



Clause 4.6 Variation Request – Height

State Significant Development (SSD-83256478)

68-80 Beauchamp Road, Hillsdale

Prepared on behalf of Homes NSW

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FPDplanning

Document control

Authors

Reviewed by	Michael File, Director	michael@fpdplanning.com
Prepared by	Anna Johnston, Associate	anna.johnston@fpdplanning.com

Project summary

Prepared on behalf of	NSW Land and Housing Corporation (operating as Homes NSW)
Land to be developed	68-80 Beauchamp Road, Hillsdale
Legal description	Lot 12 DP736905
Project description	Residential flat building development comprising a total of 179 social housing dwellings.

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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 Beauchamp Road, Hillsdale (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 179 social housing 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*.

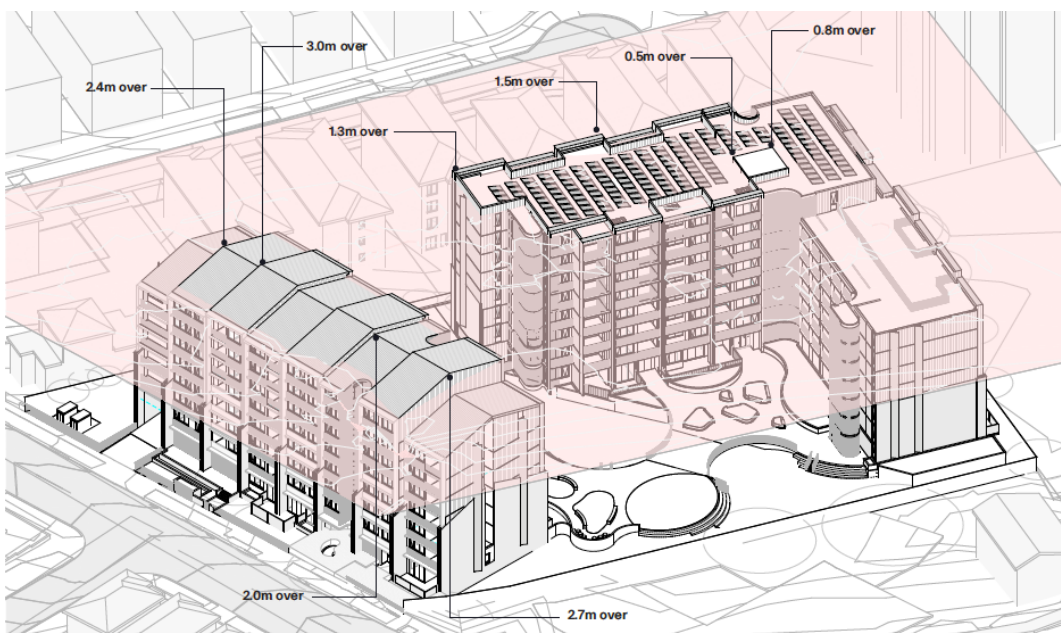
This report seeks a variation of the maximum height control of 28.6m which applies under the Bayside LEP and Housing SEPP infill affordable housing bonus provisions.

Proposed variation

This report seeks a variation of the maximum height control of 28.6m by a maximum of 3m (10%) which accommodates:

- Parts of the pitched roof structure of Building A (maximum exceedance 3.0m)
- Parts of the parapet and lift overruns / rooftop servicing of Building B (maximum exceedance 1.5m).

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



Height plane diagram (Source: Studio SC)

The proposed development is approximately 3,000sqm below the maximum permissible GFA of 16,892sqm being for a total GFA of 13,965sqm.

The height exceedance has partially driven by the need to elevate the ground floor level above natural ground level by up to approximately 2m to achieve compliance with the flood planning level ensuring safety for residents during flood events.

For Building A, the height exceedance relates to part pitched roof which forms part of the architectural design and is entirely internal to the site. The building height is fully compliant at its frontage to Beauchamp Road and steps down at the eastern and western boundaries to be fully compliant at the boundary frontages.

