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Clause 4.6 Variation Statement - Height.

Residential Towers – Bella Vista TOD

40 Memorial Ave, Bella Vista

On behalf of:
Landen Dev No 8 Pty Ltd

Submitted to:
Department of Planning Housing and Infrastructure

26 August 2025

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Project Name	40 Memorial Avenue, Bella Vista - residential towers			
Project Number	24-077			
Client	Landen Dev No 8 Pty Ltd			
Quality Management				
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1. Introduction

Knight Frank Town Planning has been engaged to prepare a written statement addressing the matters listed in Clause 4.6 (Exceptions to development standards) of *The Hills Local Environmental Plan 2019* (THLEP 2019). This statement relates to a requested exceedance of Clause 4.3 (Height of building) and is being prepared in support of a State Significant Development Application (SSDA). The subject site is 40 Memorial Avenue and 1Z Free Settlers Drive, Bella Vista (the site), comprising land legally described as Lots 1 1237055 and Lot 1 DP 1298513 respectively.

The proposed development comprises the construction of a residential flat building development to be constructed in two (2) stages comprising four (4) residential towers connected by two (2) levels of basement which will deliver 444 units. The following is a more detailed description of the works for which consent is sought through this SSDA application:

Site Preparation and Infrastructure

- Demolition of all existing structures in the form of a house and shed;
- Vegetation clearance of 98 trees (0.32ha), dewatering and infill of an existing dam;
- Construction of local Road 02 and part construction of Road 01;
- Installation of essential site servicing and infrastructure, including padmount electrical stations; and
- Consolidation and subdivision of Lot 1 DP 1237055 and part Lot 1 DP 1298513 to provide for the development site, local road and open space;

Residential Development

- Construction of four (4) residential buildings in two (2) stages;
- Delivery of 444 residential dwellings comprising 438 apartments and 6 townhouses;
- Provision of two (2) levels of basement comprising car parking (504 spaces) for residents and visitors;
- Provision of 201 bicycle spaces within the lower ground level; and
- Affordable housing delivered through monetary contributions, equivalent to approximately 34 apartments;

Community Infrastructure and Public Benefits

- Creation of high-quality communal open space for residents;
- Creation of a publicly accessible through site link;
- Public domain improvements that will enhance the broader streetscape and community amenity; and
- Dedication of open space land 1,464m² to The Hills Shire Council for public purposes;

The proposed development has been designed and positioned to optimise amenity, bulk, and scale for the site, whilst minimising environmental impacts in the form of flooding through establishing minimum habitable floor levels. The design approach has resulted in a minor exceedance of the maximum building height control applying to the site by a maximum of 54.971m, creating a non-compliance with Clause 4.3 of the THLEP 2019. Height exceedances are mostly limited to rooftop plant equipment, lift/stairwell overrun and associated screening. Notwithstanding the building height exceedance, a high level of amenity is still maintained throughout the development and as justified in this Clause 4.6 variation to the height development standard.

Clause 4.6 requires a Consent Authority to be satisfied that the applicant has demonstrated compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the relevant legislation, the Department of Planning and Environment's 'Guide to Varying Development Standards' (November 2023) and case law, this clause 4.6 variation request:

- identifies the development standard to be varied; and
- identifies the extent of the variation sought;

- establishes the reasons by which compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- demonstrates that there are sufficient environmental planning grounds to justify the variation.

2. Proposed Variation

2.1 Clause Being Varied

A variation to the maximum building height development standard is sought under clause 4.6 of the THLEP 2019.

Clause 4.3 Height of buildings, is as follows:

> ***4.3 Height of buildings***
> *(1) The objectives of this clause are as follows—*
> *(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*
> *(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.*
> *(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.*

2.2 Extent of Variation Sought

The proposed development does not achieve compliance with the maximum height limit of 51.5m in THLEP 2019– refer to **Figure 1.**

The proposed development will result in a building heights described in **Table 1.** It is noted that there are variations sought with respect to Buildings B, C & D. Building A is wholly compliant with the maximum building height limit.

The extent of the building height exceedance is demonstrated through a Building Height Plane diagram at **Figure 2** and **Figure 3** which demonstrates the extent of exceedance through a Section Plan.

