Clause 4.6 Variation Request – Height

Florida Street, Sylvania, State Significant Development

SSD-83258708

29 Florida Street, Sylvania

Prepared on behalf of Homes NSW

10 December 2025

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	29 Florida Street, Sylvania
Legal description	X DP411212, Y DP411212, Lots 2-9 & Lots 10-13 DP22661, Lot 104 DP 733063
Project description	Construction of eight residential buildings ranging in height from seven to nine storeys, accommodating 325 market dwellings and 159 social 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 *Sutherland Local Environmental Plan 2015* (Sutherland LEP) in connection with a State Significant Development Application (SSDA) at 29 Florida Street, Sylvania (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 eight residential buildings, ranging from seven to nine storeys, accommodating 159 social dwellings and 325 market dwellings.

Clause 4.6 of the Sutherland 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 to the site in accordance with the in-fill affordable housing provisions in Chapter 2 of the Housing SEPP and the low and mid rise housing provisions in Chapter 6 of Housing SEPP.

This Clause 4.6 Variation Request seeks a variation to the 28.6m height control for the site. The proposed development proposes eight buildings with a maximum height ranging from 28.15m to 33.05m.

The proposed development seeks a maximum exceedance to the height control of up to 4.45m (15.5%) for the Social Building. The extent of exceedance to the height control ranges from 1.1m (3.8%) to 4.45m (15.5%) across the proposed buildings.

This building height non-compliance results in a variation to the building height control to facilitate the renewal and increase in affordable housing on the site. The proposal will facilitate the provision of 159 social housing dwellings on the site.

The proposal exceeds the maximum building height due to design measures to respond to the slope of the site and to accommodate minimum flood level requirements for the site. The height exceedance results from the sloping topography of the site and the requirement to raise the floor levels of the buildings to accommodate minimum flood planning levels ensuring safety for residents during flood events.

The proposal has an allowable FSR of 2.86:1 under the Housing SEPP, with the development proposing an FSR of 2.05:1. The proposed floorspace is well below the maximum allowable FSR and permitted GFA by more than 17,400sqm.

The proposed floorspace is more appropriately accommodated on the site through the proposed height variation which provides for extensive deep soil, communal open space areas and landscaping at ground level, rather than accommodating the proposed floorspace within a consistent 28.6m height limit across the site which would result in increased bulk, scale, and amenity impacts. A scheme that maximised the FSR within the 28.6m height would have significantly reduced amenity, and retaining the proposed amenity within the 28.6m would significantly impact on the social housing outcome.

Further, the proposed height exceedance is architecturally integrated and presents as a minor increase to the roof form, not a dominant element. Despite the non-compliance, the visible mass above the compliant envelope is minimal.

Clause 4.6 of the Sutherland 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.

1 Introduction

This Report has been prepared to request a variation to a development standard subject to Clause 4.6 of the *Sutherland Shire Local Environmental Plan 2015* (Sutherland 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 located within the 'inner area' of an identified Town Centre being within 400m of Southgate Shopping Centre Town Centre and accordingly the controls under Chapter 6 – Low and Mid Rise Housing and of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) apply to the site. The site is also within an accessible area and eligible for the additional floor space and building height bonuses under Chapter 2 of the Housing SEPP.

The proposal is being undertaken in accordance with the provisions in Chapter 6 of the Housing SEPP, and the in-fill affordable housing provisions in Chapter 2, Part 2, Division 1 of the Housing SEPP which allows for an additional 30% height and floor space ratio (FSR) where development provides at least 15% affordable housing.

The proposed development is residential development being undertaken by Homes NSW (NSW Land and Housing Corporation), and therefore, in accordance with Section 15B (2) of the Housing SEPP, the proposed development is taken to be for the purposes of affordable housing.

The maximum permissible height and FSR under the Housing SEPP provisions is provided in Table 1.

Table 1 Applicable height and FSR controls

	Low and mid-rise provisions	30% bonus Housing SEPP	Maximum height under Housing SEPP
Building height	22m	+6.6m	28.6m
Floor space ratio	2.2:1	+0.66:1	2.86:1

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

This clause 4.6 Variation Request seeks a variation to the 28.6m height control for the site. The proposed development proposes eight buildings with a maximum height ranging from 28.15m to 33.05m.

The proposed development seeks a variation of the maximum height control of 28.6m, with a maximum exceedance of up to 4.45m (15.6%). The extent of exceedance to the height control ranges from 1.1m (3.8%) to 4.45m (15.6%) across the proposed buildings.

Clause 4.6 of the Sutherland 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 29 Florida Street, Sylvania. The site comprises 14 lots and has a total combined site area of 21,792sqm and is legally described as Lot X DP411212, Y DP411212, Lots 2-9 & Lots 10-13 DP22661, Lot 104 DP 733063.

The Site falls within the block bounded by the Princes Highway to the north, Port Hacking Road to the west, Pembroke Street to the south and Florida Street to the east. The Site has access from Florida Street via and internal roadway (Coral Tree Place).

The Site is currently occupied with ten buildings ranging from two-four storeys, containing 83 social housing dwellings.

To the west of the Site is Southgate Shopping Centre providing access to a wide range of retail and services. To the south and east the Site is surrounded by low density residential areas within the wider suburb of Sylvania. To the north across Princes Highway are commercial uses including retail shops, childcare and a car dealer.

Figure 1: Subject site (Source: BVN Architects)

2.2 Overview of the Proposed Development

The SSD application seeks approval for construction of eight residential buildings up to nine storeys across the site, containing a total of 484 dwellings, including 159 social dwellings and 325 market dwellings.

The proposed development will be staged development over two stages to enable the early delivery of social housing dwellings in the first stage of development.

