project	Site Address	Permissible height	Maximum proposed	Height exceedance	Variation %
SSDA / DPHI					
SSD-78156462	12-16 Bent Street, Lindfield	28.6m	33.6m	5m	17.48%
SSD-81623209	9-21 Beaconsfield Parade, Lindfield	27.07m	30.25m	3.18m	11.7%
SSD-82395459	3A,3B,5A and 7 Burgoyne Street and 1 and 3 Pearson Avenue and 4 Burgoyne Lane, Gordon NSW	22m	25.85m	3.85m	17.5%
SSD-78775458	3-9 Park Avenue, Gordon	28.6m	31m	2.4m	8.39%
SSD-77829461	2&4 Larkin Street and 1,3 & 5 Pockley Avenue, Roseville	28.6m	30.84	2.24m	7.8%
DA / Council					
Residential Flat Building (Council DA)	1-3 Woodside Avenue	11.5m	14.702m	3.202m	27.84%
Shop Top Housing (Council DA)	376-390 Pacific Highway, Lindfield	20.5m	23.16m	2.66.	12.98%
Residential Flat Building (Council DA)	4 & 8 Marian Street, Killara	14.5m	19.23m	4.73m	32.62%
Mixed-use development (Council DA)	7-9 Merriwa Street, Gordon	23.5m	29.45m	5.95m	25.32%
Shop Top Housing (Council DA)	810 Pacific Highway, Gordon	26.5m	31.61m	5.11m	19.28%

Table 3 Surrounding height exceedances

Noting the above approvals in the immediate locality, it is evident that strict compliance with the building height standard is not necessary to achieve acceptable planning outcomes. The proposed variation of 4m (13.99%) sits within the lower-to-mid range of approved departures and is consistent with the prevailing built form character of the locality. Therefore, strict compliance with the height of building standard is considered unnecessary and unreasonable.

5.1.5. Wehbe Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

Not applicable.

The site's R4 High Density Residential zoning is not explicitly relevant, as the site is located within the TOD, therefore, the permissibility, building height and development standards pursuant to Chapter 5 of the SEPP prevail.

5.2. Clause 4.6(3)(b) – Environmental Planning Grounds to Justify Contravening the Development Standard

The proposed development, including the height of building non-compliance, will provide for a high-quality residential flat building (including affordable housing) in a highly accessible location.

In this context, there are sound planning grounds and significant benefits to justify contravening the height of building development standards. These matters are discussed in further detail below.

5.2.1. Topography

The existing topography of the site which slopes from the northeast (89.54 RL) to southwest (78.14 RL) direction with a total fall of 11.4m, results in height control plane that is inconsistent across the site area.

A compliant development scenario within the 28.6m height limit would result in an inferior built form outcome. In order to achieve a comparable yield within a comparable envelope, floor space would need to be redistributed across larger floorplates and increased site coverage to compensate for the reduced building height. This would result in a bulkier building form with reduced setbacks, landscaping opportunities and building separation. Consequently, this would lead to poorer residential amenity outcomes, including reduced solar access and cross ventilation, and would limit opportunities for appropriate articulation and building separation. Such an outcome would not respond appropriately to the emerging built form character of the Lindfield locality.

In response to this, the design of the built form steps between the two tower elements, with the eastern tower being a storey less (9 storeys) than the western tower (10 storeys). Given this, the eastern tower proposes only a marginal height exceedance (4m maximum) which is limited to the lift overrun, primary communal open space and services.

Overall, the proposed height variation is considered necessary to respond to this significant fall in level in order to achieve a high-quality design and built form.

5.2.2. Environmental impacts

Overshadowing

The proposed development has been thoughtfully designed to minimise potential overshadowing impacts on surrounding sites, including those identified for future development. The building form and orientation have been carefully considered to support the ability of neighbouring properties to achieve compliant solar access.

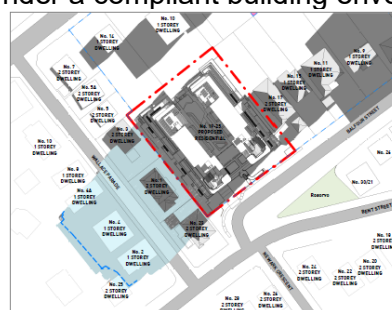
Despite the height variation, neighbouring buildings continue to receive sufficient winter solar access. Buildings to the west benefit from at least 2 hours of sunlight from 1pm to 3pm mid-winter. Meanwhile, buildings to the south, along Bent Street are only affected by overshadowing around 3pm.

