

ETHOS URBAN

Clause 22 Variation

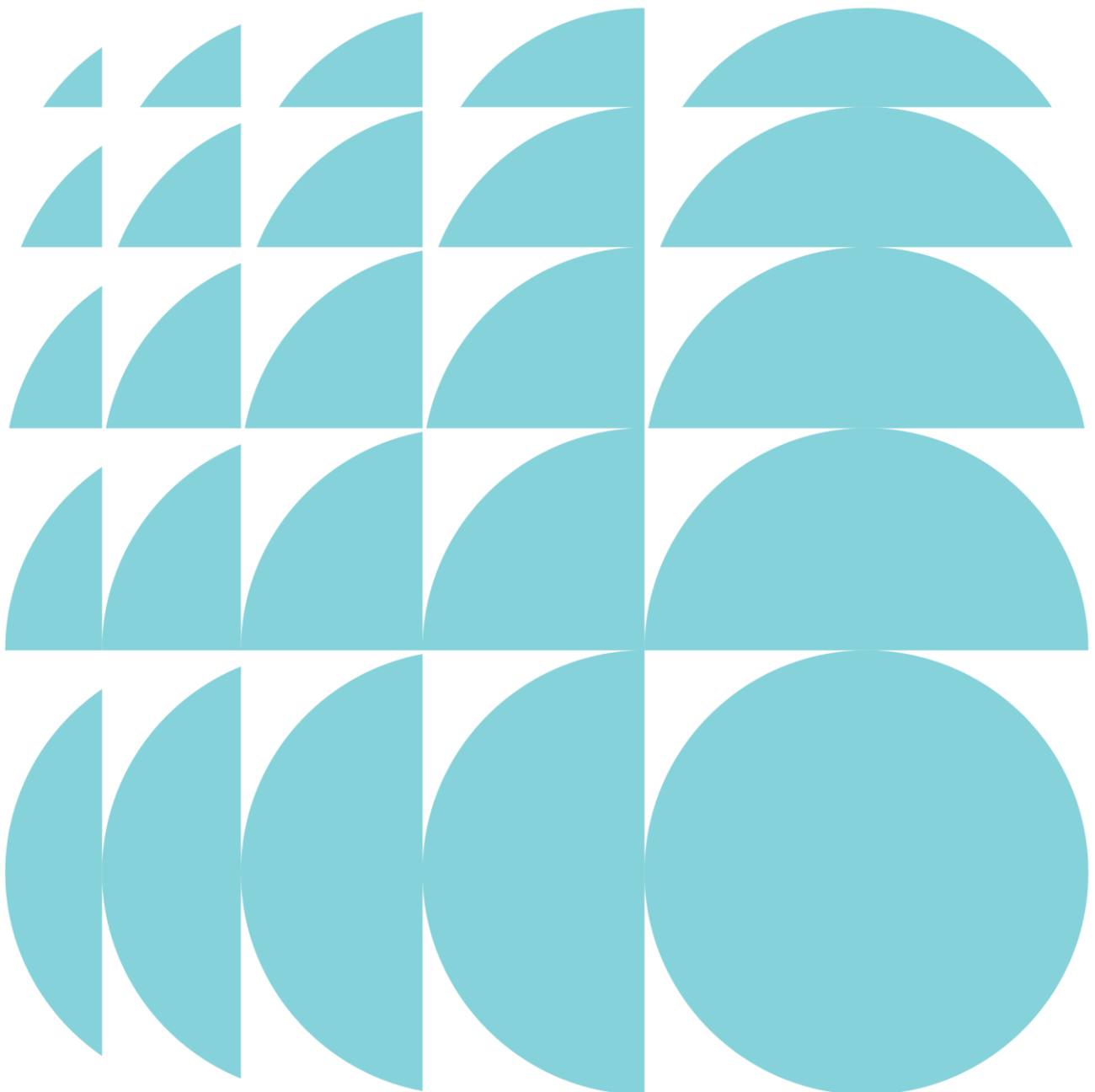
Height of Buildings

Site 2 Australia Avenue, Sydney Olympic Park

Submitted to the Department of Planning, Industry
and Environment

On behalf of Ecove Group

29 October 2019 | 218132



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1.0 Introduction

This building height variation request has been prepared by Ethos Urban on behalf of Ecove Group in support of a State Significant Development Application (SSDA) for a mixed use development (hotel, commercial office, retail) and public domain at Site 2 Australia Avenue, Sydney Olympic Park.

Clause 22 of Part 23 of Schedule 3 (Clause 22) of SEPP (State Significant Precincts) 2005 (SEPP SSP) allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by SEPP SSP. The objectives of the clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Assistance on the approach to justifying the contravention to a development standard is taken from the applicable decisions of the NSW Land and Environment Court relating to SEPP No. 1 Objections and Clause 4.6 Variations in:

1. *Wehbe v Pittwater Council* [2007] NSWLEC 827;
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
3. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386;
4. *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
5. *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118

These tests and considerations can also be applied to the assessment of variations to development standards under clause 22 of SEPP SSP. In accordance with the above requirements, this Clause 22 request identifies the variation sought to the maximum building height development standard under Clause 18 of SEPP SSP and establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances. It also demonstrates that there are sufficient environmental planning grounds to justify the contravention.

