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URBIS

CLAUSE 4.6 VARIATION REQUEST | HEIGHT OF BUILDINGS

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

Director	Christophe Charkos
Associate Director	Holly McNamara
Consultant	Patrick Jones
Project Code	P0050310
Report Number	FINAL



Acknowledgement of Country

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We recognise that First Nations sovereignty was never ceded and respect First Nations peoples continuing connection to these lands, waterways and ecosystems for over 60,000 years.

We pay our respects to First Nations Elders, past and present.

The river is the symbol of the Dreaming and the journey of life. The circles and lines represent people meeting and connections across time and space. When we are working in different places, we can still be connected and work towards the same goal.

Title: Sacred River Dreaming
Artist Hayley Pigram
Darug Nation
Sydney, NSW

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INTRODUCTION

This Clause 4.6 Variation Request (**Variation Request**) has been prepared to justify the proposed exceedance of the applicable maximum height of building control under Clause 4.3 of the Willoughby Local Environmental Plan 2012 (**WLEP 2012**) and Section 18(2) of the State Environmental Planning Policy (Housing) 2021 (**Housing SEPP**).

There is also an existing basement and swimming pool located on the site, which has resulted in a technical exceedance of the prevailing height control if strict adherence to the definitions of *building height* and *ground level (existing)* were adopted. Notwithstanding, the proposed development exceeds the maximum height of building control prescribed by Clause 4.3 of the WLEP 2012 and Section 18(2) of the Housing SEPP.

The request seeks a variation to the maximum building height for the site prescribed in the WLEP 2012 and the Housing SEPP. This request is made pursuant to Clause 4.6 of the Willoughby Local Environmental Plan (**WLEP 2012**). This request should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Urbis Ltd and dated 9 May 2025.

SITE AND For the reasons detailed in this request, the variation is well-founded and justified and confirms that there are sufficient environmental planning grounds to warrant a variation to the relevant building height development standard.

PROPOSED DEVELOPMENT

1. Site Description

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

Table 1 Site and Locality Description

Feature	Description
Street Address	37 Archer Street, Chatswood NSW 2067
Legal Description (Title Particulars)	SP 38065
Local Government Area	Willoughby
Site Area	2,201sqm
Zoning	MU1 Mixed Use
Number of existing lots	One
Existing Use / Structures	Fourteen (14) residential town houses built around a communal courtyard with basement parking.
Site Frontage Distances	<ul style="list-style-type: none">West: 37.78m to Archer StreetEast: 37.78m to Bertram Street
Site Width	<ul style="list-style-type: none">East-west: 58.26mNorth-south: 37.78m
Easements and Restrictions	<ol style="list-style-type: none">Easement for drainage 0.915m created by Dealings C951343, C984758 and D476511. 1/19199-Benefited (C984758) SP7331-benefited (C951343)Easement for support 1.83m wide (Created by Dealing F201809) located along the frontage to Bertram Street within the Road Widening dedicated as a Public Road on DP787514. The easement is in favour of the Council of the Municipality of Willoughby to support the soil from Bertram Street by the batter or embankments at present or to be constructed.

Feature	Description
Adjacent land uses North	The site is bound to the north by low scale residential development including townhouses and single dwelling properties. This land is zoned to support high-rise mixed use development including buildings with heights up to RL246.8m Along Archer Street proposals for mixed use towers have been lodged for properties at 51-55 Archer Street and 57-61 Archer Street.
Adjacent land uses East	The site directly opposes a locally listed heritage item (34 Neridah Street, Item # I103), and the South Chatswood Heritage Conservation Area (South Chatswood HCA) is located directly east of the site. There are also other locally listed heritage items along Bertram Street/Neridah Street.
Adjacent land uses South	A development application for a 14-storey mixed use development has been lodged for 31-44 Archer Street which is situated immediately to the south of the site. This area provides a transition to low scale residential uses contained within the South Willoughby Conservation Area located on the southern side of Johnson Street. There is a locally significant heritage item at 27 Archer Street.
Adjacent land uses West	To the west the site is bound by Archer Street which comprises a four-lane classified road. Existing development on Archer Street comprises medium density residential towers of 7 storeys and higher. The area has been zoned for taller buildings of up to 90m. Further to the west is the Chatswood transport interchange and Pacific Highway, linking to the CBD and wider regions.
Topography	The site slopes gently from south to north – 1.1 metre fall from a high point of RL91.2m (south east corner) to a low point of RL90.1m (north east corner).
Vegetation	Vegetation within the site includes planter boxes through the central circulation spaces and established trees around the site's perimeter. Street trees, comprising native species, along the site's western frontage form part of an attractive and distinctive avenue of trees.
Heritage	The site does not contain any items of local or stage heritage significance. The site is immediately adjacent to the South Chatswood HCA which is to the east of the site across Bertram Street. The site is also in the vicinity of several heritage items listed under Schedule 5 of the WLEP 2012.
Access Network	<p><u>Public Transport</u></p> <p>The site is in proximity to bus stops on Archer Street providing services to Chatswood and Crows Nest train stations. The site is located approximately a 750m walk from Chatswood rail station</p> <p><u>Road Network</u></p> <p>The site is immediately adjacent to Archer Street, a classified road. This provides connections to Victoria Avenue, Mowbray Road, and Boundary Street, all significant thoroughfares in the local area. The site is in proximity to the Pacific Highway and the Gore Hill Expressway, which provide connections to North Sydney, the Sydney CBD, and Hornsby.</p>

Figure 1 Site Maps



Picture 1 Site Aerial



Picture 2 Heritage Map

Source: Urbis

2. Proposed Development

The proposal seeks consent for the demolition of existing structures on the site and the development of residential apartments (including affordable housing), commercial office space, food and beverage uses and retail tenancies with servicing areas and parking contained within the building's basement. A publicly accessible through-site link is also proposed providing a direct connection between Archer Street and Bertram Street and allowing opportunities for outdoor dining and passive recreation.

