

beam

Clause 4.6 Variation

Clause 4.3 Height of Buildings
39 Barker Street, Kensington

Submitted to the Department of Planning, Housing and Infrastructure on behalf of
UNSW

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1.0 Executive Summary

Clause 4.6 of the *Randwick Local Environmental Plan 2012* (Randwick LEP 2012) enables the consent authority to grant consent for development even though it contravenes a development standard. Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that:

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

The table below provides a summary of the key matters required in a clause 4.6 Variation set out in the Department of Planning and Environments *Guide to Varying Development Standards November 2023*.

| | |
|---|--|
| <p>Where is the development site?</p> | <p>39 Barker Street, Kensington</p> |
| <p>What is proposed development?</p> | <p>The proposed SSDA involves the construction of 3 on-campus student accommodation buildings, delivering 732 beds across 5 colleges, together with 30 non-student accommodation units (Dean’s accommodation and short-stay accommodation), communal services and shared amenities.</p> |
| <p>What is the variation?</p> | <p>The maximum building height for the site is part 14m, under the Randwick LEP 2012. The 14m height limit extends into the site to a depth of 30m from the Barker Street frontage. The proposed development has been designed so that the three podiums are located within the first 30m of the site, and the towers are setback within the campus where no building height control applies. The maximum building heights of the podiums are as follows:</p> <ul style="list-style-type: none"> • Block A has a maximum building height of 17.9m (3.9m or 27.8% variation) • Block B has a maximum building height of 15.1m (1.1m or 7.8% variation) • Block C has a maximum building height of 17.4 (3.4m or 24% variation) <p>Additionally, each podium contains a lightweight shade structure which extends from the main tower. These shade structures have been setback from the front of the podium and are largely imperceptible from the public domain. These structures all reach a height of 3.3m above the podium height.</p> |
| <p>Why is compliance with the building height development standard unreasonable and unnecessary in the circumstances of the case?</p> | <p>The proposal achieves the objectives of the Height of Buildings development standard under clause 4.3 of the Randwick LEP 2012, notwithstanding the non-compliance as:</p> <ul style="list-style-type: none"> • Objective (a): The site is located within the UNSW Kensington Campus, which is characterised by high-density educational and student-related developments. The height of the podium is reflective of the evolving urban context of the area, where future development will accommodate greater density and scale, particularly along Barker Street and in surrounding streets. • Objective (b): The design of the development is considerate of the surrounding built environment, including nearby educational buildings and residential development. • Objective (c): The proposed development has been designed to minimise adverse impacts on the amenity of adjoining and neighbouring properties in terms of visual bulk, loss of privacy, overshadowing and views. |
| <p>What are the sufficient environmental planning grounds to justify contravention of the development standard?</p> | <p>The environmental planning grounds to justify contravention of the Height of Buildings development standard are:</p> <ul style="list-style-type: none"> • The proposed podium heights are generally consistent with the maximum heights of the existing building. The Block A podium is only slightly higher than the existing building that the development will replace, while both the Block B and C podiums are generally lower than the existing buildings. • The topography of the site results in Block A having a greater variation than Blocks B and C, in order to provide a consistent 4-storey built form along the Barker Street frontage (which is consistent with the scale of the existing development). • Due to the western portion of the site being subject to flooding in the 1% annual exceedance probability flood event, the finished floor level of Blocks B and C are between 1m and 1.6m above the natural ground floor of the site, resulting in a minor exceedance to the 14m height control. • The proposed development, inclusive of the height exceedance, achieves a high level of amenity for residents and students. The majority of the height exceedance is located in Block A, comprising the fourth level of the podium and the rooftop open space, which do not adversely impact surrounding properties. <p>In light of the above that the consent authority can be satisfied that there are sufficient grounds to support the proposed variation.</p> |

