



Clause 4.6 Variation Request – Height

State Significant Development (SSD-83256472)

68-80 Banks Avenue, Pagewood

Prepared on behalf of Homes NSW

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FPDplanning

Document control

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Project summary

Prepared on behalf of	NSW Land and Housing Corporation (operating as Homes NSW)
Land to be developed	68-80 Banks Avenue, Pagewood
Legal description	Lots 1-17 DP35180
Project description	Residential flat building development comprising 224 dwellings including social housing.

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Executive Summary

Introduction

This Report has been prepared to request a variation to a development standard subject to Clause 4.6 of the *Bayside Local Environmental Plan 2021* (Bayside LEP) in connection with a State Significant Development Application (SSDA) for the development of 68-80 Banks Avenue, Pagewood (the site). The Clause 4.6 Request has been prepared by FPD Planning on behalf of Homes NSW as the applicant.

The SSD application seeks consent for construction of two residential flat buildings of 7-8 storeys with 84 social housing dwellings and 140 private market dwellings.

Clause 4.6 of the Bayside LEP includes provisions that allow the consent authority to vary development standards in certain circumstances.

The Department of Planning, Housing and Industry (DPHI) has issued the *Guide to Varying Development Standards* (November 2023) to assist applicants in applying to vary development standards. This Clause 4.6 variation report has been prepared in accordance with the *Guide to Varying Development Standards*.

This report seeks a variation of the maximum height control of 28.6m which applies under the Bayside LEP and Housing SEPP infill affordable housing bonus provisions.

Proposed variation

This report seeks a variation of the maximum height control of 28.6m by a maximum of 0.8m (less than 3%) to accommodate lift overruns of the eight storey private market building.

The height exceedance is largely a result of the requirement to raise the floor level by around 0.8-1.1m above the natural ground level to accommodate the flood planning level ensuring safety for residents during flood events.

The proposed development is consistent with the maximum permissible GFA of 19,913sqm.

This proposed variation is shown in the height plane diagram below.



Height plane diagram (Source: BVN)

Justification

Clause 4.6 of the Bayside LEP includes provisions that allow the consent authority to vary development standards in certain circumstances. Clause 4.6 requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

This Clause 4.6 variation request demonstrates that compliance with the height of buildings controls is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravention of the standard as summarised below and detailed within this report.

Compliance is unreasonable and unnecessary in the circumstances

Compliance with the development standard is considered unreasonable and unnecessary in this instance as it:

- Is consistent with the objectives Clause 4.3. Height of buildings under the Bayside LEP as outlined in Table 3 of this report.
- The development standard (being the height control under the Bayside LEP) has been virtually abandoned or destroyed as a result of numerous consents departing from the standard as outlined in Table 2 of this report.

There are sufficient environmental planning grounds to justify the contravention

There are sufficient environmental planning grounds to justify the variation to the height control in this instance given the minor nature of the exceedance.

As detailed in the Architectural Design Report which forms part of the EIS and summarised in this report, the proposed height exceedance will not result in additional overshadowing or visual impacts when compared to a compliant envelope.

The proposed development is consistent with the maximum permissible GFA of 19,913sqm.

The proposed height exceedance does not seek to accommodate additional storeys than could be achieved with the height control and is largely a function of the required elevated floor levels to achieve the flood planning level.

In summary the variation will result in negligible environmental impacts, while delivering significant benefits through the provision of new and increased social housing whilst ensuring the safety of future residents during flood events.

1 Introduction

This Report has been prepared to request a variation to a development standard subject to Clause 4.6 of the *Bayside Local Environmental Plan 2021* (Bayside LEP) in connection with a State Significant Development Application (SSDA) for the development of 68-80 Banks Avenue, Pagewood (the site) for residential apartment buildings comprising social housing. The Clause 4.6 Request has been prepared by FPD Planning on behalf of Homes NSW as the applicant.

The site is zoned R3 Medium Density Residential under the *Bayside Local Environmental Plan 2021* (Bayside LEP) and the following maximum height and floor space ratio (FSR) apply under the Bayside LEP:

- Height of buildings: 22m
- FSR: 1.65:1

Infill affordable housing bonuses provisions set out in *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) apply to the site allowing the following:

- Height of buildings: 28.6m.
- FSR: 2.15:1 (allowing a maximum GFA of 19,913sqm)

The relevant provisions of the Bayside LEP and Housing SEPP are outlined in more detail in the Section 4 of the EIS.

This report seeks a variation of the maximum height control of 28.6m by 0.8m (less than 3%) which accommodates lift overruns for the eight storey market housing building.

Clause 4.6 of the Bayside LEP includes provisions that allow the consent authority to vary development standards in certain circumstances. The objectives of clause 4.6 are:

- To provide an appropriate degree of flexibility in applying certain development standards to particular development.
- To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances.
- There are sufficient environmental planning grounds to justify contravening the development standard.

