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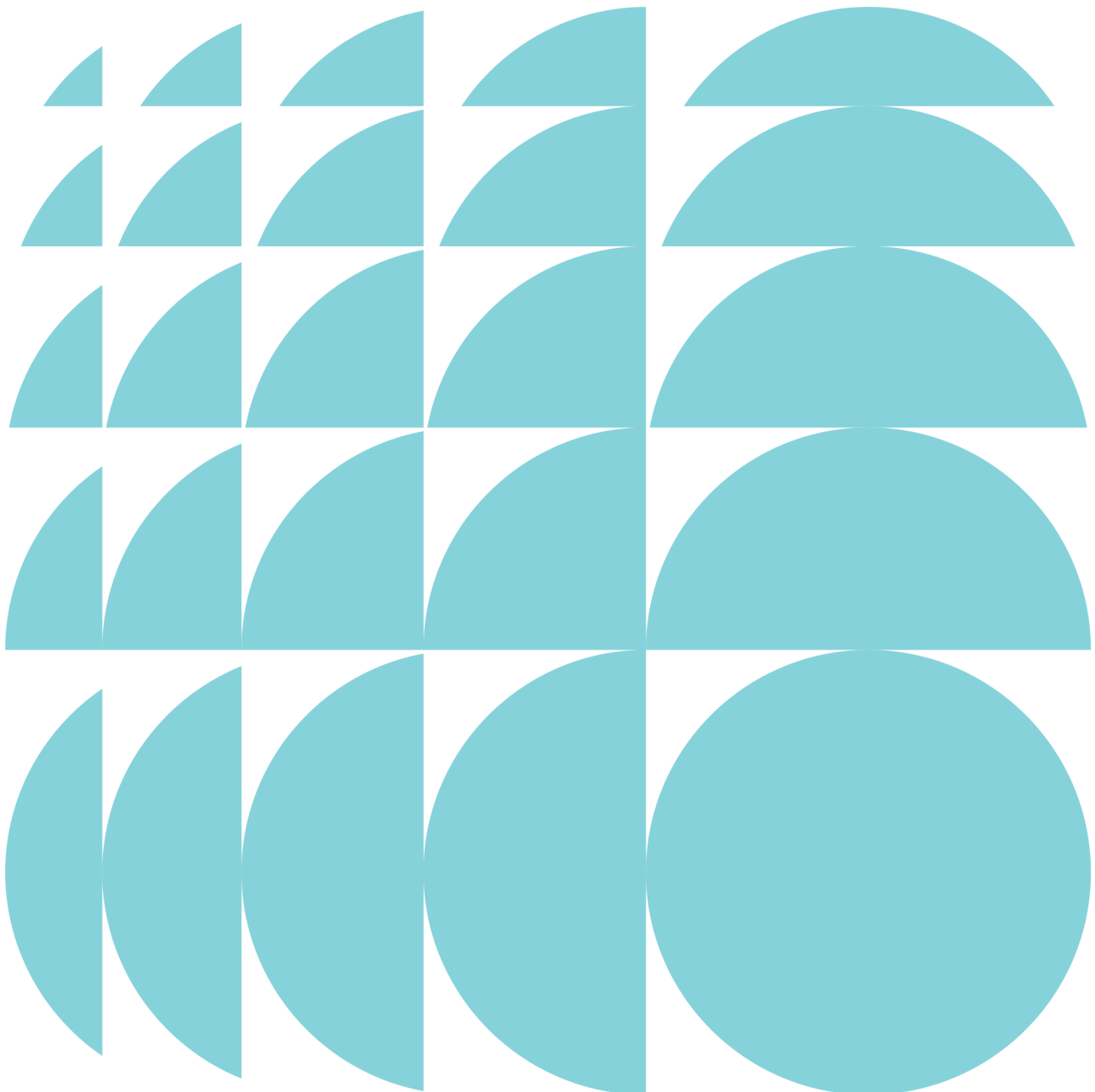
Clause 4.6 Variation to Development Standard – Maximum Building Height

26-42 Eden Street and 161-179 Princes Highway,
Arncliffe
Eden Street Communities Plus

Submitted to Department of Planning, Industry
and Environment

On behalf of Arncliffe Eden Property Pty Ltd

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CONTACT

Jim Murray Associate Director JMurray@ethosurban.com 9956 6962

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This document has been prepared by:



Jim Murray

This document has been reviewed by:



Jennie Buchanan

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Ethos Urban Pty Ltd
ABN 13 615 087 931.
www.ethosurban.com
173 Sussex Street, Sydney
NSW 2000 t 61 2 9956 6952

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1.0 Introduction

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Arncliffe Eden Property Pty Ltd. It is submitted to the Department of Planning, Industry and Environment (DPIE) in support of a State Significant Development Application (SSDA) at 26-42 Eden Street and 161-179 Princes Highway, Arncliffe (the site).