For Building B the exceedance is limited to a small amount of the roof parapet and lift overruns and rooftop servicing and is entirely a function of the flood planning level. Again this is largely internal to the site except for minor parapet exceedance along the western boundary.

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 2 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 1 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 any significant additional overshadowing or visual impacts when compared to a compliant envelope.

It is also noted that the development is well below the maximum permitted FSR (by approximately 3,000sqm) and the proposed floorspace is appropriately accommodated on the site with generous

setbacks and open space which maximises tree retention, tree planting and landscape opportunities. Accordingly, the proposed development has lower bulk and scale than is permissible and the extensive landscaping including a total canopy cover of 35% will further soften the visual impact of built form on the surrounding area.

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 Beauchamp Road, Hillsdale (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 16,892sqm)

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 3.0m (10%) which accommodates parts of the roof structure, parapet and lift overruns / rooftop servicing.

The proposed development is approximately 3,000sqm below the maximum permissible GFA of 16,892sqm being for a total GFA of 13,965sqm.

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 Beauchamp Road, Hillsdale (Lot 12 DP736905) in the Bayside Local Government Area (LGA) with a total area of 7,857sqm. The site is currently occupied by two storey residential townhouses buildings comprising 39 social housing dwellings.

The site has frontage to Beauchamp Road to the south which is a Regional Road. It adjoins Matraville Public School to the north and east. To the west it adjoins a two storey single dwelling which fronts Beauchamp Road and low rise apartment buildings which front Flack Avenue. Flack Avenue Reserve is also located to the west and connects Beauchamp Road to Flack Avenue. To the south across Beauchamp Road are low rise single dwellings.