Importantly, when compared to a compliant scheme contained within the 28.6m height limit, the proposed variation does not result in any material increase in overshadowing impacts. The additional height is inset and confined to rooftop elements, resulting in only a negligible difference in shadow distribution and extent.

The shadow diagrams (Figure 8) demonstrate that neighbouring properties continue to achieve solar access consistent with the requirements of the ADG. Accordingly, the proposed variation does not give rise to any additional adverse overshadowing impacts beyond those that would reasonably occur under a compliant building envelope.



1 OVERSHADOWING - 09AM JUNE 21 (EXISTING)
1 : 1000



2 OVERSHADOWING - 09AM JUNE 21 (PROPOSED)
1 : 1000

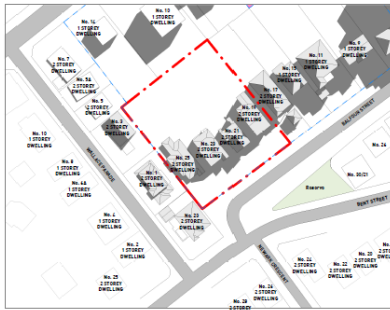


3 OVERSHADOWING - 09.30AM JUNE 21 (EXISTING)
1 : 1000



4 OVERSHADOWING - 09.30AM JUNE 21 (PROPOSED)
1 : 1000





1 OVERSHADOWING - 10AM JUNE 21 (EXISTING)
1 : 1000



2 OVERSHADOWING - 10AM JUNE 21 (PROPOSED)
1 : 1000



3 OVERSHADOWING - 10.30AM JUNE 21 (EXISTING)
1 : 1000



4 OVERSHADOWING - 10.30AM JUNE 21 (PROPOSED)
1 : 1000





1 OVERSHADOWING - 11AM JUNE 21 (EXISTING)
1 : 1000



2 OVERSHADOWING - 11AM JUNE 21 (PROPOSED)
1 : 1000



3 OVERSHADOWING - 11.30AM JUNE 21 (EXISTING)
1 : 1000



4 OVERSHADOWING - 11.30AM JUNE 21 (PROPOSED)
1 : 1000



1 OVERSHADOWING - 12PM JUNE 21 (EXISTING)
1 : 1000



2 OVERSHADOWING - 12PM JUNE 21 (PROPOSED)
1 : 1000



3 OVERSHADOWING - 12.30PM JUNE 21 (EXISTING)
1 : 1000

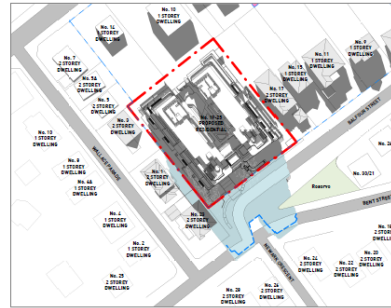


4 OVERSHADOWING - 12.30PM JUNE 21 (PROPOSED)
1 : 1000





1 OVERSHADOWING - 01PM JUNE 21 (EXISTING)
1 : 1000



2 OVERSHADOWING - 01PM JUNE 21 (PROPOSED)
1 : 1000



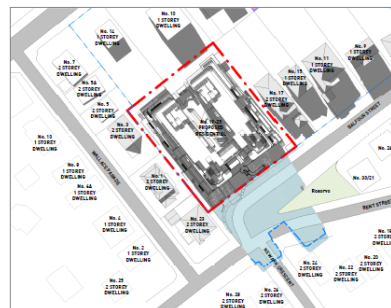
3 OVERSHADOWING - 01.30PM JUNE 21 (EXISTING)
1 : 1000