Clause 4.6 of the *Rockdale Local Environmental Plan 2011* (RLEP 2011) enables a consent authority to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6(3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard. These three matters are detailed below:

- that the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that 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.

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe).

While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a). Further guidance on Clause 4.6 of the Standard Instrument has been provided by the Land and Environment Court in a number of decisions, including:

- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
- *Moskovich v Waverley Council* [2016] NSWLEC 1015.

In accordance with the above requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (**Section 2.0**);
- identifies the variation sought (**Section 3.0**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 4.0**);
- demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 5.0**);
- demonstrates that the proposed variation is in the public interest (**Section 6.0**); and
- provides an assessment of the matters the secretary is required to consider before providing concurrence (**Section 7.0**).

Therefore, the SSDA may be approved with the variations proposed in accordance with the flexibility allowed under Clause 4.6 of the Rockdale LEP 2011.

2.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of the RLEP 2011. Clause 4.3 states as follows:

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

- (a) *to establish the maximum limit within which buildings can be designed and floor space can be achieved,*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

An extract from the Height of Buildings Map (sheet 003) is shown at **Figure 1**. The site is mapped with a maximum height limit of 70 metres.

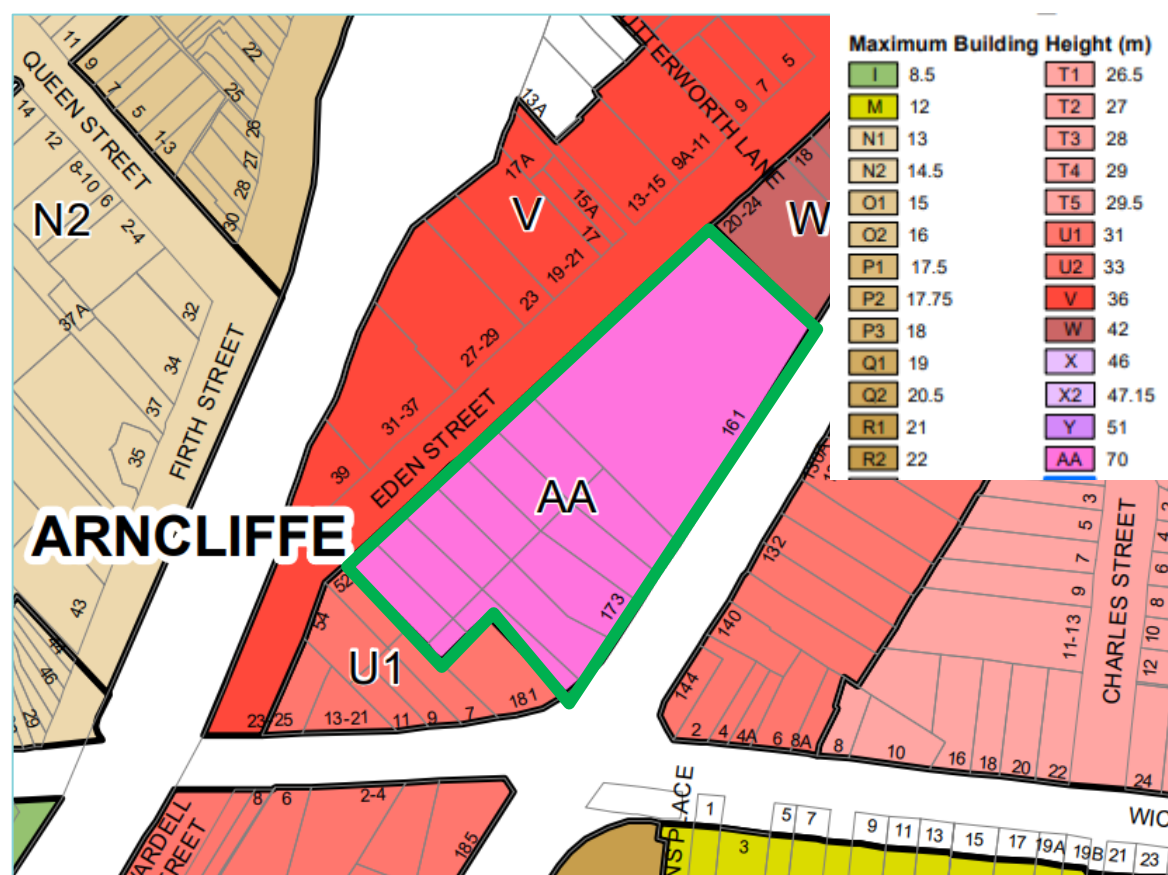


Figure 1 Extract of Height of Buildings Map (site in green)

Source: Rockdale LEP 2011, edits by Ethos Urban

3.0 Nature of the Variation Sought

The extent of the proposed variation is limited to roof-top communal open space and plant on Buildings A and B and is illustrated at **Figure 2**.