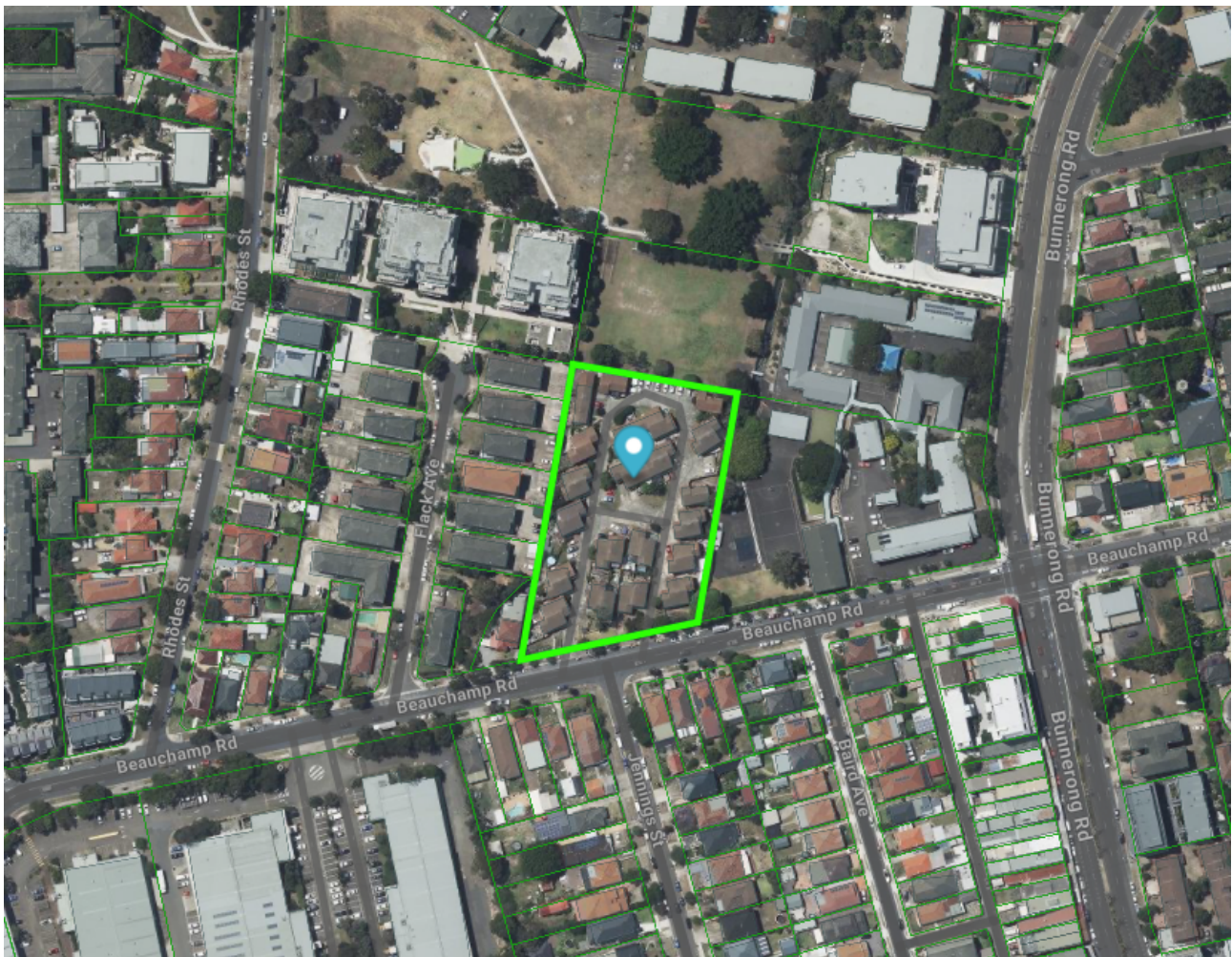


Figure 1: Subject site (Source: Mecone Moscaic)

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 two residential flat buildings of 7-8 storeys with 179 social housing dwellings

- Car parking within a two level basement
- A single access from Beauchamp Road providing access to a loading dock at ground level and basement car parking
- Associated landscaping and communal open space
- Infrastructure servicing.

3 Extent of proposed variation

This report seeks a variation of the maximum height control of 28.6m by a maximum of 3m (10%) which accommodates:

- Parts of the pitched roof structure of Building A (maximum exceedance 3.0m)
- Parts of the parapet and lift overruns / rooftop servicing of Building B (maximum exceedance 1.5m).

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

The proposed development is approximately 3,000sqm below the maximum permissible GFA of 16,892sqm being for a total GFA of 13,965sqm.