Accordingly, development consent may lawfully be granted to the proposal despite the proposed contravention of the development standard because pursuant to clause 22, the consent authority can be satisfied that:

- this written request has reasonably addressed the matters required to be demonstrated by clause 22; and
- the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone.

In accordance with the above requirements, this Clause 22 request also demonstrates that there are sufficient environmental planning grounds to justify the contravention and provides an assessment of the matters the Secretary is required to consider before granting concurrence. In accordance with Clause 22 of SEPP SSP, this written request;

- Outlines the Clause 22 framework;
- identifies the development standard to be varied;
- identifies the variation sought;
- demonstrates such that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the applicable land use zone;
- establishes and justifies that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- demonstrates that there are sufficient environmental planning grounds to justify the contravention; and
- provides an assessment of the matters the Secretary is required to consider before granting concurrence.

2.0 Clause 22 Framework

Clause 22 (Exceptions to development standards—other development) of SEPP SSP allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by SEPP SSP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 22(4) requires that the applicant's written request has adequately demonstrated:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- That there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 22(5) requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard:

- the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (4), and
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- the concurrence of the Secretary has been obtained.

Clause 22(6) requires that in deciding whether to grant concurrence, the Secretary must consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- the public benefit of maintaining the development standard, and
- any other matters required to be taken into consideration by the Secretary before granting concurrence.

The Land and Environment Court of NSW has established the process that the consent authority must undertake when assessing whether a written request adequately addresses the requirements of clause 4.6(3) and the state of satisfaction that they must form in relation to clause 4.6(4) in the recent decision of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118 by Chief Justice Preston.

These tests and considerations can also be applied to the assessment of variations to a development standard under clause 22 of SEPP SSP given the same matters of consideration are required for both clause 4.6 and clause 22 requests. Accordingly, this Clause 22 variation request is set out using the relevant principles established by the Court.

3.0 Development Standard to be Varied

The development standard to be varied is provided at clause 18 of Part 23 of Schedule 3 in SEPP SSP which states:

The height of a building on any land within the Sydney Olympic Park site is not to exceed the maximum height shown for the land on the Height of Buildings Map or the Reduced Level Map, whichever is applicable.

Building height is defined in clause 2 of Part 23 of Schedule 3 SEPP SSP as:

building height (or height of building) means the vertical distance, measured in metres, between ground level (existing) at any point to the highest point of the highest habitable floor (including above ground car parking) of the building, excluding plant and lift overruns, communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The maximum height of the buildings for the subject site is 102m (see **Figure 1**).



Figure 1 Height of building map – SEPP SSP (extract)

Source: www.legislation.gov.nsw.au

3.1 What is a Development Standard?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...

Clause 18 of Part 23 of Schedule 23 of the SEPP SSP is clearly and unambiguously a development standard.

3.2 Extent of Variation Sought

The development illustrated in the architectural plans prepared by Fitzpatrick + Partners dated 14 August 2019 provides a maximum building height of 117.5m metres (RL 132.65) to the top of the hotel building (rooftop pool) known as Site 2A. While the height to the commercial building known as Site 2B is 68.5 metres (RL 80.90). The table below provides the height of the proposed building at the highest point and of each building:

	SEPP SSP height standard	Architectural Design Competition height	Proposed SSDA height	SSDA height above/below standard
Hotel – Site 2A	102 m	127m	117.5m	+ 15.5m
Commercial – Site 2B	102 m	58.6m	68.5m	-33.5m

The exceedance of the building height is limited to the hotel tower of Site 2A and is a consequence of the architectural design competition process where the Jury (chaired by a nominee of the NSW Government Architect) found the following in respect the winning scheme (Fitzpatrick + Partners):

“Height

The proposed building height of the tower on Site 2A is considered acceptable in this instance by the Jury on account of its prominent location within Sydney Olympic Park that supports a landmark tower. It is assumed by the Jury that the additional height is created by the reduction of the footprint of the tower as the FSR is proposed as only a very small amount over the maximum. The height has a 25 metre or 24% non-compliance, being 25m over the maximum building height. The decision to adopt a slender profile will have benefits to the overshadowing impacts on the surrounding sites. Furthermore, the urban design and amenity benefits of a significantly lower building on Site 2B that offsets the increased building height of the Site 2A tower was commended and supported by the Jury.

The Jury noted that the proposed Site 2A tower building height would require a variation to the 102m maximum building height development standard applying to the site as part of a State Significant Development application. This would therefore be subject to the assessment and approval by the NSW Department of Planning and Environment.”