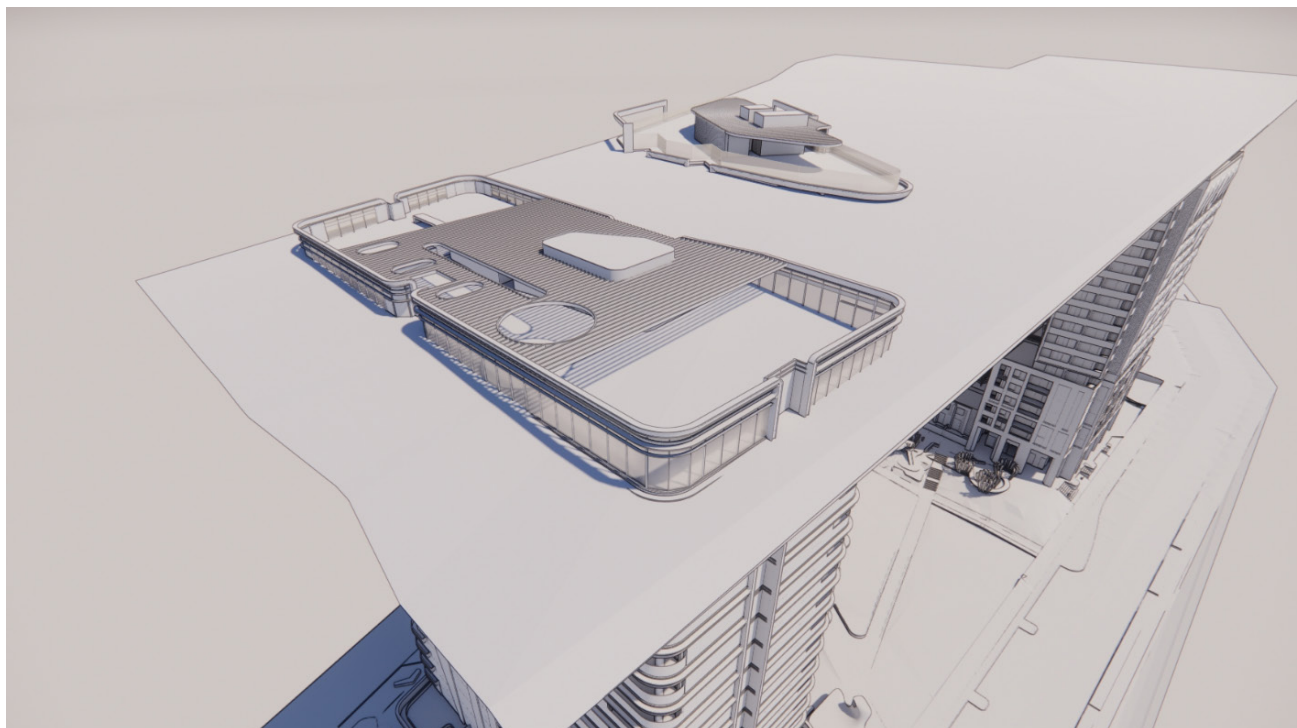


Figure 2 70m height plane diagram

Source: Group GSA

Table 1 shows the maximum heights by building and the extent of the variation to the height of buildings development standard.

Table 1 Height variation by building

Building	LEP 2011 Height	Max Building Height	Maximum Variation
Building A/B	70m	74.3 m	+4.3 m
Building B	70m	74.85m	+5.05 m
Building C	70m	64.3 m	-5.7 m
Building D	70m	60.6 m	-9.4 m

The following elevations show the buildings against the LEP height plane.