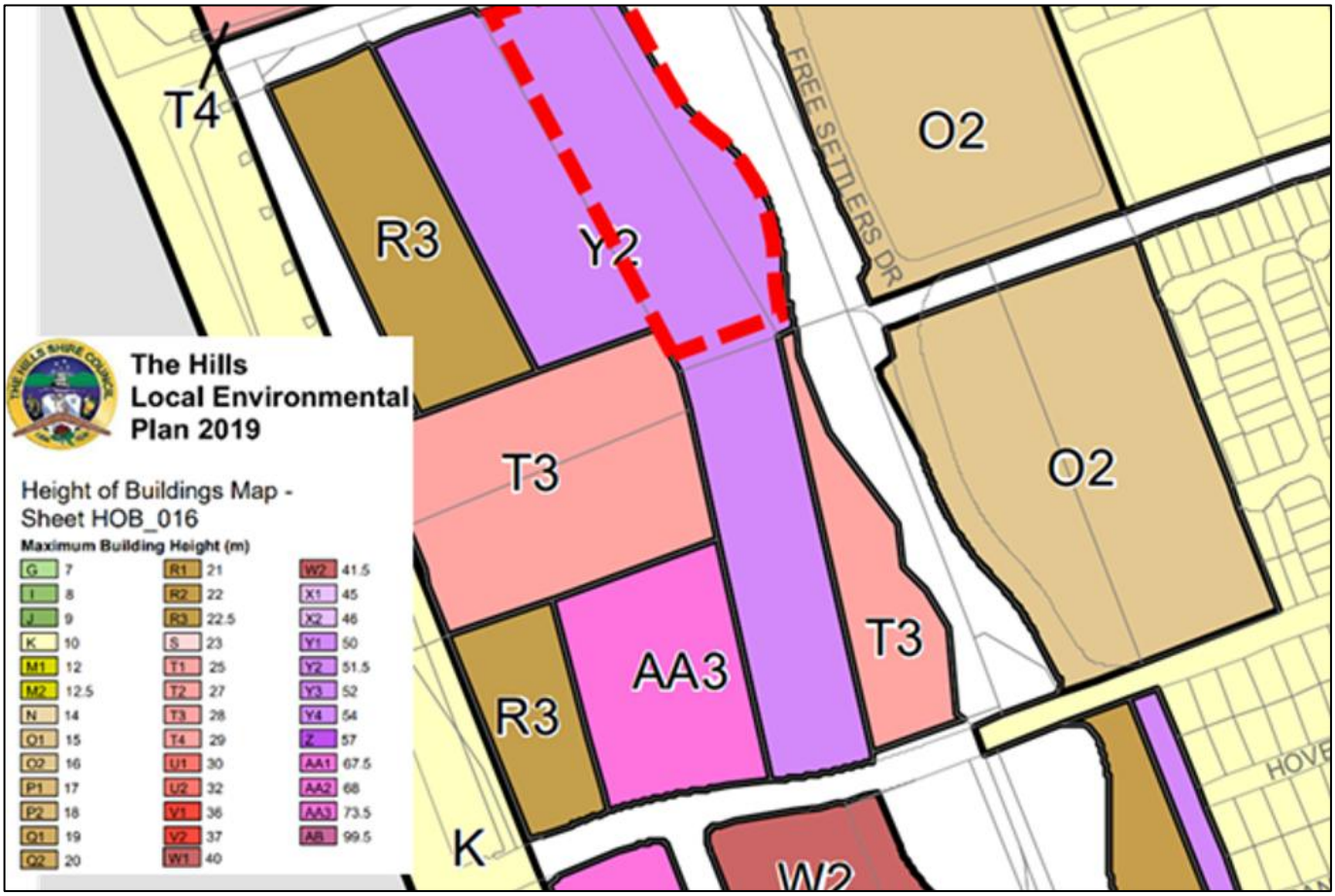

Figure 1 – Building Height map extract from THLEP 2019

Table 1 – Height of Building Exceedance

Building	Storeys	Maximum Height (RL)	Maximum Height (m)	Height Exceedance
Building A	4-9	91.2 to top of plant	33.9m	N / A
Building B	4-15	111.8 to lift overrun / plant	54.8m	3.3m to screen or 6.4% 2.044m to parapet or 3.8%
Building C	4-15	112.9 to top of plant	54.971m	3.471m to screen or 6.7% 1.567m to parapet or 3%
Building D	4-15	112.9 to top of plant	53m	1.5m to screen or 2.9% 0.237m to parapet or 0.46%