The Department of Planning, Industry and Environment has issued the *Guide to Varying Development Standards November 2023* to assist applicants in applying to vary development standards. The guide sets out five common ways which has been established by the NSW Land and Environment Court which may be considered in applying Clause 4.6 to determine whether the objection to the development standard is well founded. The matters have been considered and addressed by this report.

2 The site and proposed development

2.1 Site description

The site is located at 68-80 Banks Avenue, Pagewood in the Bayside Local Government Area (LGA) and comprises 18 lots (see Table 1 below) with a combined site area of 9,262sqm. It is currently occupied by 5 buildings containing 82 social housing dwellings within 2-3 storey walk-up buildings.

The site is bound by Banks Avenue to the west, Park Parade to the north and south, and Jellicoe Park to the east.

Table 1 Site details

Address	Lot/ DP
68 Banks Avenue	Lots 1-5 DP35180
74 Banks Avenue	Lots 6-13 DP35180
80 Banks Avenue	Lots 14-17 DP35180



Figure 1: Subject site (Source: BVN)

2.2 Overview of the proposed development

The SSD application seeks consent for the following:

- Demolition of all existing structures on the site, tree removal, excavation and site preparation works
- Construction of new residential flat buildings comprising:
 - A seven storey social housing residential flat building with 84 dwellings with a single basement level accessed from Park Avenue to the south

- Two eight storey private market housing residential flat buildings with 140 dwellings over a consolidated two level basement accessed from Park Avenue to the north
- Shared servicing access via a lay-by from Banks Avenue
- Associated landscaping and communal open space
- Infrastructure servicing
- Staged delivery to enable relocation of existing tenants and demolition of existing social housing dwellings.

The proposed development is consistent with development as described in the request for SEARs.

3 Extent of proposed variation

This report seeks a variation of the maximum height control of 28.6m by a maximum of 0.8m (less than 3%) to accommodate lift overruns of the eight storey private market building.

This proposed variation is shown in the height plane diagram at Figure 2 and cross sections at Figure 3.

The height exceedance is largely a result of the requirement to raise the floor level by around 0.8-1.1m above the natural ground level to accommodate the flood planning level ensuring safety for residents during flood events. This is illustrated in Figure 3.

The proposed development is consistent with the maximum permissible GFA of 19,913sqm.

The lift overruns which partially exceed the maximum height of buildings are located centrally on the rooftop of the building and therefore would not have any significant visual and privacy impact as discussed in further detail in Section 4.2.



Figure 2: Height plane diagram (Source: BVN)

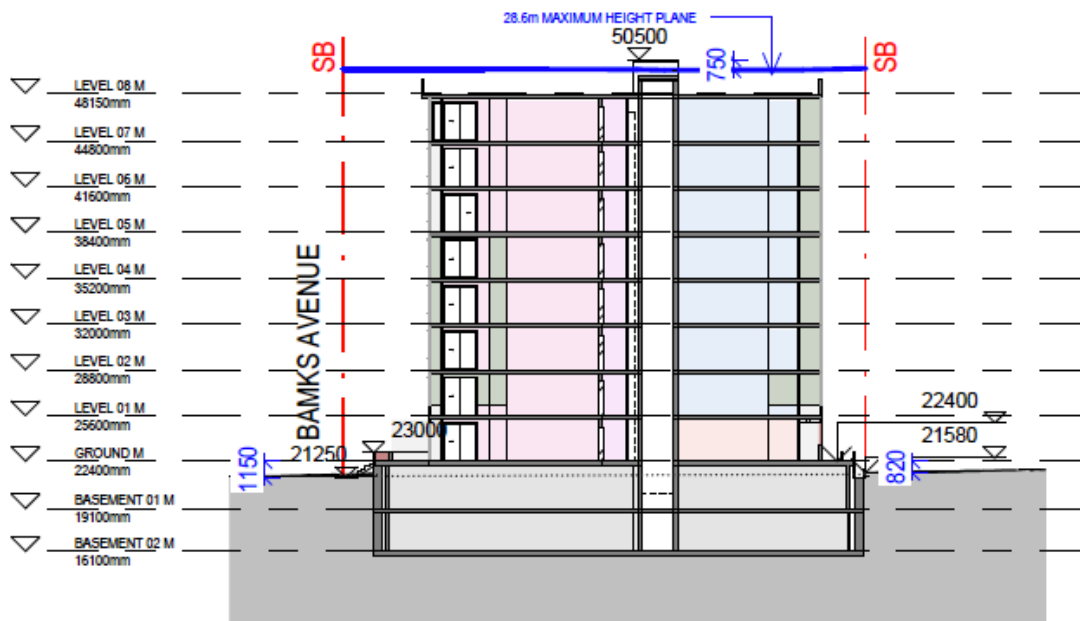


Figure 3: Market housing building – Cross Section (Source: BVN)

4 Justification of proposed variation

This section of the report provides consideration of the requirements of Clause 4.6 and the five common ways to demonstrate compliance is unreasonable or unnecessary as set out in *Guide to Varying Development Standards November 2023*.