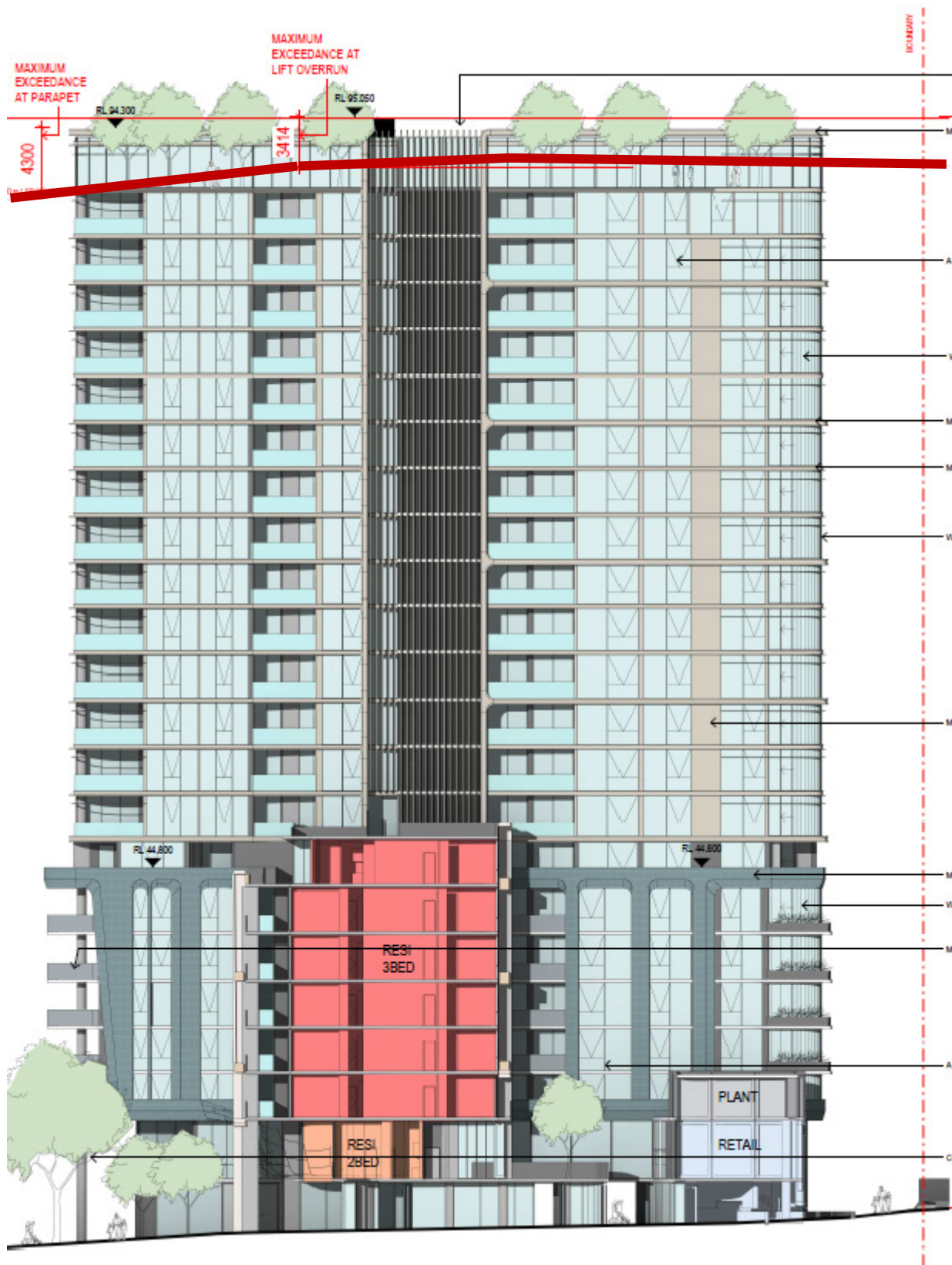


Figure 3 Building A – Elevation with 70m height plane (highlighted in dark red)