Specifically, approval is being sought for the following:

Development of Stage 1/ Social Housing Lot

- Demolition, remediation, tree removal, excavation and site preparation works.
- Construction of two residential buildings comprising:
  - An eight storey and nine storey building with 159 social housing apartments, constructed over two levels of shared basement / ground level parking accessed from Pembroke Street.
- Associated landscaping and communal open space.
- Infrastructure servicing.

Development of Stage 2/ Market Housing Lot

- Demolition, remediation, tree removal, excavation and site preparation works.
- Construction of six residential buildings comprising:
  - Three nine storey buildings with 168 dwellings, constructed over four levels of shared basement parking (Market Building 1 – North)
  - A seven storey building with 52 apartments, constructed over three levels of basement level parking (Market Building 2 – South)
  - A seven storey and eight-storey building with 105 apartments, constructed over four levels of shared basement parking (Market Building 3 – West)
- Construction of new one-way access street from Florida Street.
- Associated landscaping and public domain works.
- Infrastructure servicing.
- Lot consolidation.
- Torrens subdivision to create two lots.

3 Extent of Proposed Variation

This clause 4.6 Variation Request seeks a variation to the 28.6m height control for the site.

The proposed development proposes eight buildings with a maximum height ranging from 28.15m to 33.05m.

The proposed development seeks a variation of the maximum height control of 28.6m, with a maximum exceedance of up to 4.45m (15.6%). The extent of exceedance to the height control ranges from 1.1m (3.8%) to 4.45m (15.6%) across the proposed buildings and is generally limited to lift overruns and rooftop plant.

The extent of the height exceedance across the site is shown in Figure 2 and further outlined in Table 2, and Figure 2 to Figure 5.

Table 2 Extent of proposed height variation

Development	Building	Maximum height	Maximum extent of variation (m)	Maximum extent of variation (%)
Building 1 - North	Building 1A	32.55m	3.95m	13.8%
	Building 1B	30.55m	1.95m	6.8%
	Building 1C	32.4m	3.8m	13.3%
Building 2- South	Building B	30.98m	2.38m	8.3%
Building 3 – West	Building 3A	28.15m	Compliant	N/A
	Building 3B	29.7m	1.1m	3.8%
Social Building	Social A	33.05m	4.45m	15.5%
	Social B	31.7m	3.1m	10.8%

This building height non-compliance results in a minor variation to the building height control to facilitate the renewal and increase in affordable housing on the site. The proposal will facilitate the provision of 159 social housing dwellings on the site.

The height exceedance results from the sloping topography of the site and the requirement to raise the floor levels of the buildings to accommodate minimum flood planning levels ensuring safety for residents during flood events.

The proposal is well below the permitted floor space and seeks to more appropriately accommodate the proposed floorspace through a height variation, than within a consistent 28.6m height limit across the site, which would result in increased bulk, scale, and amenity impacts.

The building height non-compliance is driven by the need to accommodate the required flood planning levels for the site. The proposal addresses the required flood planning levels, which results in the need for additional building height up to an additional 3.5m, particularly at the front of the site where the site slopes to Pembroke Street.

This proposed variation is shown in the overall height plane diagram at **Error! Reference source not found.** and detailed height plane diagram at Figure 3 to 5.

The height exceedance generally does not exceed more than 10% except in limited circumstances where the building height non-compliance is up to 4.45m (15.5%), for the Social Building. This exceedance is limited to a small portion of the site and results from the slope of site and need to accommodate the required flood planning levels. As shown in **Error! Reference source not found.** the majority of the height exceedance is limited to rooftop servicing and lift overruns.