4 OVERSHADOWING - 01.30PM JUNE 21 (PROPOSED)
1 : 1000



1 OVERSHADOWING - 02PM JUNE 21 (EXISTING)
1 : 1000



2 OVERSHADOWING - 02PM JUNE 21 (PROPOSED)
1 : 1000



3 OVERSHADOWING - 02.30PM JUNE 21 (EXISTING)
1 : 1000



4 OVERSHADOWING - 02.30PM JUNE 21 (PROPOSED)
1 : 1000

EXISTING PROPERTY SHADOWS
AREA OF PROPOSED SHADOWS PROJECTING OUTSIDE THE SITE BOUNDARY
COMPLAINT BUILDING HEIGHT SHADOW

EXISTING PROPERTY SHADOWS
AREA OF PROPOSED SHADOWS PROJECTING OUTSIDE THE SITE BOUNDARY
COMPLAINT BUILDING HEIGHT SHADOW

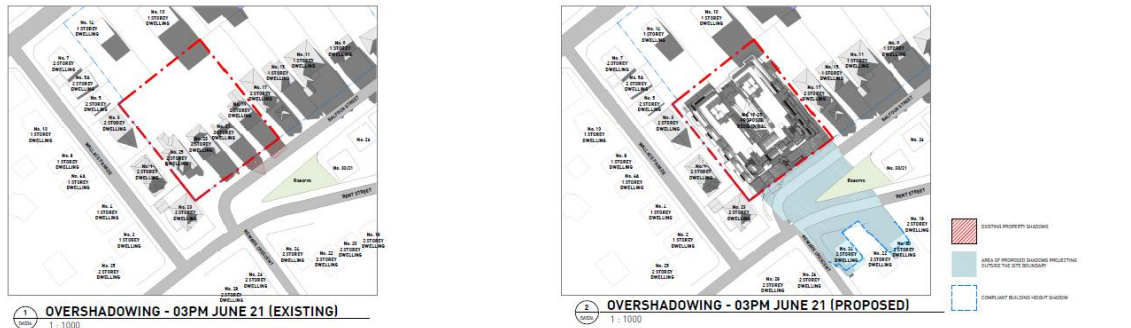


Figure 8: Proposed overshadowing (Source: Giles Tribe)

Privacy impacts

To ensure a favourable urban design outcome with the two tower elements, setbacks are included in the building's design to reduce the impacts on the existing properties to the east and west.

The proposed tower form is articulated, with a podium level proposed on level 6. This setback also provides an appropriate transition between the site and the low-density residential properties whilst reducing any perceived bulk and scale of the proposed building in relation to these properties.

Similarly, when compared to a compliant scheme contained within the 28.6m height limit, the proposed height variation does not introduce any adverse privacy impacts. The building has been designed with appropriate setbacks, separation distances and articulation to mitigate overlooking.

The additional height is predominantly associated with non-habitable rooftop elements and does not result in additional opportunities for overlooking into adjoining properties. As such, the privacy impacts of the proposal are comparable to, and no greater than, those that would arise under a strictly compliant development.

5.2.3. Intensity of development

The proposal complies with the FSR development standard. Given this, the proposed height variation does not increase the intensity. The height exceedance as a result of the proposed variation is minimal in the context of the development and broader area and will not materially intensify the redevelopment of the site.

5.2.4. Desired future character

The proposed development has been designed in accordance with the TOD program and Chapter 5 of the Housing SEPP. In accordance with these Government initiatives and policies, the immediate context is set to undergo significant transition to a medium and high-density residential area, as shown indicatively in Figure 9.

The proposed development supports the gradual intensification of the locality within proximity to the Lindfield Train Station, directly responding to the Housing SEPP and TOD program.

The proposed development is also consistent with Ku-ring-gai Council's exhibited planning strategy, which identifies the Lindfield Town Centre and surrounding TOD precinct for transition to high-density residential use. The site has been rezoned from R2 Low Density to R4 High Density Residential, supporting built forms of similar scale. This strategic alignment reinforces the compatibility of the proposed development with the intended future character of the locality.