It is noted that the height of the hotel tower at Site 2A has been considerably decreased (by 9.5m) since the design competition and is now proposed to be a 15.5m or 15% non-compliance with the 102m building height development standard. It should be reinforced, that the commercial building on Site 2B is substantially below the 102m height development standard (33.5 metres below) and the off-setting of building heights on the site is one of the key reasons behind the Jury selection of the proposed development as the winner of the architectural design competition and consideration that the buildings achieve design excellence. The extent of the height variation is illustrated in **Figure 2** and for visual purposes a photomontage is provided at **Figure 3**.

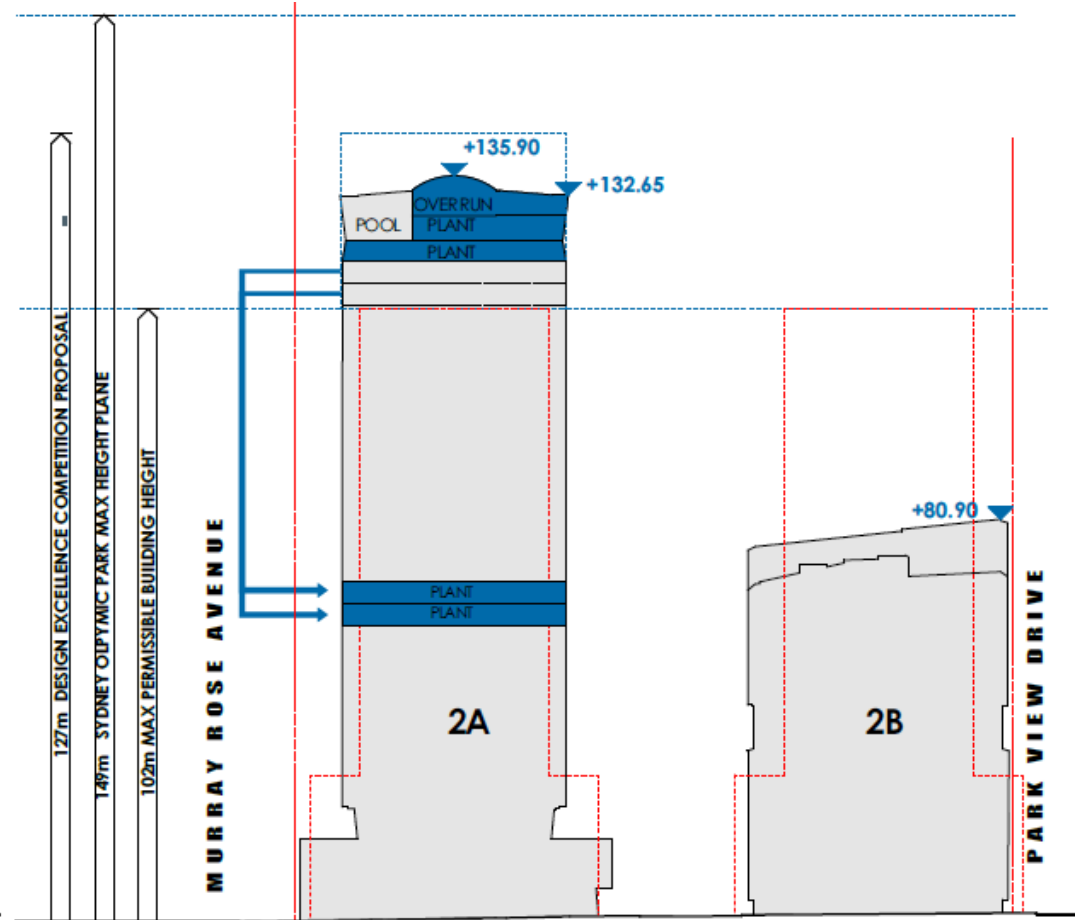


Figure 2 Section illustrating extent of Variation

Source: Fitzpatrick + Partners



Figure 3 Photomontage of proposed development

Source: Fitzpatrick + Partners

4.0 Justification for Contravention of the Development Standard

Clause 22 of SEPP SSP provides that:

22 Exceptions to development standards—other development

(2) *The objectives of this clause are:*

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (3) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Further, clause 22(5) of SEPP SSP provides that:

- (5) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (4), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the Land and Environment Court of NSW and the NSW Court of Appeal in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.

The relevant matters contained in Clause 22 of SEPP SSP, with respect to the height of building development standard, are each addressed below, including with regard to these decisions.

5.0 Matters to be addressed by Clause 22 of SEPP SSP

5.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Clause 22(4) of SEPP SSP requires the departure from the development standard to be justified by demonstrating:

that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In **Wehbe**, Preston CJ of the Land and Environment Court of NSW provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed case.

In the decision of **Wehbe**, the Chief Justice expressed the view that there are five different ways in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. These five tests are as follows:

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

Of particular assistance in this matter, in establishing that compliance with the development standard is unreasonable or unnecessary is the **First Method** and the **Third Method**. These will be further addressed to demonstrate that compliance with the maximum building height is unnecessary in this circumstance.

