

URBIS

CLAUSE 4.6 VARIATION REQUEST

16-24 Lord Street & 21-27
Roseville Avenue, Roseville

SSD-78996460

Prepared for
HYECORP
16 April 2025

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Report Number Formal Lodgement

Version	Date of issue	Prepared By	Reviewed By
Formal Lodgement	16 April 2025	HM, PJ	CC



Acknowledgement of Country

Urbis acknowledges the Traditional Custodians of the lands we operate on.

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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REQUEST TO VARY A DEVELOPMENT STANDARD

REQUEST TO VARY SECTION 155(3) OF STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021

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 section 155(3) (and by extension, the additional building height applicable under section 18(2)) of the State Environmental Planning Policy (Housing) 2021 (**Housing SEPP**).

There are also several existing swimming pools 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)* was adopted.

The Variation Request seeks to vary to the maximum building height for the site prescribed in the Housing SEPP. This request is made pursuant to clause 4.6 of the Ku-ring-gai Local Environmental Plan 2015 (**KLEP 2015**). This request should be read in conjunction with the Environmental Impact Statement (**EIS**) prepared by Urbis Ltd and dated 4 April 2025.

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.

SITE AND PROPOSED DEVELOPMENT

1. Site Description

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

Table 1 Site Description

Feature	Description
Street Address	16-24 Lord Street & 21-27 Roseville Avenue, Roseville, NSW 2069
Legal Description	<ul style="list-style-type: none">21 Roseville Avenue – Lot 9 DP104673423 Roseville Avenue – Lot 66 Section B DP327725 Roseville Avenue – Lot 65 Section B DP327727 Roseville Avenue – Lot 64 Section B DP327716 Lord Street – Lot 14 Section B DP327718 Lord Street – Lot 15 Section B DP327720 Lord Street – Lot 16 Section B DP327722 Lord Street – Lot 17 Section B DP3277 & Lot 1 DP10478124 Lord Street – Lot 18 DP1173328.
Site Area	9,370.9 sqm
Site Dimensions	Lord Street frontage (south): 104 metres (approx.) Martin Lane frontage (east): 106 metres (approx.) Roseville Avenue frontage (north): 90 metres (approx.) Western boundary: 101 metres (approx.)
Easements and Restrictions	Refer to Section 2 of the EIS accompanying this SSDA for details on the easements and restrictions applying to the site.
Site Topography	The prevailing site topography has a moderate fall in gradient from west to east of approximately 7 metres (RL92m to RL85m) (refer Survey Plan at Appendix G).

Feature	Description
Vegetation	The site contains planted vegetation and scattered remnant trees that are contained within the front and backyards of the existing properties. This includes a range of small, medium and mature trees as well as general residential landscaping such as ornamental gardens, turfed areas and hedging.
Existing Development	The site is currently occupied by nine (9) detached dwellings across ten (10) lots. The existing dwellings are single storey federation style bungalows. The sites at 16 to 24 Lord Street and 25 and 27 Roseville Avenue, have backyard swimming pools of varying depths.
Local Context	<p>The site is located approximately 1.7 kilometres north of the Chatswood CBD, a significant commercial centre. The Chatswood CBD hosts a range of commercial offerings including office space, shopping centres, and smaller retailers. Roseville Local Centre (Hill Street Precinct) is located approximately 200m west of the site containing a range of shops and services. Macquarie Park is located 8km west of the site.</p> <p>The site is located within the Clanville Conservation Area with none of the properties within the site listed as individual heritage items. A locally listed heritage item is located adjacent to the site at 29 Roseville Avenue, being Roseville Scout Group Hall.</p>
Adjacent Development North	On the opposing side of Roseville Avenue are single and dual storey detached dwellings.
Adjacent Development East	To the east of the site are a range single and dual storey detached dwellings.
Adjacent Development South	On the opposing side of Lord Street are several single and dual storey detached dwellings.
Adjacent Development West	To the west of the site are several single and dual storey detached dwelling. Further west of the site is the Roseville Town Centre and Roseville Train Station, along with the Pacific Highway.
Access Network	<p><u>Public Transport</u></p> <p>The site is located a maximum distance of 317 metres from the entrance to the Roseville Train Station. The Roseville Train Station affords public transport access to the Chatswood CBD, North Sydney, and the Sydney CBD, as well as other local and strategic centres on the North Shore.</p> <p>The nearest bus stop is located at the intersection of Roseville Avenue and Gerlad Avenue, approximately 200 metres east of the site. This bus stop is serviced by the 558 bus route which operates between Chatswood and Lindfield via Roseville.</p> <p><u>Road Network</u></p> <p>The site is located approximately 400 metres from the Pacific Highway which connects the Sydney CBD with the North Shore. The site is located 550 metres north of the Boundary Street and Pacific Highway intersection which affords access to the Northern Beaches and strategic centres of Dee Why and Brookvale.</p> <p>The site is also located 3.5 kilometres north of the M1 Motorway which connects the Sydney CBD to the north-western suburbs and Greater Western Sydney.</p>
Transport Oriented Development Program	The site is located within the Roseville Transport Oriented Development Area (TOD Area).

