

3 Farmhouse Road, Westmead

Clause 4.6 Written Request – Height Development Standard

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3 FARMHOUSE ROAD, WESTMEAD

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Prepared under instructions from
[Combined Projects \(Westmead\)](#)

by

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1.0 INTRODUCTION

1. Development Application DA/932/2021 seeks consent for alterations and additions to an approved residential development DA 1271/2016 for various changes to the layout and arrangement of apartments, an additional 4 floors to Buildings D and F respectively, and expansion of the basement level 04 at 3 Farmhouse Road, Westmead (formally known as Lot 4, 158-164 Hawkesbury Road and 2A Darcy Road, Westmead).
2. The Development Application involves a variation to the Building Height development standard at Clause 4.3 of the Parramatta Local Environmental Plan 2011 (PLEP).
3. Clause 4.6(2) of the PLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP, or any other environmental planning instrument.
4. However, clause 4.6(3) states that 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 circumstance of the case, and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard.
5. Clause 4.6(4) provides that 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 (3), 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 Planning Secretary has been obtained.
6. Clause 4.6(5) provides that in deciding whether to grant concurrence, the Planning Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
7. In accordance with clause 4.6(3) the applicant requests that the Building Height development standards be varied. This Clause 4.6 Written Request has been prepared on behalf of the applicant in support of the proposed variation to the Building Height development standards at Clause 4.3 of the PLEP and justifies the proposed extent of variation.

8. This Clause 4.6 Written Request has been prepared having regard to NSW Planning & Infrastructure, 'Varying development standards: A Guide', August 2011, which remains a relevant policy document, being referred to in Planning Circular PS20- 002, dated 5 May 2020.
9. In accordance with Clause 4.6(4) the consent authority can be satisfied that this request has adequately addressed the matters required to be demonstrated by subclause 4.6(3), and 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.
10. In accordance with Clause 4.6(5):
 - (a) Parramatta Local Planning Panel may assume concurrence under cl 4.6 in accordance with assumed concurrence notice dated 21 February 2018 (attached to Planning Circular PS 20-002, dated 5 May 2020) made under cl 64 of the EP&A Regulation 2000.
 - (b) The contravention of the standard does not raise any matters of significance for state or regional environmental planning.
 - (c) This Clause 4.6 request demonstrates that there are significant environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard, which has already been abandoned for this site.
11. Having regard to the above the Parramatta Local Planning Panel has the jurisdictional authority to grant consent pursuant to Clause 4.6 of the Parramatta Local Environmental Plan 2011.

2.0 SITE DESCRIPTION AND LOCATION

2.1 Locality Description

12. The site is located within the suburb of Westmead and is within the City of Parramatta Local Government Area.
13. The site is located within the Westmead Strategic Precinct pursuant to the Parramatta Development Control Plan 2011. The PDCP identifies that the Westmead Strategic Precinct has a primary function as a regionally significant health and education hub. Accordingly, Westmead serves a growing role as a mixed use location with a dynamic mix of employment, health, educational, recreation, retail and housing uses.
14. The site is located at the south edge of the Westmead Strategic Precinct and is located approximately 2 kilometres from the Parramatta CBD. The site is located adjacent the Westmead train station, Parramatta Light Rail Station, and Sydney Metro West station.
15. Westmead is identified as having a strong residential component to support its primary function as a health and education hub. The DCP indicates that future opportunities for residential, retail, business, hospital, education and community facility development should be integrated with public transport facilities to improve public transport accessibility and to provide a more permeable pedestrian and bicycle network.
16. The location of the site is illustrated in Figure 1 below.

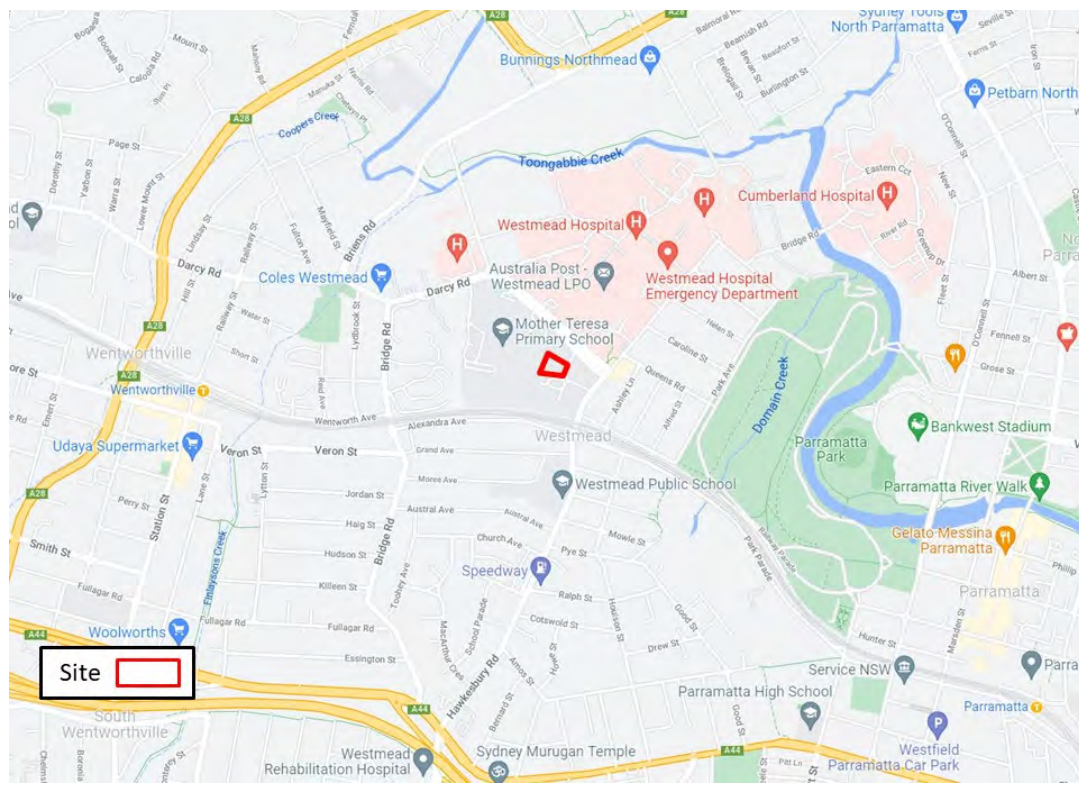


Figure 1:

Site location (Source: Google Maps)

17. The site is identified as being within Special Area: 158-164 Hawkesbury Road and part of 2A Darcy Road, Westmead in section 4.3.4.1 of the Parramatta Development Control Plan 2011 (PDCP). The Desired Future Character of the locality is described in the DCP as follows:

The site known as the University of Western Sydney (UWS) Westmead, comprises 158-164 Hawkesbury Road and part of 2A Darcy Road, Westmead. It is a four-hectare site located immediately north-west of Westmead Railway Station and within the Westmead Precinct, two kilometres west of the Parramatta CBD.

The future mixed use character of the site will complement the medical and research facilities of the precinct. The land uses anticipated for the site include retail; commercial (i.e. medical support services, specialist rooms; medical professional associations etc); residential (i.e. serviced apartments, seniors living, key workers accommodation and residential flat buildings); open space and civic functions (i.e. plaza); and community facilities such as child care centres.

Future built form will be designed to appropriately respond to the existing siting, scale, form and character of buildings of heritage significance, as well as provide appropriate heights and setbacks to street frontages to improve the quality of the public realm within the site.

Height will be distributed across the site having regard for orientation, overshadowing, the scale of retained heritage buildings and views/vistas to Parramatta Park to the east. Built form fronting Hawkesbury and Darcy Roads will locate active uses on the ground floor to increase the vibrancy of the Westmead Precinct as a whole.

The built form will include taller, slender "statement" buildings located along the railway line to enable a strong visual relationship between the precinct and the CBD. Taller buildings are to be located within the south western corner of the site and should reduce visual bulk, provide architectural modulation, reduce overshadowing and encourage dual aspect apartments for enhanced access to sunlight and breeze.

The building form to the north and east will be lower in height to optimise solar access to private and public open space and would allow view corridors to the heritage buildings.

The strategic location of this site in relation to Westmead Station and adjacent to the T-Way lends itself to the creation of a transit oriented development which allows for greater intensity of uses to optimise the advantage of available transport infrastructure and minimise the reliance on vehicles.

2.2 Site Description

18. The site was formally known as Lot 4 158-164 Hawkesbury Road and 2A Darcy Road, Westmead. However, since approval of DA/1271/2016, a plan of subdivision has been registered which has formally created the site which is now known as 3 Farmhouse Road, Westmead and legally referred to as Lot 4 DP 1227281.

19. The subject site is irregular in shape, falls toward the west and has a total area of 6,588 square metres. The site is accessed via an Farmhouse Road which connects to both Darcy Road and Hawkesbury Road. An aerial image of the is shown at Figure 2.
20. The site is temporarily occupied by a display suite and associated car park for Deicorp which was erected to facilitate sales in the recently completed southern adjacent development at 5-7 Maple Tree Road as well as apartments in the approved development on the subject site.



Figure 2:

Aerial view of the site (Source: Six Maps, Department of Lands 2021)

2.3 Surrounding Development

21. The surrounding development is characterised by a mix of development types including medical, educational, commercial, and residential development.
22. Parramatta Marist High School adjoins the site to the west. The school's swimming pool is located immediately adjacent to the site. A palisade fence currently separates the two properties. Further to the west, high and medium density residential development exists with frontage to Bridge Road, including the Monarco Estate which comprises a collection of residential towers up to 14 storeys in height.
23. The subject site is located within a precinct which was formally land owned by the University of Western Sydney and which has been the subject of strategic planning work and is specifically referenced in Section

4.3.4.1 of the Parramatta DCP which applies to the subject and surrounding sites known collectively as Special Area: 158-164 Hawkesbury Road and part of 2A Darcy Road, Westmead.

24. On 11 February 2015, the Joint Regional Planning Panel approved Development Application DA/571/2014 for the works to the University of Western Sydney land including demolition of all buildings with the exception of the two heritage buildings listed under Schedule 5 of PLEP 2011, remediation, construction of an internal road network and torrens title subdivision of the site into 5 allotments. This subdivision created the subject allotment to which this development application relates.
25. An area of open space that was delivered as part of the above works on the overall site is located to the south on the opposite side of Maple Tree Road.
26. To the south of the subject site, across the open space, is the recently completed development at 5-7 Maple Tree Road which was granted development consent DA/96/2016 on 2 August 2017. This development was completed by Deicorp who is also the proponent of the subject development application. Low density residential development exists on the southern side of the railway line.
27. Opposite the subject site to the north-east is 160 Hawkesbury Road which holds a prominent corner location at the intersection of Hawkesbury Road and Darcy Road. This site is the subject of approved DA/868/2018 for the construction of 2 x mixed use buildings of 8 and 11 storeys comprising retail, commercial and educational uses and a childcare centre with 2 levels of basement on Lot 2. Construction of this approval is well advanced and part of this development, known as Stage 1, has been completed.
28. 1 Farmhouse Road is located immediately adjacent to the north and also has direct frontage to Darcy Road. The indicative use approved for 1 Farmhouse Road is for commercial development, however, to date no application has been made for the future redevelopment of this site.
29. Westmead Hospital is located further to the north across Darcy Road.
30. 158 Hawkesbury Road is located to the south-east of the subject site and contains the heritage significant Farmhouse Building and St Vincent's Building. The St Vincent's Building will continue to be used for the purposes of education. The Westmead village shops are located further to the east of the site on the eastern side of Hawkesbury Road. The Westmead village shops comprise an eclectic mix of retail, commercial and residential development. Westmead Train Station is located approximately 220 metres to the south east of the site.