Specifically, the SSDA seeks development consent for:

- Demolition of existing buildings, structures and tree removal.
- Excavation of the site to a basement depth of RL RL71.85mm.
- Construction of a mixed-use building to 28 storeys (RL184.25m) comprising residential and commercial uses.
- The development of 125 apartments (including 28 affordable housing units) with residential amenities and services, commercial office space, food and beverage tenancies and retail uses.

The proposal is for a 28-storey building with 6 basement levels. The development contains the following uses:

- Residential apartments: A total of 125 apartments (including 28 affordable housing units) comprising 29 x 1 bed apartments, 55 x 2 bed apartments, 30 x 3 bed apartments and 11 x 4 bed apartments with recreational facilities at Level 8.
- Office tenancies: occupying levels 1 and 2.
- Retail tenancies: double storey retail units fronting Bertram Street.
- Food and beverage tenancies: ground level.
- Basement parking: 154 car spaces, 11 motorbike spaces, 28 bicycle spaces and end of trip facilities.
- Servicing and plant equipment.
- Publicly accessible landscaped through site link.
- The gross floor area (**GFA**) for the proposed development is described below:
 - Total GFA: 14,230m²
 - Residential GFA: 12,318m²
 - Non-residential GFA: 1,912m²

Architectural plans detailing the proposal have been prepared by Fuse Architects and are attached under a separate cover. A photomontage of the proposal is provided in Figure 2 below.

Figure 2 Photomontages of the proposed development



Picture 3 Northern facade

Source: Fuse Architects



Picture 4 Bertram Street frontage

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the planning instrument you are seeking to vary?

This Clause 4.6 Variation Request seeks to vary Clause 4.3 of the WLEP 2012.

4. What is the site's zoning?

The site is zoned MU1 Mixed Use under the WLEP 2012.

5. What is the development standard to be varied?

The development standard being varied is clause 4.3 of the WLEP 2012 which permits a maximum building height of Part 68m and Part 23m. Section 18(2) of the Housing SEPP permits an additional 20-30% building height if 10-15% of the total development GFA is provided as affordable housing (AH) for a minimum period of 15 years. The proposed development will provide 15% AH and is therefore granted an additional 30% bonus building height.

4.3 Height of buildings

The objectives of Clause 4.3 of the WLEP 2012 is provided below:

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

- (a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,*
- (b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,*
- (c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,*
- (d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,*
- (e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,*
- (f) to use maximum height limits to assist in responding to the current and desired future character of the locality,*
- (g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,*
- (h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.*

The provisions of Section 18 of the Housing SEPP are provided below:

18 Affordable housing requirements for additional building height

(1) This section applies to development that includes residential development to which this division applies if the development—

- (a) includes residential flat buildings or shop top housing, and*
- (b) does not use the additional floor space ratio permitted under section 16.*

(2) The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).

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

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

The objective of Part 2 Division 1 of the Housing SEPP is provided below:

15A Objective of division

The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low-, low- and moderate-income households.

6. Type of development standard?

Numerical development standard.

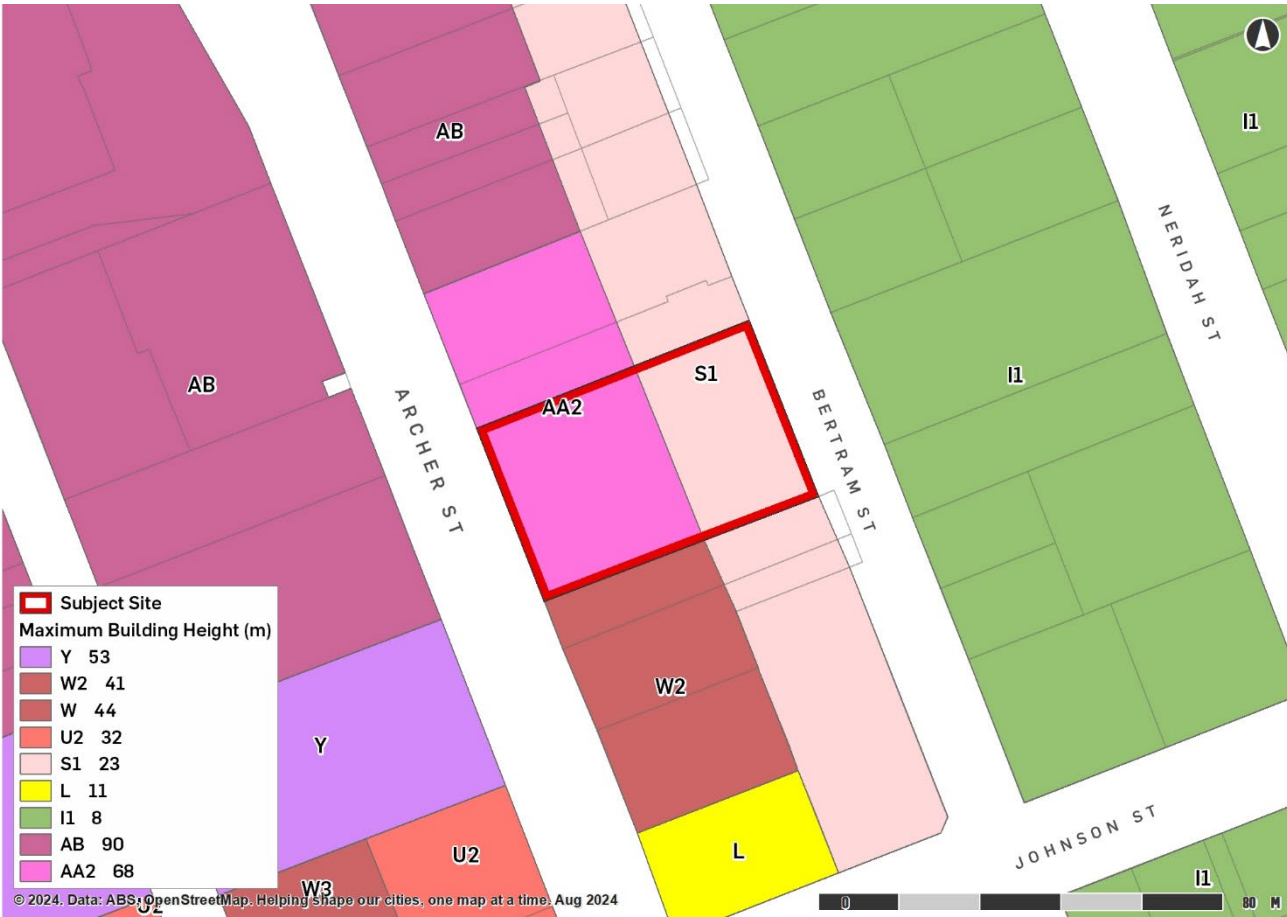
7. What is the numeric value of the development standard in the environmental planning instrument?