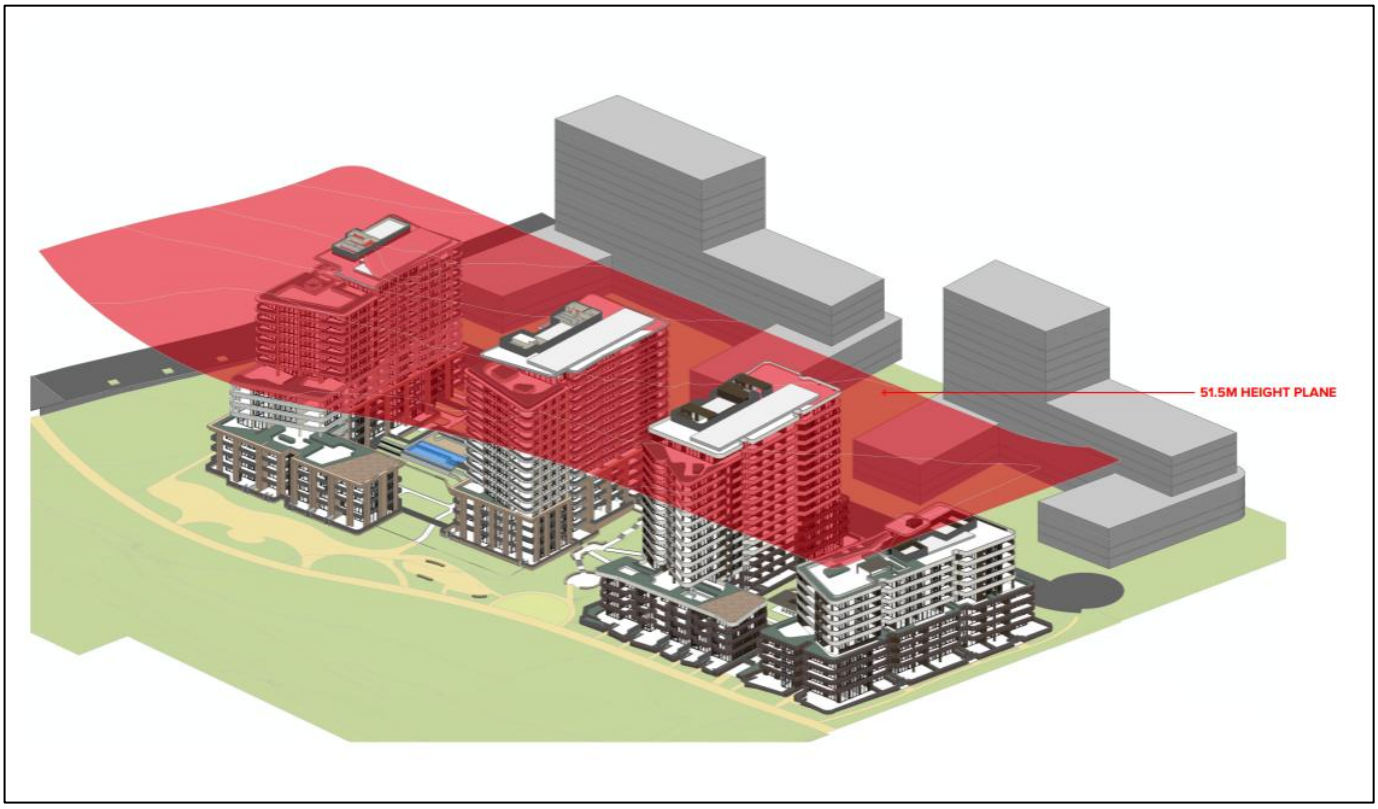

Figure 2 – Building Height Plane. Source: Turner Studio

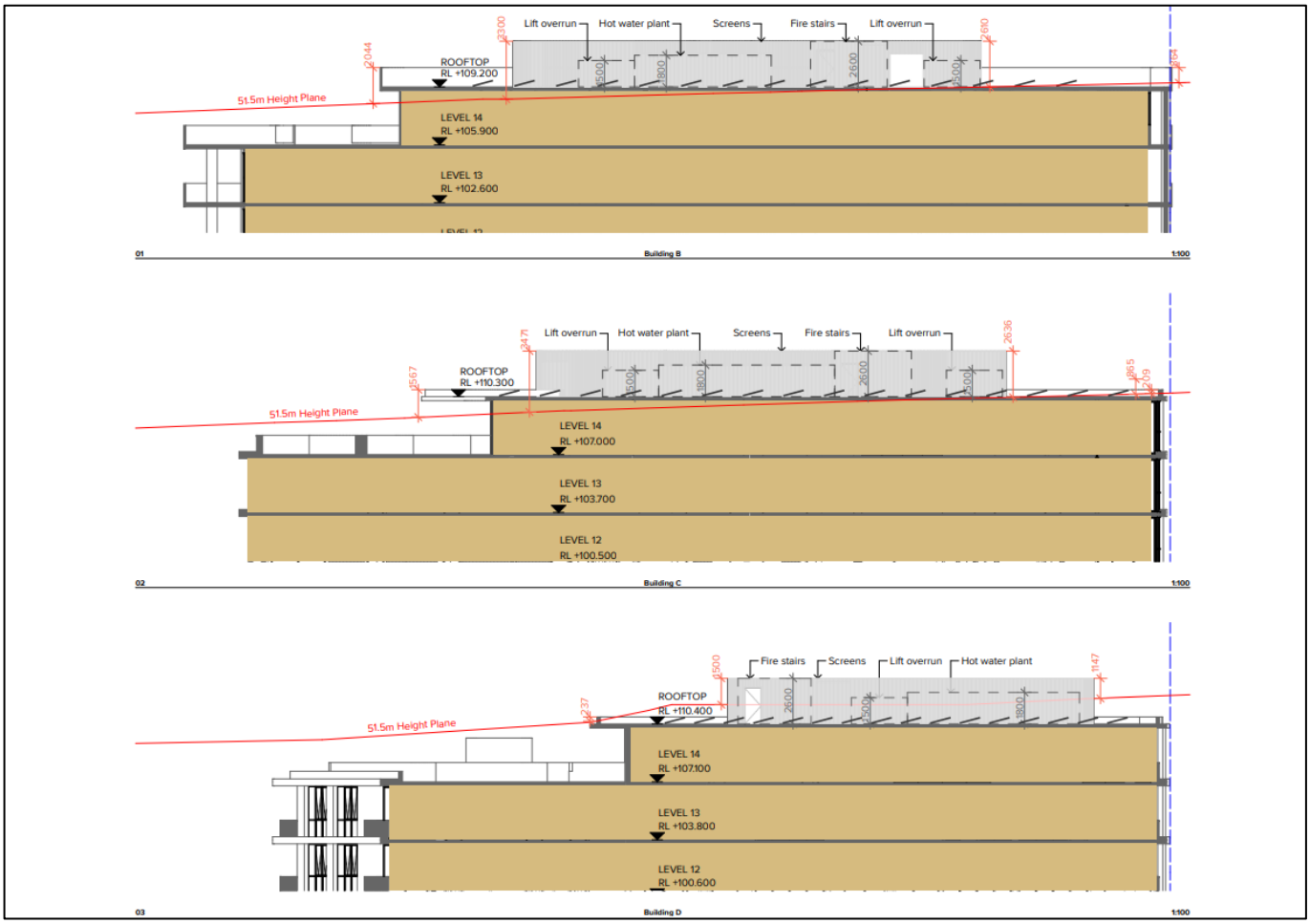

Figure 3 – Section Plan. Source: Turner Studio

2.3 Planning basis for the variation sought

The optimal design and siting response for the proposed development in terms of amenity, bulk and scale has resulted in a minor exceedance of the maximum building height limit applying to the site. The building footprint and distribution of height have been slightly modified from that within the *Bella Vista and Kellyville Transport Oriented Development Precincts Design Guide* whilst still achieving the principles of the Design Guide. The adopted design response is considered to achieve an optimal outcome as follows:

- Enhances the interface with Elizabeth MacArthur Creek;
- Allows for greater connectivity with a publicly accessible through site link;
- Provides an appropriate height transition to Memorial Ave;
- Enhances the residential amenity for future residents of the development;
- The resulting built form and its ability to achieve design excellence pursuant to cl8.6 of THLEP 2019 has been the subject of review on two occasions by the State Design Review Panel; and
- Maximises the amount of affordable housing.

3. Assessment of Proposed Variation

3.1 Clause 4.6 Exceptions to Development Standards

Clause 4.6 Exceptions to development standards of the THLEP 2019 permits the consent authority the flexibility to grant consent where a development exceeds a development standard. Clause 4.6 states:

(1) The objectives of this clause are as follows—
(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—
(a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.
Note—
The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
(4) The consent authority must keep a record of its assessment carried out under subclause (3).
(5) (Repealed)
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
(7) (Repealed)
(8) This clause does not allow development consent to be granted for development that would contravene any of the following—
(a) a development standard for complying development,
(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(caa) clause 5.5,
(cab) (Repealed)
(ca) clause 6.3,
(cb) clause 7.11,
(cc) clause 7.15.