5.1.1 The objectives are otherwise achieved – the First Method

The height development standard of SEPP SSP does not provide objectives, however guidance can be sort from the SOPA Master Plan 2030 (2018 Review) which states at section 4.6.4 Building Height Controls:

“To reinforce the primacy of Olympic Boulevard and to create consistent building heights along main streets, maintain solar access to the public domain and maintain the iconic Olympic skyline”

The primacy of Olympic Boulevard is entirely maintained given that the proposed height of the hotel tower at Site 2A at 117.5m remains significantly below the maximum height of sites fronting Olympic Boulevard at 149m (ie 31.5m lower). In any event, as considered by the architectural design competition Jury, the proposed building height of the tower on Site 2A is considered acceptable in this instance on account of its prominent location within Sydney Olympic Park that supports a landmark tower.

This prominent site/landmark tower rationale follows for the objective of creating a consistent building height along Australia Avenue, as the site is located on a prominent axis with a significant public domain fronting Australia Avenue. As such, consistent building heights are not considered appropriate in this instance given the uniqueness of the site (in terms of location and site planning) within Sydney Olympic Park. The Jury noted the urban response of a taller, slim, circular tower was particularly appropriate to the immediate context of the established built form along Murray Rose Avenue and Dawn Fraser Avenue, defining Jacaranda Square, and the axial relationship to Olympic Park Station.

In terms of overshadowing to the public domain, the architectural design competition Jury noted the distribution of building height and a slender tower form together with a lower commercial building provides a superior building separation outcome with reduced overshadowing impacts. This is particularly apparent in terms of overshadowing to the public domain and Jacaranda Square as the single more slender built form of Site 2A, as opposed to two wider towers that comply with the 102m height development standard, provides an overall reduced overshadowing outcome to public areas.

Furthermore, the proposed 15.5m breach in the 102m height development standard on the site is not considered to detract from the iconic Olympic Skyline given the substantial distance the site is separated from ANZ Stadium, Qudos Bank Arena, Sydney Showground Stadium, Sydney International Aquatic Centre and other iconic sporting facilities. Regardless, it is considered that the proposed development will significantly contribute to the skyline of Sydney Olympic Park by providing architecturally bold and landmark buildings of high design merit on this prominent site.

5.1.2 The underlying purpose or objective would be thwarted or defeated – the Third Method

The third way relates to compliance with a development standard resulting in the underlying purpose being defeated or thwarted. The underlying purpose of the building height development standard is to ensure that built form within Sydney Olympic Park is appropriate and consistent with the surrounding context of the site and desired future character of Australia Avenue and surrounds.

Strict adherence to the development standard is considered to result in a poorer design outcome on this unique and prominent site as it would result in two towers achieving the same height of 102m and therefore visually competing with each other. Indeed, the architectural design competition Jury stated in the design report that the awarding Fitzpatrick + Partners as the winning scheme was partly due to the following:

- *The innovative slender circular tower form on Site 2A was the superior urban design response, and along with the interesting tessellated façade design will create a landmark building for this important axial site;*
- *The distribution of building height and a slender tower form together with a lower commercial building provides a superior building separation outcome with reduced overshadowing impacts; and*

Furthermore, it is important to note that the definition of building height in SEPP SSP for Sydney Olympic Park excludes plant and lift overruns from building height. Accordingly, should the two upper most hotel levels and mid point plant levels be switched, and thus all plant for the tower located on the roof, the proposed development would be compliant with the 102m height development standard (except for the pool/bar area), with exactly the same visual built form as what is proposed (as shown below at **Figure 4**). This was not proposed as the mid point plant levels achieve the most efficient mechanical and operational outcome for the tower. As such, in this scenario the roof top pool and bar area is the only hotel floor space and technical building height above the 102m height standard. Its location at the top of the building is far superior in terms of hotel amenity and guest experience, and therefore fitting of a 5 star hotel on this prominent site in Sydney Olympic Park.