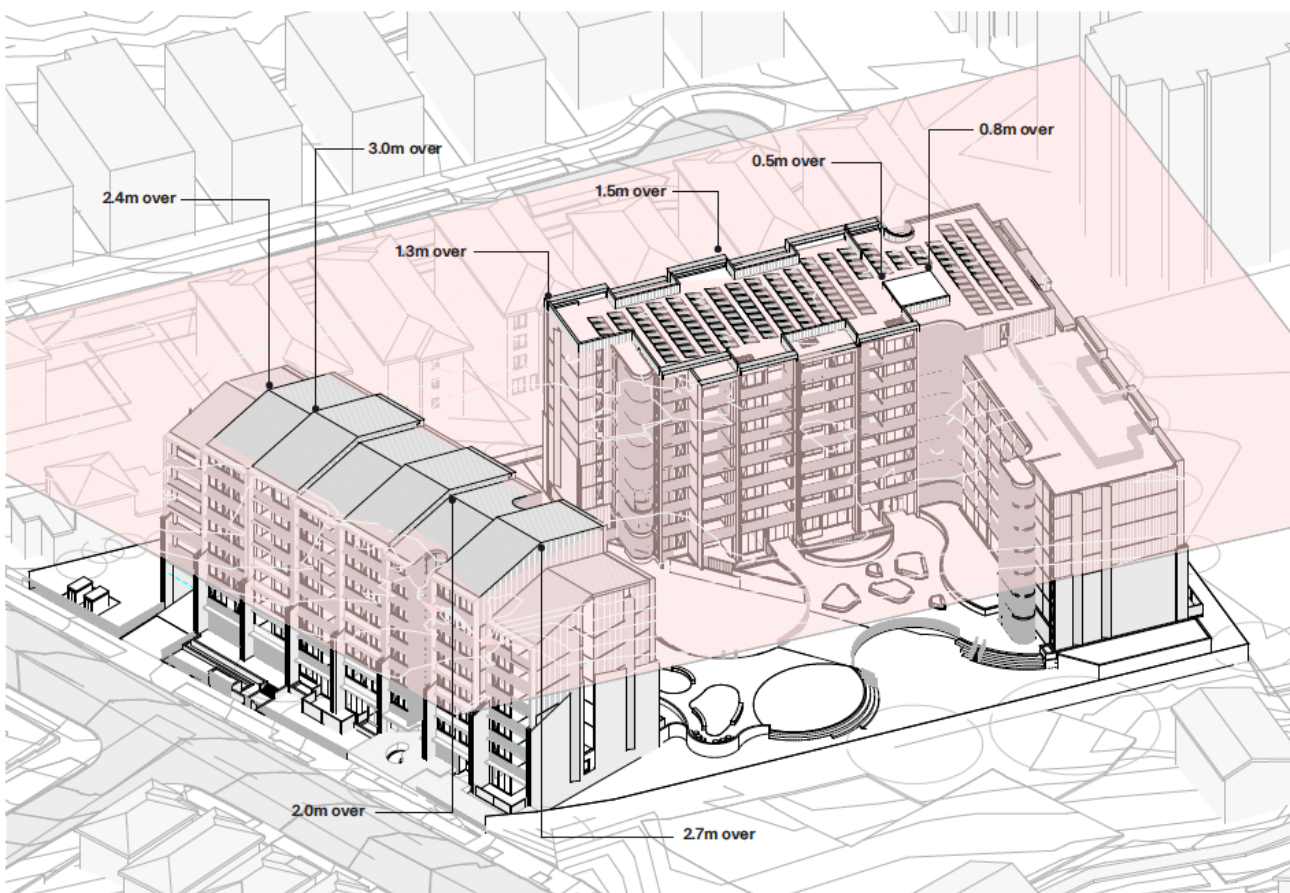


Figure 2: Height plane diagram (Source: Studio SC)

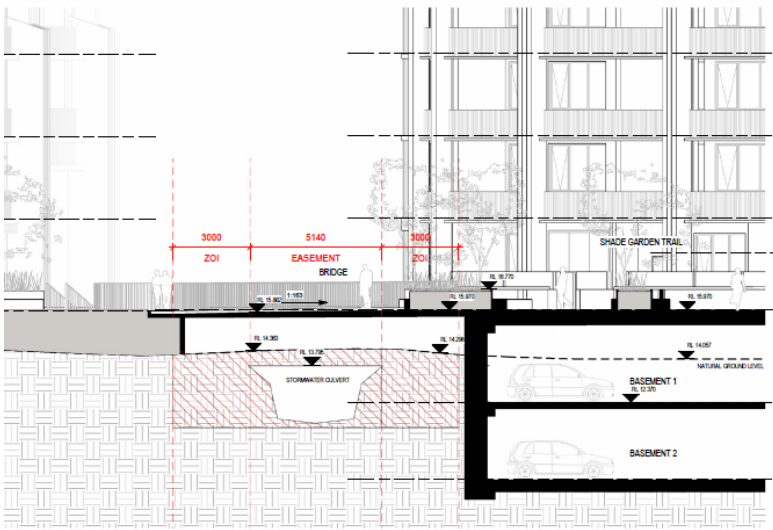


Figure 5: Building B Cross section (Source: Studio SC)

For Building A, the height exceedance relates to the upper part of the pitched roof which seeks to respond to the surrounding character and is entirely internal to the site. The building height is fully compliant at its frontage to Beauchamp Road and steps down at the eastern and western boundaries to be fully compliant at the boundary frontages.

For Building B the exceedance is limited to a small amount of the roof parapet and lift overruns and rooftop servicing and is entirely a function of the flood planning level. Again this is largely internal to the site except for minor parapet exceedance along the western boundary.

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 of the tests.

The five common ways that compliance with a development standard may be demonstrated to be unreasonable or unnecessary are addressed in Table 1.