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

The Department of Planning, Housing and Infrastructure has issued the *Guide to Varying Development Standards November 2023* to assist applicants applying to vary development standards. The guide sets out five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary as established by the NSW Land and Environment Court in determining whether the objection to the development standard is well founded. A Clause 4.6 application is not required to meet all the tests.

The five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary are addressed in Table 2.

Table 2: Five ways to demonstrate compliance is unreasonable or unnecessary

Objective	Consideration
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The objectives of Clause 4.3 Height of Buildings can be achieved, as outlined in Table 3, notwithstanding the non-compliance.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary	This test is not applicable in this instance.
The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable	This test is not applicable in this instance.
The development standard has been virtually abandoned or destroyed by council's own actions in granting consents departing from the standard.	Numerous exceedances to the maximum height of buildings under the Bayside LEP including for lift overruns and other rooftop structures having been approved in the Bayside LGA. It is noted that the Clause 4.6 register for Bayside Council has only been made available from April 2022 to October 2023. Based on a review of the available Clause 4.6 register the following approvals are considered relevant. • DA-2022/329 for residential flat buildings for affordable and private housing at 15 – 37 Innesdale Road Wolli Creek which allowed a 1.2m height exceedance to the 27.7m height control (4.49%) to accommodate lift overruns. • DA-2021/420 for residential flat buildings at 37-41 Flora Street, Arncliffe which allowed a 0.94m height exceedance to the 26.5m height control (3.5%) to accommodate lift overruns. • DA/2021/381 for mixed use development at 55-61 Bonar Street, Arncliffe which allowed a 6.95m exceedance of the 12m height control (57.9%) to

Objective	Consideration
	accommodate a split height control across the site and allow rooftop structures. DA-2021/424 for seniors housing at 81 Holoway Street, Banksmeadow which allowed a 2.8m exceedance of the height control (19%) to accommodate part of the upper level and rooftop services.
The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	This test is not applicable in this instance.

The proposed development is consistent with the objectives of Clause 4.3 Height of Buildings as shown in Table 3.

Table 3: Consideration of Clause 4.3 Height of buildings objectives

Height of building objectives	Consistency
To ensure that building height is consistent with the desired future character of an area,	The desired future character of the area is established through the Bayside LEP controls which allow for residential flat buildings of up to 22m and the infill affordable housing bonus which allows for 30% additional height (maximum 28.6m). This height limit envisages development of up to 8 storeys which is consistent with the proposal for the site The height exceedance is largely a result of the requirement to raise the floor level by around 0.8-1.1m above the natural ground level to accommodate the flood planning level ensuring safety for residents during flood events. Accordingly, it is considered that the proposed development is consistent with the desired future character for the area.
to minimise visual impact of new development, disruption of views, loss of privacy and loss of solar access to existing development,	The proposed height exceedance would not result in any additional visual impact, overshadowing or loss of view compared with a compliant scheme as detailed in Section 5. The proposed development is within the maximum permitted FSR and the proposed floorspace is appropriately accommodated on the site with generous setbacks and central open space which maximises tree retention, tree planting and landscape opportunities minimising visual impacts and overshadowing.
To provide appropriate height transitions between development, particularly at zone boundaries.	The proposed development proposes appropriate height transitions to the surrounding area. In this regard it is noted that the site interfaces with the RE1 Public Recreation zone to the east and areas zoned R2 Low Density Residential are located to the north and south. However, the site has no direct residential neighbours with residential areas to the north and south separated by Park Parade.

Height of building objectives	Consistency
	Setbacks to Jellicoe Park range from 3.1m to 6.0m and provide for landscaping within the setback whilst enabling apartments to address the park enhancing activation and safety. Setbacks from Banks Avenue to the north and south range from 13.3m and 14.7m providing for retention of significant trees, extensive deep soil landscaping and sensitive built form transitions to surrounding low density residential areas, whilst minimising overshadowing to the south.

As detailed above compliance with the development standard is considered unreasonable and unnecessary in this instance as it:

- Is consistent with the objectives Clause 4.3. Height of buildings under the Bayside LEP (see Table 3).
- The development standard (being the height control under the Bayside LEP) has been virtually abandoned or destroyed as a result of numerous consents departing from the standard as outlined in Table 2.

4.2 Are there are sufficient environmental planning grounds to justify contravening the development standard?

There are sufficient environmental planning grounds to justify the variation to the height control in this instance given the minor nature of the exceedance.