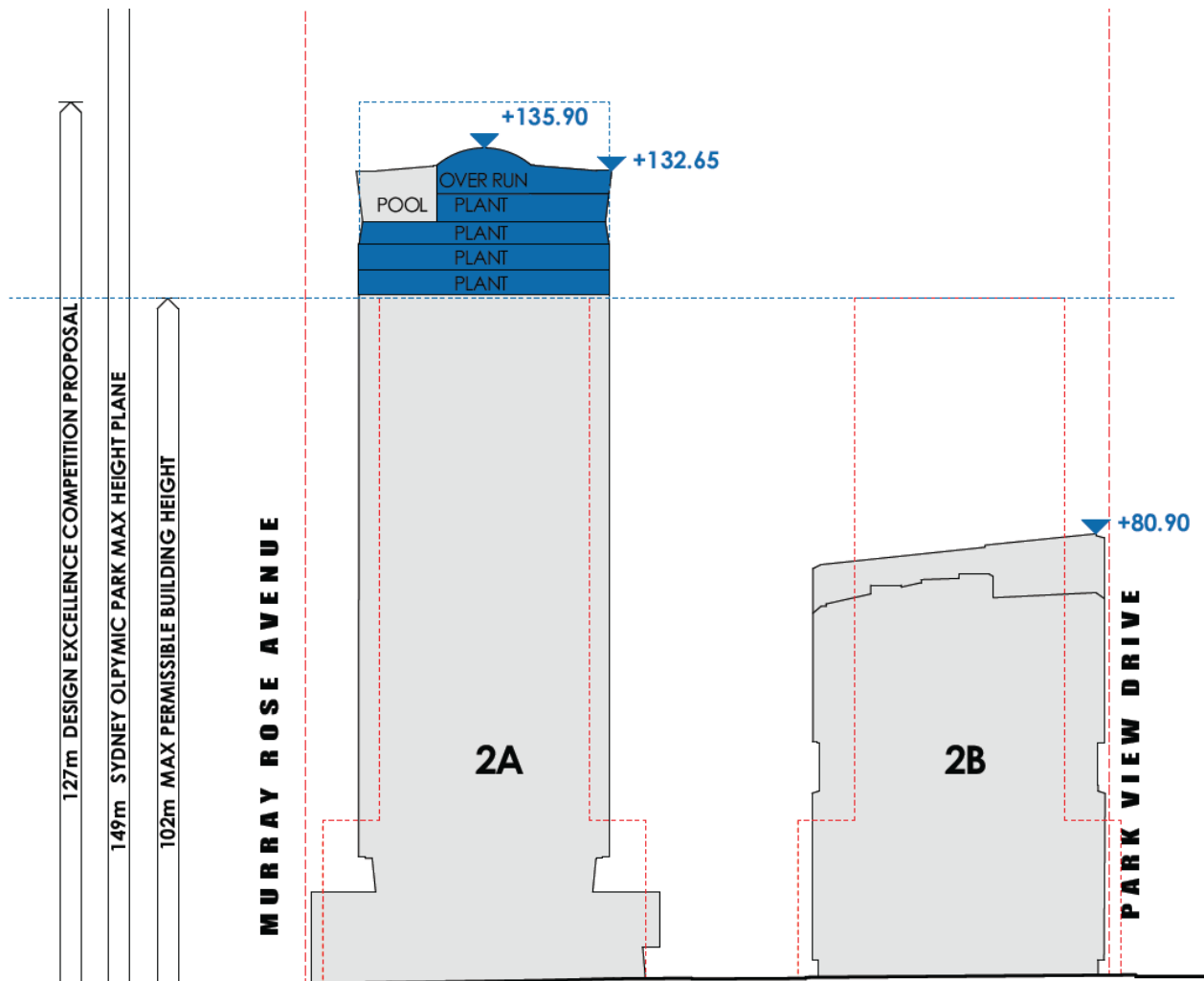


Figure 4 Section illustrating a technically compliant scheme (should upper most hotel levels switch with mid point plant)

Source: Fitzpatrick + Partners

5.2 There are sufficient environmental planning grounds to justify contravening the development standard

Clause 22(4) of SEPP SSP requires the departure from the development standard to be justified by demonstrating:

that there are sufficient environmental planning grounds to justify contravening the development standard.

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 (and it follows a clause 22) variation request must be particular to the circumstances of the proposed development on that site.

There are a number of particular factors that affect the site which reduce the development's appropriateness to achieve strict compliance with the building height standard. These are detailed below.

5.2.1 Prominent Site and Public Domain

As discussed in Section 5.1.1, it is considered that the unique position of the site within Sydney Olympic Park at the axis and Australia Avenue and Dawn Fraser Avenue can accommodate a landmark tower that achieves design excellence. This site uniqueness is reinforced by a large public domain area occupying the forward part of the site (ie fronting Australia Avenue) that places the proposed buildings at the rear portion of the site. This is considered to

provide an appropriate context and framing for the tall slender hotel tower on Site 2A, and thus not dominate the built form of the Australia Avenue streetscape.

It is noted that the architectural design competition Jury considered the offsetting of building heights on the site, ie Site 2A tower above and Site 2B building substantially below the 102m height development standard, as being a superior urban design response for this site rather than two equal height towers as contemplated by SEPP SSP.