3.0 BACKGROUND

3.1 Planning Proposal to rezone land at 158-164 Hawkesbury Road and 2A Darcy Road

31. In 2011 the University of Western Sydney sought a Planning Proposal to rezone the land at 158-164 Hawkesbury Road and 2A Darcy Road from SP2 Special Uses (Educational Establishment) to B4 Mixed Use. The Planning Proposal was accompanied by a number of studies and master plan prepared by ARUP which informed the amendment to the LEP as well as a site specific component of the Parramatta DCP and included specific boundaries for new height and FSR areas.
32. An amendment to the Parramatta Local Environmental Plan 2011 rezoning the land at 158-164 Hawkesbury Road and 2A Darcy Road from SP2 Special Uses (Educational Establishment) to B4 Mixed Use was gazetted in 2013. Parramatta Local Environmental Plan 2011 (as amended) provides site specific building height and FSR development standards, permitting building heights ranging from 31-48 metres and FSR of 1.5:1- 4.0:1 across the site based on the masterplan which accompanied the Planning Proposal. An amendment to the DCP was simultaneously adopted providing planning controls specific to the site.
33. The rezoning of the site from SP2 Special Uses (Educational Establishment) to B4 Mixed Use also provided for additional permitted uses on the site including residential, retail, commercial and community uses including education and significantly increased the development potential of the site consistent with both the Council's strategic plan for Westmead and the aims of Sydney Metropolitan Plan 2036.



Figure 3:

Indicative masterplan by ARUP which informed the Planning Proposal height and FSR controls for the site and was captured as Figure 4.3.4.1.3 of the PDCP 2011

3.2 Development Application DA/571/2014

34. On 11 February 2015, the Joint Regional Planning Panel approved Development Application DA/571/2014 for the following works on the site:
 - Demolition of all buildings with the exception of the two heritage buildings listed under Schedule 5 of PLEP 2011.
 - Remediation of the site.

- Earthworks and construction of an internal road network.
 - Public domain works including landscaping involving the retention of 8 trees, removal of 40 trees and tree replenishment.
 - Torrens title subdivision of the site into 5 allotments
35. The Stage 1 development application was accompanied by an Urban Design Report prepared by Cox Richardson. The Urban Design Report argued a case for an alternative site layout and distribution of buildings compared to the ARUP masterplan (refer to Figure 3) which informed the recently adopted height and FSRs across the site under the PLEP 2011. The Urban Design Report also included indicative building envelopes to illustrate one potential way in which the proposed new allotments could be developed under subsequent development applications.
36. In approving Development Application DA/571/2014 the Joint Regional Planning Panel upheld the applicant's request to vary the development standards contained Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Parramatta Local Environmental Plan 2011. The proposed gross floor area and floor space ratio on Lots 2, 3, 4 and 5 exceeded the maximum floor space ratio permissible under PLEP 2011 due to the fundamental change in site layout and indicative building envelopes when compared to the masterplan which informed the Planning Proposal. The height of the indicative building envelopes on Lots 2, 4 and 5 exceeded the maximum heights permissible by PLEP 2011. **Specifically in relation to Lot 4, the Council's assessment report found that a floor space ratio variation of up to 25% was proposed and a building height variation of up to 23.8% was proposed within the indicative building envelopes.**
37. The Council's assessment report for Development Application DA/571/2014 recommended that the Clause 4.6 variations for Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) be upheld and specifically noted that the non-compliances across the site are attributed to the fact that the concept plan in PDGP 2011 was poorly conceived and not well resolved and that the alternative approach to the site outlined in the Cox Richardson Urban Design Report represented an improvement which effectively meant that the height and FSR boundaries had become redundant. The assessment report states that Council's Urban Design Unit found that the proposal resulted in an improved built form outcome:
- The Urban Design Unit are supportive of the proposed non-compliances of Height and FSR across the site. Most non-compliances are a result of a suboptimal concept plan being the primary tool to inform the LEP controls for the site specific DCP.***
- The proposed Concept Plan is a result of design development and rationalisation of the DCP and results in most instances results with an improved built form outcome.*
38. The Determination and Statement of Reasons issued by the Joint Regional Planning Panel stated that the Panel considered compliance with Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) to be unnecessary in the circumstances.
39. The concept plan prepared by Cox Richardson which supported the Stage 1 development application is illustrated in Figure 4 below.

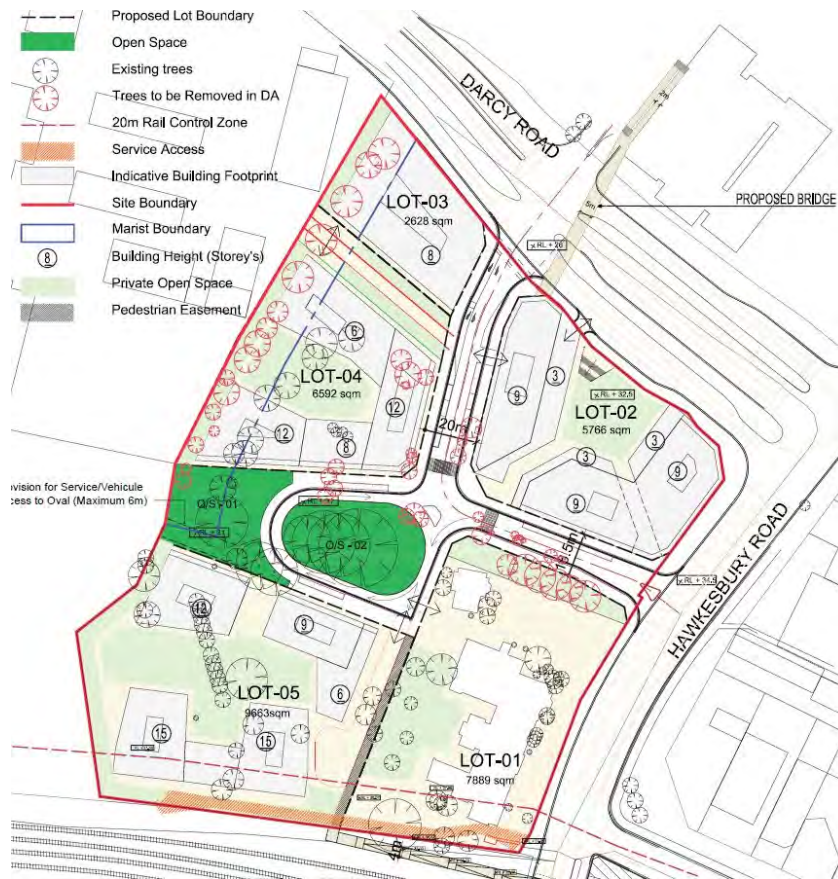


Figure 4:

Cox Richardson
Concept Plan
which supported
DA/571/2014
which differs
substantially
from the ARUP
masterplan in
Figure 3 above
which informed
the Planning
Proposal and
DCP
amendments

3.3 Development Application DA/968/2016 (Lot 5)

40. On 2 August 2017, development consent was granted to DA/968/2016 at 160 Hawkesbury Road, Westmead (Lot 5) for tree removal and construction of two Residential Flat Buildings containing 556 apartments over 4 levels of basement car parking. Building A comprises a part 4, part 9 storey building and Building B comprises a part 8, part 15 and part 24 storey building.
41. In approving Development Application DA/968/2016 the Joint Regional Planning Panel upheld the applicant's request to vary the development standards contained Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Parramatta Local Environmental Plan 2011. There are three height zones which apply to that site and variations of up to 73.1% were supported. There are two FSR zones which apply to that site being 1.5:1 and 4:1 and an FSR of 4.52:1 was approved (at the time of approval, the guidance provided by *Mulpha Norwest Pty Ltd v The Hills Shire Council* (No 2) [2020] NSWLEC 74, did not exist and so FSR was calculated on a combined basis).
42. The site plan for Development Application DA/968/2016 is shown in Figure 5.



Figure 5:

Development Application DA/968/2016 (Lot 5) Site Plan

3.4 Development Application DA/1271/2016 (the subject site)

43. On 1 November 2017, development consent was granted to DA/1271/2016 for construction of a residential flat building containing 344 units over basement car parking with heights ranging between 6-20 storeys at 3 Farmhouse Road, Westmead (formally known as Lot 4, 158-164 Hawkesbury Road and 2A Darcy Road).
44. In approving Development Application DA/1271/2016 the Joint Regional Planning Panel upheld the applicant's request to vary the development standards contained Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of the Parramatta Local Environmental Plan 2011. **The approved development departs significantly from the height controls with a departure of 19.3% for Building E, 23.7% for Building F and 80.3% for Building D.** The approved development was identified as having an FSR of 4.34:1 against the standard of 4:1 and 3.5:1 which apply to the various parts of the site (at the time of approval, the guidance provided by *Mulpha Norwest Pty Ltd v The Hills Shire Council* (No 2) [2020] NSWLEC 74, did not exist and so FSR was calculated on a combined basis).



Figure 6:

Development Application DA/1271/2016 – Subject Site

4.0 PROPOSAL

4.1 Strategic Context

45. On 1 November 2017, development consent was granted to DA/1271/2016 for construction of a residential flat building containing 344 units over basement car parking with heights ranging between 6-20 storeys at 3 Farmhouse Road, Westmead (formally known as Lot 4, 158-164 Hawkesbury Road and 2A Darcy Road).
46. Since the time of the approval of DA/1271/2016, there have been significant strategic planning, transport planning and policy changes in relation to Westmead including the following:
 - In November 2017, the Department of Planning and Environment announced Westmead as a Planned Precinct with a health and education area north of the rail line.
 - Parramatta Light Rail – Stage 1 has been announced and construction is currently under way with the Westmead Light Rail stop to be built at corner of Hawkesbury Road and Railway Parade. Parramatta Light Rail Stage 1 will connect Westmead to Carlingford via Parramatta CBD and Camellia.
 - Sydney Metro West line has been announced and construction is currently underway with the new Metro platform located south of the existing Westmead Station on the eastern side of Hawkesbury Road, Sydney Metro West will connect the Sydney City Centre (CBD) with Westmead.
 - Sydney University has been chosen by the NSW Government to develop a new world class multi-disciplinary campus within the Westmead Health and Innovation District which will accommodate 25,000 students.
 - In March 2020, the City of Parramatta Council's Local Strategic Planning Statement (LSPS) City Plan 2036 (LSPS) came into effect and sets out a 20-year land use planning vision for the City of Parramatta. The LSPS identifies that the Westmead Health and Education Precinct provides a major conglomeration of health, research and medical services. The LSPS also identifies target for 28,700 additional jobs and 4,500 dwellings in Westmead by 2036.
 - The Westmead Place Strategy has been prepared and placed on public exhibition from December 2020 to March 2021. The Westmead Place Strategy identifies a bold vision for Westmead to be Australia's premier health and innovation district with a jobs growth of 50,000 by 2036. The Strategy includes an action to undertake further studies for housing intensification and diversification within 800 metres of Westmead Station.
47. The site is now exceptionally well located with immediate proximity to not just a single train station, but a train station, metro station and light rail station. The site is also within a precinct which is earmarked for significant jobs and student growth immediately around the site. Therefore, it is critically important to ensure that this significant landholding optimises the delivery of housing to support this growth, within the previously identified urban design framework for the site. Accordingly, the changes in the strategic and planning context have prompted a design review of the approved development to understand whether it has sufficiently fulfilled the environmental capacity of the site.