Source: Group GSA, edits by Ethos Urban

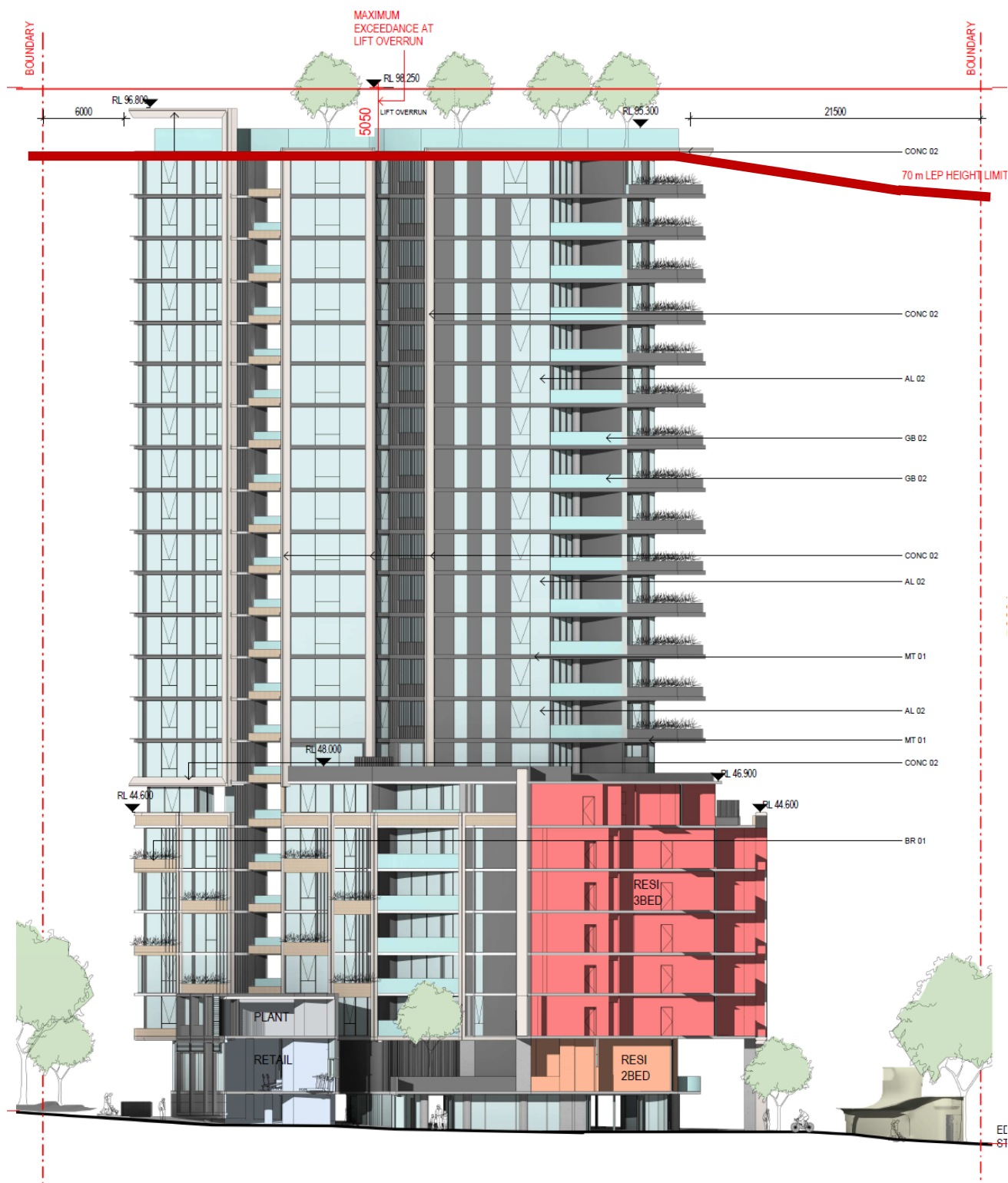


Figure 4 Building B – Elevation with 70m height plane (highlighted in dark red)

Source: Group GSA, edits by Ethos Urban



Source: Group GSA, edits by Ethos Urban



Figure 6 Building D – Elevation with 70m height plane (highlighted in dark red)

Source: Group GSA, edits by Ethos Urban

4.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the RLEP 2011 provides that:

4.6 Exceptions to development standards

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority 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.*

Further, clause 4.6(4)(a) of the RLEP 2011 provides that:

- (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.*

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

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in clause 4.6 of the RLEP 2011, with respect to the height of buildings development standard, are each addressed below, including with regard to these decisions.

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

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

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the RLEP 2011 is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

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

- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

Of assistance in this matter is the First Method. This is addressed below.

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

The objectives of the development standard contained in clause 4.3 of the RLEP 2011 are:

- (a) to establish the maximum limit within which buildings can be designed and floor space can be achieved.*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The proposal is assessed against the objectives for the height of building development standard below.

Objective (a): to establish the maximum limit within which buildings can be designed and floor space can be achieved

Under the 70m height control, heights of approximately 22 storeys can be achieved if the buildings were to comply with the height of buildings development standard. To determine whether the proposed building heights are acceptable, the existing building height control is taken to represent a baseline for an “appropriate development density”.