2.0 The Development Site


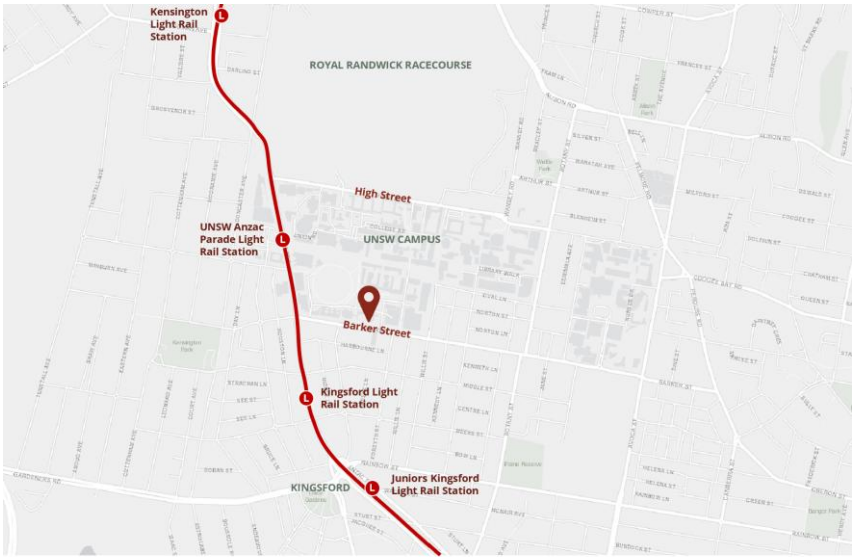







| | | |
|---|------------------------------------|---|
|  Address | 39 Barker Street, Kensington |  <p data-bbox="587 846 718 884">  THE SITE </p> <p data-bbox="1220 855 1364 884">NOT TO SCALE</p> <p data-bbox="1380 846 1412 884">  </p> |
|  Legal Description | A portion of Lot 3 in DP1264172 | |
|  Site Area | 8,905m ² (approx.) | |
|  Owner | UNSW | |

Figure 1 Location Plan



 Lot 3 in DP1264172
  The Site

NOT TO SCALE 

Figure 2 Aerial image of the site

Key Information about the site

The site is located within the UNSW Kensington campus, and is currently occupied by existing student accommodation known as the Barker Street Apartments, as shown in **Figure 3** and **Figure 4**.



Figure 3 View of the site from within UNSW



Figure 4 View of apartments from Barker Street



Existing
Development

3.0 The Proposed Development

This proposed SSDA seeks consent for the construction of three buildings, delivering 732 on-campus student accommodation beds across 5 colleges, together with 30 non-student accommodation (Dean's accommodation and short-stay accommodation), communal services and shared amenities. Specifically, the development comprises the following:

- Site preparation and excavation works, including demolition of all structures on the site, tree removal and relocation.
- Construction of 3 buildings for the purpose of on-campus student accommodation, known as Blocks A, B and C, with a shared ground floor and courtyard space. Specifically, the following is proposed:
 - 8,708m² of GFA in Block A, across a 4-storey podium and 10-storey tower.
 - 7,773m² of GFA in Block B, across a 4-storey podium and 8-storey tower.
 - 6,285m² of GFA in Block C, across a 4-storey podium and 7-storey tower.
- Provision of 3,967m² of internal communal space, and 6,350m² of external communal space, across the three blocks.
- Reconfiguration of Southern Drive, including its partial closure and redirection to the western boundary of the site, to provide driveway access.
- Associated landscaping and public domain works.
- Extension and augmentation of physical infrastructure utilities as required.

Architectural Plans and an Urban Design Report prepared by Bates Smart illustrating the proposed development are included with the SSDA. An artist impression of the proposed development is shown in **Figure 5**.



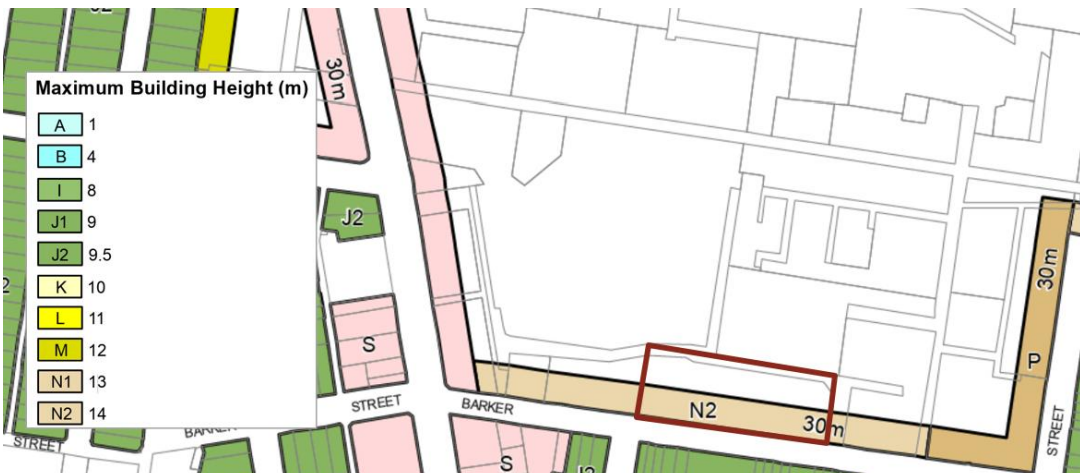
Figure 5 Artist impression of the proposed development