Table 1: 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 2: 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 allows for development of up to 8 storeys which is consistent with the proposal for the site The proposed development largely complies with the height control, with the exceedance limited to the rooftop structures, parapets, lift overruns and rooftop servicing which would not result in significant additional impacts as detailed in Section 4.2. As detailed in Section 3 the exceedance has partly been driven by the need to raise the ground floor level to accommodate the flood planning level ensuring safety of future residents. Otherwise it is to accommodate the pitched roof design of Building A which responds to the surrounding character of the area. 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 development is well below the maximum permitted FSR and the proposed floorspace is appropriately accommodated on the site with generous setbacks and communal open space which maximises tree retention, tree planting and landscape opportunities. Accordingly, the proposed development has lower bulk and scale than is permissible and landscaping will

Height of building objectives	Consistency
	further soften the visual impact of built form on the surrounding area. As detailed in the EIS and at Section 4.2 of this report the proposed development does not result in any unreasonable solar or view impacts and any additional impact as a result of the height exceedance is minimal.
To provide appropriate height transitions between development, particularly at zone boundaries.	The proposed development proposes appropriate height transitions to the surrounding area, noting that the adjacent land is zoned R3 Medium Density Residential consistent with the subject site. The side setback to the west is designed to be compliant with the ADG with 50% of the required 18m habitable to habitable separation distance accommodated within the site for Building B resulting in a 9m boundary setback. Building A comprises a largely blank frontage to the west with the only windows being screened to the side boundary. Accordingly, for Building A 50% of the required 12m habitable to non-habitable separation is accommodated within the site resulting in a predominantly 6m boundary setback, noting a small encroachment of the corner of Building A occurs into the 6m ADG setback. The northern and western boundaries setbacks have been designed to provide a generous setback to the adjacent school while maximising tree retention and opportunities for landscaping and tree planting to minimise overlooking.

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 2).
- 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 1.

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 any significant additional overshadowing or visual impacts when compared to a compliant envelope.

Figure 6 below shows the additional overshadowing as a result of the height exceedance illustrating that the additional overshadowing impacts would be negligible.