4.2 General Description

48. An urban design review has been undertaken by Gyde in collaboration with Turner architects and has identified that an alternative approach towards the development of the site compared to the approved development DA 1271/2016 would achieve urban design benefits including greater diversity of scale, increased variety of architectural expression, and an accentuation of the slenderness of form of the tower. These benefits are achieved **whilst still adhering to the previously established urban design principles for the overall site**, including the principle of downward transition from south to the north.
49. The proposed development is for alterations and additions to an approved residential development DA 1271/2016 for the following:
 - Additional 4 floors (12.3m) to Buildings D
 - Additional 4 floors (15.05m) to Building F
 - Increase in apartments from 344 to 405 units
 - Increase in Gross Floor Area from 28,825 square metres to 34,163.6 square metres
 - Additional communal open space at Level 10 on Building E and Level 14 on Building D
 - Refinement to the architectural expression of the buildings
 - Various changes to the layout and arrangement of previously approved apartments
50. The proposed alterations and additions to the approved development DA 1271/2016 are detailed on architectural plans prepared by Turner Architects which accompany this application.
51. The proposal as amended is described as the erection of a 6 to 24 storey residential flat development above 4 basement levels. The amended proposal retains the 'U' shaped building footprint above a single storey landscaped podium which provides a common open space area for the residents.
52. The amended distribution of built form and massing of the building across the site is the result of a further analysis of the context of the site and the desire to deliver a positive urban design outcome that is consistent with the desired future character for the site and the Westmead precinct generally. The amended proposal is a high quality transit orientated development that will provide housing choice in a location that enjoys exceptional access to a range of employment, health and educational facilities as well as a range of public transport options.
53. The additional height does not result in an unacceptable shadow impact to the recently completed development at 5-7 Maple Tree Road which remains compliant with the ADG guidance.
54. The family of heights retain an appropriate contextual relationship with the development to the south and future development to the north. In this regard the higher buildings have been located in the south western corner of the site with the building height still decreasing toward the north and east to provide a transition in scale providing an appropriate level of visual relief between the development and the heritage significant buildings.



Figure 7:

Approved
development
on the site



Figure 8:

Proposed
amendments
with 4
additional
floors to
Buildings D
and F



Figure 9:

CGI of
approved
development
facing north-
west



Figure
10:

CGI of
proposed
development
facing north-
west



Figure
11:

CGI of
approved
development
facing south-
west



Figure
12:

CGI of
proposed
development
facing south-
west

4.3 Urban Design Principles

55. The Urban Design Report prepared by Gyde which accompanied the development application is attached as Appendix A to this Clause 4.6 Written Request. The Urban Design Report discusses the urban design principles for the site in detail and discusses how the subject application responds to the principles.
56. Pertinent parts of the discussion in the Urban Design Report are provided below:

5. URBAN DESIGN PRINCIPLES

5.1 The urban design principles underpinning the development of the site and the immediate precinct have evolved over a complex and unique planning history. Due to issues identified with the existing planning controls applicable to the site, Parramatta Council, along with its design review panel and the landowner have sought to address sub-optimal development controls embedded in the PLEP 2011. This has since occurred via progressive DA approvals, which have facilitated improved urban design outcomes that achieve compliance with SEPP 65 and the ADG, which was not possible under the applicable controls.

The existing development consents and the development that has so far occurred in the precinct have significantly varied the applicable controls under PLEP 2011 via a merit based and peer reviewed assessment processes.

As the applicable controls under PLEP 2011 have been **abandoned**, this report takes the more relevant and meaningful approach to consider the planning and urban design principles underpinning subsequent development consents applicable to the site and the precinct. As PDCP 2011 controls were developed in conjunction with the applicable controls under the PLEP 2011, departure from the DCP controls is warranted. However, these have been considered throughout the sequential DA processes on a principles basis.

6. URBAN DESIGN REVIEW

There are few locations in the metropolitan area in such an advantageous transit nexus that connects high frequency underground Metro line trains, frequent metropolitan and regional rail services, light rail and high frequency T-way services. This uniquely positions the site in a major transit oriented health, education and innovation hub with excellent access across the local, district, metropolitan and regional transit reach.

Since development consent for Lot 4 and 5 were was granted in 2016, commitment to the future Parramatta Light Rail, Sydney Metro West and hospital expansion have significantly changed the employment and public transport context for this location.

As consent for development preceded commitment to these key infrastructure items, the current development consent for Lot 4 did not capture opportunities to respond to the future enhanced transit oriented and land use context, when on a strategic level, increased residential capacity on the site would certainly be considered. The same can be said for Lot 5 but as it is now constructed, the opportunity for this to occur has since passed, meaning that increased density on Lot 4 is one of few remaining

shovel ready opportunities to respond to key infrastructure investment by providing increased residential density in short walking distance to the interchange.

The development consent for Lot 4 also precedes the adoption of the LSPS and the exhibition of the Draft Westmead Place Strategy. As outlined in Section 4, these documents clearly support focusing and intensification of land use adjacent to the future Westmead interchange and the employment, service and knowledge opportunities presented by the expanding health innovation and education precinct. This will facilitate integrated land use and transit, as well as making the most of the government's transport investment.

Increased density will provide greater opportunity for people to live close to jobs, education, health services and transport in a strategic location with a higher level of public domain amenity and connectivity.

The strategic merits of increasing density on one of the last remaining large consolidated development parcels adjacent to this interchange are clear. The focus of the remainder of this report is therefore on the site specific merits of increased density.

To inform our understanding of the site specific merits of the proposal, we consider whether: the additional density can be accommodated with acceptable and manageable impacts; it corresponds to the overarching urban design principles that have evolved to guide and underpin the development and approval outcomes of the precinct outlined in Section 5 - Table 5; and any departures (if any) from those underlying principles are justifiable.

As assessment of the amended development in relation to the Table 5 Urban Design Principles is provided as Appendix A. This demonstrates that the amended concept is generally consistent in principle, with already approved outcomes. This is largely because the amendments mainly involve the increase in height on Building D1 and Building F, along with some corresponding internal adjustment and reconfigurations of units to maintain compliance with ADG requirements.

As the fundamentals of proposed built form have not changed, Gyde's Appendix A analysis of the proposed development highlights a need to focus on the proposed amendment and how they relate to the following (Table 5) urban design principles. Consideration of these matters is provided in the following sections.

6.1 HEIGHT TRANSITION

The site planning for the proposed development generally adheres to the same urban design principles as previously approved under the current development consent.

The relationship between built form and public space remains unchanged with the building set out in a perimeter block arrangement, promotes positively interfaces and overlooks the public street, access ways and open space while enabling the privacy of the school grounds to be managed sensitively.

This also allows for solar penetration into the building cluster from the north west where is of best advantage to the common open space areas, irrespective of the increased building height to Building D1 and F.

The increase in building height warrants consideration for height modulation at the precinct scale. This is considered in relation to the principle of focusing taller building heights at the southern and of the precinct adjacent to the rail, and transitioning downward towards the north.

We consider the amended design in relation to the principle of transitioning building height downwards towards the north as reflected in the existing development on Lot 5, the current consent on Lot 4 and the intended future development potential of Lot 3. Across these lots a transition from south to north as follows:

- Lot 5 transitions from heights of 8-9-15-25 storeys;
- Lot 4 transitions from height of 6-9-11-20 storeys;
- Lot 3 in the north to 7 storeys.

Based on the amended concept, the transition scenario will occur as follows:

- Lot 5 transitions from heights of 8-9-15-25 storeys;
- Lot 4 transitions from height of 6-9-15-24 storeys;
- Lot 3 in the north to 7 storeys.

While the heights on Lot 4 will increase and will be comparable to the heights on Lot 5, they still achieve an acceptable northwards transition towards the Lot 3 height of 7 storeys in the north across, noting that this transition does not occur along public space and is therefore of minimal impact.

However, the clustering of 14, 9-10 and 7 storeys between the north of Lot 4 and Lot 3 will provide greater visual and streetscape interest and will not result in any deleterious effects in relation to building bulk.

Refer **Figures 13 and 14** for comparative analysis of the approved and proposed transitional massing in the precinct.

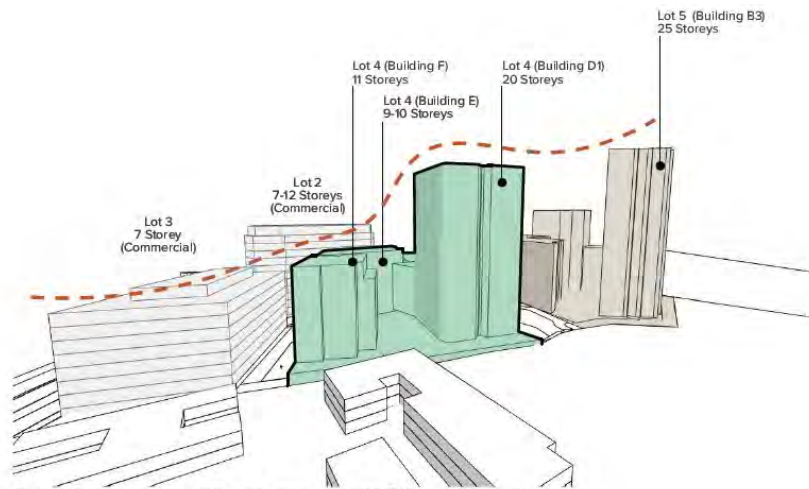


Figure 13. Height transition as approved in 2017 (Source: Turner)

Figure 13:

Figures 13 and
14 from the
Urban Design
Report

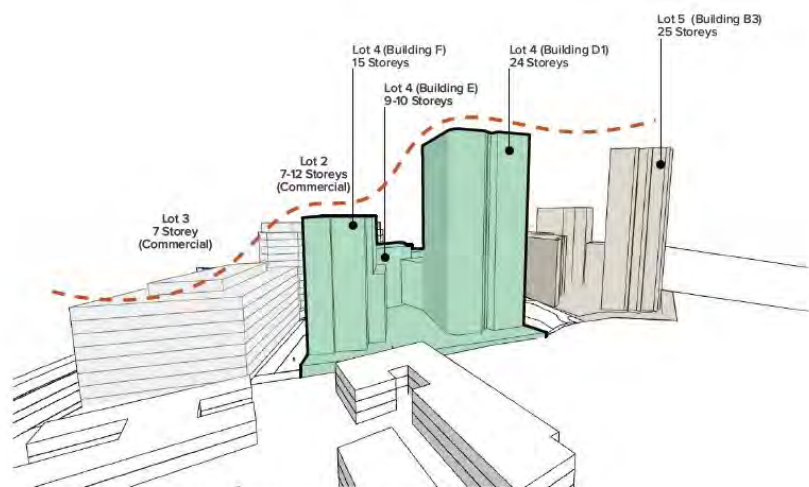


Figure 14. Height transition as proposed (Source: Turner)

6.2 BUILDING MODULATION

The underlying principle of building modulation guides the design and interrelationship between individual buildings at the building, site and precinct scale. This assists in establishing the visual quality and interest of building form, and the balance between the uniqueness and coherency of architectural language. In this regard the principles seek to create streetscapes that tie together with a unifying character, but provide distinctive characterisation to promote visual interest.

Already built into the existing development consents is a set of individually characterised buildings with a with a high level of articulation and modulation. A unifying contemporary character is achieved with the use of bespoke design elements such as bay window boxes on upper levels. A variety of materials and finishes and alternating vertical and horizontal emphasis enhances individual character. This approach will be carried over from the current development consent.

At the site and precinct scale, we consider the arrangement and variances of volumetric form and roof height. The current development consent for Lot 4 provides for a combination of street wall and tower elements of differing shapes and forms to achieve varied roof lines and distinct characterisation between buildings. The same can be said for the development forms on Lot 5.