Source: Bates Smart

4.0 The Proposed Variation

This section outlines the relevant environmental planning instrument (EPI), the development standard to be varied and proposed variation.

Table 1 Planning instrument, development standard and proposed variation

| Matter | Comment |
|---|---|
| EPI sought to be varied | Randwick LEP 2012 |
| The site's zoning | <p>SP2 Educational Establishment</p> <p>The objectives of this land use zone are:</p> <p>(a) To provide for infrastructure and related uses.</p> <p>(b) To prevent development that is not compatible with or that may detract from the provision of infrastructure.</p> <p>(c) To facilitate development that will not adversely affect the amenity of nearby and adjoining development.</p> <p>(d) To protect and provide for land used for community purposes.</p> |
| Development standard sought to be varied | <p>Clause 4.3 Height of Buildings</p> <p>The objectives of this clause are:</p> <p>(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,</p> <p>(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</p> <p>(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p> <p>The maximum building height for the site is 14m which extends to a depth of 30m, with the rest of the site not being subject to a height control (refer to Figure 6). This approach provides an appropriate transition in scale at the campus interface while allowing design flexibility within the campus interior to accommodate university functions.</p>  <p>Figure 6 Height of Buildings Map - Sheet HOB_002 (site outlined in red) Source: Randwick LEP 2012 Height of Buildings Map</p> |
| The proposed Variation | <p>In keeping with the intent of the height control, the proposed development has been designed so that the podiums of the three buildings are located within the first 30m of the site, and the towers are setback within the campus where no building height control applies. The maximum building heights of the podiums are as follows:</p> <ul style="list-style-type: none"> Block A has a maximum building height of 17.9m (3.9m or 27.8% variation) Block B has a maximum building height of 15.1m (1.1m or 7.8% variation) Block C has a maximum building height of 17.4 (3.4m or 24% variation) |

Additionally, each podium contains a lightweight shade structure which extends from the main tower. These shade structures have been setback from the front of the podium and are largely imperceptible from the public domain. These structures reach a height of:

- Block A shade structure has a maximum building height of 3.3m (51.4% total variation)
- Block B shade structure has a maximum building height of 3.3m (31% total variation)
- Block C shade structure has a maximum building height of 3.3m (47% total variation)

These variations are illustrated in **Figure 7**.