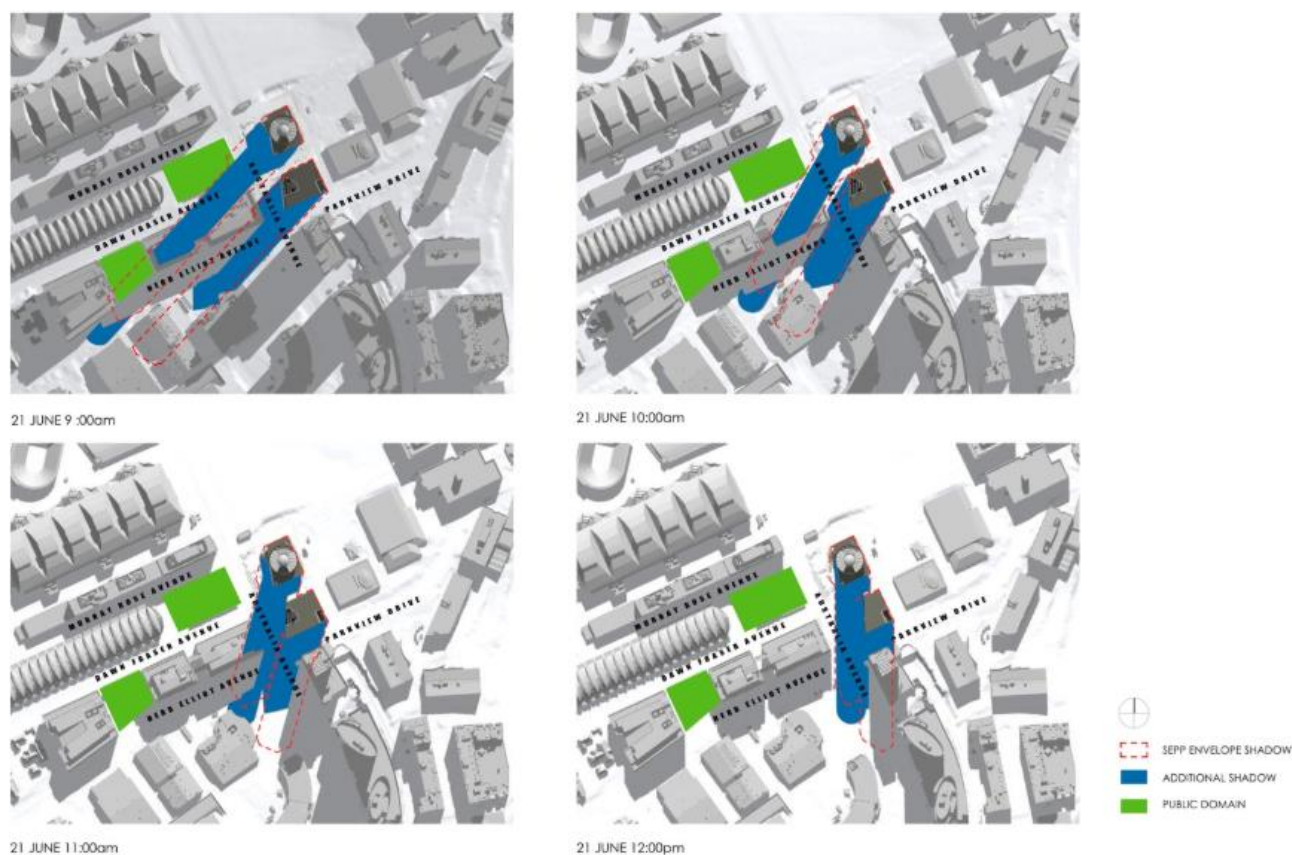
5.2.2 Solar Access

As discussed in Section 5.1.1, the architectural design competition Jury noted in respect to the winning Fitzpatrick + Partners design:

“The decision to adopt a slender profile will have benefits to the overshadowing impacts on the surrounding sites. Furthermore, the urban design and amenity benefits of a significantly lower building on Site 2B that offsets the increased building height of the Site 2A tower was commended and supported by the Jury.....”

“the lower commercial building provides a superior building separation outcome with reduced overshadowing impacts.”

As demonstrated by the shadow diagrams prepared by Fitzpatrick + Partners (**Figure 5**), the additional height of the hotel tower on Site 2A combined with its more slender profile and which is offset by a shorter commercial building on Site 2B, results in an improved shadowing impact upon the public domain and adjoining sites, than a building height compliant scheme (ie two 102m high towers with larger floorplates).