The amendments proposed will continue to adhere to the principle of modulated height while maintaining the desired 9-10 storey street wall scale on Farmhouse Road and in the immediate vicinity of the heritage item. **The additional height on Building D1 and Building F will enhance the slenderness of both buildings establishing a more elegant form and reducing perceived building bulk.**

The additional height on Building D1 will be comparable to the height of the tallest building on Lot 5 (i.e. Building C1). The additional height on Building F will be comparable to the mid rise building on Lot 5 (Building B1). The amendments to heights on Lot 4 will respond cohesively to the design approach on Lot 5. As the amended development concept seeks to include additional levels onto the existing approved development and to maintain the visual language that is reflected in those approvals, the elements of visual variance, individual characterisation have not changed. In terms of the modulation of height on Lot 4, the amended development enhances modulation in that it provides a greater sense of distinction an individuality between Buildings E and F, which were originally at a comparable height.



Figure 15. Building Modulation (Source: Turner)

Figure 14:

Figure 15 from
the Urban
Design Report

6.3 SOLAR ACCESS - ADG COMPLIANCE

6.3.1 ADG - Solar compliance within Lot 4

The increase in height for Buildings D1 and F as been designed to ensure that living rooms and private open spaces of at least 70% of apartments receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter as required by the Apartment Design Guide. Refer Figure 16.

In order to achieve ADG compliance, all 3 bed apartments have been relocated to the upper floors of Building D1 where they will have maximum outlook and amenity. 1 bed apartments have been relocated to the lower levels of the tower and to Building F. These are generally north facing to provide a high level of amenity and allow the proposal meet minimum ADG solar compliance.

Communal open space areas on Lot 4 meet the minimum 50% ADG requirement for mid winter solar access at 58%, as illustrated in Figure 17.

6.3.2. ADG - Solar compliance within Lot 5

The increase in height for Buildings D1 and F has been designed with consideration for impacts on Lot 5 in terms of amenity and the ability for Lot 5 to maintain its level of compliance with the solar access requirements of the ADG. As can be seen in Figure 19, the overshadowing effects of the additional building height generally occurs outside of Lot 5.

Based on information provided in Turner's DA package, Lot 5 maintains 70% of all apartments achieving compliance with solar access requirements of the ADG.

Communal open space areas on Lot 5 meet the minimum 50% ADG requirement for mid winter solar access at 62%, as illustrated in Figure 18.

6.4 SOLAR ACCESS - PRECINCT IMPACTS

6.4.1. Building D1 - Solar impacts of increased building height on the broader precinct

As can be seen in Figure 19, the focus on delivering slender tower forms results in fast moving shadows with short dwell times in any particular location. The additional height on Building D1 results in minor increases in overshadowing which largely falls within the railway reserve and is therefore of minimal and acceptable impact. The additional height results in minor increases in overshadowing between 2pm and 3pm affecting part of the commercial centre at the corner of Hawkesbury Road and Railway Parade. There are no impacts of the additional height on the retail plaza.

The solar overshadowing is therefore of minimal and acceptable impact resulting from additional height on Building D1.

6.4.2. Building F - Solar impacts of increased building height on the broader precinct

As can be seen in Figure 19 there is a minor increase in overshadowing in the peripheral area of the Marist School sports oval, which occurs for a

brief period of time in the morning. The sports oval is unaffected by overshadowing for the remainder of the day. Additional overshadowing impacts on the retail plaza and the open space surrounding the heritage item are negligible as affects are generally limited to the at grade car park.

The solar overshadowing is therefore of minimal and acceptable impact resulting from additional height on Building D1.



Figure 19: Winter solstice - Precinct overshadowing diagrams (Source: Turner)

Figure 15:

Figure 19 from the Gyde Urban Design Report

4.4 Design Excellence Advisory Panel

57. The subject proposal was presented to Council's Design Excellent Advisory Panel on 2 December 2021. The Panel members at this Panel were the same members who were involved in the extensive workshop process that occurred during the original Development Applications for Lot 4 (the subject site) and Lot 5 which were prepared concurrently and subsequently approved. The presentation was undertaken by Turner architects, Gyde (urban design), and Sutherland & Associates Planning.

58. The presentation included a comprehensive discussion in relation to significant strategic planning, transport planning and policy changes in relation to Westmead. Further, the presentation included a detailed architectural and urban design analysis of the site and context and demonstrated how the proposal will achieve urban design benefits including greater diversity of scale, increased variety of architectural expression, and an accentuation of the slenderness of form of the tower. The presentation explained how these benefits are achieved whilst still adhering to the previously established urban design principles for the overall site, including the principle of downward transition from south to the north.

59. In response, the Panel were generally supportive of the proposal and concluded the following in the minutes of the meeting:

The Panel were generally supportive of the proponent's additional units and revised architectural expression and distribution of program across the lot.

60. In addition, the Panel identified a number of specific and discreet items to be addressed, including:

- Reduction in car parking
- Increase in common open space
- Improvement of the substation presentation

- Shadow analysis upon future light rail station
61. The core issues of bulk, scale, massing and architectural expression were considered satisfactory at the first Panel meeting.
 62. The subject proposal was presented to Council's Design Excellent Advisory Panel for a second time on 10 March 2021, with the presentation focused on addressing the specific items identified by the Panel for further work.
 63. However, there were two new Panel members at the second Panel meeting who were unimformed of the site, the previous approvals, the proposed application, the content of the first Panel presentation, and the minutes from the first Panel meeting.
 64. The Minutes of the second Panel meeting are contradictory. Paragraph 2 reiterates that:
 2. The December Panel expressed general support for the proposal based on the site location in close proximity to a range of public transport services and subject to;
 - a. The provision of additional common open space using other podium spaces on levels 3,8, and 20-23
 - b. Additional shadow analysis relative to the light rail platform area.
 - c. Reduction in carparking provision with proximity to public transport services.
 - d. Incorporating the substation into a more unified urban element to minimise its impact on the shared pedestrian space
 65. The elements (a) to (b) have been addressed by the amended application.
 66. Notwithstanding, Paragraph 10 of the Minutes to the second Panel meeting contains commentary that is fundamentally contradictory to Paragraph 2:

In the previous DEAP Report, the Panel recommended that the Council's Urban Design Team consider the impacts on the public domain in reference to the desired future character for the precinct; a substantial increase to height and density clearly impacts on the public domain, so it would typically only be justifiable in terms of improved public benefit, amenity and urban design quality. However, no such argument has been put forward in this case. For a proposal of this scale, this is not only highly unusual but also risky - especially considering the magnitude of the non-compliances already approved.

While perspective views are shown of the approved and proposed massing for example, no improvements to proportion or language are indicated, or any modifications proposed to gracefully integrate the extra bulk. Even the height transition argument previously made is not verified at project scale, with adjoining built context simply not shown on plans, elevations or sections. Without a demonstrable argument, it is very difficult for the Panel - and a consent authority - to understand the proposal's merits, let alone justify further breaches of height and density. It is therefore

strongly recommended that a clear and substantial argument is provided to justify the proposal, especially in terms of :

- public benefit
- improved urban design quality
- improved relationship with the public domain, including contextual fit, streetscape, landscape, aesthetics, pedestrian comfort etc

67. The content of Paragraph 10 is uninformed and clearly not prepared following a review of all of the documentation submitted with the development application, including the Urban Design Report prepared by Gyde, or the presentation to the first Design Review Panel.

68. In particular, both the Urban Design Report prepared by Gyde and the presentation to the first Design Review Panel specifically discuss and demonstrate:

- Improvements to proportion and language of Buildings D1 and F (Section 2 of the first DEAP presentation, Section 3 of the second DEAP presentation, and Section 6.2 of the Urban Design Report prepared by Gyde, as quoted in paragraph 42 to this Written Request)
- Verification of the height transition at a project scale with adjoining built context (Section 2 of the first DEAP presentation, Section 3 of the second DEAP presentation, and Section 6.1 of the Urban Design Report prepared by Gyde, as quoted in paragraph 42 to this Written Request)
- Improved Urban Design Quality (Section 2 of the first DEAP presentation, Section 3 of the second DEAP presentation, and Section 6.2 of the Urban Design Report prepared by Gyde, as quoted in paragraph 42 to this Written Request)
- Improved relationship with the public domain (Section 2 of the second DEAP presentation)

69. Paragraph 10 is clearly at odds with Paragraph 2, because it is uninformed. Contrary to the assertion of Paragraph 10, detailed material has been provided which demonstrates the proposal's merits and comprehensively justifies further breaches of height and density. The Council have agreed with this in the assessment report to the Local Planning Panel on 16 August 2022, where it is stated:

It is noted that the separate meetings were chaired by different Panel members, which accounts for the differing advice.

The additional storeys proposed in this application was looked at favourably by the first Panel, who was supportive of the increased density and Architectural expression. It was on this basis that the applicant proceeded with amended documentation to address the remaining concerns raised by DEAP.

Accordingly, although the second Panel raised additional issues and questioned supporting the increase in density and built form, Council has undertaken the proposed variations on its merits under the Clause 4.6 discussions under the PLEP2011 compliance table.

From Council's perspective, the overall design of the development was assessed and satisfied the Design excellence requirements of SEPP65 when DA/1271/2016 was approved.

70. For completeness, a comprehensive response to Paragraph 10 has been prepared by Gyde to address the content of Paragraph 10 of the second DEAP minutes and is Appendix B to this Clause 4.6 Written Request.

5.0 CLAUSE 4.6

5.1 Clause 4.6 Exceptions to development standards

71. Clause 4.6(2) of the PLEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by the PLEP, or any other environmental planning instrument.
72. However, clause 4.6(3) states that 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:
- that compliance with the development standard is unreasonable or unnecessary in the circumstance of the case, and
 - there are sufficient environmental planning grounds to justify contravening the development standard.
73. In accordance with clause 4.6(3) the applicant requests that the Building Height development standard be varied.

5.2 Development Standard to be varied

74. Clause 4.3 states:

(1) The objectives of this clause are as follows:

- to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,
- to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- to require the height of future buildings to have regard to heritage sites and their settings,
- to ensure the preservation of historic views,
- to reinforce and respect the existing character and scale of low density residential areas,
- to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

75. Building height (or height of building) is defined in the dictionary of PLEP as the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.
76. There are two height controls on the subject site being 31 metres (Zone U1) in the northern portion of the site, 40 metres (Zone W) in the southern portion of the site as shown in Figure 16.