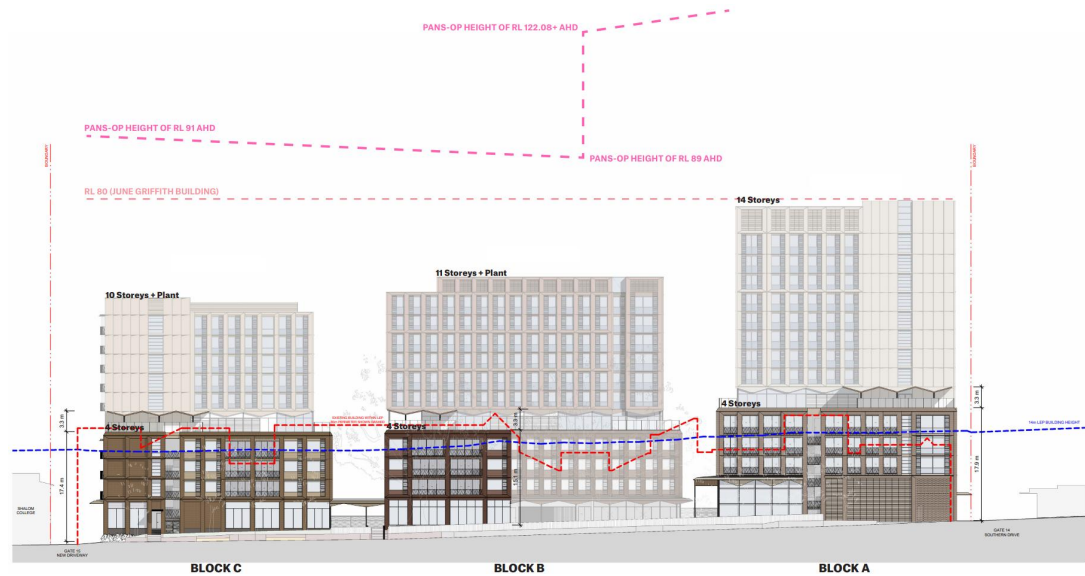


Figure 7 Proposed Height of Buildings development standard variation

Source: Bates Smart

Figure 8 provides an axonometric drawing, illustrating the proposed variation to the Height of Buildings development standard.

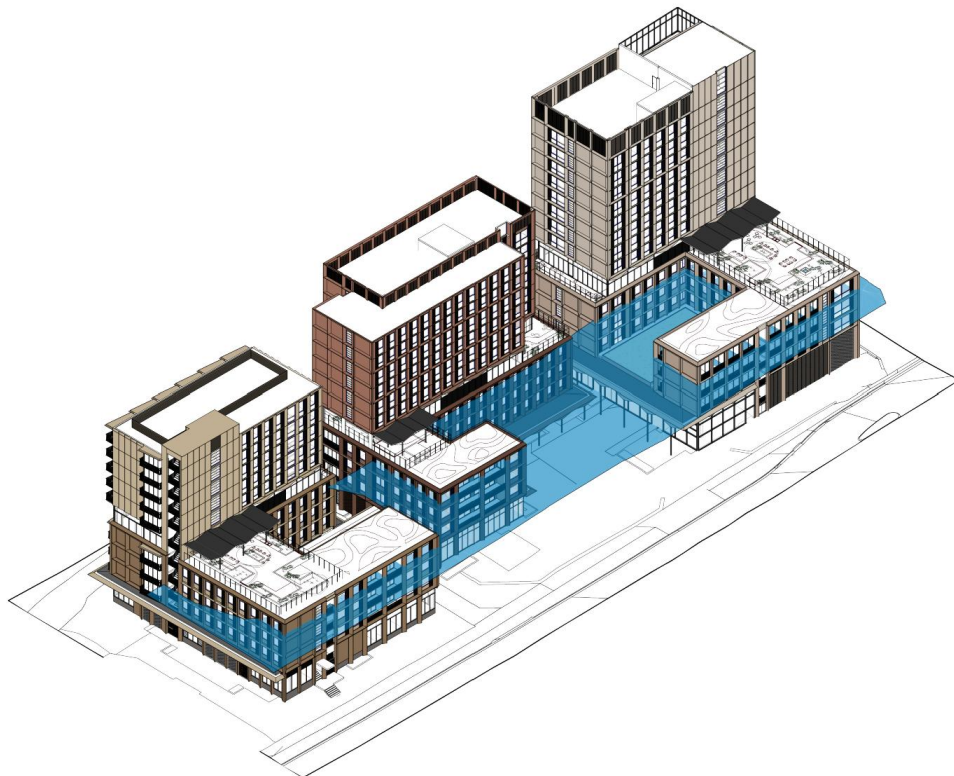


Figure 8 Proposed building height

Source: Bates Smart

5.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of the Randwick LEP 2012 provides that:

- 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 of the case, and*
 - b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

These key considerations are considered in their respective sections below.

5.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary

This Clause 4.6 Variation Request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height control pursuant to the 'First Method' outlined in Wehbe.

The discussion under the following subheadings demonstrates how the proposed height variation achieves the objectives of the Height of Buildings development standard, notwithstanding the non-compliance.

5.1.1 Assessment against the development standard objectives

This section addresses the matters in clause 4.6(3)(a) and, in particular, how the objectives of the development standard are achieved, notwithstanding the non-compliance with the numerical control. The relevant objectives for the height control are contained in Clause 4.3 of the LEP.