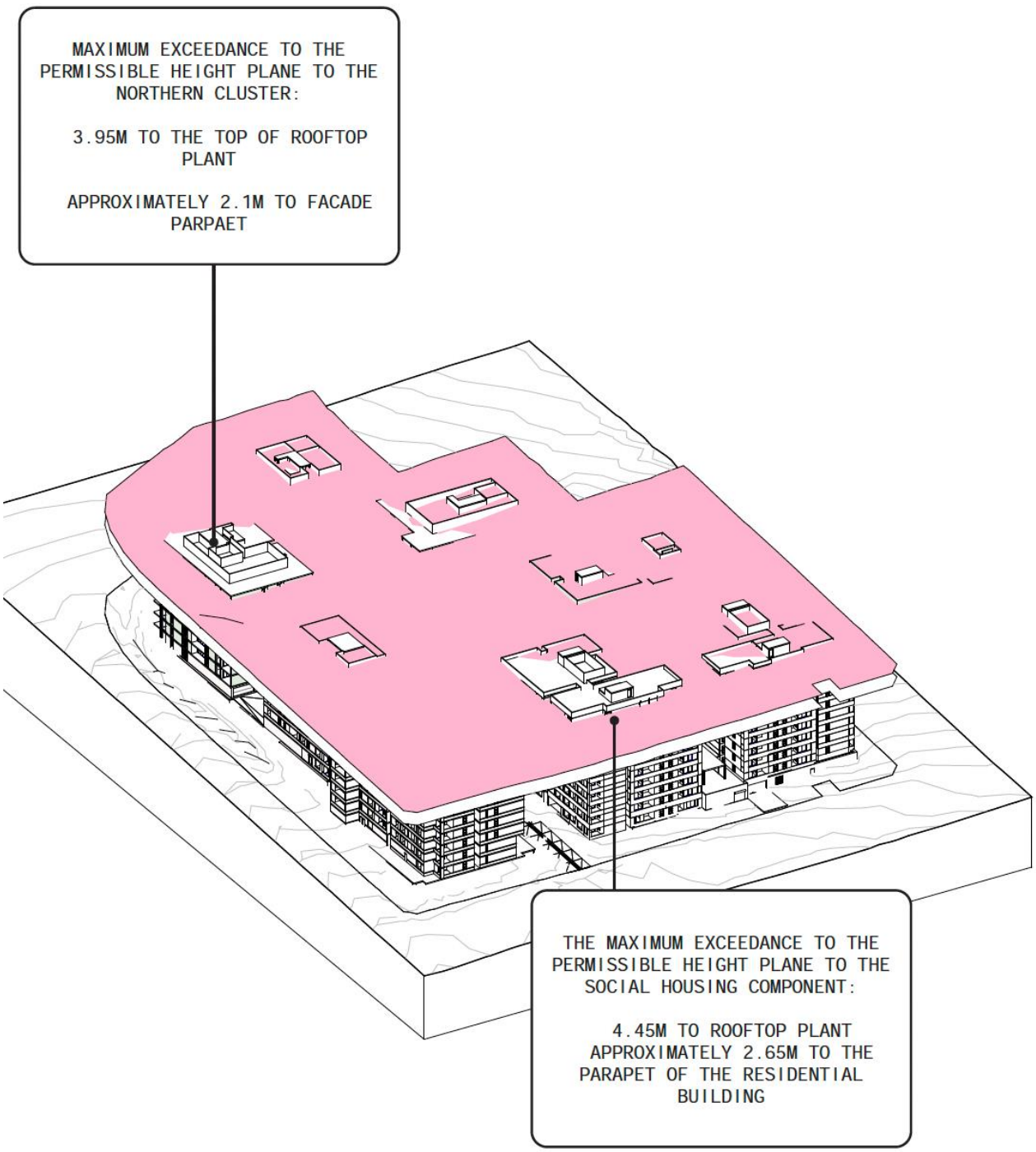

Figure 2: Height plane diagram (Source: Studio BVN)

As shown in Figure 3, the extent of the height exceedence for Building 1 (Market Building 1 – North) does not exceed 3.95m at the greatest extent. The proposed height exceednce is generally limited to roof top plant and lift overuns and is required to accommodate elevated ground levels in response to the minimium flood planning levels.

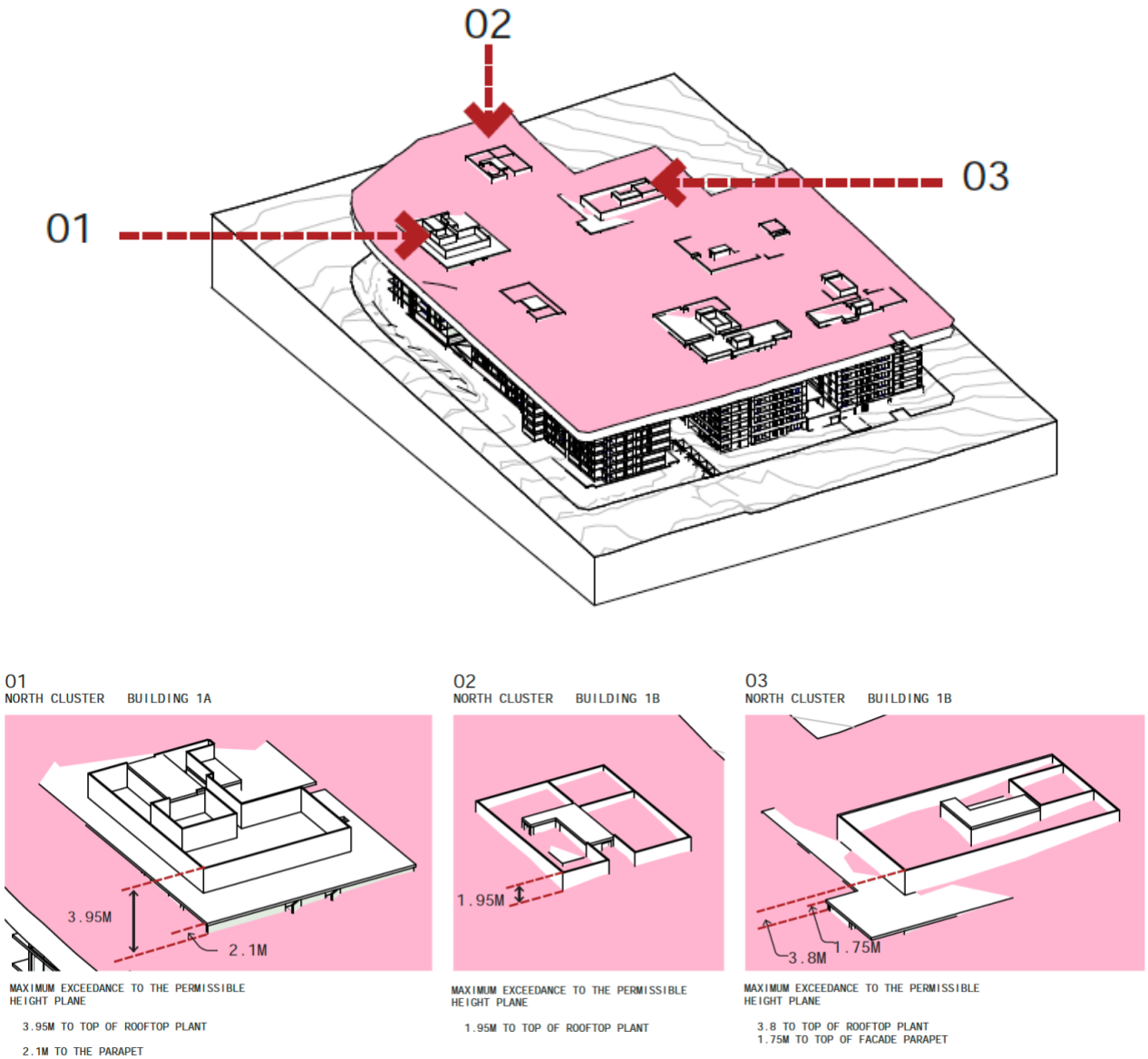

Figure 3 Proposed extent of height exceedance for Building 1 – North (Source: BVN)

As shown in Figure 4 the extent of the height exceedance for Building 2 and Building 3B is minor, with the height exceedance is limited to a small amount of the roof parapet and lift overruns and rooftop servicing and is a function of the flood planning level.