3.2 Objectives

The object of cl4.6 is to provide a degree of flexibility when considering a development against the development standards to achieve better outcomes for and from development in particular circumstances.

This submission demonstrates that despite not achieving compliance with the maximum height of building development standard, a better outcome is achieved in this instance and that it is appropriate to apply flexibility in this circumstance.

3.3 Exclusions

The consent authority may grant development consent even though the development would contravene a development standard imposed by the THLEP 2019. Cl 4.3 is not a development standard expressly excluded from the operation of this clause as noted in Clause 4.6(8).

3.4 Compliance with the development standard is unreasonable or unnecessary

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the development being considered as justified using the *Wehbe v Pittwater Council [2007] NSWLEC827* (Wehbe) Court case, where Preston CJ identified five ways in which an applicant might establish that compliance with a development standard is unreasonable or unnecessary. The five ways outlined in Wehbe are:

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

This submission relies on the First Way to support our submission that compliance with the development standard is unreasonable or unnecessary.

We note that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018 NSWLEC 118*, Chief Justice Preston considered the proper interpretation of clause 4.6 and found that:

- Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial test relative to a compliant development (at [87]);
- There is no requirement for a clause 4.6 request to show that the proposed development would have a 'better environmental planning outcome for the site' relative to a development that complies with the standard (at [88]); and
- One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [94(c)]. That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

These comments of the Chief Judge are particularly pertinent in this case as this cl 4.6 request shows that there are no adverse amenity or design impacts due to non-compliance with the maximum permitted height of building.

Objectives of the Development Standard (First Way)

The following are the objectives of the height of building development standard being varied:

(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,

(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

It is our view that the objectives of the development standard being varied are achieved despite the non-compliance. The following is our consideration of the development against the objectives of the development standard.

(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,

In *Project Venture Developments Pty Ltd V Pittwater Council* consideration is given to compatibility with respect to a building and its surroundings. It was confirmed that '*Compatibility is... different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve*'. It is therefore not necessary that the development adopt the same built form, density scale, and appearance as surrounding developments to be compatible.

In considering the compatibility of the building heights adopted we have contemplated both with respect to the existing development context and future development permitted under the *Kellyville and Bella Vista and Kellyville Transport Oriented Development Precinct* (the TOD Precinct) of which the site forms part.

While the site forms part of the TOD Precinct, development within the Precinct has yet to occur and hence its character is emerging. Land to the west and south currently comprise large lots with remnant vegetation and no substantial structures. Land to the east comprises the Elizabeth MacArthur Creek corridor, associated open space and Free Settlers Drive. Beyond this is a residential care facility operated by BaptistCare comprising a series of buildings up to 5 storeys in height. To the north is Memorial Ave being a classified road six (6) lanes in width and with a substantial landscaped verge.

Clause 7.27 of the THLEP 2019 states that development consent must not be granted for development unless the consent authority has considered the *Bella Vista and Kellyville Transport Oriented Development Precincts Design Guide* (Precinct Design Guide). The Precinct Design Guide provides planning controls for building heights within the Precinct demonstrated in storeys. **Figure 4** details the following:

- that the subject site would have three (3) x 15 storey buildings within the southern part of the site and one (1) x eight (8) storey building adjoining Memorial Ave;
- Land to the west comprises land owned by Landcom and which is the subject of an existing concept approval. The building envelopes demonstrate a similar maximum height and similar podium heights than the proposed development;
- Land to the north demonstrates a similar transition in scale for building heights adjoining Memorial Ave than the proposed development; and
- Land to the south comprises a 'proposed district park' which is located some distance from the proposed buildings.

Figure 4 – General building heights strategy Precinct Design Guide (Source: DPHI)

For the purpose of considering whether the building heights adopted are compatible with adjoining development, it is more appropriate to consider the future development outcomes contemplated under the Precinct Design Guide, rather than solely on its existing context. The objectives relevant to building height are as follows:

a. To ensure a variety of heights are provided that promote high amenity development and communal spaces.

b. To provide enclosure to Elizabeth Macarthur Creek and encourage passive surveillance of the riparian corridor.

c. To ensure a high level of amenity to communal open space and the public domain through design and siting of buildings.

d. To protect the amenity and maintain solar access to adjacent buildings.