The site is subject to a base height permitted by clause 4.3 of the WLEP 2012 and a bonus height control permitted by section 18 of the Housing SEPP. The numerical value of the development standard to be varied is outlined in **Table 2** below.

Table 2 Maximum building height

Permitted (WLEP 201)	Permitted (Housing SEPP)	<u>Total</u>
Part 68m	$68\text{m} + 30\% \times 68 = 88.4$	<u>Part 88.4m</u>
Part 23m	$23\text{m} + 30\% \times 23 = 29.9$	<u>Part 29.9m</u>

Figure 3 WLEP 2012 Height of Buildings Map



8. What is the percentage variation (between the proposal and the environmental planning instrument)?

Table 3 below details the proposed numeric variance considering the base requirements under clause 4.3 of the WLEP 2012 and Section 18(2) of the Housing SEPP. Whilst the standard being varied is clause 4.3 of the WLEP, the percentage variation relates to the exceedance once the 30% has been applied.

Table 3 Proposed Variation

Maximum Permitted in Metres (WLEP)	Maximum + 30%	Proposed in Metres	# Variation after application of 30% bonus	% Variation after application of 30% bonus
Part 68m	88.4	93.4m	+ 5m	+5.7%
Part 23m	29.4m	32m	+ 2.1m	+7%

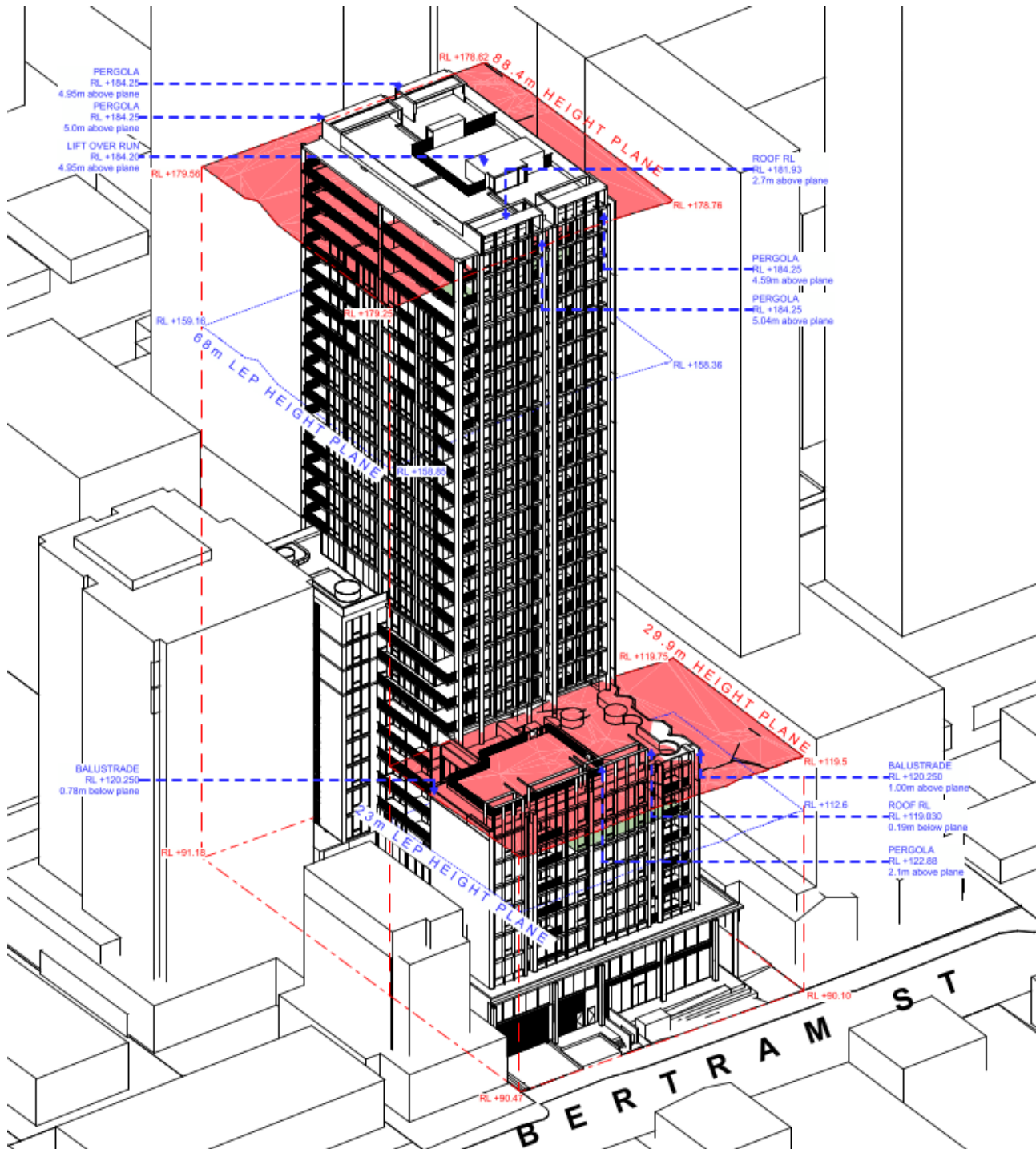
As displayed above, when the bonus afforded by the Housing SEPP is applied to the proposed development, the building will exceed the maximum building height permitted by Section 18(2) of the Housing SEPP by 5.7% and 7%.

Given that section 18(2) of the Housing SEPP is not a development standard, the applicable development standard to be varied is clause 4.3 of the WLEP 2012.