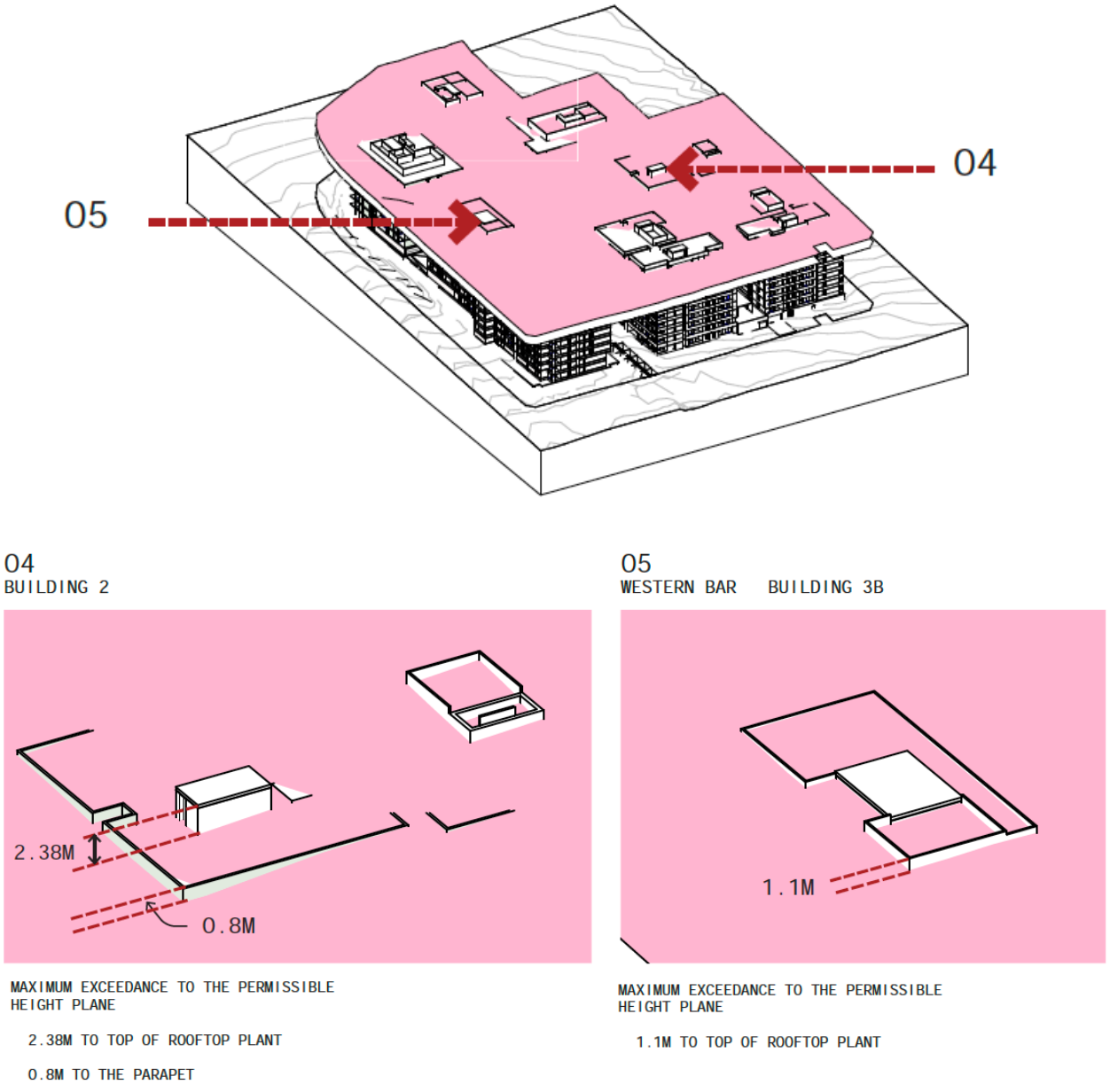

Figure 4 Proposed extent of height exceedance for Building 2 and Building 3B (Source: BVN)

As shown in Figure 5 the greatest extent of the proposed height exceedance is for the proposed Social Building which proposes a height variation of up to 4.45m across the two buildings. The height exceedance for the Social Building is required to achieve the minimum flood planning levels and response to the slope of the site on Pembroke Street.

The Social Building has been carefully considered to ensure that minimum flood planning levels can be achieved, while minimising impacts. The height of Social Building is fully compliant at its frontage to Pembroke Street, the building and is setback a minimum of 9.5m from Pembroke Road and includes upper-level setbacks to minimise potential overshadowing and amenity impacts.

The height exceedance for the Social Building is required to deliver 159 social dwellings and strict compliance with the height control would result in a loss of social housing.