The development adopts a building height strategy that is consistent with the Precinct Design Guide. Buildings A, B & C which are subject of the variation being sought all propose heights of 15 storeys. Building D proposes an overall height of 9 storeys which is a minor departure from the envisaged 8 storeys, and which is, consistent with the objectives of the Precinct Design Guide seeking to achieve a diversity of building heights within the Precinct transitioning from Memorial Ave to the creek corridor. Whilst Building A proposes a 9 storey building, it is within the maximum building height limit in THLEP 2019.

Consideration has been given in the design to adjoining development particularly future development to the west as part of the approved Landcom State Significant Development Application (SSD-10344). The proposed development is compatible with this development and the overall streetscape as envisaged by the Precinct Design Guide. A variety of building heights have been adopted, both with respect to the individual buildings and the overall development, which will contribute towards the overall diversity of building heights within the Precinct. With respect to the amenity and solar access to adjacent building this has been considered in detail under objective (b) below.

(b) to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.

A high degree of amenity is achieved within the development with respect to its communal open space (COS) areas. The distribution of COS within the development ensures there is equal access for its residents and provides spaces for all weather conditions.

The potential impacts of the development as it relates to overshadowing, visual impact and loss of privacy are each considered below.

<u>Overshadowing</u>

Shadow diagrams have been prepared by Turner Studio and can be found in the Architectural Drawings appended to the Environmental Impact Statement (EIS) at **Appendix A** and as shown at **Figures 5 & 6** below. These diagrams demonstrate the impact of the development on solar access to adjoining development as measured on 21 June between the hours of 9am and 3pm, detailed in half hour increments.

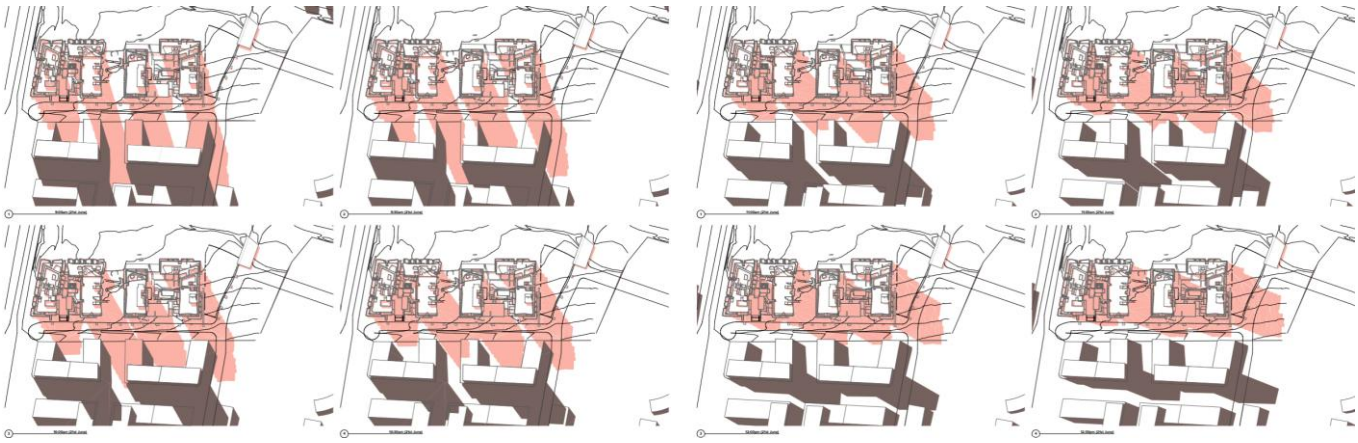

Figure 5 – Shadow Diagrams – 9am – 10:30am & 11am-12:30pm (Source: Turner Studio)

Figure 6 – Shadow Diagrams – 1pm – 2:30pm & 3pm (Source: Turner Studio)

With respect to adjoining development the following is noted:

- Landcom Site to the West. Overshadowing will likely occur to a future residential development on the Landcom site between the hours of 9am – 12pm, with only very minor overshadowing remaining by 12pm. Between the hours of 12.30pm and 3pm there will be no overshadowing of the site. It is further noted that given the general envelopes approved under the SSDA, overshadowing is typically limited between 11am-12pm to part of the ground level situated between the building envelopes;
- Elizabeth Macarthur Creek. Shadow diagrams demonstrate that there will be very limited overshadowing of the adjoining riparian corridor. There would be some minor impact as measured between 2pm-2.30pm and increasing more significantly from 3pm onwards.
- BaptistCare and Residential Uses. Shadow diagrams demonstrate there will be no impact on the BaptistCare site to the east which comprises a residential care facility, nor the established residential flat buildings located to the south-east of the subject site.