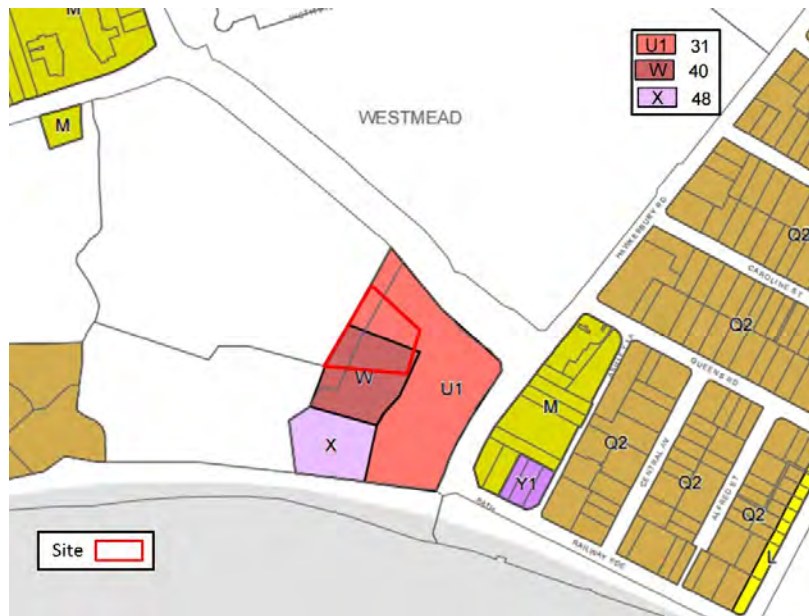


Figure 16:

Extract from the
PLEP Height Map

5.3 Extent of Variation to the Development Standard

77. The table below provides a breakdown of the approved and proposed height of Building F which is located in the 31 metre height zone:

Height zone	Approved Height and Variation	Proposed Height and Variation	Incremental Exceedance	Cumulative Exceedance
31 metres	<ul style="list-style-type: none"> 38.35 metre height 7.35m or 23.7% variation 	<ul style="list-style-type: none"> 53.4 metre height 22.4m or 72.25% variation 	+48.55%	+72.25%

78. The table below provides a breakdown of the approved and proposed height of Building D1 which is located in the 40 metre height zone:

Height zone	Approved Height and Variation	Proposed Height and Variation	Incremental Exceedance	Cumulative Exceedance
40 metres	<ul style="list-style-type: none"> 72.15 metre height 32.15m or 80.3% variation 	<ul style="list-style-type: none"> 84.5 metre height 44.5m or 111.25% variation 	+30.95%	+111.25%

79. The approved development of the site under DA 1271/2016 already departs by 23.7% from the 31 metre height zone and 80.3% from the 40 metre height zone. As a result, the consideration of whether “strict compliance” is unreasonable and unnecessary has already been determined in the approval of DA 1271/2016.

80. Furthermore, whilst the proposal results in a total cumulative exceedance to the 31 metre height zone of 72.25%, the proposed additional 4 storeys to Building F is only responsible for an incremental exceedance of **48.55%**.
81. Likewise, whilst the proposal results in a total cumulative exceedance to the 40 metre height zone of 111.25%, the proposed additional 4 storeys to Building D1 is only responsible for an incremental exceedance of **30.95%**.
82. The development to be assessed under Clause 4.6 of the PLEP is the subject application and the contravention of the standard proposed is not the cumulative exceedance of the development standard, rather than the incremental increase to the 31 and 40 metre height controls of 48.55% and 30.95% respectively. Nevertheless, the issues of cumulative exceedance of the building height development standards are also addressed in this Clause 4.6 Written Request so that there can be no doubt that Clause 4.6 is satisfied.

5.4 Clause 4.6(3)(a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

83. Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.
84. This was recently re-affirmed in the matter of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.
85. Whilst it is only necessary to address the first method of the five part test described in *Wehbe v Pittwater Council*. [2007] NSWLEC 827, which alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement, this Clause 4.6 Written Request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case based on multiple tests, as discussed below:

5.4.1 Test 1: the objectives of the standard are achieved notwithstanding non-compliance with the standard;

86. The specific objectives of the building height development standard, as specified in clause 4.3(1) of the Parramatta Local Environmental Plan 2011 are identified below. A comment on the proposal’s consistency with each objective is also provided.

Objective (a): to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan

87. Firstly, it is noted that this objective relates to the land covered by the Parramatta LEP 2011, which includes all land to the north of the railway line. Specifically, the transition of built form does not relate to land to the south of the subject site beyond the immediately adjacent Lot 5 development that has recently been completed.
88. This objective is principally concerned with transition in built form and land use intensity.

89. This objective is therefore also aligned with the principle of transition in scale identified in Section 4.3.4.1 of the DCP which applies to the subject and surrounding sites known collectively as Special Area: 158-164 Hawkesbury Road and part of 2A Darcy Road, Westmead, which states (in part):

Taller buildings are to be located within the south western corner of the site and should reduce visual bulk, provide architectural modulation, reduce overshadowing and encourage dual aspect apartments for enhanced access to sunlight and breeze.

The building form to the north and east will be lower in height to optimise solar access to private and public open space and would allow view corridors to the heritage buildings.

90. The proposed development seeks for 4 additional storeys to building D1 and 4 additional storeys to Building F. The additional 4 storeys to Building D1 results in an incremental height variation to the 40 metre zone, whilst the additional 4 storeys to Building F results in an incremental height variation to the 31 metre zone.
91. Section 6.1 of the Gyde Urban Design Report (Appendix A and paragraph 42 of this Written Request) specifically addresses the issue of transition in built form and demonstrates that the additional 4 storeys for each building retains a transition in scale from south to north. The Urban Design Report specifically notes that “While the heights on Lot 4 will increase and will be comparable to the heights on Lot 5, they still achieve an acceptable northwards transition towards the Lot 3 height of 7 storeys in the north across, noting that this transition does not occur along public space and is therefore of minimal impact”.
92. Figure 13 in this Written Request clearly illustrates that a transition in scale is retained, and in fact, the proposal improves the actual perception of transition, with a more deliberate and defined “stepping” from south to north.
93. The discussion in Section 6.1 of the Gyde Urban Design Report clearly demonstrates that the proposed distribution of height across the site provides a transition in scale from south to north which sits comfortably within the family of buildings within this precinct. The highest component of the proposed development (the 24 storey tower) is located on the south western portion of the site and is consistent with the intent of the LEP in terms of the distribution of height across the overall site. The proposal incorporates lower building heights on the northern and eastern portions of the site, and accordingly provides an appropriate transition in built form and land use intensity within the area and satisfies Objective (a) of the building height development standard to provide a transition in built form and land use intensity is satisfied by the proposal.

Objective (b): to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development

94. Objective (b) is directed to the minimisation of specified amenity impacts. It is important to recognise that minimisation of such matters does not require that there be no impact: *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 per Preston CJ at [87].
95. Given that the height controls on the subject site have been abandoned (noting there is already an 80.3% building height variation on the subject site), the proposed extent of height variation has been determined based on a design that fits within the established principle of height transition within the UWS Special Area, and the minimisation of amenity impacts to surrounding properties. That is, the extent of height has been deliberately driven by the achievement of minimisation of adverse impacts. The specific impacts as discussed below.

Minimise Visual Impact

96. A visual impact is considered to be changes to the scenic attributes of the landscape or vista as a result of an introduced element or building and the associated changes in the human visual experience of the landscape.

97. An adverse visual impact occurs when the introduced element is not compatible or harmonious with its surrounding environment, or desired future character for that environment. In relation to the consideration of compatibility, the Land and Environment Court matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 provides guidance in relation to the meaning of compatibility and also establishes a planning principle to guide this consideration. Commissioner Roseth explains that there is frequently confusion about sameness and compatibility, and specifically provides that:

The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.

98. Accordingly, an acceptable visual impact is achieved where the proposed additional height is considered to exist in harmony with its surroundings. In this instance, the achievement of a harmonious relationship of the proposal within its context relies on the capacity for the proposal to fit within the established urban design principles for the site and in particular the identified transition in scale.

99. Figure 13 in this Written Request clearly illustrates that a transition in scale is retained, and in fact, the proposal improves the actual perception of transition, with a more deliberate and defined “stepping” from south to north. The discussion in Section 6.1 of the Gyde Urban Design Report clearly demonstrates that the proposed distribution of height across the site provides a transition in scale from south to north which sits comfortably within the family of buildings within this precinct.

100. A further element in relation to visual impact beyond the scale of the proposal relates to the actual architectural expression of the proposal. As can be seen in Figures 9 and 10, and also 11 and 12, the additional 4 storeys to Buildings D1 and F maintain the same architectural expression as previously approved, and therefore the proposal does not alter the architectural expression of the development, which has previously been considered to be acceptable by the consent authority.

101. Having regard to the above, the proposal has minimised visual impact as it will sit harmoniously within the emerging context of the site, and the architectural expression of the development remains unaltered.

Minimise Disruption of Views

102. The approved development on the subject site is taller than any building within Westmead, with the exception of the recently completed development immediately to the south. The proposal is for 4 additional floors to Buildings D1 and F respectively, and so the only potential impact to views are those from the upper four levels of the tower on the southern adjacent site, in a northerly direction over the approved development. Some of the northerly views obtained from the upper four floors of that development will be removed as a consequence of the proposal.

103. However, in the Council assessment report for DA 1271/2016, Council concluded that:

Locating the tallest point of the development to the south-western corner of Lot 4 does not in this instance obstruct any views to or from the site identified in Council's planning controls' (p. 40)

104. The four upper levels on the southern adjacent tower have a sweeping 180 degree outlook to the east, north and west. However, there are no iconic or remarkable views over the site from the southern adjacent upper levels, with the impacted north-easterly aspect being towards Baulkham Hills. The outlook is also obtained over many multiple property boundaries. Figure 17 below illustrates the narrow outlook corridor that will be impacted by the additional 4 floors to Building D1 from the upper four floors of the eastern face of the tower on the southern adjacent site.



Figure 17:

The narrow outlook corridor (green) that will be impacted by the additional 4 floors to Building D1 from the upper four floors of the eastern face of the tower on the southern adjacent site

105. Having regard to the fact that there are no identified view corridors over the subject site, no iconic views to the north-east obtained over the site, and only a narrow outlook corridor that is impacted by the proposal, it is considered that the proposal has minimised view impacts.

Minimise Loss of Privacy

106. The proposed additional 4 floors to Buildings D1 and F will not result in any unacceptable privacy impact.
107. Whilst the additional 4 floors to Building F are opposite existing approved floors of Building D1 (Levels 10-13), there is a separation distance of 25 metres between Buildings D1 and F which exceeds the minimum required separation distance of 24 metres above 8 storeys as required by Objective 3F-1 of the Apartment Design Guide.
108. Likewise, whilst the additional 4 floors to Building D1 are opposite to the north of the recently constructed tower on Lot 5, the separation distance is well in excess of the 24 metres as required by Objective 3F-1 of the Apartment Design Guide.
109. The approved development on the subject site was designed to protect the privacy of the western adjacent school by ensuring that there are minimal windows on the western facades of Buildings D1 and F, or that the windows are screened. This approach is generally maintained for the additional 4 floors to each of these

buildings, and whilst some windows are unscreened, these are for the top four floors for Building D1 which are elevated such a significant distance above the ground level that these windows do not result in any meaningful impact to the privacy of the adjacent school.

110. Finally, the Acoustic Report prepared by Acoustic Noise & Vibration Solutions Pty Ltd dated 14 September 2021 which accompanied the subject development application provides that the proposed development:

'...will have no adverse effects in regard to the internal amenity of noise levels at nearby receivers, provided recommendations in our approved original acoustic report dated the 21st December, 2016...are adhered to'.

111. The nearby receivers are understood to be the adjacent sites.

Minimise Loss of Solar Access

112. The proposed development has been designed to minimise the loss of solar access to nearby properties.

113. Section 6.4 of the Urban Design Report prepared by Gyde, found at Appendix A to this Clause 4.6 Written Request includes a detailed analysis in relation to the solar impacts associated with the proposal. This is also provided at Paragraph 42.

114. In particular, the following is noted:

- The increase in height for Buildings D1 and F as been designed to ensure that living rooms and private open spaces of at least 70% of apartments within the development on the subject site receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter as required by the Apartment Design Guide.
- Communal open space areas on the subject site meet the minimum 50% ADG requirement for mid winter solar access.
- The increase in height for Buildings D1 and F has been designed with consideration for impacts on the southern adjacent Lot 5 in terms of amenity and the ability for Lot 5 to maintain its level of compliance with the solar access requirements of the ADG. The overshadowing effects of the additional building height generally occurs outside of Lot 5 which maintains 70% of all apartments achieving compliance with solar access requirements of the ADG. Likewise, communal open space areas on Lot 5 meet the minimum 50% ADG requirement for mid winter solar access at 62%.
- The additional height on Building D1 results in only minor increases in overshadowing which largely falls within the railway reserve and is therefore of minimal and acceptable impact. The additional height results in minor increases in overshadowing between 2pm and 3pm affecting part of the commercial centre at the corner of Hawkesbury Road and Railway Parade. There are no impacts of the additional height on the retail plaza. The solar overshadowing is therefore of minimal and acceptable impact resulting from additional height on Building D1.
- The proposed increase in height to Building F results in a very minor increase in overshadowing in the peripheral area of the Marist School sports oval for a period of only 15 minutes, which occurs for a brief period of time in the morning. The sports oval is unaffected by overshadowing for the remainder of the day. Additional overshadowing impacts on the retail plaza and the open space surrounding the heritage item are negligible as affects are generally limited to the at grade car park.
- Analysis of shadows from the proposed additional Lot 4 built form indicates no extra overshadowing to the new light rail platforms as seen in Figure 18 below.