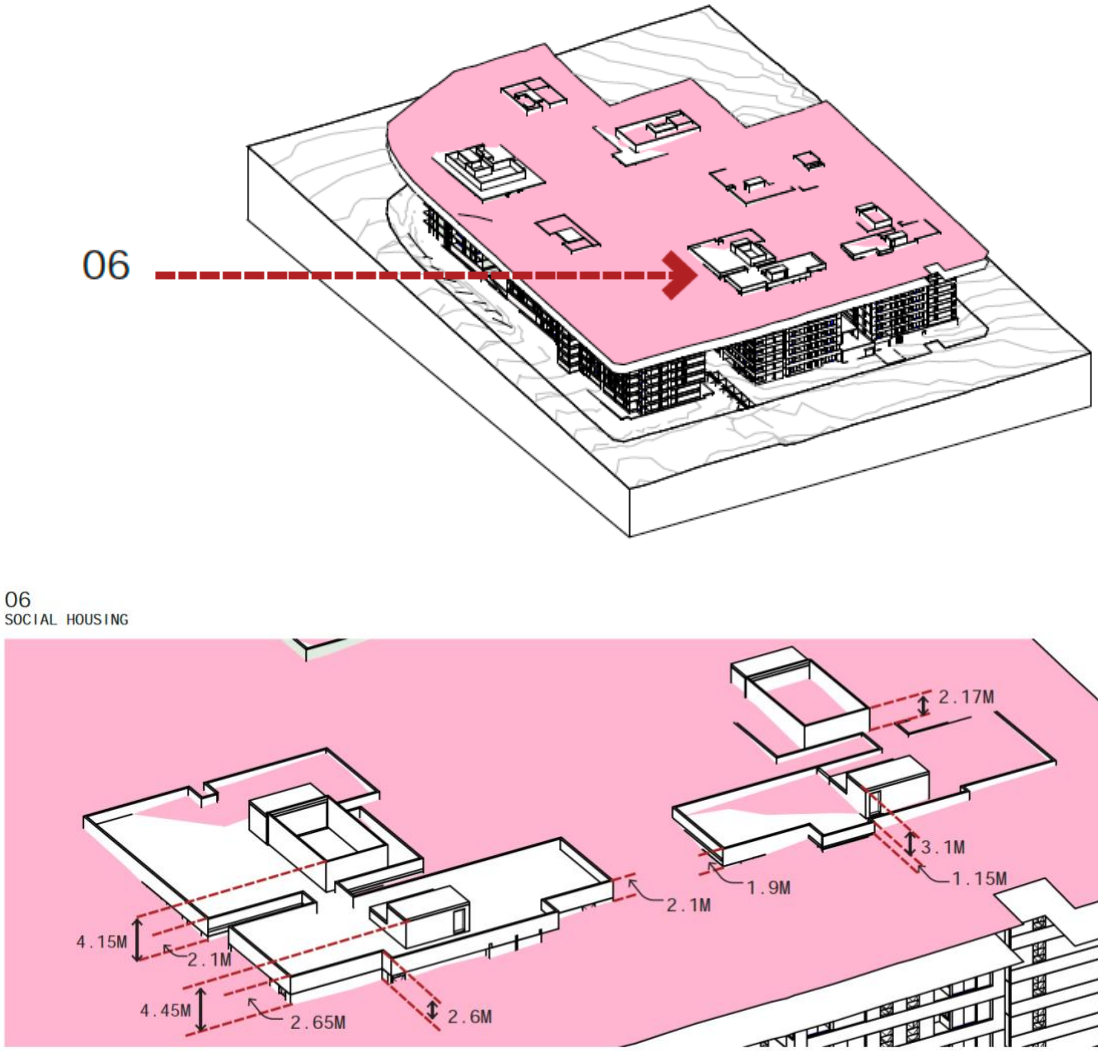

Figure 5 Proposed extent of height exceedance for the Social Building (Source: BVN)

The proposal has an allowable FSR of 2.86:1 under the Housing SEPP, with the development proposing a significantly lower FSR of 2.05:1. The proposed floorspace is below the maximum allowable FSR and permitted GFA by more than 17,400sqm.

The proposed floorspace is appropriately accommodated on the site through the proposed height variation which provides for more extensive deep soil, communal open space areas and landscaping at ground level, rather than accommodating the proposed floorspace within a consistent 28.6m height limit across the site which would result in increased bulk, scale, and amenity impacts. The proposal also appropriately responds to the required flood planning levels, which necessitates the need for additional height on the site to accommodate the higher ground floor levels.

The proposed development has lower bulk and scale than is permissible and provides extensive landscaping and communal open space, including more than 37% of the site as communal open space. The proposed development also provides appropriate height transition to surrounding buildings, with significant landscaped setbacks, and stepped massing to the south to provide an appropriate transition and provide a high level of amenity.

In most cases, the height exceedance is minor and generally limited to lift overruns and rooftop plant. The greatest extent of the height exceedance is for the Social Building which is the result of the slope of the site to the south and need to raise the residential levels by approximately 3.5m above the ground level to achieve the minimum flood planning level at the Pembroke Street frontage.

The proposal provides significant public benefit in the form of new and increased social housing. Despite the non-compliance, the proposed development does not result in any unreasonable amenity impacts to adjoining properties or public domain.

Despite the minor non-compliance, the proposed development does not result in any unreasonable amenity impacts to adjoining properties or the public domain.

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?

Compliance with the development standard is considered unreasonable and unnecessary in this instance.

The applicable standards in Clause 16 and Clause 180 of Housing SEPP do not contain objectives for the development standard proposed to be varied. However, as discussed in Table 3, the proposed development is consistent with the objectives of Chapter 2, Part 2, Division which is to 'facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households'.

The proposed development is also consistent with the aim of Chapter 6 of the Housing SEPP which is to 'encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport'.

Notwithstanding, the above, consideration has also been given to the objectives of in Clause 4.3 Height of Buildings in Sutherland LEP, as outlined in the Table 4.

As demonstrated in Table 1 and Table 2 the objectives are achieved notwithstanding non-compliance. This is consistent with the five-part test established in *Wehbe vs Pittwater a*nd one of the five ways that compliance can be demonstrated to be unreasonable or unnecessary in the *Guide to Varying Development Standards* (refer to Table 3).

The Department of Planning, Industry and Environment 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 3.