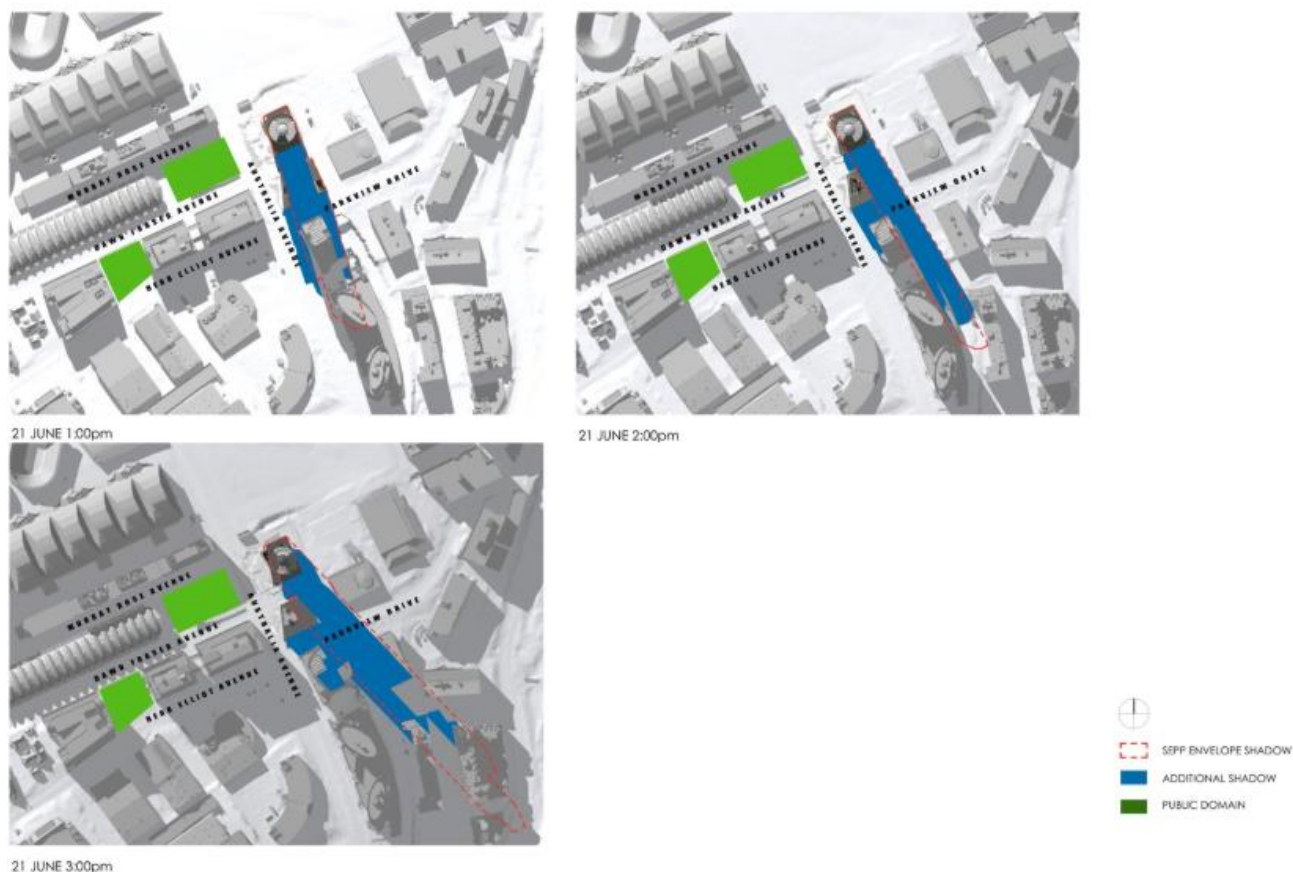


Figure 5 Shadow diagrams – Proposed scheme v height compliant scheme

Source: Fitzpatrick + Partners

5.3 The proposed development will be in the public interest

Clause 22(5) requires that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The proposal demonstrates that it meets the intention of the development standard. Additionally, the proposal can be shown to achieve the objectives of the B4 Mixed Use zone.

Therefore, despite the non-compliance with the height of buildings standard, the proposal is considered to be in the public interest as it represents a superior urban design, amenity and site planning outcome as it nevertheless satisfies the zone objectives and the intention of the development standard.

5.3.1 Consistency with the objectives of the zone

The proposed variation to the height of buildings development standard will result in a development that is still consistent with the objectives of the development standard, as addressed in **Table 1**.