9. Visual representation of the proposed variation (if relevant)

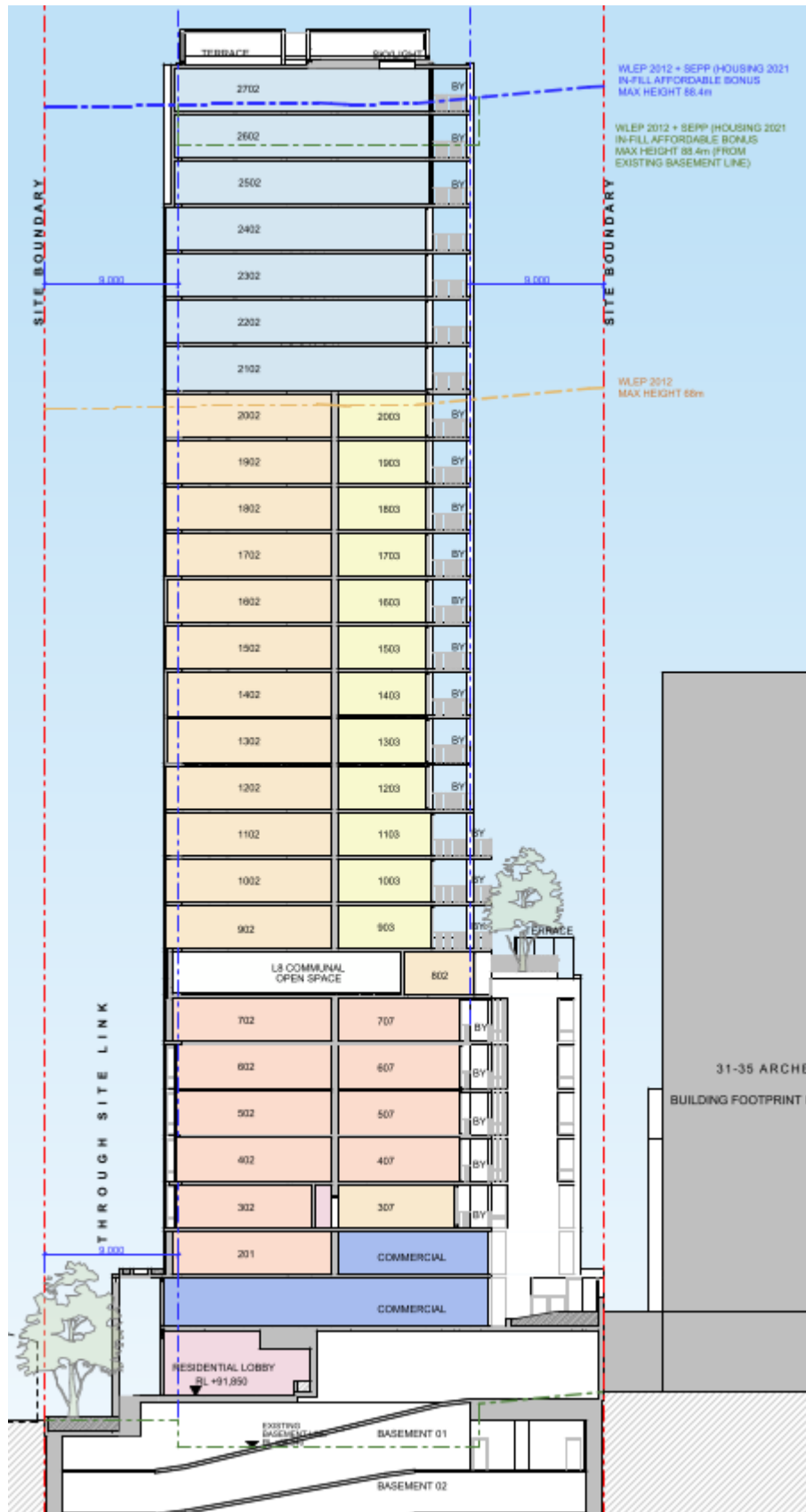
Figure 4, Figure 5 and Figure 6 below visually display the proposed variation