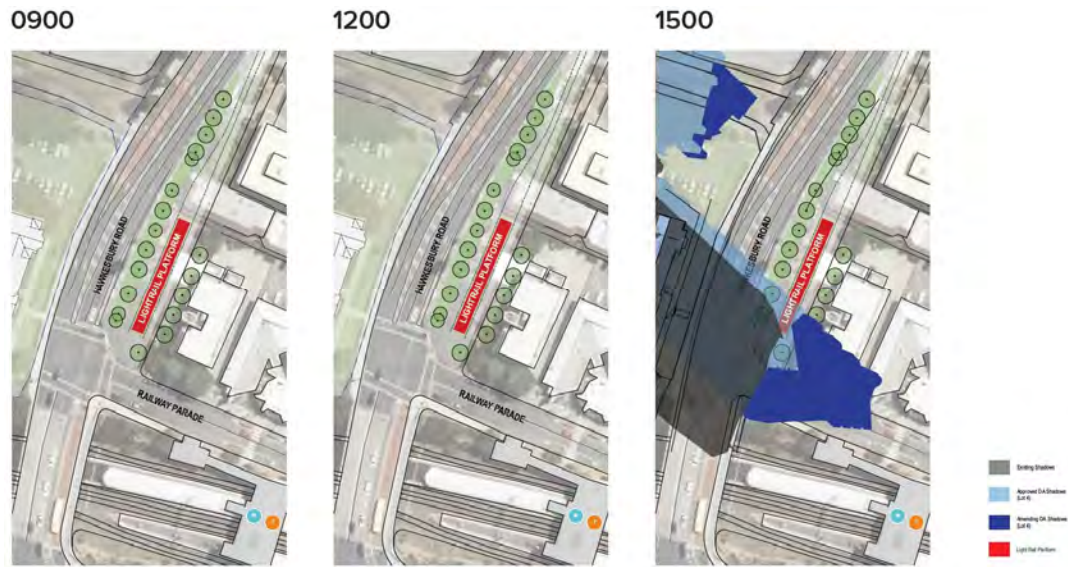


Figure18:

There is no extra shadow to the light rail platform as a result of the proposal

Objective (c): to require the height of future buildings to have regard to heritage sites and their settings

115. The subject site is located in close proximity to two local heritage items, the University of Western Sydney St Vincent's the Building, and the Victorian Residence, which are both located within the former University of Western Sydney precinct that contains the subject site.

116. In consideration of the heritage impacts associated with the proposed development for 4 additional storeys to Buildings D1 and F, it is firstly relevant to note that on page 40 of the Council assessment report for the approved development DA 1271/2016, the following was concluded the following in relation to heritage impacts:

The departure to the height in this instance does not result in any adverse impacts to the heritage item located on Lot 1 given its location and separation. Council's Heritage Adviser upon review of the proposal, found the development to be satisfactory and did not raise objections to the variation to the height.

117. The grounds identified above, being the location and separation of the subject site relative to the identified heritage items, remain relevant to the subject proposal. That is, the lower levels of the approved building remain unchanged by the proposal which simply seeks 4 additional floors above two buildings, and so the conclusions from Council's earlier assessment are unchanged by this proposal.

118. The subject application was accompanied by a Heritage Impact Statement prepared by Urbis which is Appendix E to this Clause 4.6 Written Request. The Heritage Impact Statement provides the following assessment in relation to the heritage impact of the proposal:

The proposed changes to the application are primarily contained to a proposed height increase in Buildings D& F, both of which are located in the western portion of the subject site, furthest from the heritage items located to the south-west of the subject site. It is proposed to increase

both buildings by four storeys. Minor changes to the facades of these building are also proposed, however, all façade changes are minor and will still maintain the approved material choices and characteristics of the originally approved design. This includes their well modulated forms and variety of complementary building materials to reduce the visual scale of the proposed development.

The overall height of the building located closest to the heritage items (Building E) is not being changed as part of the proposal.

While the increase of four storeys to both Building D & F will increase the overall scale of the development, given the existing approved height, the addition of four storeys is not considered to result in any further impact to the heritage items primarily due to the distance between these building and the heritage items. The variable building heights of the approved development are still maintained, and still allow for a transition from taller development at the west to lower scale development at the east, as the development approaches the heritage items.

Minor changes are proposed to Building E, however, these changes are limited to changes to the façade comprising minor changes to window and door openings. The proposed changes to Building E will not have any adverse impacts on the heritage items located to the east.

As noted in the NBRS HIS, no potential views and vistas from Parramatta Park will be affected as the development lies outside of the significance view corridors associated with Old Government House and Domain Parramatta Park.

119. The proposal is satisfactory in relation to Objective (c) of the building height development standard in that the proposed bulk and scale of the proposal has regard to the nearby heritage items and their settings. In particular, the closest building elements to the heritage items remain unchanged and the height increases occur away from the heritage significant buildings. The proposed materials and finishes have been chosen to compliment the heritage significant buildings. The proposed development will have an acceptable impact on views to and from heritage items. Overall the proposal will have an acceptable impact on the heritage significance of nearby heritage items and their settings.

Objective (d): to ensure the preservation of historic views

120. The original development application DA 1267/2016 for the site was supported by a Heritage Impact Statement prepared by NBRS dated 22 December 2016, which identified that the only identified historic view of any relevance in proximity to the site are those towards Old Government House and Parramatta Park. To determine the impact of the development on the world heritage listed Old Government House and Domain, a views and vistas assessment was undertaken looking towards the proposed development from the following locations within Parramatta Park identified as “critical views” relevant to the subject site:

- From the Dairy to Westmead and Wisteria Gardens; and
- Out of the Park from the Domain to Westmead, the west and north-west.

121. The NBRS assessment provides that views west and northwest from these locations within Parramatta Park to the subject site at Westmead are obscured by densely planted vegetation and tall trees. In the light of

this, any view to the subject site has been obscured by dense vegetation planted on the Parramatta Park site.

122. The subject application is subsequently accompanied by a Heritage Impact Statement prepared by Urbis which is Appendix E to this Clause 4.6 Written Request. The Heritage Impact Statement provides the following assessment in relation to historic views:

As noted in the NBRS HIS, no potential views and vistas from Parramatta Park will be affected as the development lies outside of the significance view corridors associated with Old Government House and Domain Parramatta Park.

123. The proposed development will not have any meaningful impact on historic views.

Objective (e): to reinforce and respect the existing character and scale of low density residential areas

124. Figure 17 below identified that the closest R2 Low Density zone to the subject site are approximately 780 metres to the north-west and 945 metres to the north-east.

125. The character of these R2 Low Density zones is that primarily of detached one and two storey dwellings. However, due to the significant distance between the subject site and the nearest R2 Low Density zones, there is no meaningful impact to the character of those zones as a result of the proposed height variations.

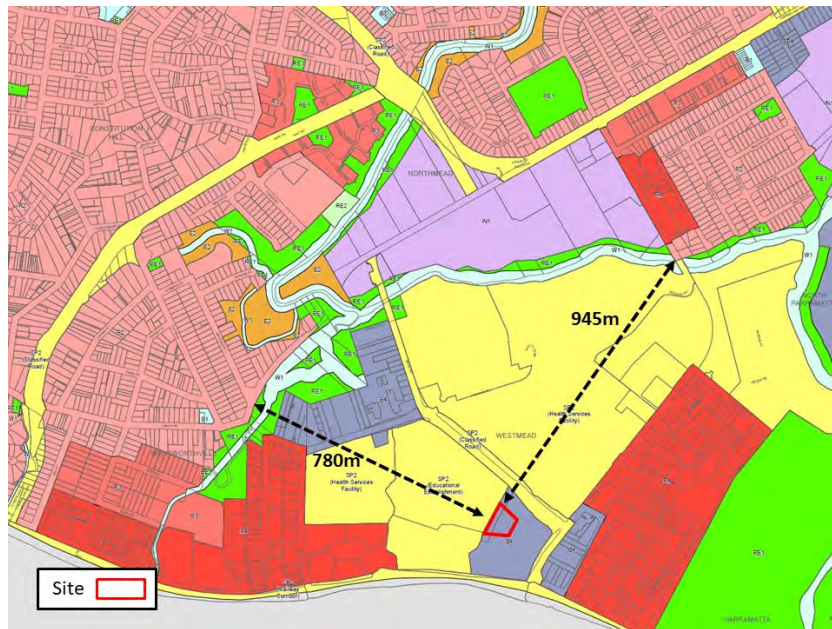


Figure19:

Closest R2 Low Density zones under the PLEP to the subject site

Objective (f): to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes

126. The subject site is not located within or nearby any of the commercial centres within the Parramatta LEP 2011, which are considered to be those sites zoned B1 Neighbourhood Centre, B2 Local Centre, or B3 Commercial Core. The site is a significant distance of over 600 metres from the nearest commercial centre and so the proposal results in no impact in relation to sky exposure and daylight to existing buildings in those centres.

127. Notwithstanding the above, the proposal does not result in any meaningful impact in relation to sky exposure and daylight to existing buildings within Westmead, as discussed previously. There is already an approved development on the subject site and the incremental increase is only 4 storeys above Buildings D1 and F respectively does not significantly alter the impact of the development in relation to sky exposure and daylight to the side and rear of the tower on the southern adjacent site. As discussed in Paragraph 106 above, the proposal does not prevent the achievement of a compliant level of solar access for the southern adjacent development.

128. Likewise, the proposal does not result in unsatisfactory impact in relation to sky exposure and solar access to key areas of public domain, parks and streets. The nearest park to the site is Parramatta Park which is 500 metres to the east and unaffected by the proposal. Whilst there are streets around and nearby the site, these are generally not considered to be “key” areas of public domain, other than the new light rail stop identified by the Design Excellence Advisory Panel for further assessment. As illustrated in Figure 18, analysis of shadows from the proposed additional Lot 4 built form indicates no extra overshadowing to the new light rail platforms.

129. Accordingly, the proposed variation to the height control does not result in any meaningful change when compared with the approved development in relation to sky exposure and day light to commercial centres, parks or key areas of public domain.

5.4.2 Test 2: the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

130. The underlying objectives and purpose of the building height control are relevant to the proposed development. However, the proposed development is consistent with those objectives as discussed above in Section 5.4.1 of this Written Request. The proposed building height still results in a development which is consistent with the desired future character for the subject site and the Westmead precinct generally, conserves the significance of the existing heritage buildings and sits comfortably within the context of the site with no significant adverse impacts to adjacent properties.

5.4.3 Test 3: the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

131. Compliance is no longer a relevant consideration as the previously approved development on the site has already varied the height controls which have effectively been abandoned on the subject site. Nonetheless, the proposed development is consistent with those objectives as discussed above in Section 5.4.1 of this Written Request. Due to the design, location and configuration of the proposed development, the proposal successfully achieves these objectives and will provide a considered built form response that will deliver a positive urban design outcome.