With respect to the future District Park located to the south of the development site, detailed analysis has been undertaken of the impact of the development on its solar performance, see **Figure 7**. While overshadowing of part of the District Park will occur, 93% of the District Park will achieve solar access for a minimum of 4 hours between 9am & 3pm and 78% between 10am and 2pm.

Figure 7 – Solar Performance District Park (Source: Turner Studio)

Given the orientation of the lot and the building form, the overshadowing of existing and future development will not be significant. It is considered that the development has minimised the impact on adjoining properties and open space areas.

Visual Impact

In support of the application is a Visual Impact Analysis appended to the EIS (**Appendix L**). The analysis considers how the proposed development will present within the existing urban context and when considering the surrounding likely future built form outcomes resulting from the Bella Vista and Kellyville TOD Precincts Design Guide. **Table 1** provides a summary of the viewpoints considered and how the proposed development will be viewed within the existing and future development context.

It is considered that the development has been designed to minimise visual impacts both with respect to the adjoining properties and how it will be viewed more broadly within the locality.

Table 1 – View Impact Analysis Summary

Viewpoint	Description of Views
View 1: Free Setters Drive looking south-west View as seen from alongside the BaptistCare facility	Demonstrates that part of the development will be viewed from the public domain particularly Building D. The development is largely screened by the existing tree line along the creek corridor.
View 2: Free Setters Drive looking north-west View as seen from alongside established residential flat building development	Some views of Building D from the public domain comprising several of the uppermost levels. Remaining buildings are otherwise screened by the existing tree line along the creek corridor.

View 3: Cnr. Balmoral Road & Mawson Avenue looking north View as seen from the public domain	There will be limited to no views of the development as it will largely be screened by established trees running east-west along Balmoral Rd. Diagrams showing the future built form in accordance with the Precinct Design Guide demonstrate that this will completely obscure views to the proposed development in future.
View 4: NW Transitway looking south-east	The proposal features more prominently in the landscape. Part of Building A able to be viewed, majority of Buildings B, C & D able to be viewed. Clear view lines are achieved between the building towers looking east. Diagrams showing the future built form in accordance with the Precinct Design Guide demonstrate that this will completely obscure views to the proposed development in future.

View 5: Sunnyholt Road (west of Old Windsor Rd) looking east	More distant views of the proposed development. Part of Buildings A & B viewed in the context of Memorial Ave. Established trees will screen the development to some degree. Buildings C & D will feature less prominently given their location within the southern part of the site. Diagrams showing the future built form resulting from the Precinct Design Guide demonstrate that the proposed development will be seen in the context of similar building scale and heights.
View 6: Memorial Avenue looking south-east	More proximate views of the development site from the northern edge of Memorial Ave. The proposed development features more prominently with less established trees at this location. Buildings A & B seen clearly from this viewpoint. Buildings C & D not able to be viewed given the future development footprint on the adjoining Landcom site.

	Diagrams showing the future built form resulting from the Precinct Design Guide demonstrate that the proposed development will be seen in the context of similar building scale and heights.
View 7: Memorial Avenue looking south-west	Proposed development features more prominently in the landscape. Part of Building A able to be viewed above the established tree line. Majority of tower forms for Buildings B, C & D able to be viewed above the prevailing building line. Clear view lines are achieved between the building towers looking west preserving views to the sky. Diagrams showing the future built form resulting from the Precinct Design Guide demonstrate that the proposed development will be seen in the context of similar building scale and heights.

Privacy

The orientation of the built form and design measures implemented ensures that a high degree of privacy will be achieved within the development. With respect to the interface of the proposal with adjoining development, the proposal benefits from a significant building separation achieved in part through the perimeter road network and the adjoining riparian corridor.

With respect to the future development of the Landcom site to the west, a compliant building separation will be achieved. With respect to the existing BaptistCare site to the east, the development achieves a circa 100m separation.

Conclusion

For the reasons stated above, the variation to the maximum building height limit addresses the objectives of the development standard in THLEP 2019. The variation also supports Bella Vista's role as a Transit Oriented Development (TOD) precinct in a manner that is compatible with the bulk, scale, and character of future surrounding development as outlined in the Precinct Design Guide.