Table 3: 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 applicable standards in Clause 16 and Clause 180 of Housing SEPP do not contain objectives for the development standards proposed to be varied. However, in accordance with Clause 15A of the Housing SEPP the objective of Chapter 2, Part 2, Division 1 of the Housing SEPP is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

Objective	Consideration
	The proposed development is consistent with this objective as it will deliver a significant proportion of social housing on the site. The proposed development will deliver 159 new social housing dwellings in a mixed tenure community, which is an increase on the existing 83 social dwellings on site. The proposal is consistent with this objective as it will facilitate the delivery of new social housing to meet the needs of very low income households in the Sutherland Shire. Clause 162 of the Housing SEPP sets out that the aim of Chapter 6 is to encourage the development of low and mid rise housing in areas that are well located with regard to goods, services and public transport. The proposed development is consistent with the aim of Chapter 6 as it will facilitate development within an identified low and mid rise housing area to deliver increased housing supply in a well located area in walking distance to shops, services and public transport. The proposed development will deliver a total of 484 new homes, including 159 social homes, within a well located area, identified for increased density. Notwithstanding, consideration has also been given to the objectives of in Clause 4.3 Height of Buildings in Sutherland LEP, as outlined in the table below.
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	The exceedance to the height control is required to deliver increased housing, and the provision of a substantial proportion of social housing on the site. Strict compliance with the height control is unreasonable in this circumstance as it would result in the loss of affordable housing on the site. The minor exceedance to the height control is required to renew the site and deliver social housing and increased housing on the site, consistent with the strategic objectives of the NSW Government and low and mid rise housing reforms. Compliance with the height control is considered unreasonable as it would prevent the renewal of the site and delivery of social housing, and the proposed development has been carefully designed to minimise impacts and deliver improved amenity and design outcomes for the site.
The development standard has been virtually abandoned or destroyed by council's own	This test is not applicable in this instance.

Objective	Consideration
actions in granting consents departing from the standard.	
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 4.

Table 4: Consideration of Clause 4.3 Height of buildings objectives

Height of building objectives	Consistency
(a) to ensure that the scale of buildings— (i) is compatible with adjoining development, and (ii) is consistent with the desired scale and character of the street and locality in which the buildings are located or the desired future scale and character, and (iii) complements any natural landscape setting of the buildings,	The desired future character of the area is established through the low and mid rise housing provisions in the Housing SEPP which allow for residential development up to 22m and the infill affordable housing bonus which allows for 30% additional height (maximum 28.6m). The proposal is consistent with the planned higher density residential character for the site, and surrounding areas in accordance with the low and mid rise housing provisions. The proposal provides significant tree canopy and landscaped areas, which complements the surrounding landscaped streetscape. The proposal also seeks to retain significant trees and provide substantial landscaping along all sites boundaries to integrate with the surrounding area. As detailed in Section 0 the exceedance has partly been driven by the need to raise the ground floor level to accommodate the flood planning level and to respond to the slope of the site. The height exceedance is also required to deliver improved public benefits through the provision of 159 social dwellings on the site. Accordingly, it is considered that the proposed development is consistent with the desired future character for the area.
(b) to allow reasonable daylight access to all buildings and the public domain,	As detailed in the EIS and at Section 0 of this report the proposed development does not result in any unreasonable solar impacts and any additional impact as a result of the height exceedance is minimal.
(c) to minimise the impacts of new buildings on adjoining or nearby properties from loss of views, loss of privacy, overshadowing or visual intrusion,	The proposed development has been carefully designed to minimise impacts, and will not result in any unacceptable privacy, solar or amenity impacts to neighbouring properties.

Height of building objectives	Consistency
	The proposed development includes substantial landscaped setbacks ranging from 7.5m to 11.7m along Pembroke and Florida Street to provide a generous setback to surrounding residential areas and maximise tree retention and allow opportunities for landscaping and tree planting to minimise impacts. The proposal achieves more than 30% deep soil, 31.5% canopy cover and 36% of the is provided as communal open space which further reduces impacts.
(d) to ensure that the visual impact of buildings is minimised when viewed from adjoining properties, the street, waterways and public reserves,	The proposed development is significantly 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 further soften the visual impact of built form on the surrounding area. This is achieved by smaller footprints necessitating the modest height exceedances. The visual analysis in the EIS demonstrates that proposal will not result in any unacceptable visual impacts.
(e) to ensure, where possible, that the height of non-residential buildings in residential zones is compatible with the scale of residential buildings in those zones,	Not applicable.
(f) to achieve transitions in building scale from higher intensity employment and retail centres to surrounding residential areas.	The proposed development provides an appropriate height transition to the surrounding area, noting that the adjacent land is zoned R4 High Density Residential and is identified for increased density, up to 6 storeys, in accordance with the low and mid rise housing provisions. The proposed development provides transition in scale to surrounding areas through generous landscaped setbacks, siting of budlings, landscaped areas and upper level setbacks to further reduce any impacts and provide an appropriate transition to surrounding residential areas,

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 Design Report which forms part of the EIS and summarised below, the proposed height exceedance will not result in any significant additional overshadowing when compared to a compliant envelope.

The site is located an area identified for increased housing and renewal, and the minor height exceedance is not expected to result in any significant additional impacts to those anticipated as result of the introduction of low and mid rise housing provisions.

The height exceedance results from the sloping topography of the site and the requirement to raise the floor levels of the buildings to accommodate minimum flood planning levels ensuring safety for residents during flood events.

The proposed floorspace is well below the maximum allowable FSR and permitted GFA by more than 17,400sqm. The proposed floorspace is more appropriately accommodated on the site through the proposed height variation which provides for extensive deep soil, communal open space areas and landscaping at ground level, rather than accommodating the proposed floorspace within a consistent 28.6m height limit across the site which would result in increased bulk, scale, and amenity impacts.