5.4.4 Test 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;

132. The building height controls for the site were derived from the ARUP masterplan which informed the Planning Proposal for the site. However, this masterplan has more recently been considered by Council to be “suboptimal” and Council has approved a substantially different site layout and suggested arrangement

of buildings under the infrastructure DA for the entire precinct DA/571/2014 which relied upon a Clause 4.6 request in relation to height.

133. As a result, the height controls and boundaries no longer correspond with the approved site arrangement and configuration such that Council has abandoned the building height controls within the Special Area: 158-164 Hawkesbury Road and part of 2A Darcy Road, Westmead as identified in section 4.3.4.1 of the Parramatta Development Control Plan 2011 (PDCP).

134. Three of the four development parcels within the precinct have now been approved with substantial height variations, as follows:

DA	Site	Height Controls	Approved Max Height/Variation	Approval Date
DA/968/2016	160 Hawkesbury Road (Lot 5), Westmead	<ul style="list-style-type: none"> 31m 40m 48m 	<ul style="list-style-type: none"> 51.6m/66.4% 39.6m/NA 83.1m/73.1% 	2/8/2017
DA/1271/2016	158-164 Hawkesbury Road and 2A Darcy Road (Lot 4), Westmead	<ul style="list-style-type: none"> 31m 40m 	<ul style="list-style-type: none"> 38.35m/23.7% 72.15m/80.3% 	1/11/2017
DA/868/2018	164 Hawkesbury Road, (Lot 2), Westmead	31m	39.1m/26%	4/12/2019

135. As illustrated in the table above, the approved development of the site under DA 1271/2016, which is proposed to be amended by the subject application, already includes a 23.7% departure from the 31 metre height zone and a 80.3% departure from the 40 metre height zone.

136. Council and the relevant consent authority has taken a consistent approach and position in the assessment of the above Development Applications. Appendix F to this Written Request contains extracts from each assessment report to illustrate this point.

137. The building height development standard has clearly been abandoned for this precinct by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

138. Strict compliance with the building height controls for the subject site has already been determined to be unreasonable and unnecessary on the subject site.

5.4.5 Test 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.

139. The proposed zoning of the land is considered to be reasonable and appropriate

140. In summary, strict compliance with the building height development standards is unreasonable and unnecessary in the circumstances of the case in that:

- The building height controls applicable to the site relate to a previous masterplan which has since been abandoned and so the building height controls are no longer relevant to the subject site. Evidence of this is the recent approval on the subject site which departed from the building height controls by 23.7% and 80.1%.
- Since the approval of DA 1271/2016 on the site, two additional rail infrastructure projects have been announced and construction commenced, such that the site is not is now exceptionally well located with immediate proximity to not just a single train station, but a train station, metro station and light rail station. In addition, the site is also within a precinct which is ear marked for significant jobs and student growth immediately around the site. Therefore, it is critically important to ensure that this significant landholding optimises the delivery of housing to support this growth, within the previously identified urban design framework for the site.
- The proposed distribution of built form and massing of the building across the site is the result of a further review and considered analysis of the context of the site and the desire to deliver a positive urban design outcome that will provide an appropriate curtilage to the heritage significant buildings located on the site.
- The amended massing of the development results in a higher level of modulation with the building height decreasing toward the north and east to provide a transition in scale to the future anticipated buildings surrounding the site as well as the heritage significant buildings to the south east such that the proposed arrangement of heights is appropriate for the site and its context.
- The proposed variation to the height control allows for a more slender built form and the proposed variation also facilitates a greater level of modulation in scale between the various built form elements of the building.
- The desired future character outlined for the overall site within section 4.3.4.1 of the PDGP indicates that the future built form on the site shall include taller, slender “statement” buildings located along the railway line to enable a strong visual relationship between the precinct and the CBD. Whilst the site is not directly adjacent to the railway line, the proposal appropriately responds to the desired future character, providing a 24 storey tower in the south western corner of the site. The proposed tower will complement the two towers on the southern adjacent site which are 15 and 25 storeys in height, satisfying the requirement that tall slender statement buildings be provided to enable a visual connection between the Westmead precinct and the Parramatta CBD located to the east.
- The design of the amended proposal involves a dynamic architectural language and a façade treatment with a high level of materiality that will compliment and improve the character of the area.
- A solar analysis prepared by Turner Architects accompanies the subject application and demonstrates that the amended proposal does not result in a significant adverse or non-complying impact to the surrounding properties. In fact, a detailed 15 minute assessment of the solar performance of the as-built building to the south at 5-7 Maple Road has been used to inform the proposed height by ensuring that the solar access performance of that building remains compliant at 70% of apartments receiving 2 hours of solar access on 21 June.
- There are no unacceptable adverse impacts in terms of shadow, view, visual and acoustic privacy impacts resulting from the proposed variation to the building height development standards which would warrant strict compliance, noting that strict compliance is no longer considered a relevant benchmark in any event.
- The proposed height and associated density will not result in any increase in traffic as there is no additional parking proposed.
- The proposed variation allows to site to optimise the delivery of housing in an ideal location within the demonstrated environmental capacity of the site and the proposed variation therefore allows for the most efficient and economic use of the land.

- Strict compliance with the development standard would result in an inflexible application of the control that would not deliver any additional benefits to the owners or occupants of the surrounding properties or the general public.
- Having regard to the planning principle established in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 most observers would not find the proposed development offensive, jarring or unsympathetic to its location and the proposed development will be compatible with its context.

As the proposal is consistent with the objectives of the building height control, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

5.5 Clause 4.6(3)(b) Are there are sufficient environmental planning grounds to justify contravening the development standard?

141. The Land & Environment Court matter of *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development

142. Preston J further observes at para 23 that the concept of 'environmental planning grounds' are those that relate to the subject matter, scope, and purpose of the *Environmental Planning & Assessment Act 1979*, including its express objects set out in s 1.3 of that Act.

143. The approved development on the site already results in a variation to the two building height controls which apply to the site. The proposed development the subject of this application involves a further variation to the 31 metre height control of 48.55% and to the 40 metre height control of 30.95%, which is as a direct consequence of the additional 4 storeys proposed for both Buildings D1 and F. The following environmental planning grounds are sufficient to justify the proposed variations to the development standard.

144. The additional height and associated density increase has strategic merit. Since approval of D/1271/2016 for the site there has been the following strategic planning changes:

- (a) In November 2017, the Department of Planning and Environment announced Westmead as a Planned Precinct with a health and education area north of the rail line.
- (b) Parramatta Light Rail – Stage 1 has been announced and construction is currently under way with the Westmead Light Rail stop to be built at corner of Hawkesbury Road and Railway Parade. Parramatta Light Rail Stage 1 will connect Westmead to Carlingford via Parramatta CBD and Camellia.
- (c) Sydney Metro West line has been announced and construction is currently underway with the new Metro platform located south of the existing Westmead Station on the eastern side of Hawkesbury Road, Sydney Metro West will connect the Sydney City Centre (CBD) with Westmead.

- (d) Sydney University has been chosen by the NSW Government to develop a new world class multi-disciplinary campus within the Westmead Health and Innovation District which will accommodate 25,000 students.
- (e) In March 2020, the City of Parramatta Council's Local Strategic Planning Statement (LSPS) City Plan 2036 (LSPS) came into effect and sets out a 20-year land use planning vision for the City of Parramatta. The LSPS identifies that the Westmead Health and Education Precinct provides a major conglomeration of health, research and medical services. The LSPS also identifies target for 28,700 additional jobs and 4,500 dwellings in Westmead by 2036.
- (f) The Westmead Place Strategy has been prepared and placed on public exhibition from December 2020 to March 2021. The Westmead Place Strategy identifies a bold vision for Westmead to be Australia's premier health and innovation district with a jobs growth of 50,000 by 2036. The Strategy includes an action to undertake further studies for housing intensification and diversification within 800 metres of Westmead Station.

145. The subject site is located in the heart of Westmead, adjacent to no less than three nodes of rail infrastructure. Clearly, from a strategic planning perspective, the additional height and associated additional housing on the subject site is in complete and absolute alignment with the strategic planning direction for this precinct.

146. The additional height and incremental building height variations also have site specific merit.

147. The site is uniquely located at the south-western corner of the precinct identified as Special Area: 158-164 Hawkesbury Road and part of 2A Darcy Road, Westmead as identified in section 4.3.4.1 of the Parramatta Development Control Plan 2011 (PDCP). The DCP specifically identifies that development within this precinct should achieve a height transition from south to north, with the greatest height and density occurring at the south-western corner and decreasing to the north and north-east. The site specific merits of the proposal, including the additional 4 storeys to both Building D1 and Building F which are responsible for the height variations, are well founded for the following reasons:

- The proposal will build on the original development principles of the approved DA as expressed in Section 4.3.4.1 in the Parramatta DCP and will continue to adhere to the urban design principles established throughout the planning process for the site and the wider precinct.
- The additional height will not deleteriously impact the ability for existing and approved built form in the precinct to meet the key precinct urban design principle of transitioning height downwards towards the north, as this will still occur.
- The amending DA will continue to deliver on the urban design principle to achieve modulation of roof height and building form.
- The additional height will enhance the slenderness, elegance of Building D1 and F, while reducing their perceived building bulk.
- Building design for Lot 4 continues to meet the solar access requirements of the ADG for both apartments and communal open space.
- The additional building height has been provided in a manner that also maintains the solar access ADG compliance for Lot 5.
- Shadow impacts caused by the proposed additional height will not cause adverse effects on the surrounding public space with overshadowing mainly impacting the railway reserve. Where additional shadow impact, occurs it has a short dwell time and will be of minimal impact.

148. The incremental and cumulative variation to the building height development standards promotes the desired future character identified in Section 4.3.4.1 in the DCP. In particular that

‘[t]he built form will include taller, slender statement buildings located along the railway line to enable a strong visual relationship between the precinct and the CBD.’

149. The proposed increased scale of Building D1 and Building F will not be perceived as jarring or antipathetic in the urban design context of the site, and is in fact entirely compatible with the emerging and anticipated context around the site.

150. The proposed height and resulting density will not result in any increase in traffic as there is no additional parking proposed.

151. There are no unreasonable impacts in terms of shadow, view, visual and acoustic privacy impacts resulting from the proposed further variation to the building height development standard.

152. The proposed increase in height for Building D1 and Building F does not result in any adverse impact to the nearby heritage items.

153. The proposal will deliver a high quality transit orientated development that will increase the vibrancy of the precinct whilst providing a greater diversity of housing to meet the demand generated by changing demographics and housing needs in an existing urban area with excellent access to public transport, health services, educational establishments, recreational opportunities and services and facilities.

154. Strict compliance is no longer considered a relevant benchmark or consideration for the subject proposal given that a significant variation to the building height development standards has already been approved on the site. There are sufficient environmental planning grounds to warrant the proposed variations to the current building height as the proposal will achieve a high quality urban design outcome which remains consistent with the key principle for distribution of height within this precinct for a transition of scale from south to north.

155. The objects specified in section 5(a)(i) and (ii) of the EP&A Act are:

‘to encourage:

i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

ii) the promotion and co-ordination of the orderly and economic use and development of land...’

156. The proposed additional variation to the 31 metre and 40 metre building height development standards directly contributes an additional 61 apartments on the site. The delivery of the additional 61 apartments as a consequence of the incremental variations to the building height development standards represents a particularly orderly and economic development outcome for the subject site as follows:

- The site is within Westmead which is identified in the City of Parramatta Council’s Local Strategic Planning Statement (LSPS) City Plan 2036 (LSPS) for an additional 4,500 dwellings by 2036.