The question is therefore: *do the non-compliant components of the building represent a development density that is not appropriate?*

In *Veloshin v Randwick Council* [2007] NSWLEC 428, Roseth SC established a planning principle around assessment of height and bulk. This planning principle is considered appropriate in this instance, given height and bulk are the relevant drivers of development density.

The questions asked by Roseth SC that are most relevant to the proposed development are as follows:

1. *Are the impacts consistent with impacts that may be reasonably expected under the controls?*
2. *How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?*
3. *Is the proposal consistent with the bulk and character intended by the planning controls?*

In relation to the first question, the key issue is whether the additional massing above the height limit creates any significant additional impacts that would not be present if the development were to comply. In this regard, it is noted that Building A is 23 storeys and Building B is 22 storeys. Crucially, all proposed floor space is located below the 70m height limit. The development will still read as four tall residential towers above podiums as outlined in the Rockdale DCP 2011. Any additional overshadowing generated does not impact surrounding public open space and will not reduce solar access to surrounding residential dwellings as compared to a fully compliant envelope. As such, the additional massing does not result in any significant additional adverse impacts. Environmental impacts are discussed further in **Section 4.2**.

In relation to the second question, the proposed development does not fundamentally depart from the desired bulk and scale under the relevant controls. Building C and Building D are below the height limit and the built form is

compliant with the DCP and Apartment Design Guide setback controls. The proposal will maintain an appropriate relationship with existing development to the north and south. The buildings will continue to be read as multi-storey residential buildings above podiums.

In relation to the third question, it is noted that the intention of the zoning and density controls is to create a high-density residential environment near transport nodes. The density proposed is commensurate with the site's proximity to Arncliffe Station and town centre and would not create a bulk or character inconsistent with that envisaged by the applicable zoning or density controls.

Overall, the proposed building heights are considered to maintain an appropriate development density given the expected scale of development under the controls and the relationship with surrounding development. The additional height elements do not result in a significant difference in how the buildings will be read, nor do they produce any significant adverse impacts. Objective (a) is therefore achieved despite non-compliance with the standard.

Objective (b): to permit building heights that encourage high quality urban form

The site is zoned for high density mixed use residential development. It has been designed to meet the objectives of the site-specific DCP and has been subject to three NSW GADRP sessions as demonstrated within the SEE. The design has been amended to reflect the DRP feedback and exhibits a high-quality response to the site and the surrounding urban form.

Objective (c): to provide building heights that maintain satisfactory sky exposure and daylight to buildings, key areas and the public domain

The proposed variation is limited to lift overrun and rooftop communal open space. The overshadowing analysis provided at **Appendix A** demonstrates that the proposed variation to the height limit will not generate any overshadowing or reduce sky exposure beyond that expected from buildings that comply with the 70m height limit.

Objective (d): to nominate heights that will provide an appropriate transition in built form and land use intensity

The site is located within the Arncliffe town centre and has been zoned to accommodate tall residential buildings. The site to the north is zoned to accommodate buildings up to 42m; the site to the east is zoned to accommodate 36m buildings; and the site to the south is zoned to accommodate buildings up to 31m.

Situated on the Princes Highway, the site is to become an important landmark signifying the Arncliffe town centre and building heights transition to the surrounding area. The additional height resulting from the roof top communal open space is minor in relation to the overall building height and does not impact the fundamental change in scale between the site and the surrounding areas. The proposal achieves objective 4.3(1)(d) despite the minor exceedance.

4.1.2 Provision of Social Housing

As discussed in detail below in **Section 4.2.1**, the height non-compliance is a result of additional GFA provided for by the FSR bonus under *State Environmental Planning Policy (Affordable Rental Housing) 2009* (the ARH SEPP). Compliance with the height control is considered unreasonable on this basis, as it would prevent the ARH SEPP FSR bonus from being achieved and would reduce the amount of social housing able to be provided.

It is noted that the proposal also seeks a minor 2.8% variation to the FSR control to enclose balconies for certain apartments that front Princes Highway to reduce noise pollution. It has been demonstrated at **Appendix M** that the proposed minimal FSR variation is warranted and the proposal will achieve the relevant RLEP 2011 objectives.

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

Clause 4.6(3)(b) of the RLEP 2011 requires the consent authority to be satisfied that the Applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

That there are sufficient environmental planning grounds to justify contravening the development standard.

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action v Woollahra Municipal Council* [24] and *Turland v Wingecarribee Shire Council* [42]).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site. In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

4.2.1 Consistency with the Aims and FSR bonus under the ARH SEPP

The key driver behind the additional height is the development's eligibility to achieve additional floor space under Division 1 of the ARH SEPP. This FSR bonus is available to developments that provide affordable housing and is designed as an incentive to facilitate the effective delivery of new affordable rental housing.