As detailed in the Architectural Design Report which forms part of the EIS and summarised below, the proposed height exceedance will not result in additional overshadowing or visual impacts when compared to a compliant envelope.

Figure 4 below shows the overshadowing as a result of the proposal. The lift overruns are located centrally on the rooftop and accordingly will not result in any additional overshadowing.

The Visual Analysis prepared as part of the Architectural Design Report also illustrates that the lift overruns would not be visible from key viewpoints in the public domain (see Figure 5 below).

The proposed development is consistent with the maximum permissible GFA of 19,913sqm.

The proposed height exceedance does not seek to accommodate additional storeys than could be otherwise achieved within the height control and is largely a function of the required elevated floor levels to achieve the flood planning level.

In summary the variation will result in negligible environmental impacts, while delivering significant benefits through the provision of new and increased social and private housing whilst ensuring the safety of future residents during flood events.

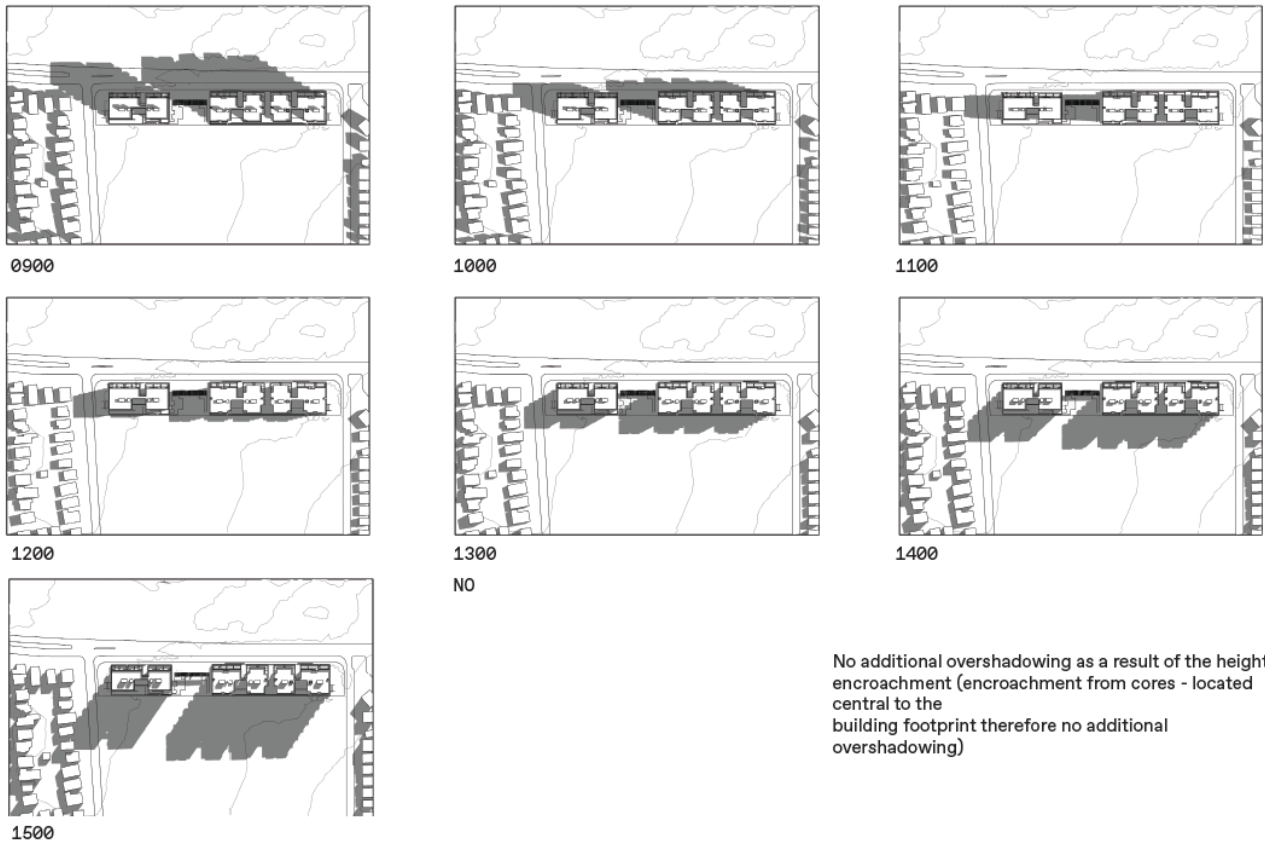


Figure 4: Shadow diagrams (Source: BVN)



Figure 5: Visual Analysis (Source: BVN)

5 Conclusion

This Clause 4.6 variation request demonstrates that compliance with the height of buildings controls is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify contravention of the standard as summarised below and detailed within this report.

Compliance is unreasonable and unnecessary in the circumstances

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