- The site is within the centre of the Structure Plan for the Westmead Place Strategy (refer to Figure 18 below), which was placed on public exhibition from December 2020 to March 2021 and identifies a bold vision for Westmead to be Australia's premier health and innovation district with a jobs growth of 50,000 by 2036. The Strategy includes an action to undertake further studies for housing intensification and diversification within 800 metres of Westmead Station
- The site is within a precinct which is specifically earmarked for significant jobs and student growth immediately around the site. The site is also located directly adjacent to Westmead Hospital as well as associated businesses which service the hospital and university. Therefore it is critically important to ensure that this significant landholding optimises the delivery of housing to support this growth, within the previously identified urban design framework for the site.
- The site is particularly well placed to contribute towards the housing target due to its location immediately adjacent to three rail nodes.

157. The proposed variations to the building height development standards allows for the most efficient and economic use of the land. On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed non-compliances with the building height development standards in this instance.

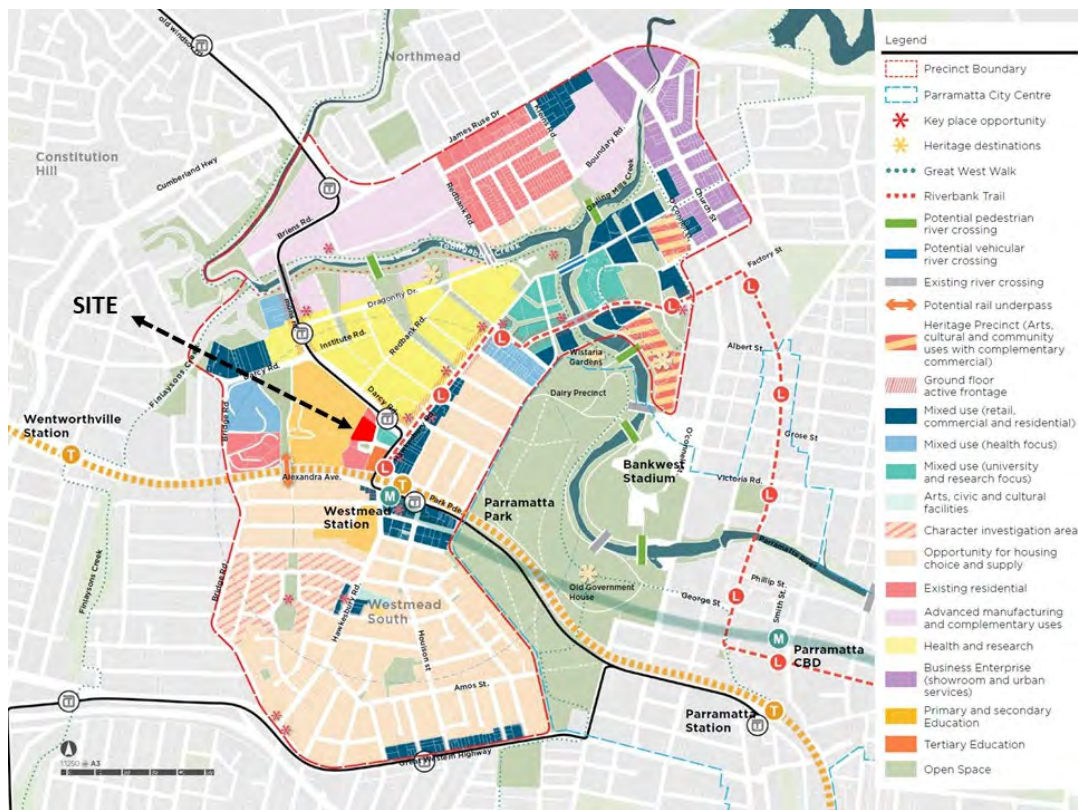


Figure20:

The site is located centrally within the Structure Plan for the Westmead Place Strategy

5.6 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

158. Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

159. These matters are comprehensively addressed above in this written request with reference to the five part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

5.7 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

160. Clause 4.6(4)(a)(ii) states 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.

Objective of the Development Standard

161. The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

Objectives of the Zone

162. Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the B4 Mixed Use zone pursuant to the Parramatta Local Environmental Plan 2011 (PLEP) which has the following objectives:

To provide a mixture of compatible land uses.

163. The proposed development is defined as a residential flat building which is an innominate permissible use in the zone. Development is already approved on the site for a residential flat development, and the proposal is for 4 additional storeys to Buildings D1 and F of the approved residential flat building.

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.

164. The proposed development will provide for an additional 61 apartments on the subject site as a consequence of the proposed height variations, resulting in a total of 405 apartments. The proposal is located immediately adjacent to three nodes of rail which services the Westmead precinct and the proposal enables increased density to be achieved adjacent to and in a short walk of under 400m a major transit interchange and growing employment precinct. The proposal will facilitate higher density residential along Light Rail and T-Way corridors and will support the activation of a commercial/ mixed use hub in walking distance to stops and stations. The need for this approach will be compounded by the introduction of the Sydney Metro which will complement and strengthen standard metropolitan and regional passenger rail, and T-Way services. It is the most logical location to increase density as there has been significant investment that will strengthen public transport accessibility as well as health, education and innovation oriented activities, which has not yet been reflected in existing controls and approved development, yet would certainly be considered as part of future studies for housing intensification in this location.

165. The site location is well serviced by existing pedestrian facilities with footpaths on both sides of the general road network around the site. There are pedestrian signals that directly connect the site to the bus stops and Westmead train station. The site is also linked with a number of existing cycle paths. In the immediate vicinity of the site, there is an on-road bicycle path on Hawkesbury Road and an off-road bicycle path on the northern side of Darcy Road. The Westmead Place Strategy also outlines a future active transport network servicing the Westmead precinct which builds on the existing infrastructure in place.

166. The proposal indeed provides 340 bicycle spaces which substantially exceeds the minimum 203 spaces required by the Parramatta Development Control Plan which maximises the opportunity for the proposal to encourage cycling.

167. Accordingly, the proposal will maximise public transport patronage and encourage walking and cycling.

To encourage development that contributes to an active, vibrant and sustainable neighbourhood.

168. The proposed increase in density and additional 61 dwellings will further contribute to the patronage and economic success of local businesses which will directly assist in the achievement of an active, vibrant and sustainable neighbourhood.

169. The proposal will focus a higher population adjacent to a future major multi-modal transit interchange. This will support the use of public transport infrastructure, vitality and vibrancy of the centre and public space, as well as providing opportunities for community interaction. It will also enhance housing choice and availability close to jobs and education facilities.

To create opportunities to improve the public domain and pedestrian links.

170. The proposal involves a modification to the approved landscaping arrangement for the substations adjacent to the shareway on the northern edge of the site, in order to soften their appearance from the public domain. Accordingly, the proposal improves the public domain outcome of the approved development on the site.

To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.

171. The proposal does not include any commercial component and therefore does not detract from the higher order Zone B3 Commercial Core.

To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.

172. The subject site is not located within the Parramatta City Centre and so this zone objective is not relevant to the subject proposal.

173. For the reasons given the amended proposal remains consistent with the objectives of the B4 Mixed Use zone.

174. The proposal has been demonstrated to be consistent with both the objectives of the building height development standard as well as the objectives of the zone and therefore the consent authority can be satisfied that the proposal is in the public interest. Furthermore, the public interest is appropriately served by providing an improved urban design outcome and additional housing, within the demonstrated environmental capacity of the site.

5.8 Clause 4.6(5) Secretary Considerations

175. The matters for consideration under Clause 4.6(5) are addressed below:

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,

176. The Parramatta Local Planning Panel may assume concurrence under cl 4.6 in accordance with assumed concurrence notice dated 21 February 2018 (attached to Planning Circular PS 20-002, dated 5 May 2020) made under cl 64 of the EP&A Regulation 2000.

177. The contravention of the standard does not raise any matters of significance for state or regional environmental planning. The development does not impact upon or have implications for any state policies in the locality or impacts which would be considered to be of state or regional significance.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(b) the public benefit of maintaining the development standard,

178. This Clause 4.6 request has demonstrated there are significant environmental planning benefits associated with the contravention of the standard. There is no material impact or benefit associated with strict adherence to the development standard and in my view, there is no compelling reason or public benefit derived from maintenance of the standard, which has already been abandoned for this site.

5.9 Objectives of Clause 4.6

179. The specific objectives of Clause 4.6 are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

180. As demonstrated above the proposal is consistent with the objectives of the zone and the objectives of Clause 4.3 notwithstanding the proposed variation to the maximum building height development standard.
181. The architectural package prepared by Turner Architects which accompanies the subject application illustrates the relationship of the proposed development within the context of the site. It demonstrates a high quality outcome for the site which will result in the delivery of a residential development surrounding by landscaping and a built form that will provide for an integrated community set around a central open space area which combined will contribute significantly to the amenity afforded to the general public and future occupants alike.
182. Allowing the flexible application of the maximum building height development standard in this instance is not only reasonable but also desirable given the context of the site and desire to deliver a positive result for the site which will facilitate an acceptable urban design outcome whilst optimising the delivery of housing in an ideal location.
183. Accordingly, it is considered that the consent authority can be satisfied that the proposal meets objective 1(a) of Clause 4.6 in that allowing flexibility in relation to the maximum building height development standard and will achieve an acceptable and better urban design outcome in this instance in accordance with objective 1(b).

6.0 CONCLUSION

184. On 1 November 2017, development consent was granted to DA/1271/2016 for construction of a residential flat building containing 344 units over basement car parking with heights ranging between 6-20 storeys at 3 Farmhouse Road, Westmead (formally known as Lot 4, 158-164 Hawkesbury Road and 2A Darcy Road).

185. In approving Development Application DA/1271/2016 the Joint Regional Planning Panel upheld the applicant's request to vary the development standard contained Clause 4.3 (Building) of the Parramatta Local Environmental Plan 2011 by a 23.7% departure in the 31 metre height zone and an 80.3% departure in the 40 metre height zone.

186. Accordingly, strict compliance with the maximum building height development standard on the subject site **has already been found to be unreasonable and unnecessary** in the circumstances of the case.

187. The proposed development involves an incremental height variation of 48.55% to the 31 metre height zone and 30.95% to the 40 metre height zone.

188. This Clause 4.6 Written Request, including Appendices, demonstrates that there are sufficient environmental planning grounds to support the extent of the proposed building height variations as follows:

- The proposal is consistent with the objectives of the building height development standard
- The building height standards of 31 metre and 40 metres have already been abandoned
- The proposal is consistent with the zone objectives
- The proposal will build on the original development principles of the approved DA as expressed in Section 4.3.4.1 in the Parramatta DCP and will continue to adhere to the urban design principles established throughout the planning process for the site and the wider precinct.
- The additional height will not deleteriously impact the ability for existing and approved built form in the precinct to meet the key precinct urban design principle of transitioning height downwards towards the north, as this will still occur.
- The amending DA will continue to deliver on the urban design principle to achieve modulation of roof height and building form.
- The additional height and density will enhance the slenderness, elegance of Building D1 and F, while reducing their perceived building bulk.
- Building design for Lot 4 continues to meet the solar access requirements of the ADG for both apartments and communal open space.
- The additional building height has been provided in a manner that also maintains the solar access ADG compliance for Lot 5.
- Shadow impacts caused by the proposed additional height will not cause adverse effects on the surrounding public space with overshadowing mainly impacting the railway reserve. Where additional shadow impact, occurs it has a short dwell time and will be of minimal impact.

189. It is reasonable and appropriate to vary the building height development standards to the extent proposed in this circumstance. Finally, the proposed development and height variations are in the public interest because it facilitates a development which is consistent with the objectives of the standard and the zone and which delivers additional housing within the demonstrated environmental capacity of the site.