Figure 4 Height plane exceedance diagram



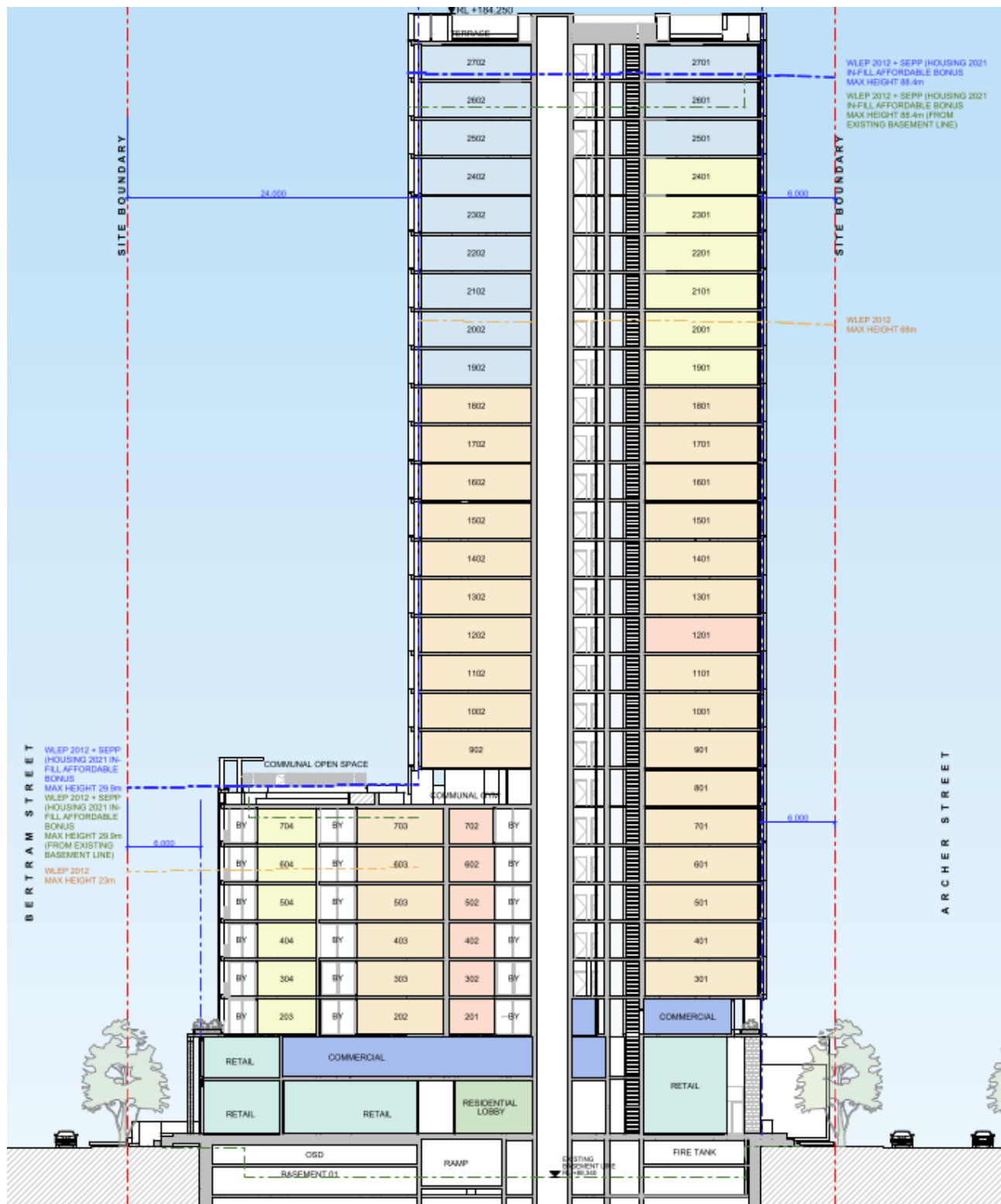
Source: Fuse Architects

Figure 5 North-south section diagram



Source: Fuse Architects

Figure 6 East-west section diagram



Source: Fuse Architects

JUSTIFICATION FOR THE PROPOSED VARIATION

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

Table 4 Justification for the variation

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	<p>Yes.</p> <p>For completeness, this section addresses both the objectives of the infill affordable housing provisions of the Housing SEPP and the objectives of Clause 4.3 of the WLEP 2012.</p> <p><u>Objectives of Clause 4.3 of the WLEP 2012</u></p> <p><i>(a) to ensure that new development is in harmony with the bulk and scale of surrounding buildings and the streetscape,</i></p> <p>The proposed development is consistent with the current emerging high-density character of the surrounding locality of the southern Chatswood CBD in terms of bulk and scale. The proposal is consistent with the envisaged land use, urban design, and public domain objectives outlined in Council's CBD Planning and Urban Design Strategy 2036.</p> <p>Whilst it is acknowledged that surrounding sites may ultimately choose to not utilise the bonuses afforded within the Housing SEPP when developed, the consistency of the development with the surrounding context should assess the maximum possible scenario. As such, the proposed development is consistent with the future envisaged building heights up to maximum of 117m on the opposing side of Archer Street and 93m to the north of the site.</p> <p><i>(b) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,</i></p> <p>The environmental impacts of the proposed variation are outlined in detail in Section 11 of this request.</p> <p>The mid-winter overshadowing diagrams (at Figure 4) demonstrate that the extent of overshadowing cast as a consequence of the proposed development protruding beyond the 93m metre height plane is minor compared by the overshadowing cast by a compliant building height.</p> <p><i>(c) to ensure a high visual quality of the development when viewed from adjoining properties, the street, waterways, public reserves or foreshores,</i></p> <p>The proposed development has been subject to an architectural design competition consistent with Clause 6.23 of the LEP. The project was awarded design excellence by the Jury, subject to design refinements prior to the lodgement of the SSDA. The final design is consistent with the scheme for which design excellence was awarded despite the minor exceedance of the height of building control and is therefore considered to represent a high quality development when viewed from adjoining land.</p> <p><i>(d) to minimise disruption to existing views or to achieve reasonable view sharing from adjacent developments or from public open spaces with the height and bulk of the development,</i></p> <p>The proposed development is unlikely to result in the disruption of existing views given the flat topography of the surrounding area and identified scale of change of proposed within the Chatswood CBD area. Vistas to the development from nearby high points are marginally affected, however the viewing distance of these locations results in a nil visual impact from the</p>

Key Questions	Response
	<p>proposed variation. Refer to the Visual Impact Assessment submitted with this application at Appendix P.</p> <p><i>(e) to set upper limits for the height of buildings that are consistent with the redevelopment potential of the relevant land given other development restrictions, such as floor space and landscaping,</i></p> <p>In the context of the Chatswood CBD, which has been planned for significant transformation to high-density with equally scaled towers in proximity of the subject site, the magnitude of departure will still maintain a scale and character as envisioned in the Chatswood CBD Planning and Urban Design Strategy 2036 (Chatswood CBD Strategy). It is also noted that the original strategy envisaged 90m towers along this section of Archer Street.</p> <p><i>(f) to use maximum height limits to assist in responding to the current and desired future character of the locality,</i></p> <p>In addition to subsection (f) of clause 4.3 of the WLEP 2012, Section 20(3)(a) of the Housing SEPP provides that development consent for the purposes of in-fill affordable housing must not be granted unless the proposed development is compatible with <i>the desirable elements of the character of the local area</i>. The future and emerging desired character of the immediate surrounds is commensurate with the Chatswood CBD Strategy.</p> <p><i>(g) to reinforce the primary character and land use of the city centre of Chatswood with the area west of the North Shore Rail Line, being the commercial office core of Chatswood, and the area east of the North Shore Rail Line, being the retail shopping core of Chatswood,</i></p> <p>The proposal reinforces the primary and emerging character of the Chatswood CBD through delivering a mixed-use development.</p> <p><i>(h) to achieve transitions in building scale from higher intensity business and retail centres to surrounding residential areas.</i></p> <p>The proposed development includes a lower scale podium to respond to the site's split height control and surrounding the context. The proposed building height is lower than the building height afforded for sites on the opposing side of Archer Street if the Housing SEPP bonuses are applied.</p> <p><u>Objective of Part 2, Division 1 (Housing SEPP)</u></p> <p><i>15A The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low-, low- and moderate-income households.</i></p> <p>The proposed development dedicates 15% of the total GFA as affordable housing which equates to 28 dwellings (2,136sqm). This is a substantial uplift from the 14 market dwellings 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 as discussed in Section 11 below.</p> <p>The proposed development represents a high-quality design outcome for the site and the locality, having considered a range of existing site conditions to propose a well-considered design response. The proposed development will provide amenity and liveability through complying with relevant design objectives in the Apartment Design Guide (ADG).</p> <p>The affordable housing component has been carefully designed to ensure high levels of amenity, and a variety of housing typologies and tenures are provided to meet the expected needs and profile of the local community.</p>