Figure 1 Site Maps



Picture 1 Location Plan



Picture 2 Aerial Map

Source: Urbis

Figure 2 Locality Photographs



Picture 3 Looking north-east along Lord Street



Picture 4 Looking south-west along Lord Street



Picture 5 Looking north-east along Roseville Avenue



Picture 6 Looking south-west along Roseville Avenue

Source: Urbis

2. Proposed Development

A summary of the key features and details of the proposed development (including land use and works) is provided in the table below:

Table 2 Development Description

Project Element	Summary
Project Summary	<p>The project includes demolition of existing buildings and structures on the site and construction of 259 residential apartments with affordable housing and basement parking. Specifically, the SSDA seeks development consent for:</p> <ul style="list-style-type: none"> ▪ Demolition of existing buildings and structures and removal of selected trees. ▪ Excavation & construction of a 3-level basement. ▪ Construction of a residential flat building up to 9-storeys in height (RL121.4m) to provide 259 apartments including affordable housing, residential amenities and services. ▪ Provision of car parking spaces at basement level and bicycle parking. ▪ Provision of hard and soft landscaping. ▪ Associated works for the provision of infrastructure and servicing.
Site/Project Area	<p>The site has a total area of 9,370.9m². The majority of the site will be physically disturbed by the project.</p>

Project Element	Summary
Proposed uses	Residential flat building
Apartments and Mix	<p>The proposal will deliver 259 dwellings in the following mix:</p> <ul style="list-style-type: none"> ▪ 1 bedroom: 28 (10.8%) ▪ 2 bedrooms: 117 (45.2%) ▪ 3 bedrooms: 104 (40.2%) ▪ 4 bedrooms: 10 (3.9%) <p>211 of these apartments will be market housing and 48 apartments will be affordable housing (17% of overall GFA). All affordable housing units will be located in Building D.</p>
Gross Floor Area (GFA)	30,391.5m ²
Floor Space Ratio (FSR)	3.24:1
Maximum height	31.2m above existing ground level 9 storeys
Parking	<p>344 car parking spaces:</p> <ul style="list-style-type: none"> ▪ 309 residential including 39 platinum standard accessible spaces. ▪ 35 visitor spaces including 3 accessible spaces and 2 car share spaces. <p>8 motorcycle parking spaces</p>
Bicycle Parking	339 spaces
Communal Open Space	2,354.6m ² (24.8% of site area)
Deep Soil Area	2,592.6m ² (22% of site area)
Estimated Development Cost	\$148,596,689 (excluding GST)

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

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

This Variation Request seeks to vary the Housing SEPP.

4. What is the site's zoning?

The site is zoned R2 Low Density Residential. The site is also located within the Roseville 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.

5. What is the development standard to be varied?

The standard to be varied is the height of buildings development standard, which is set out in section 155(2) of the Housing SEPP (along with the additional building height that may be applied to this standard under section 18(2)) as follows:

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 non-discretionary 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.

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—

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

6. Type of development standard?

Numerical 'non-discretionary' 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 section 155 of the Housing SEPP 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 3** below.

Table 3 Numerical value of development standard to be varied

Section (Housing SEPP)	Provision	Numerical Value
Section 155 Maximum building height and maximum floor space ratio	<i>(2) The maximum building height for a residential flat building in a Transport Oriented Development Area is 22m</i>	22m
Section 18 Affordable housing requirements for additional building height	<i>(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 development on 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—</i> <i>affordable housing component = $\frac{\text{additional building height}}{\text{(as a percentage)}} \div 2$</i>	22m + 30% of 22 = 28.6m
Total		<u>28.6m</u>

The numerical value of the development standard to be varied is **28.6m**.