The proposed development has lower bulk and scale than is permissible and provides extensive landscaping and communal open space, including more than 30% deep soil and 37% of the site as communal open space. The proposed development also provides appropriate height transition to surrounding buildings, with significant landscaped setbacks, and stepped massing to the south to provide an appropriate transition and provide a high level of amenity.

The project provides extensive communal open space for the overall community that offsets the height exceedance. The proposed development includes a large amount of high-quality communal open space and though site links, significantly exceeding minimum requirements. The spaciousness, permeability, and landscape outcomes of the site ensure that the height exceedance does not translate into density pressure or loss of amenity. This generous open space network also assists in mitigating perceived bulk and improving neighbourhood character outcomes.

The proposed design of the buildings, with the retention of mature trees and tree canopy, generous landscaped setbacks along all street frontages and upper levels setbacks to the Social Building reduces any visual impacts and minimises impacts. The proposal presents a high-quality design outcome for the site, consistent with the desired future character and strategic objectives to increase density close to centres.

The upper levels on the Social Building are setback to minimise the extent of height exceedance, and the considered design and siting of the market building maintain generous setbacks, resulting in:

- minimal visual bulk when viewed from street level,
- reduced perceived heigh due to the generous setbacks, compliant separation and significant landscaping, communal open space and tree canopy.

- Even with the greatest exceedance of 4.45m for the Social Building, the shadow impacts fall predominantly within the site boundaries and not onto neighbouring residential properties.
- Overshadowing analysis shows that any additional shadowing from the exceedance occurs late in the afternoon or during times with minimal impact.

The solar analysis undertaken by BVN in the Design Report at Appendix E of the EIS demonstrates the proposed development would result in only minor additional overshadowing when compared to height complaint envelope.

Figure 6: Shadow diagrams (Source: BVN)

As demonstrated in Figure 7 and Figure 8, the solar analysis undertaken by BVN confirms that any potential solar impacts to neighbouring properties to the south are limited to the lower portions of the buildings only where there are no windows.

The lower parts of the residential buildings are also screened with fencing and landscaping further reducing any potential for overshadowing impacts from the proposed development. Further, the residential buildings to the south of Pembroke Street are orientated east-west for solar access minimising any potential for solar impacts.

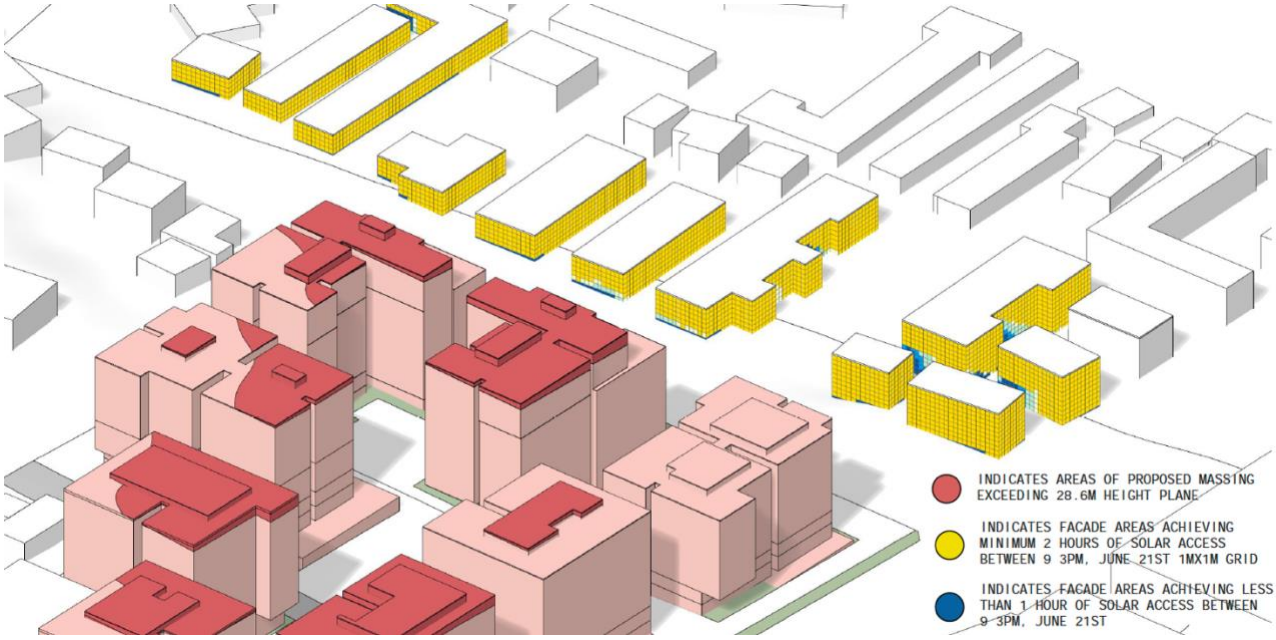

Figure 7 Proposed solar access to surrounding development (Source: BVN)