Key Questions	Response
	<p>The proposal will provide high quality affordable housing that has been seamlessly integrated into an architecturally designed development.</p> <p>In addition, the subject site is mapped as Area 3 on the Affordable Housing Map under the WLEP 2012 and must deliver an affordable housing contribution equivalent to 10% of GFA of the residential component of the development. Pursuant to Clause 6.8(6), the affordable housing contribution will be provided as a monetary contribution.</p> <p>The development provides affordable housing for those on very low, low, and moderate incomes in location close to services, retail and public transport responding to an identified need for affordable housing. There is a critical shortage of affordable housing in the local area and the proposal will deliver new housing to meet this need in the short-term.</p> <p><u>Conclusion</u></p> <p>The objectives of the building height development standard of the WLEP 2012 and Housing SEPP are achieved, notwithstanding the minor non-compliance detailed in this request</p>
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	<i>N/A. Not relied upon. See above and below.</i>
c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)	<p>Yes.</p> <p>The objective of Part 2 Division 2 'In-fill affordable housing' of the Housing SEPP is as follows:</p> <p>15A Objective of division</p> <p><i>The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.</i></p> <p>Key to the objective of Part 2 Division 1 of the Housing SEPP is the delivery of both market and affordable housing that meets the needs of residents, whilst ensuring high-quality built form is delivered. The proposed development will deliver 125 dwellings, of which 28 dwellings will be for the purposes of affordable housing.</p> <p>The site is in a highly accessible location being approximately 750m from the Chatswood Interchange and will deliver a high-quality shop-top housing development. The proposed variation to the height control allows for family sized 4-bedroom units to be delivered, as well as high amenity and liveability. 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. Further, the provision of family sized apartments is critical to meeting the existing and ongoing housing need in the local area.</p>
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	<i>N/A. Not relied upon. See above.</i>
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	<i>N/A. Not relied upon. See above.</i>

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

Proposed height exceedance

The proposed exceedance to the height control relates to Level 27 and the roof level of the tower form, as well as pergolas and roof elements at Level 8 (podium roof). At the tower roof level, a number of elements protrude the height limit to allow for a high level of amenity to be provided for the proposed residential dwellings. All roof elements that exceed the height control are setback and have been designed to be recessive in nature.

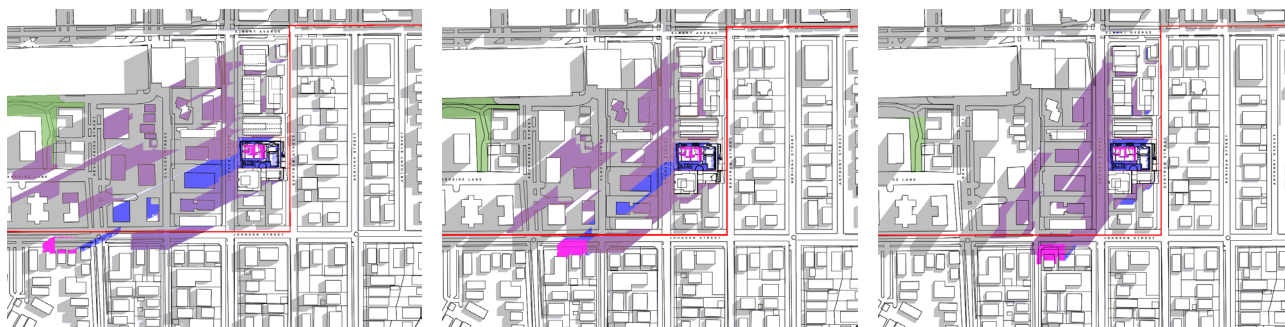
There is an absence of environmental harm arising from the contravention of the height of building development standard and sufficient positive environmental planning grounds to justify contravening the development standard for the following reasons:

- **Overshadowing:** The mid-winter overshadowing diagrams (refer to **Figure 7** below) demonstrate that the extent of overshadowing cast as a consequence of the proposed development protruding beyond the permissible height plane is minor compared to the overshadowing caused by a compliant building height.

The greatest additional shadow cast by the proposed exceedance to the height control occurs at 2pm mid-winter where an additional 785m² of shadow is cast. The proposed height exceedance will result in 285m² of shadow being cast on the rear garden of 17 Archer Street, 85m² on the side and front setbacks of 20 Bertram Street, 189m² on the roof of 20 Bertram Street and 8.5m² in the northern side setback of 22 Bertram Street at 2pm mid-winter. The remaining 218m² of shadow falls onto Bertram Street at 2pm mid-winter. At this time, the existing gardens of these properties are marginally overshadowed by the neighbouring buildings along Bertram Street, however, continue to receive 5 hours of full sun between 9am and 2pm. From 2pm they are marginally overshadowed by the proposed exceedance and the existing shadows cast by development along Bertram and Archer Street. All neighbouring properties, regardless of the height non-compliance, achieve the minimum required 3 hours of direct sunlight.

It is noted that the overshadowing assessment undertaken on 21 June represents the worst case, and on all other days within the year, the properties will receive greater solar access.