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

The proposed maximum heights for each of the four buildings within the proposed development are provided in the table below, showing the numerical exceedance of each building. The below building heights are the top of the lift overruns for each building as the maximum height; the roof parapets for these buildings are 100mm below the height of the lift overruns.

Table 4 Proposed Maximum Building Heights

Building	Maximum Building Height	Proposed Maximum Building Height	Numerical Exceedance	Exceedance (%)
Building A	28.6m	30.6m	2m	6.99%
Building B	28.6m	30.2m	1.6m	5.59%
Building C	28.6m	30.9m	2.3m	8.04%

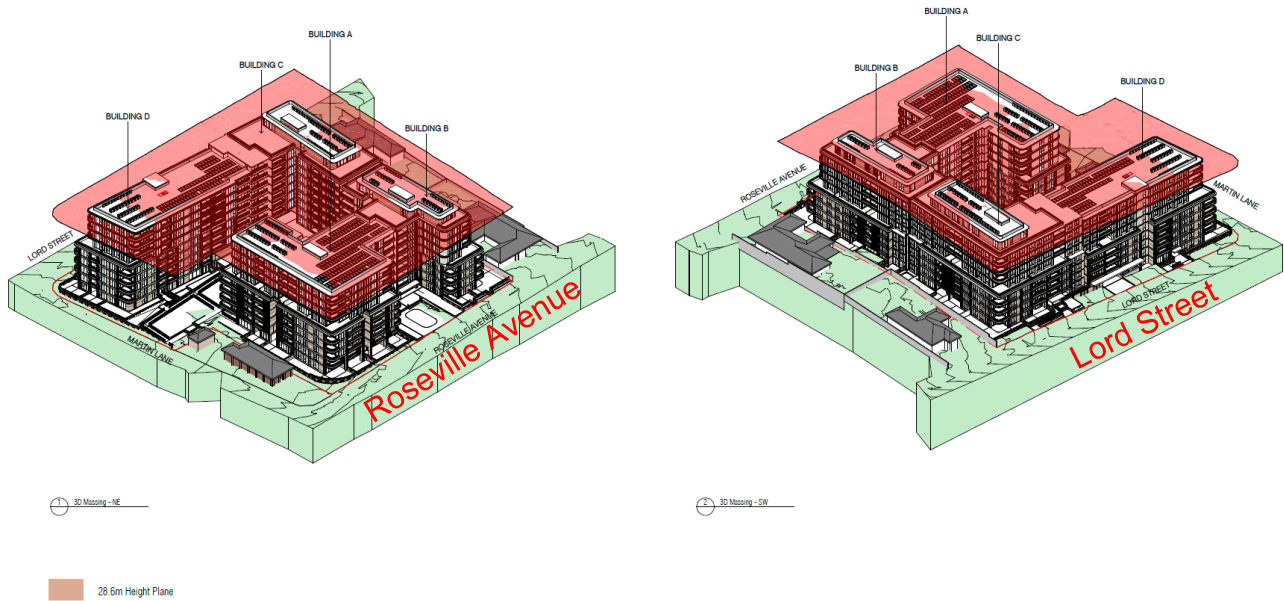
Building	Maximum Building Height	Proposed Maximum Building Height	Numerical Exceedance	Exceedance (%)
Building D	28.6m	31.1m	2.5m	8.74%

Therefore, the maximum proposed variation of the 28.6m development standard is 2.5m which is a percentage variation of 8.74%