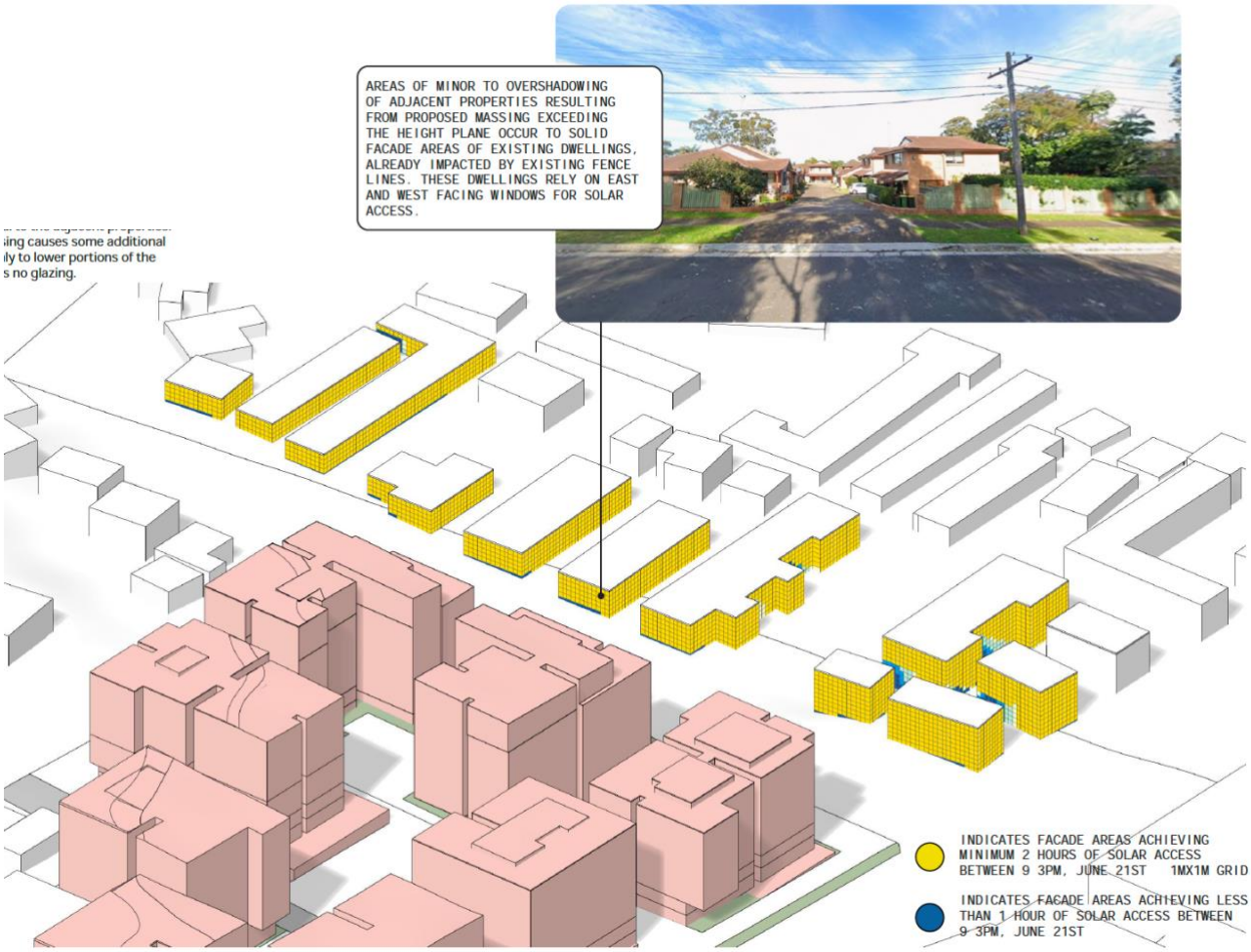

Figure 8 Compliant solar access to surrounding development (Source: BVN)

The proposal provides significant benefit in the form of increased social housing, and the minor non-compliance will not result in any unreasonable amenity impacts to adjoining properties or public domain.

The height exceedance is also the result of ESD requirements which have a genuine spatial impact. The additional height supports essential ESD outcomes such as:

- optimised cross-ventilation pathways.
- compliant rooftop PV zones.
- improved insulation and thermal roof build-ups.
- higher ceiling heights to improve natural ventilation and daylight.

The height increase is therefore functional and directly tied to achieving sustainability performance targets.

In summary, there are sufficient environmental planning grounds to justify the proposed variation as outlined below.

- The proposed development responds to the planned future built form context, and aligns with the vision, strategic intent to renew social housing, and to increase residential density close to centres.
- The proposal will deliver a significant new housing supply, including an increase in social housing, and provide significant public benefit through the provision of increased social housing in a well-serviced area close to public transport, jobs and local services.
- The proposed development is well below the permitted the FSR for the site and will deliver improved amenity and design outcomes through a variation to the height control, rather accommodating the proposed FSR within a consistent 28.6m height across the site which would result in increased bulk, scale and amenity impacts.
- The proposal does not result in significant overshadowing, privacy or visual impacts.
- The proposed height exceedance is architecturally integrated and presents as a minor increase to the roof form, not a dominant element. Despite the non-compliance, the visible mass above the compliant envelope is minimal.
- The proposal achieves a high level of landscaping across the site and significantly exceeds relevant targets for communal open space, deep soil and tree canopy which mitigates potential visual impacts and amenity impacts.
- The proposed height exceedance is required to achieve the proposed ESD measures to ensure high amenity and sustainable buildings.

In summary the variation will result in negligible environmental impacts, while delivering significant benefits through the provision of increased housing, and a significant proportion of social housing on the site.

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 consistent with the objectives Clause 4.3. Height of buildings under the Sutherland LEP as outlined in Table 4 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 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 when compared to a compliant envelope.

It is also noted that the development is well below the maximum permitted FSR (by approximately 17,400sqm) and the proposed floorspace is more appropriately accommodated on the site with generous setbacks and open space which maximises tree retention, tree planting and landscape opportunities.

Therefore, the proposed development proposes less bulk and scale than is permissible and the extensive landscaping, including 30% deep soil and 31.5% tree canopy across the site, further reduces and mitigates any potential impacts associated with the height exceedance.

The proposed height exceedance is largely a function of the slope of the site and the elevated floor levels to achieve the required flood planning levels across the site. It is also required to deliver improved public benefit through the delivery of 159 social dwellings on the site.

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.