Table 1 Assessment against Zone Objectives for the B4 Mixed Use Zone

Objective	Proposal
<i>(a) to protect and promote the major events capability of the Sydney Olympic Park site and to ensure that it becomes a premium destination for major events,</i>	<p>The proposed development has been designed to ensure that it does not adversely impact upon the capability of Sydney Olympic Park to host major events.</p> <p>Rather, the proposed height breach of the hotel tower on Site 2A, promotes a more slender and architecturally prominent tower that reflects the importance of the proposed 5 star hotel use of the building. There is a distinct lack of high quality hotel accommodation in Sydney Olympic Park and the immediate area to accommodate tourists, business people and professional sporting teams/organisations. As such, the proposed development is expected to further promote the capability of Sydney Olympic Park for major events.</p>
<i>(b) to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling,</i>	<p>The proposed hotel, commercial and retail development is in very close proximity to public transport and is considered attractive to cyclists and pedestrians. We note the proposed height breach of the hotel tower on Site 2A will not inhibit the attainment of this objective.</p>
<i>(c) to ensure that the Sydney Olympic Park site becomes an active and vibrant town centre within metropolitan Sydney,</i>	<p>The proposed development will encourage growth of Sydney Olympic Park's town centre by providing a quality development set within an attractive environment.</p> <p>The provision of a slender 5 star hotel tower that achieves design excellence will directly assist in the attainment of this objective by positively contributing to the active and vibrancy of Sydney Olympic Park.</p>
<i>(d) to provide for a mixture of compatible land uses,</i>	<p>The proposed development is located within a broader development precinct of the Parkview Precinct and is adjacent to the Central Precinct of the SOP Master Plan 2030 (2018 Review). Both these precincts current and desired future character provides for a mix of land uses, including a residential, commercial and retail. The proposed development comprising a hotel, commercial office and retail is entirely aligned with this objective, and the proposed height breach of has no impact upon the attainment of this objective.</p>
<i>(e) to encourage diverse employment opportunities,</i>	<p>The proposed 5 star hotel will provide for a diverse workforce including hotel guest staff, kitchen staff, bar staff, maintenance staff, security staff., cleaning and washing staff etc. Also there will be a significant commercial office and ground floor retail component to the proposed development providing substantial employment opportunities. The internal layout and ground floor have been designed to ensure it is suitable for a variety of commercial businesses.</p> <p>The proposed development comprising a hotel, commercial office and retail is entirely aligned with this objective, and the proposed height breach of has no impact upon the attainment of this objective.</p>
<i>(f) to promote ecologically sustainable development and minimise any adverse effect of land uses on the environment,</i>	<p>ESD principles have guided the proposed development, ensuring that it will minimise its impacts on the environment.</p> <p>The scheme achieves a minimum 4-star rating for the hotel component and a minimum 5-star rating for the commercial office component in accordance with the Green Star – Design & As Built Submission Guidelines document development by the Green Building Code of Australia. This is what has been required by SOPA for this development. Therefore, the proposed development is considered to be entirely consistent with this objective.</p>
<i>(g) to encourage the provision and maintenance of affordable housing.</i>	<p>No housing is proposed for the proposed development, as such this objective is not strictly relevant in this instance. However, we note the proposed development does not impact the attainment of this objective within Sydney Olympic Park.</p>

6.0 Secretary's Concurrence

Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (and it follows clause 22), subject to the conditions in the table in the notice. The following section provides a response to those matters set out in clause 22 which must be considered by the consent authority under its delegated authority:

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning.

No matters of State or regional environmental planning significance are raised by the contravention of the development standard.

The public benefit of maintaining the development standard.

The justification in **Section 5.2** above demonstrates that a variation to the development standard is acceptable in terms of the public benefit. The proposed development is considered to be consistent with the objectives of the zone and the intention of the development standard.

Any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposed variation represents a non-compliance that will allow for an improved built form and environmental outcome on the site and its orderly redevelopment. No other matters require consideration by the Secretary.

7.0 Summary

In conclusion Council can be satisfied that this Clause 22 Variation Request satisfactorily demonstrates:

- That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as strict compliance with the development standard would result in an inferior urban design and amenity outcome in this instance. Indeed, the exceedance of the building height is limited to the hotel tower of Site 2A and is a consequence of the architectural design competition process where the Jury (chaired by a nominee of the NSW Government Architect) found that the proposed arrangements of building heights was appropriate to the site and achieved design excellence.
- That there are sufficient environmental planning grounds to justify contravening the development standard as the proposal is a prominent site that is suited to a landmark tower. Furthermore, the tall slender tower form that is offset in height by a shorter commercial building results in a better urban design outcome and amenity outcome in terms of overshadowing. Also, the site's uniqueness is reinforced by a large public domain area occupying the forward part of the site (ie fronting Australia Avenue) that places the proposed buildings at the rear portion of the site. This is considered to provide an appropriate context and framing for the tall slender hotel tower on Site 2A, and thus not dominate the built form of the Australia Avenue streetscape.
- As demonstrated by the shadow diagrams prepared by Fitzpatrick + Partners, the additional height of the hotel tower on Site 2A combined with its more slender profile and which is offset by a shorter commercial building on Site 2B, results in a reduced shadowing impact upon the public domain and adjoining sites, than a building height compliant scheme (ie two 102m high towers with larger floorplates).
- Given the definition of height in SEPP SSP that excludes plant and lift overruns, switching the midpoint plant room with the two upper most levels of the hotel would result in a building height compliant scheme (except for the rooftop pool/bar), but a substantially inferior building in terms of energy efficiency. In this scenario, the only non-compliance in building height would be from the rooftop pool and bar. The location of the rooftop pool and bar is considered appropriate given the amenity it would provide for hotel guests, befitting a 5 star hotel in Sydney Olympic Park.
- The proposed variation to building height is in the public interest because it is consistent with the intent of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

In light of the above, it is requested that the Department of Planning, Industry and Environment grant development consent for the proposed development even though there is a variation to the proposed development standard imposed by Clause 18 Part 23 Schedule 3 of SEPP SSD.