Social housing and the NSW Land and Housing Corporation

The NSW Land and Housing Corporation (LAHC) is a Public Trading Enterprise that was established under the *Housing Act 2001*. LAHC operates under the Department of Family and Community Services and is responsible for the management of the NSW Government's social housing portfolio, which comprises some 130,000 properties.

Social housing is primarily Government-owned accommodation that provides for individuals and families who are unable to access suitable accommodation in the private rental market. On the spectrum of housing situations, social housing caters to low and very low income households, which typically comprise some of the most vulnerable members of society. These cohorts include people in poor health (mental and physical) or escaping violent or abusive situations. As of June 2014, there were approximately 60,000 approved applicants on the social housing waiting list.

Communities Plus

LAHC is a self-funding government agency that has historically funded the maintenance and provision of social housing through property sales (e.g. Millers Point) and receipt of rental income from tenants. In 2015, LAHC launched the Communities Plus program – a development program designed to deliver 23,000 new and replacement social housing dwellings through redevelopment of existing land.

Development delivered under Communities Plus is mixed-tenure – that is, a mix of both social and market housing. This mix serves two purposes: to offset the cost of delivering the new social housing, and to avoid concentrating large amounts of social housing.

Eden Street is part of Communities Plus Neighbourhood Renewal Release 3 (<https://www.communitiesplus.com.au/release-three/overview>). As part of the release, the applicant tendered for the site and is now partnering with LAHC to deliver 180 new social housing dwellings, which are contained in Building C. These dwellings will be managed by Evolve Housing, a Community Housing Provider (CHP). These social housing dwellings are critical social infrastructure and will deliver a significant public benefit by housing people who are unable to access accommodation on the private market.

ARH SEPP FSR bonus

Under clause 13 of the ARH SEPP, development to which the Division applies is eligible for additional FSR if the percentage of the gross floor area of the development used for affordable housing is at least 20 per cent.

Under clause 6 of the ARH SEPP, residential development is taken to be for the purposes of affordable housing if the development is on land owned by the Land and Housing Corporation.

As such, the development is eligible for the full FSR bonus under clause 13 of 20% across the site. Calculation of gross floor area is discussed further in **Section 5.2.2** of the Environmental Impact Statement.

The non-compliant elements of the development are a result of the development accommodating the additional GFA generated by the ARH SEPP FSR bonus.

Consistency with aims of ARH SEPP

The aims of the ARH SEPP are as follows:

- a) to provide a consistent planning regime for the provision of affordable rental housing;
- b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards;
- c) to facilitate the retention and mitigate the loss of existing affordable rental housing;
- d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing;
- e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing;
- f) to support local business centres by providing affordable rental housing for workers close to places of work; and
- g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.

The height non-compliance is consistent with the aims of the ARH SEPP, given:

- the additional height facilitates the provision of 180 social housing dwellings by allowing the floor space bonus to be accommodated in an acceptable manner;
- the additional social housing will provide accommodation for low and very low income households, thereby assisting members of society that are most in need;
- the additional social housing is provided close to a railway station and town centre, with numerous opportunities for employment, allowing for tenants to support the local business centre; and
- all market housing is located below the 70m height limit. The market housing directly contributes to the provision of additional social housing by offsetting the cost of delivery of the social housing; that is, the additional social housing would not be able to be provided without the additional market housing.

4.2.2 Height is distributed across the site to reduce external impacts

Buildings C and D are proposed to sit well below the maximum 70m height limit. Placing the building mass within Buildings A and B allows Buildings C and D to become lower which reduces the overshadowing impacts of the proposal on the existing development to the south, including the St Xaviers primary school campus, which is a key consideration under the DCP.

4.2.3 Provision of safe, high quality roof top communal open space

The proposed height variation facilitates the provision of rooftop communal open space and lift access. The inclusion of the roof top communal open space significantly improves the residential amenity for future residents in Buildings A and B.

4.2.4 Height non-compliance results in little to no additional impact

The site's size location means that the additional height results in little to no additional impact on the surrounding area:

- **Views:** The proposed additional height does not result in any view loss for any surrounding residences. The existing and future residential development in the area is below the 70m height limit. The proposed variation will not reduce any views.
- **Overshadowing:** Additional overshadowing cast by the additional height will not generate any unreasonable impacts on the surrounding area as illustrated by the overshadowing diagrams at **Appendix A**.