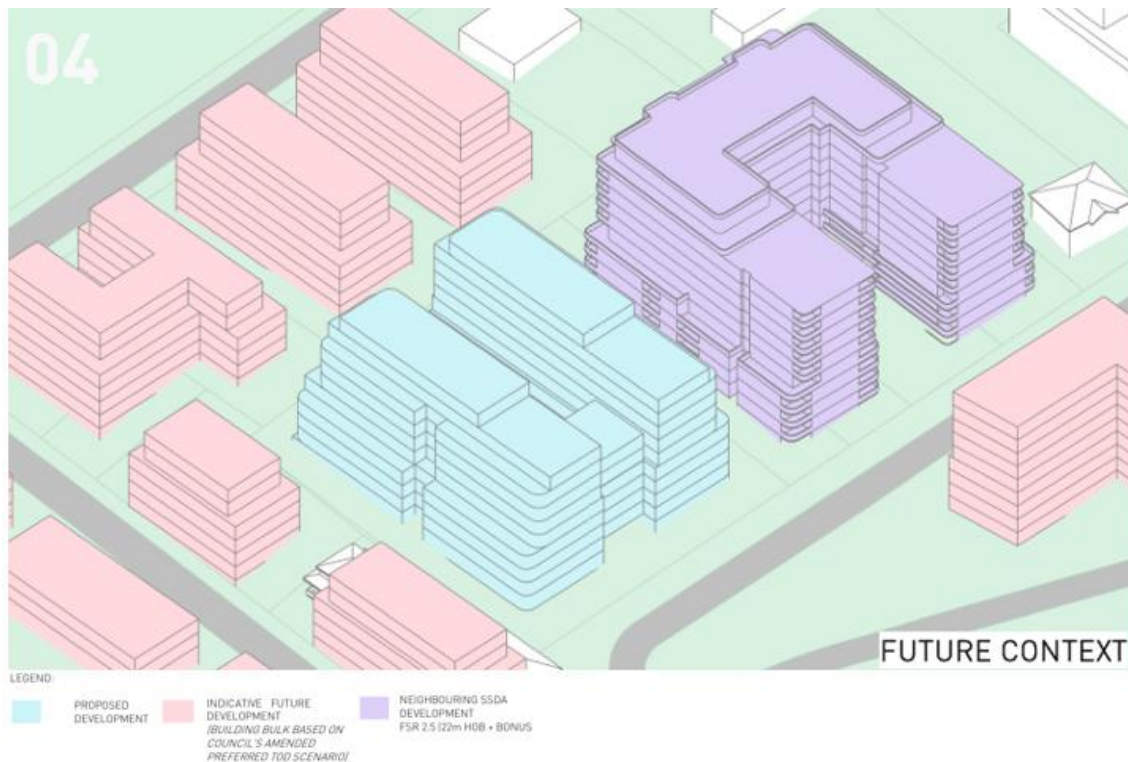


Figure 9: Indicative future development (Source: Giles Tribe)

In summary, the proposed height variation is considered acceptable in regard to its urban design and responsiveness to the topography and local context for the following reasons:

- The non-compliant component of the building height is located centrally to the rooftop, recessed behind parapet walls and consequently will contribute to very limited perceivable bulk or scale of the building.
- The exceedance in height results in minimal additional overshadowing when compared to a height compliant scheme. Importantly, the proposal complies with the solar access requirements under the ADG, maintaining 2 hours of solar access to neighbouring properties between 9am – 3pm.
- Only a small portion of the proposed development is non-compliant with the height control. However, to ensure a favourable urban design outcome, the two tower forms incorporate substantial articulation and are stepped to respond to the natural topography of the site, and lower density development to the west.

It is concluded that there is limited adverse environmental impacts arising from the contravention of the height of building development standard and sufficient positive environmental planning grounds to justify contravening the development standard.



Figure 10: Proposed development viewed 7 Balfour St (Source: Balfour Group).



Figure 11: Proposed development viewed from 28 Bent St (Source: Balfour Group)

6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstances and this Request has been shown to satisfy the provisions of Clause 4.6(3) of the KLEP 2015.

Strict compliance with the 28.6m height limit would require a reduction in building height or floor space. This would likely result in:

- A loss of residential yield, including affordable housing;
- A more compact or vertically compressed built form;
- Increased excavation to lower building levels, adding construction cost and complexity.

These changes would not improve amenity or design outcomes. In contrast, the proposed design allows for better articulation, a stepped response to site topography, and optimises housing supply without significant additional impact. The variation therefore enables a better overall planning and design result.

It has been demonstrated that compliance with the height of buildings development standard is unnecessary and unreasonable given the specific circumstances of the proposal. In addition, clear planning grounds have been provided that justify contravening the development standard. The proposal is consistent with the objectives of Chapter 2 and Chapter 5 within the Housing SEPP.

The variation to the height of buildings development standard would not result in a breach of any other development standards for the site and the proposal is consistent with local and state government housing strategies.

Overall, and for the reasons set out above, the proposed development represents a superior outcome for the site and it is therefore justified and appropriate that the development standard be varied as proposed and that such variation is demonstrably in the public interest, as it supports the delivery of diverse housing supply—including affordable housing—within a walkable catchment of public transport and local services, in line with State and local planning policy objectives.