9. Visual representation of the proposed variation

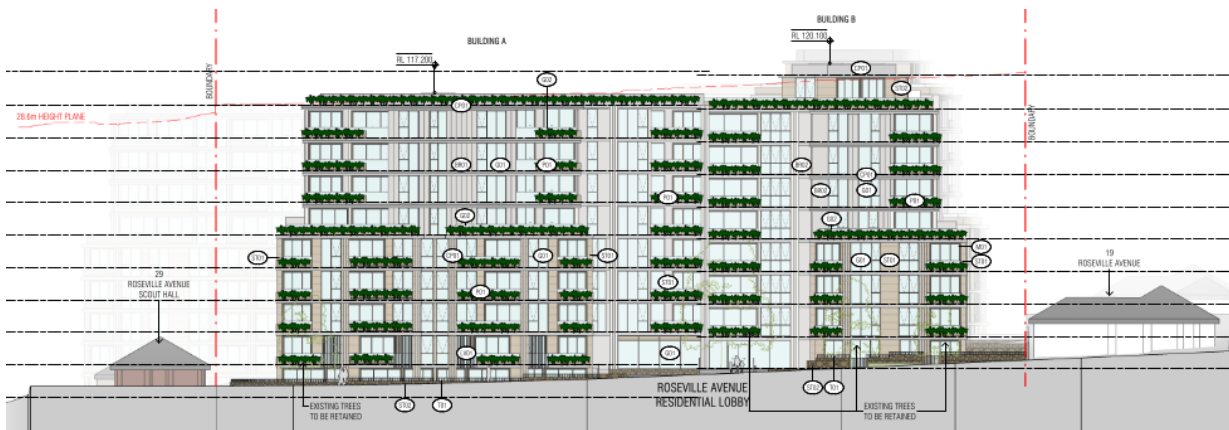
Figure 3 and Figure 4 below visually display the proposed variation.

Figure 3 Proposed Variation (Height Plane)

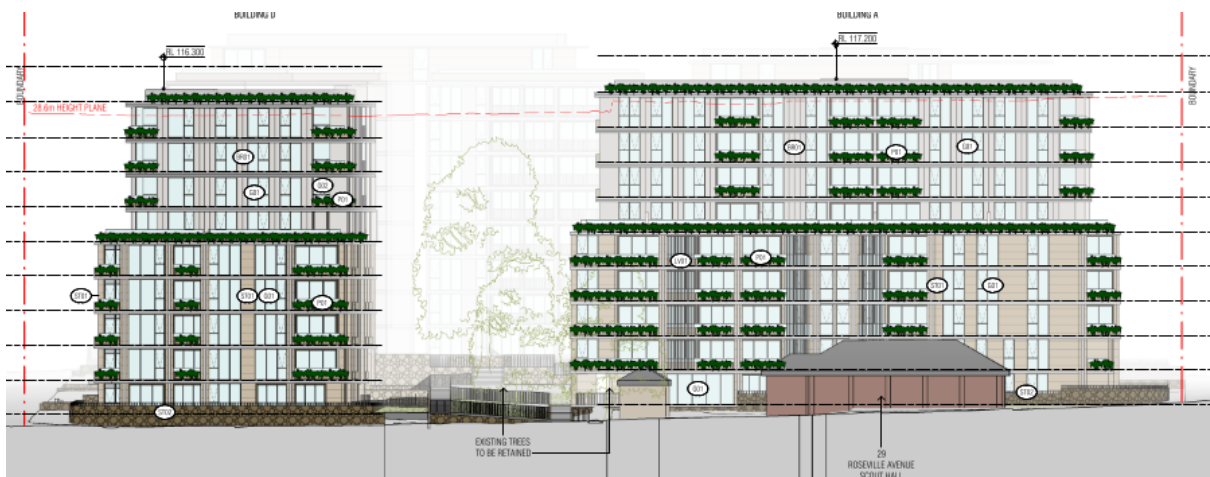


Source: FKA

Figure 4 Proposed elevations



Picture 7 North elevation (Roseville Avenue)



Picture 8 East elevation (Martin Lane)

Source: FKA

JUSTIFICATION FOR THE PROPOSED VARIATION

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

It is noted that the non-discretionary building height standard under s155 and bonus provisions available under s15A of the Housing SEPP are not accompanied by specific objectives related to the height of buildings control. As such, this test has been applied to the aims and objectives of each relevant chapter which set the parameters for the subject controls.

Table 5 addresses the relevant objectives of the Housing SEPP against the Wehbe 5 part test.