Objective (a) to ensure that the size and scale of development is compatible with the desired future character of the locality

The site is located within the UNSW Kensington Campus, located between the Kensington and Kingsford Town Centres, with residential neighbourhoods to the south of the site. The UNSW Kensington Campus is characterised by high-density educational and student-related developments. The large number of educational buildings within the university campus is complemented by supporting land uses, including recreational space, food and drink premises, and importantly, on-campus student accommodation, which all contribute to an activated, vibrant campus. The character of the Kensington/Kingsford areas has been subject to change in recent years, with a significant number of purpose-built student accommodation developments being approved and constructed along Anzac Parade, in close proximity to the Kensington and Kingsford light rail stops. These applications are discussed in greater detail in **Section 3.2** of the EIS. The residential areas that surround the UNSW Campus are subject to the Low and Mid Rise Housing Policy, introduced by the NSW Government in 2024. This policy introduced new planning controls supporting increased density in certain areas, permitting developments up to 22m or 6 storeys on land adjacent to the subject site, with further additional height available under the in-fill affordable housing provisions of the Housing SEPP.

The proposed development responds to this desired future character, with a podium height of 4 storeys, extending into the site for 30m. Whilst the podium height exceeds the 14m height limit on this portion of the site, the design has been specifically developed to align with the existing street wall height along Barker Street, including the existing M15 Rupert Myers Building to the east.

It is important to note that the height of the proposed towers are not subject to the 14m height limit, which only applies to the first 30m of the site. These towers, with a maximum building height of RL 79.7m, are consistent with the taller, high-rise developments across the broader UNSW Campus, including the F10 June Griffith Building, as seen in **Figure 9**.

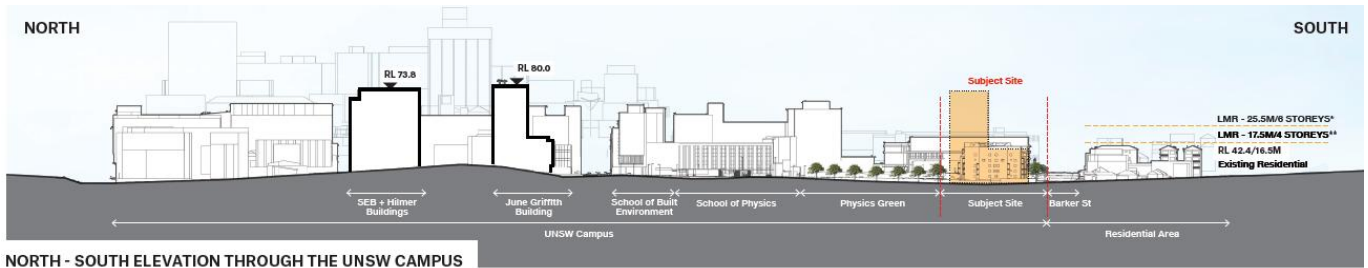


Figure 9 Campus built form

Source: Bates Smart

The height and scale of the proposed development is, therefore, aligned with the planned and anticipated character of the university campus and surrounding residential developments, which will support the growing educational and research functions of the university campus via the provision of dedicated student accommodation.

Objective (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item

The broader UNSW site contains the C2 ‘Old Tote & Figtree Theatre’ heritage conservation area; however, the portion of land being developed under this SSDA is not located within the heritage conservation area and is not identified as an item of heritage significance. The podium of the buildings, which is the subject of the proposed variation will not be visible from the heritage conservation area, and will not block any views towards the heritage conservation area. The proposed podium height and overall massing of the development has been carefully designed to complement the overall built form and character of the university campus, inclusive of the C2 heritage conservation area.

Objective (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views

The proposed development has been designed to minimise adverse impacts on the amenity of adjoining and neighbouring properties, ensuring compatibility with the surrounding built environment, whilst preserving the overall quality of life for existing and future residents.

Visual Bulk

The development has been designed with a staggered built form, ensuring that the transition in building height is gradual and compatible with the surrounding environment. The podium height, whilst exceeding the 14m height limit, is consistent with the desired street wall height along Barker Street, and within the broader area, and has been designed to provide a gradual height transition from the university campus through to the residential neighbourhoods south of the site. The gradual stepping of the height is demonstrated in **Figure 10** View from Barker Street looking north west and **Figure 11**, with the minor variations to the 14m height limit unnoticeable when viewing the whole development in its surrounding context.