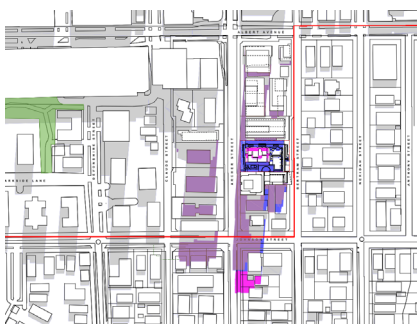
Figure 7 Mid-Winter Shadow Diagrams



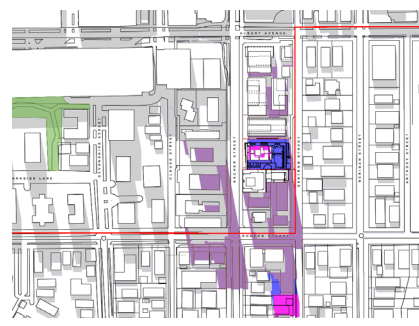
Picture 5 9am



Picture 6 10am



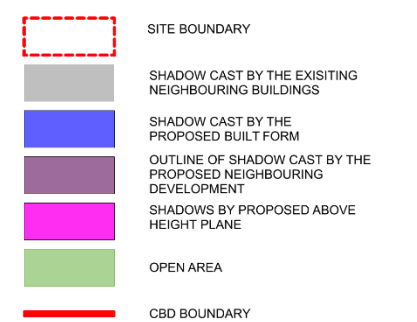
Picture 7 11am



Picture 8 12pm



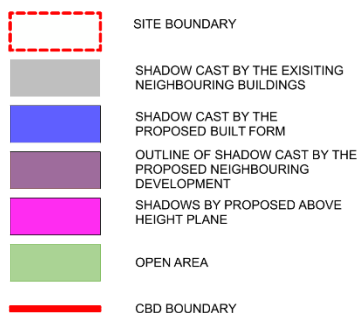
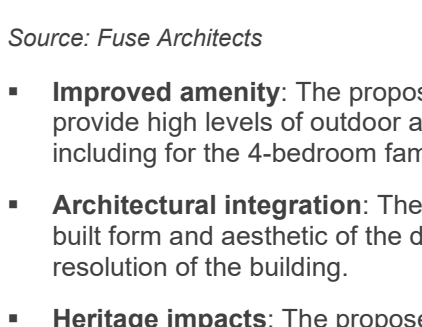
Picture 9 1pm



Picture 10 2pm



Picture 3 pm



Source: Fuse Architects

- **Improved amenity:** The proposed extrusions allow access to the rooftop landscape areas, which will provide high levels of outdoor amenity and liveability to future residents of the Level 27 apartments, including for the 4-bedroom family sized apartments located at that level.
- **Architectural integration:** The areas which protrude above the height limit sensitively blend into the built form and aesthetic of the design and contribute to the high-quality architectural language and resolution of the building.
- **Heritage impacts:** The proposed height exceedance will not result in any harmful heritage impact on the South Chatswood HCA or adjoining local heritage items. The width of Bertram Street, the appropriately scaled podium, and upper-level setbacks ensure a sensitive transition between the HCA and the emerging high-density CBD context. The tower's design, referencing traditional materials and subdivision patterns, mitigates visual bulk and maintains the residential character of the HCA. While some afternoon overshadowing will occur, it will not materially diminish the significance or setting of heritage items, and the HCA will continue to be read as a coherent early residential precinct.
- **Intensity of uses:** The proposed height variation marginally increases the intensity of the uses on the site with a compliant FSR still being maintained. The proposed development has utilised the bonuses afforded by the Housing SEPP for in-fill affordable housing of 30% additional height and FSR. The height exceedance as a result of the proposed variation is minimal in the context of the development as a whole

and will not materially intensify the residential redevelopment of the site. The proposal also complies with the applicable FSR development standard.

- **Orderly and economic use of the site:** The proposed minor height exceedance will efficiently utilise land and its associated infrastructure to promote the orderly and economic use of the site in a manner that also presents a suitable design and built form response having regard to the site's heritage context. The provision of diverse housing in accessible locations is principle of the Housing SEPP which the development as proposed will deliver.
- **Housing supply:** In the case that the proposed development complies with Clause 6.25 of the WLEP 2012, approximately 6 residential dwellings would not be delivered. The current priority of the Federal, State and Local governments under the National Housing Accord 2022 is to deliver 1.2 million well-located homes by 2029. Priority should be given to residential accommodation within this location, particularly affordable housing which is in critical short supply.
- **Visual impact:** The Visual Impact Assessment (**VIA**) includes an assessment of the visual impacts of the elements of the proposed development that exceed the height control. As can be seen from the below Figure, in the views where the proposed height exceedance is perceptible, it does not make a significant contribution to the overall visual impact of the proposed development. In addition, as can be seen in the views, the design of the building, in the areas that exceed the height control that are visible, includes design features that help to minimise the appearance of the built form, including screening, landscape planting and light-coloured materials. The visual impacts of the exceedance to the height control are minimal.

Figure 8 Visual impact of exceedance

(Visual impact in cyan with red outline - including proposed non-compliance with the height control in green)



View from Mowbray Road looking north towards the site along Archer Street, from standing position on public pavement.



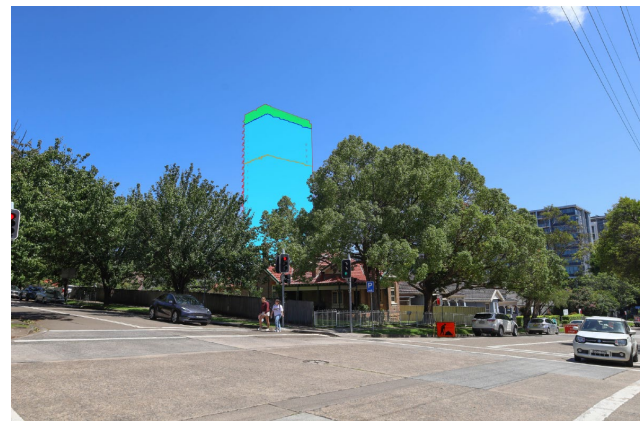
View from Neridah Street looking north towards the development, from standing position on public pavement.