Table 5 Wehbe 5 Part Test

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	<p data-bbox="624 663 671 689">Yes.</p> <p data-bbox="624 719 1422 801">Whilst the below legislation references are not technically the objectives of the development standard to be varied, they outline the aims and objectives of the policies to which this development relates.</p> <p data-bbox="624 831 1214 857"><u>Aims of Chapter 5 Transport Oriented Development</u></p> <p data-bbox="624 887 1422 936"><i>(a) to increase housing density within 400m of existing and planned public transport,</i></p> <p data-bbox="624 943 1422 1025"><i>(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></p> <p data-bbox="624 1032 903 1059"><i>(i) are well designed, and</i></p> <p data-bbox="624 1066 1070 1093"><i>(ii) are of appropriate bulk and scale, and</i></p> <p data-bbox="624 1099 999 1126"><i>(iii) provide amenity and liveability,</i></p> <p data-bbox="624 1133 1422 1182"><i>(c) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.</i></p> <p data-bbox="624 1211 1150 1238"><u>Objective of Part 2, Division 1 (Housing SEPP)</u></p> <p data-bbox="624 1267 1422 1328"><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 data-bbox="624 1357 1422 1518">The proposal dedicates 17% of the total GFA as affordable housing which equates to 48 affordable housing dwellings (5,192sqm of GFA). This is a substantial uplift from the 9 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 data-bbox="624 1547 1422 1686">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 all the relevant design objectives in the Apartment Design Guide (ADG).</p> <p data-bbox="624 1715 1422 1854">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. The proposal will provide high quality affordable housing that has been seamlessly integrated into an architecturally designed development.</p> <p data-bbox="624 1883 1422 2022">The development provides affordable housing for those on very low, low, and moderate incomes in a close location 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>

Key Questions	Response
b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)	N/A. <i>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 data-bbox="625 421 673 448">Yes.</p> <p data-bbox="625 474 1417 533">The objective of Part 2 Division 2 'In-fill affordable housing' of the Housing SEPP is as follows:</p> <p data-bbox="625 555 912 586">15A Objective of division</p> <p data-bbox="625 600 1353 680"><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 data-bbox="625 707 1398 766">The aims of Chapter 5 'Transport Oriented Development' of the Housing SEPP are:</p> <p data-bbox="625 788 871 819">150 Aims of chapter</p> <p data-bbox="625 833 1062 864"><i>The aims of this chapter are as follows—</i></p> <p data-bbox="625 864 1426 922"><i>(a) to increase housing density within 400m of existing and planned public transport,</i></p> <p data-bbox="625 922 1426 1003"><i>(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></p> <p data-bbox="625 1003 903 1034"><i>(i) are well designed, and</i></p> <p data-bbox="625 1034 1072 1066"><i>(ii) are of appropriate bulk and scale, and</i></p> <p data-bbox="625 1066 999 1097"><i>(iii) provide amenity and liveability,</i></p> <p data-bbox="625 1097 1362 1178"><i>(a) to encourage the development of affordable housing to meet the needs of essential workers and vulnerable members of the community.</i></p> <p data-bbox="625 1200 1426 1527">Key to the objectives and aims of these chapters is the delivery of market and affordable housing that meets the needs of residents whilst ensuring high-quality built form is delivered. The proposed development will deliver 259 dwellings, of which 48 dwellings will be for the purposes of affordable housing.. The site is in a highly accessible location being approximately 200m from Roseville and will deliver a mid-rise residential flat building. 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> <p data-bbox="625 1550 1426 1832">The need to increase the height of the buildings above the height plane has arisen because of the incorporation of generous landscaped spaces which provide visual relief to the building form and improve amenity for future residents. A compliant scheme that achieves the same quantum of floorspace (which is compliant with the applicable controls for the site) would necessarily result in the erosion of these spaces. Ultimately, if strict compliance with the height control was required, the quality and quantum of both market housing and affordable housing would be adversely affected, thus defeating the objectives and aims of the relevant sections of the Housing SEPP.</p>
(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?	N/A. <i>Not relied upon. See above.</i>

Key Questions	Response
e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?	N/A. Not relied upon. See above.

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

Proposed height exceedance

The proposed exceedance to the height control is minimal in nature and relates only to minor areas of the roof level. A small number of discrete roof elements protrude the height limit to allow for a high level of amenity to be provided for the proposed residential dwellings. The large change in levels across the existing site also results in a sloping height control. The proposed building has been designed to respond to this existing condition, however, as a result there are elements on the roof form that make minor protrusions through the height plane in some areas of the site. All roof elements that exceed the height control are setback and have been designed to be recessive in nature.