4.2.5 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase “*environmental planning grounds*” is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the EP&A Act, including the objects in Section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 2** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the maximum building height development standard.

Table 2 Assessment of proposed development against the Objects of the EP&A Act

Object	Comment
<i>(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</i>	The proposed development will provide increased and better fit for the purposes of social housing on the site, thereby contributing towards the social welfare of the community. The proposed buildings will also incorporate sustainability features which will seek to use the State's resources more efficiently.
<i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment</i>	The proposed development is considered to be ecologically sustainable in that it delivers on economic, social, and environmental aspects, including: <ul style="list-style-type: none"> • Provision of increased and better fit for purpose social housing; • Increased and more diverse market housing within close proximity to public transport and employment opportunities, adhering to the principles of transit-oriented development; • The proposed development provides new public open space for use by the broader community; and • The development provides new retail services and employment opportunities
<i>(c) to promote the orderly and economic use and development of land</i>	The proposed development will make more efficient use of the land by demolishing accommodation that is no longer fit for purpose and replacing it with modern housing which better meets the demands for housing within the locality.
<i>(d) to promote the delivery and maintenance of affordable housing,</i>	The proposed development will provide 180 social dwellings, which are better suited to the needs of the local community and will be able to accommodate more people that require this form of accommodation.
<i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i>	This object is not applicable to the site. It is noted that the proposed park will be planted with native species.
<i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i>	There is no existing physical cultural heritage on the site. However, the project has been designed with connection to country in mind with the advice and input of an Indigenous consultant.
<i>(g) to promote good design and amenity of the built environment,</i>	The proposed development has been designed by Group GSA, a firm which is recognised for its high quality designs. The proposal has also been the subject of several reviews by the State Design Review Panel.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed buildings will be designed and constructed in accordance with the relevant BCA and Australian Standard controls and provisions.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	This object is not relevant to this proposed development.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	The proposed development will be publicly notified in accordance with Council's requirements.

4.2.6 Conclusion on clause 4.6(3)(b)

It is considered that there are sufficient environmental planning grounds to justify contravention of the development standard, on the basis that:

- the development is eligible for an FSR bonus under the ARH SEPP for providing affordable housing (in the form of social housing); the variation to the height limit is required to accommodate this additional density;

- accommodating the FSR bonus within the height limit would result in poorer outcomes in terms of the quality of the communal open space; and
- the additional height results in little to no additional impact to surrounding areas, in terms of overshadowing or view loss.

4.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

4.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the building height development standard, for the reasons discussed in **Section 4.1.1** of this report.

4.3.2 Consistency with objectives of the zone

The proposal is assessed against the objectives of the B4 Mixed Use zone below.

a) To provide a mixture of compatible land uses.

The proposed development will provide market and social residential dwellings in addition to retail floorspace. The development has been designed so that the uses will be compatible with each other once operational and will positively contribute to the broader Arncliffe centre.

b) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposed development will provide new housing and employment within 100m of the Arncliffe Station. It is therefore highly accessible and an appropriate location for higher density development.

5.0 Secretary's Concurrence

Under Clause 4.6(5) of the Rockdale LEP 2011, the Secretary's concurrence is required prior to any variation being granted. Under Clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice.

We note that none of the conditions in the table apply to the DA, therefore the Secretary's concurrence is assumed. Nevertheless, the following section provides a response to those matters set out in Clause 4.6(5) of the RLEP which must be considered by the Secretary.

5.1 Clause 4.6(5)(a): Whether a contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation does not raise any matters of significance for State or regional environmental planning. The variation to the maximum height development standard will not contravene any overarching State or regional objectives or standards or have any effect outside the site's immediate area.

5.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the development standard in terms of State and regional planning objectives. To the contrary, if the development standard were to be maintained, the ability to provide affordable housing and communal open space above buildings A and B would be compromised, and would reducing the public benefit and the development's amenity.

5.3 Clause 4.6(5)(c): Other matters required to be taken into consideration before granting concurrence

We are not aware of any other matters that the Secretary (or the consent authority, under delegation) is required to consider before granting concurrence.

6.0 Conclusion

The assessment above demonstrates that compliance with the maximum height development standard contained in Clause 4.3 of the RLEP 2011 is unreasonable and unnecessary in the circumstances and that the justification is well founded.

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

- Will facilitate the provision social housing;
- Will facilitate the provision of safe, high quality roof top communal open space;
- Will not create any unreasonable additional impacts to the surrounding public domain or residential dwellings; and
- Will promote the orderly and efficient use of land, in accordance with the objects of the Act.