Figure 10 View from Barker Street looking north west

Source: Bates Smart



Figure 11 View from Anzac Parade looking east

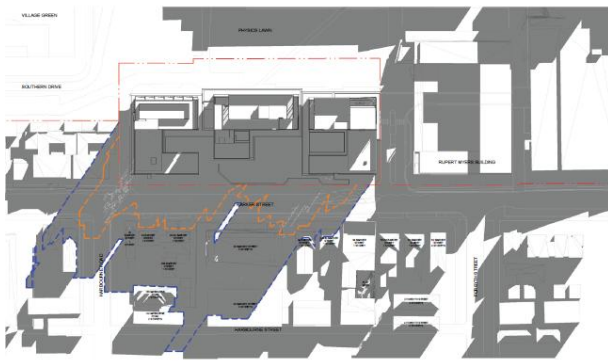
Source: Bates Smart

Loss of Privacy

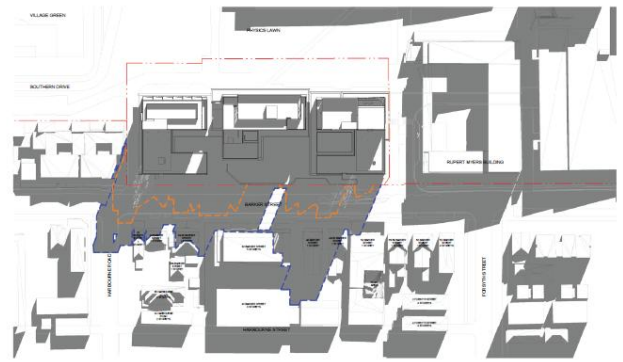
Privacy has been a key consideration in the design of the podium built form, particularly relating to the residential dwellings to the south of the site, and adjoining student accommodation within the campus. The proposed towers are positioned away from the southern residential developments, mitigating any potential impacts on privacy. The podiums have a 6m setback from Barker Street, which provides an acceptable building separation distance to the residential properties on the opposite side of Barker Street. Whilst the objectives, criteria and guidance of the Apartment Design Guide do not explicitly apply to on-campus student accommodation, the proposed development has considered the building separation objective, ensuring adequate building separation distances are provided, to achieve reasonable levels of internal and external visual privacy.

Overshadowing

Shadow Diagrams have been prepared by Bates Smart which demonstrate that the proposed development will not result in significant overshadowing of surrounding properties or public open space. As illustrated in **Figure 12**, the overshadowing to adjacent properties as a result of the proposed development are caused by the towers which are located outside the Randwick LEP 2012 height limit for the site. Despite the minor increase in overshadowing as a result of the proposed development, the podium heights which exceed the 14m height control do not result in any overshadowing to adjacent properties.



21/06/25 - 9AM



21/06/25 - 10AM



21/06/25 - 11AM



21/06/25 - 12PM



21/06/25 - 1PM



21/06/25 - 2PM



21/06/25 - 3PM

LEGEND

- Existing Site Shadows
- Proposed Development Shadows

Figure 12 Excerpt of shadow diagrams at mid-winter
 Source: Bates Smart

Views

There are no significant view corridors around the site which will be impacted by the proposed development. As illustrated in **Figure 13** and **Figure 14** the minor variation to the height limit for the site is unnoticeable when viewing the podiums in the context of the whole development, and surrounding context. The shade structures located above the height limit on the podiums have been setback from Barker Street, further reducing the visibility and impacts on views for surrounding residents, students and visitors.



Figure 13 View from Barker Street looking west
 Source: Bates Smart



Figure 14 View from Barker Street looking north
 Source: Bates Smart

In summary, the proposed development achieves the objectives of the Height of Buildings development standard, notwithstanding the non-compliance with the numerical control.

5.1.2 Assessment against the zoning objectives

The proposed development (inclusive of the proposed height exceedance) is consistent with the objectives of the SP2 Educational Establishment land use zone, as presented in **Table 2**.