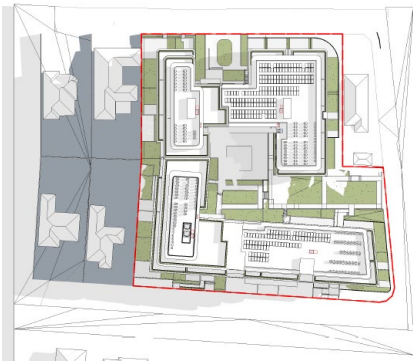
There is an absence of environmental harm arising from the contravention of the height of building development standard and sufficient positive environmental planning grounds to justify contravening the development standard for the following reasons:

- **Overshadowing:** The mid-winter overshadowing diagrams (replicated at **Figure 5**) demonstrate that the extent of overshadowing cast as a consequence of the proposed development protruding beyond the 28.6 metre height plane is minor compared by the overshadowing cast by a compliant building height.

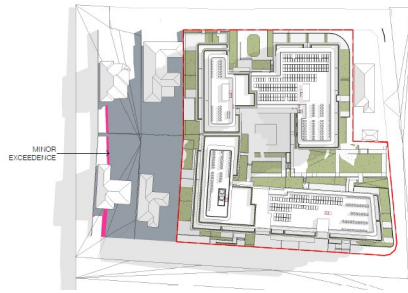
The greatest additional shadow cast by the proposed exceedance to the height control occurs at 10am on 21 June. The proposed height control exceedance will result in an additional 12m² of shadow being cast on the rear garden at 17 Roseville Avenue at 10am on 21 June. The proposed height control exceedance will result in an additional 27.5m² of shadow being cast on the front garden and an additional 12.5m² of shadow being cast on the rear garden of the property at 12 Lord Street at 10am on 21 June. These increases in shadow to these two properties as a result of the proposed building height exceedance is 3% and 7% respectively. At this time, the existing gardens of these properties are already largely in shadow, however, continue to receive 4 hours of full solar access between 11am and 3pm in mid-winter. 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 5 Shadow Diagrams

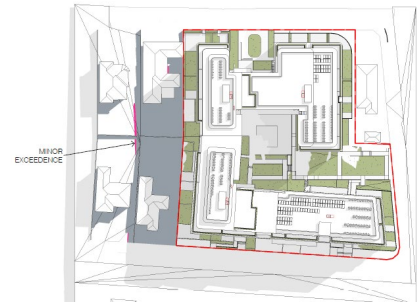
(Additional shadow cast by the height exceedance shown in magenta)