View from the corner of Hercules and Johnson Street looking north-west, from standing position on public pavement.



View from the corner of Johnson Street and Neridah Street looking north-west, from standing position on public pavement.



View from corner of Albert Avenue and Neridah Street looking south-west, from standing position on public pavement.

Source: Urbaine

Technical exceedance due to existing basement level

As outlined within this Clause 4.6 Variation Request, irrespective of whether the proposed built form protrudes above the height plane, there would be a technical height control exceedance due to the existing basement level within the site. If strict compliance with the definition of “building height” was adhered to, there would be a “stepped” maximum building height plane due to the existing basement level and definition of “ground level (existing)”. See these definitions below:

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.

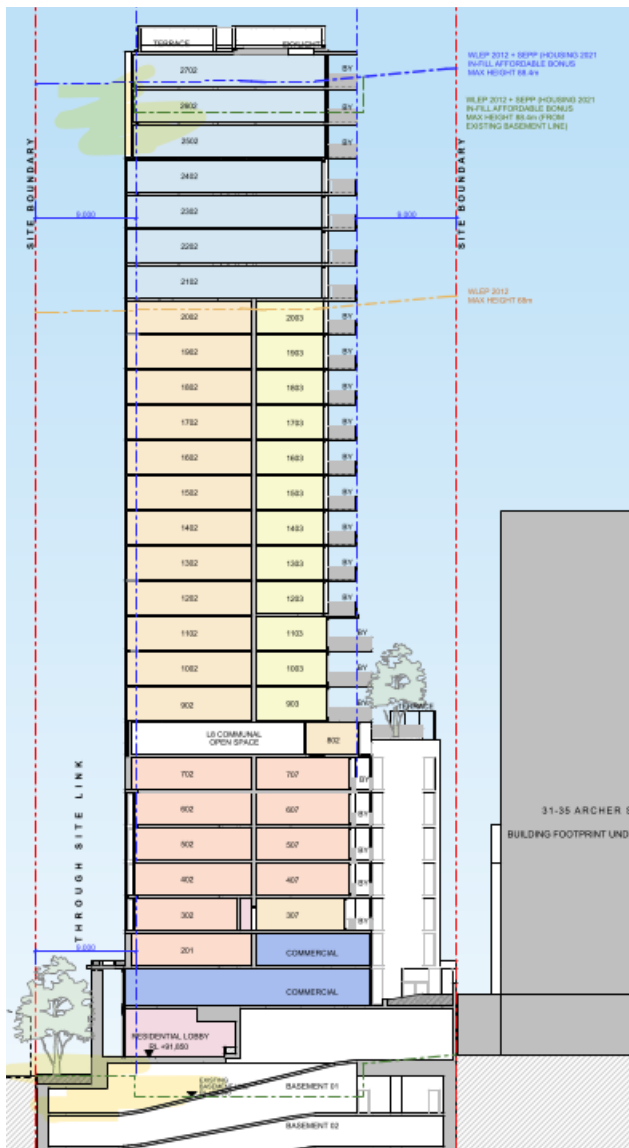
ground level (existing) means the existing level of a site at any point.

Figure 9 below displays how the height plane would appear if strict compliance with the above definitions was undertaken.

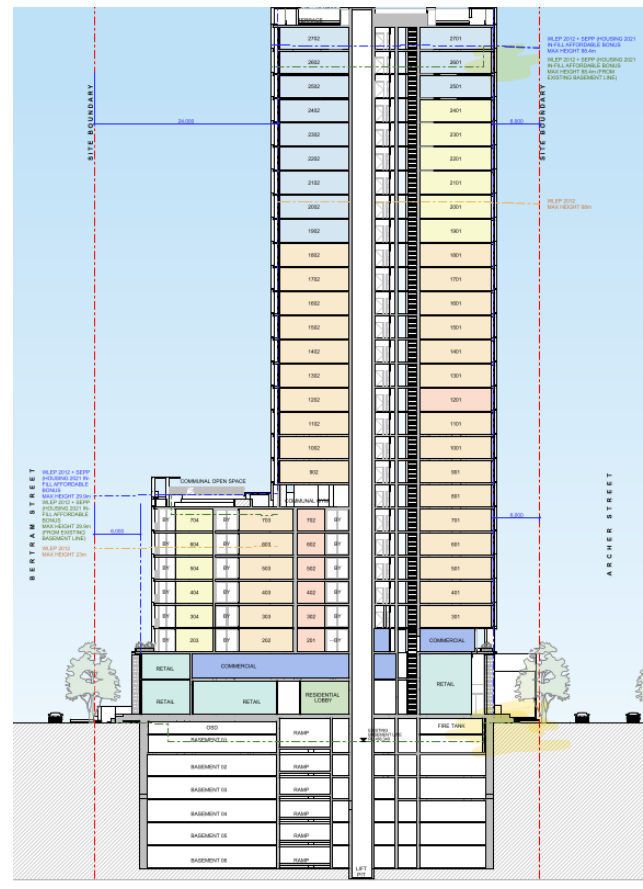
In the case of *Tony Legge v Council of the City of Sydney [2016] NSWLEC 1424*, the Commissioner discerned that “it is appropriate to take the levels of the site at its interface with the public domain” and the importance of placing “the proposed building in its context, rather than relying on the present built form of any existing development on a site”. As such, the proposed development and the extruded height plane has taken the site levels at the lot interfaces with the public domain, rather than “stepping down” to reflect the

existing basement depth. Further, the intention of the above definitions is to limit building heights above the existing ground or street level and not relate to any excavated depths. Therefore, the proposed development has been developed in accordance with the intentions of the definitions, and the height plane of Part 88.4m and Part 29.9m above the prevailing existing ground level has been adopted for the assessment of the application.

Figure 9 Sections showing existing basement level



Picture 11 North-south elevation



Picture 12 East-west elevation

Source: Fuse Architects

For the reasons detailed in this request, the variation to building height standard of the Housing SEPP is well-founded and justified and there are sufficient environmental planning grounds to warrant contravention.

DISCLAIMER

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