Table 2 The proposed development's alignment with the objectives of the SP2 Educational Establishment zone

| Objective | Alignment |
|---|---|
| <i>To provide for infrastructure and related uses.</i> | The site is located within the UNSW Kensington Campus, which is characterised by high-density educational and student-related developments. The large number of educational buildings within the university campus is complemented by supporting land uses, including recreational space, food and drink premises, and importantly, on-campus student accommodation, which all contribute to an activated, vibrant campus. The proposed development directly supports the infrastructure provided within the UNSW Kensington Campus, surrounding public transport and broader health and education precinct in Randwick. By providing on-campus student accommodation within the UNSW Campus, the development supports the university's long-term goals of fostering a vibrant and integrated student community. It also increases the housing provided on site, which will facilitate the growth of educational facilities and related uses within the campus. |
| <i>To prevent development that is not compatible with or that may detract from the provision of infrastructure.</i> | The proposed development has been designed to complement, rather than detract from the provision of educational infrastructure at UNSW. No uses incompatible with the educational function of the campus are proposed. This development will positively contribute to the broader infrastructure of the campus by providing much-needed on-campus accommodation for students. |
| <i>To facilitate development that will not adversely affect the amenity of nearby and adjoining development.</i> | The site is located within the UNSW Kensington Campus, which is characterised by high-density educational and student-related developments. The proposed building has been carefully designed to mitigate potential impacts such as visual bulk, overshadowing, and loss of privacy. The design includes setbacks, stepped building forms, and landscaping to ensure that the development complements the surrounding built environment and does not negatively affect the residential developments to the south. The introduction of the podium along the southern boundary of the site ensures that the majority of rooms are located within the towers, on the northern portion of the site, reducing the noise and amenity impacts to neighbouring residential dwellings. |
| <i>To protect and provide for land used for community purposes.</i> | The proposed development seeks to provide 762 student and non-student accommodation units, with communal facilities and amenities. The existing building on the site provides limited facilities for students, requiring students to use other facilities provided across the campus. The proposed development seeks to increase the number of students residing on campus, as well as providing an increased number of amenities and facilities to accommodate these additional students. This will not cause any additional strain on existing facilities and amenities on campus for students, and enables students who do not live on campus, or in other student accommodation, to access these facilities. |

5.2 Clause 4.6(3)(b): Sufficient environmental planning grounds to justify the contravention of the development standard

Clause 4.6(3)(b) of the LEP requires the contravention of the development standard to be justified by demonstrating that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole.

Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action at*

[24]). In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 Variation Request must be particular to the circumstances of the proposed development on that site at [60].

In this instance, the following reasons, as described in further detail below, are sufficient environmental planning grounds to justify this contravention.

5.2.1 Consistent with the Existing Building Height

The existing Barker Street apartments are arranged in a staggered formation, ranging from 3-5 storeys in height. As illustrated in **Figure 15**, the proposed podium heights are generally consistent with the maximum heights of the existing building. The Block A podium is only slightly higher than the existing building, whilst both the Block B and C podiums generally are lower than the existing buildings. The provision of a 4-storey podium across each of the buildings results in a more consistent streetscape along Barker Street, aligning with the adjoining podium and/ or building heights. The 4-storey podium includes a double-storey ground floor height, to provide a high-quality, light-filled dining hall in Block A. This double-height ground floor is carried across Block B and C, to create a cohesive built form along Barker Street.