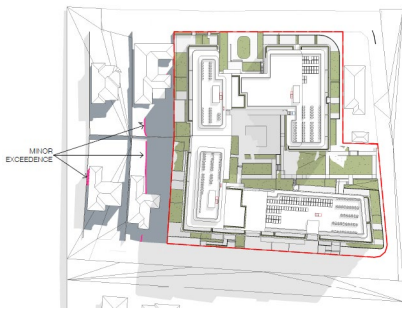
Picture 9 Mid-Winter 9am



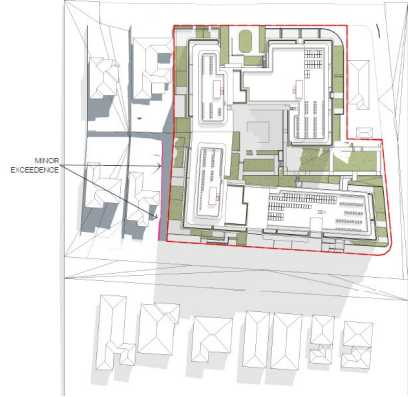
Picture 10 Mid-Winter 10am



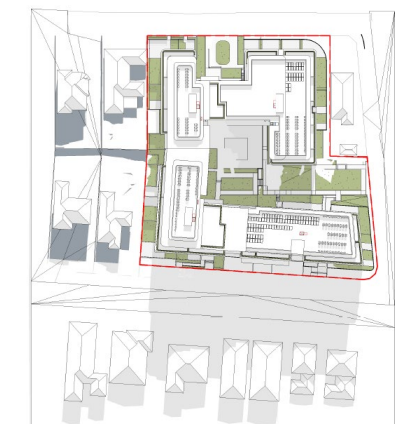
Picture 11 Mid-Winter 11am



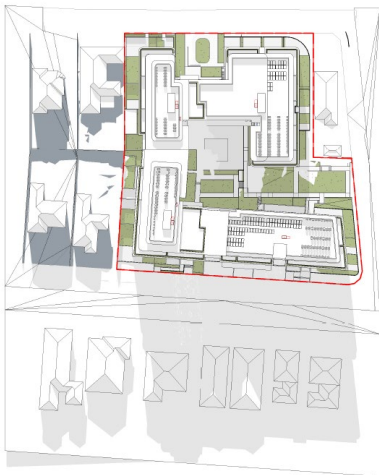
Picture 12 Mid-Winter 12pm noon



Picture 13 Mid-Winter 1pm



Picture 14 Mid-Winter 2pm



Picture 15 Mid-Winter 3pm

Source: FKA

- **Disruption of views:** The proposed exceedances are located along the edges of the rooftops and are unlikely to result in the disruption of views from the surrounding area towards locations of objects that contain visual importance, such as surrounding locally listed buildings. The elements of the proposed development protruding beyond the 28.6 metre height plane is elevated at roof level and will not have a material impact on views of visual importance.
- **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 penthouse 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 exceedance has negligible impact on the overall impact of the development on surrounding heritage items. As described in the Heritage Impact Statement (**Appendix GG**), the design of the proposal has been carefully developed to respond to and complement the surrounding Clanville Heritage Conservation Area (**HCA**) and locally listed scout hall. The proposed exceedances of the height control are minimally visible from street level and have been designed to integrate holistically into the overall composition of the building, and as such, will have negligible impact on the significance of the HCA and heritage items.
- **Intensity of uses:** The proposed height variation does not increase the intensity of the uses on the site with a compliant FSR being maintained. 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 mid-rise residential flat buildings in accessible locations is an aim of the Housing SEPP which the development as proposed will deliver.
- **Visual impact:** The Visual Impact Assessment includes an assessment of the visual impacts of the elements of the proposed development that exceed the height control. The elements of the built form that are in exceedance of the height control are largely setback from the building edge and located centrally to the roof areas. 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 recessed balconies, landscape planting and light-coloured materials. The visual impacts of the exceedance to the height control are minimal.

Figure 6 Visual impact of exceedance

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



View from no. 1 Hill Street, from standing position on the upper landing of the stairway to the railway bridge



View from corner of Lord Street and Martin Lane, from standing position on public pavement



View from outside no. 30 Roseville Avenue, from standing position on public pavement



View from junction between Roseville Avenue and Trafalgar Avenue, from standing position on Roseville Avenue public pavement



View from outside no. 15 Belgium Avenue, from standing position on Belgium Avenue public pavement

Source: Urbaine

- **Sloping site:** The site slopes 7.5 metres from west to east and as such, results in a height control plane that is inconsistent across the site area. In response to this, the design of the built form has been stepped at roof level. On the eastern edge of the building there is only a marginal height exceedance which progressively increases as the building continues westward due to the sloping nature of the site. Strict compliance with the height control would unduly limit the composition of the built form that could be achieved on the site, and the result provision of market and affordable dwellings in a highly accessible location to meet housing need.

Technical exceedance due to existing swimming pools

As outlined within this CI4.6 Variation Request, irrespective of whether the proposed built form protrudes above the 28.6m height plane, there would be a technical height control exceedance due to the existing swimming pools at 16 to 24 Lord Street and 25 and 27 Roseville Avenue. 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 pool depths 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,

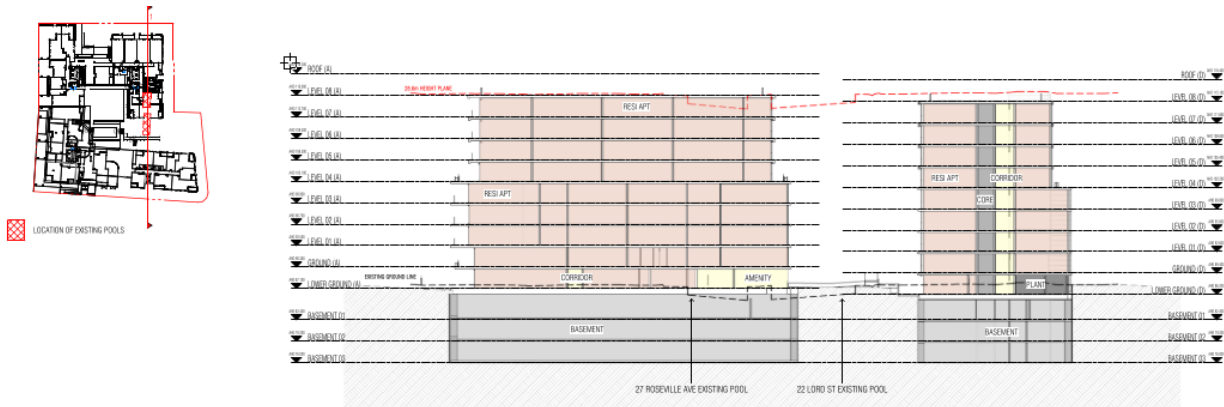
including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