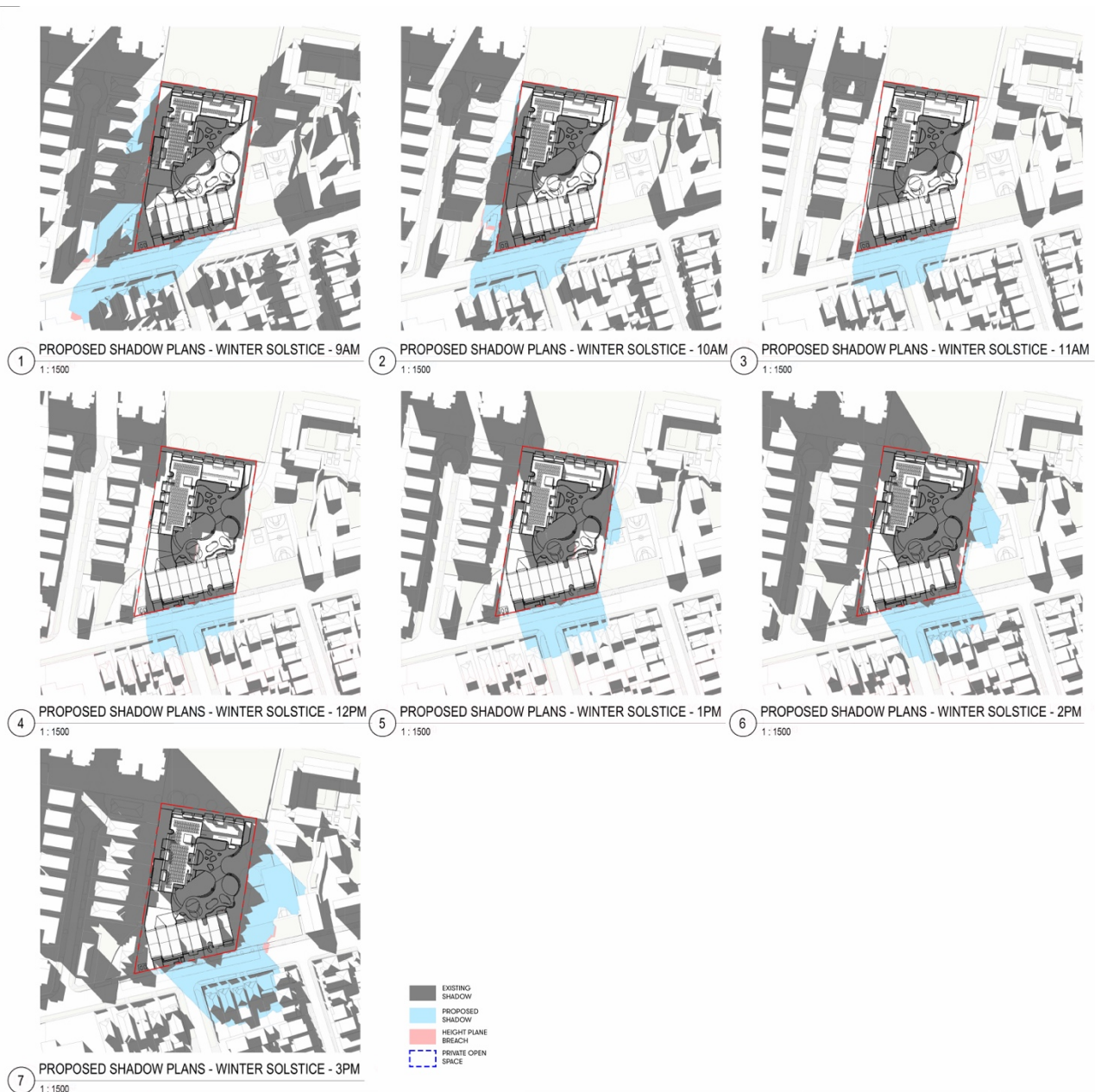


Figure 6: Shadow diagrams (Source: Studio SC)

The Visual Analysis prepared as part of the Architectural Design Report also illustrates minimal additional visual impacts as a result of the height exceedance (see Figure 7 below).

When viewed from Rhodes Street Reserve from the north the additional height would not be visible. When viewed from Jennings Street to the south and along Beachamp Road the additional building form would be partly visible, but would not have any significantly discernible additional impact.



View from Jennings St



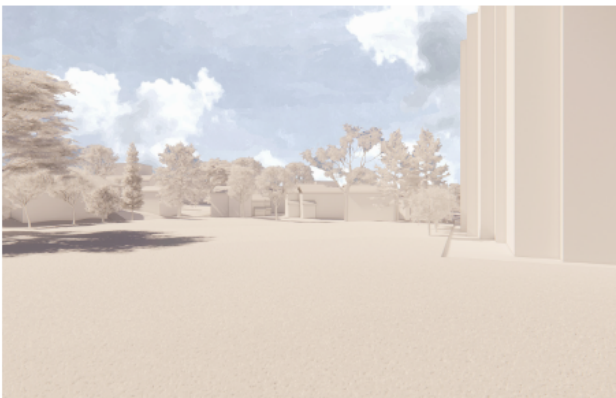
View from Beauchamp Rd



View from Jennings St



View From Beauchamp Rd



View looking at North Elevation



View looking at North Elevation



Building breaching height plane

Figure 7: Visual Analysis (Source: Studio SC)

It is also noted that the development is well below the maximum permitted FSR (by approximately 3,000sqm) and the proposed floorspace is appropriately accommodated on the site with generous setbacks and open space which maximises tree retention, tree planting and landscape opportunities. Accordingly, the proposed development has lower bulk and scale than is permissible and landscaping will further soften the visual impact of built form on the surrounding area.

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.

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

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 2 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 1 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.

It is also noted that the development is well below the maximum permitted FSR (by approximately 3,000sqm) and the proposed floorspace is appropriately accommodated on the site with generous setbacks and open space which maximises tree retention, tree planting and landscape opportunities. Accordingly, the proposed development has lower bulk and scale than is permissible and the extensive landscaping including a total canopy cover of 35% will further soften the visual impact of built form on the surrounding area.

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.