3.5 Environmental Planning Grounds

In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009, it was determined that it is necessary for applicants to demonstrate there exist sufficient environmental planning grounds particular to the development in the Clause 4.6 objection.

In WZSydney Pty Ltd v Ku-ring-gai Municipal Council [2023] NSWLEC 1065, it was considered by Commissioner Dickson that avoiding adverse impacts may constitute sufficient environmental planning grounds as it promotes 'good design and amenity of the built environment' being one of the objects of the EP&A Act 1979. However, that the lack of impact must be specific to the non-compliance to justify the breach.

With respect to the relevant case law mentioned above, there are sufficient environmental planning grounds specific to the development and subject site that warrant support as detailed below:

- The site is flood affected given its proximity to Elizabeth MacArthur Creek. The development is required to achieve minimum habitable floor levels that achieves the 1% Annual Exceedance Probability event + freeboard. This constraint has limited the ability of the development to further respond to the site's topography;
- Non-compliant building height is located central to the individual building footprint and is well setback from the public domain (see **Figure 2**). The components of the building that exceed the height plane are largely limited to rooftop plant equipment, lift/stairwell overrun and associated screening. There is however a minor amount of residential airspace of Buildings B & C that exceed the height plane (see **Figure 3**);
- Building heights transition appropriately towards Memorial Ave. with a complaint building height achieved for Building A;
- Building heights achieve an appropriate interface with the Elizabeth MacArthur Creek corridor with a human scale podium and upper-level setbacks adopted for the tower form;
- Shadow diagrams submitted in support of the application confirm that solar access is maintained to adjoining properties as it relates to existing and future residential development;
- Shadow diagrams submitted in support of the application confirm that solar access is maintained to adjoining open space areas comprising the Elizabeth MacArthur Creek corridor and future District Park;
- View impacts of the development are mitigated through significant separation distances between the individual buildings, reduction in building envelopes between tower forms and skilful design. The view impacts of the development are consistent with those contemplated for development within the TOD Precinct;
- Provides high quality communal open space areas that achieve compliant solar access as required by the ADG;
- Provides for extensive deep soil areas and tree canopy within the development site that well exceed statutory requirements; an

- There is no significant or unreasonable environmental or amenity impacts that arise from the exceedance of the permitted height of building development standard.

For the above reasons, it is considered there are sufficient environmental planning grounds consistent with clause 4.6(3)(b) to warrant support from the Department of Planning, Housing & Infrastructure.

3.6 State or regional environmental planning significance

Contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

3.7 Public Interest

The development is in the public interest as it will achieve a high standard of urban design and supports high density housing in a TOD precinct location.

While it is no longer a statutory requirement to satisfy the matter of 'public benefit', which has since been repealed, for the purpose of considering the development particularly against the zone objectives that it is still prudent to do so.

The subject site is zoned R1 General Residential under the THLEP 2019, and the proposed development is permissible with development consent. The relevant objectives of the R1 zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.*
- *To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.*

The proposed development is considered to consistent with the objectives of the zone as follows:

- Contributes towards the housing needs of the community by providing high density housing in a location that is close to population and public transport routes;
- Provides a variety of housing types including adaptable, liveable and affordable housing; and
- Contributes towards the housing needs of the community by providing a range of apartment sizes and layouts, including a significant number with 3 + bedrooms that can accommodate families;

The proposed development achieves the objectives of the development standard being varied and the objectives of the zone in which it is proposed, despite the non-compliance with cl 4.3. Therefore, the proposal remains in the public interest despite the variation being sought.

4. Conclusion

This cl 4.6 variation request demonstrates that compliance with *Clause 4.3* within the THLEP 2019 is unreasonable and unnecessary in the circumstances of the proposal and that the proposed variation to the development standard is an acceptable outcome for the development of the site.

This variation statement details the unique circumstances of the proposed development, which will provide a better planning outcome in the context of the site for the following reasons:

- The proposed building heights are compatible with adjoining land under the Precinct Design Guide;
- That the proposed development continues to satisfy the objective of cl 4.3 despite the variation that has been sought;
- There are sufficient environmental planning grounds to justify the contravention in the circumstances of this particular case;
- The proposed development is consistent with the objectives of the R1 General Residential zone;
- The proposed non-compliance with the height of building development standard will not result in any matter of significance for State or regional environmental planning; and
- The proposed development is in the public interest.