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

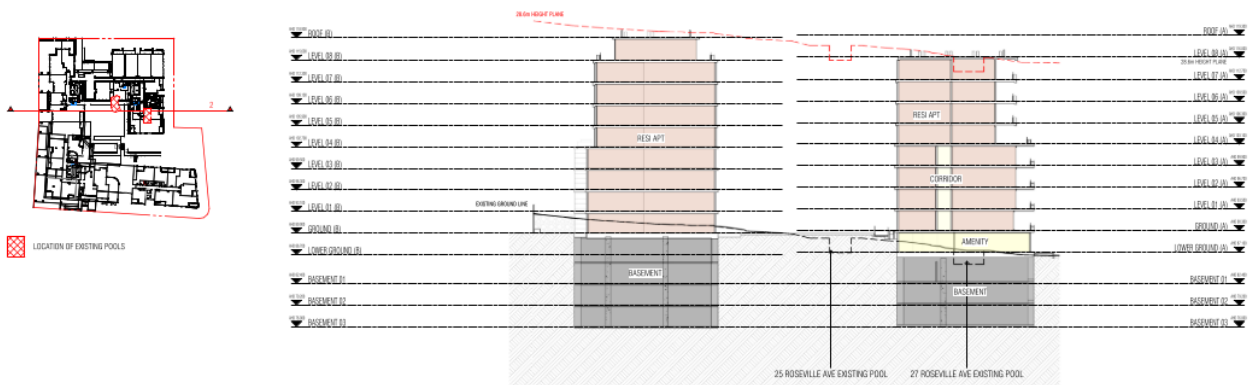
Figure 7 below displays how the height plane would appear if strict compliance with the above definitions was undertaken.

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 pool depths. 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 28.6m above the prevailing existing ground level has been adopted for the assessment of the application.

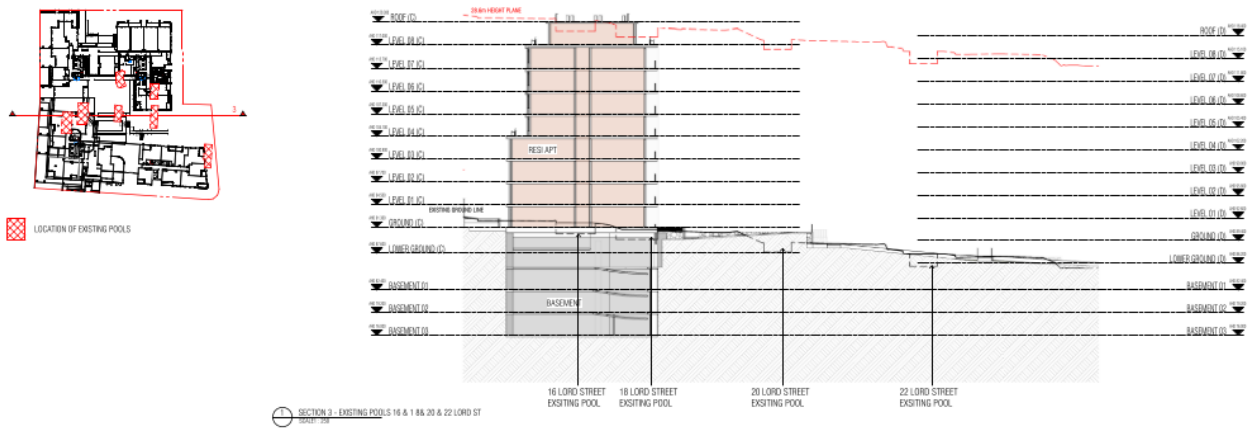
Figure 7 Sections showing existing swimming pools



Picture 16 Section showing the existing pools at 27 Roseville Avenue and 22 Lord Street



Picture 17 Section showing the existing pools at 25 and 27 Roseville Avenue



Picture 18 Section showing the existing pools at 16 – 22 Lord Street

Source: FKA

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.

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