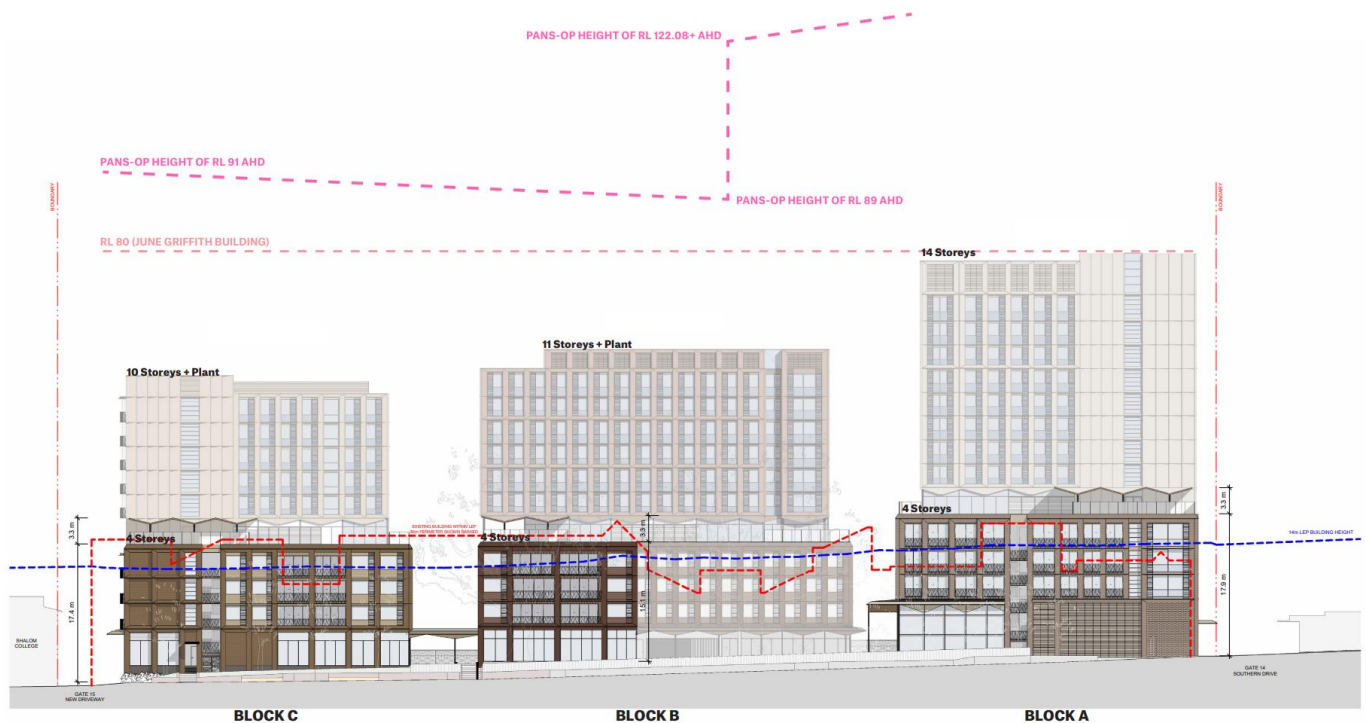


Figure 15 Existing buildings with proposed building overlay

Source: Bates Smart

5.2.2 Topography

The built form of the podiums has been designed to provide a consistent 4-storey built form approach. Due to the topography of the site, sloping towards the southwestern corner of the site, the Block A podium height appears to be higher than the podium heights of Block B and C. Reducing the podium height of Block A, to provide a uniform building height would reduce the cohesion of the Barker Street streetscape, as the podium height of Block A would not be consistent with the maximum height of the Rupert Myers Building, to the east of the site.

5.2.3 Flood Impacts

As illustrated in **Figure 16**, the western portion of the site is subject to flooding in the 1% Annual Exceedance Probability (AEP) flood event. Flood modelling shows that the recommended finished floor level for the ground floor should be situated at. Due to the flooding on the site, the finished floor level for the ground floor must be raised to a minimum of 27.450m AHD, to ensure safety for residents and students in the buildings. As a result of the finished floor level of Block B and C being between 1 and 1.6m above the natural ground floor of the site, there is a minor exceedance to the 14m height control, in order to provide a consistent podium height across the site and streetscape.



Figure 16 Portion of the site subject to flooding

Source: Bates Smart

5.2.4 Amenity Impacts

The proposed development, inclusive of the height exceedance, achieves a high level of amenity for residents and students. The majority of the height exceedance is located in Block A, comprising the fourth level of the podium and the rooftop open space. The provision of communal open space on the rooftop of the Block A podium does not adversely impact the overshadowing, visual impact, or privacy of adjoining properties and enables a better use of the space, which would otherwise be underutilised. The provision of communal open space on the podium rooftop also contributes to the fifth elevation, improving the outlook for residents looking down onto this space.

Whilst the variation to the height control proposed by Block A is 51.4%, it is important to note that 23.6% of this variation comprises a shade structure that is located on the level 4 rooftop open space. This shade structure is designed to mitigate wind impacts resulting from the RL 80m high tower adjacent to the rooftop open space. The height exceedance in Block A is considered to deliver a positive outcome for the site, as it enables the safe use of the rooftop open space and does not have adverse impacts on adjoining properties.

In light of the above, it is clear that the planning framework for Randwick provides sufficient environmental planning grounds to justify the contravention.