

Attachment C

**Clause 4.6 Variation Request
Building Height**



AMENDED
CLAUSE 4.6 VARIATION
REPORT

888 BOURKE ST,
ZETLAND

28 January 2020

Updated 21 July 2020

Updated 12 November 2020

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1.0 INTRODUCTION

- 1.1 This Clause 4.6 variation report accompanies a Stage 2 Development Application submitted to the City of Sydney for approval. It supports the proposed variation to the Height development standard pursuant to Clause 4.3 of The Sydney LEP 2012.
- 1.2 The subject site is zoned B4 Mixed Uses under The Sydney LEP 2012. The site was the subject of a Stage 1 DA and a Competitive Design Alternative Process. The approved brief for the competitive process recognised that a variation to the height control would be considered.
- 1.3 Clause 4.3 of the LEP relates to height. The accompanying map specifies a maximum height of 22 metres.
- 1.4 Clause 4.6 allows for the contravention of a development standard with approval of the consent authority.
- 1.5 The report is structured to address the requirements of Clause 4.6 and in reference to the following Land and Environment Court judgements:
 - *Whebe V Pittwater Council NSW [2007] LEC 82*
 - *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*
 - *Randwick City Council v Micaul Holdings [2016] NSWLEC 7*
 - *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*
- 1.6 This report has been amended to accompany amended DA plans that have been prepared in response to concerns raised by Council in regard to overshadowing and view sharing principles.

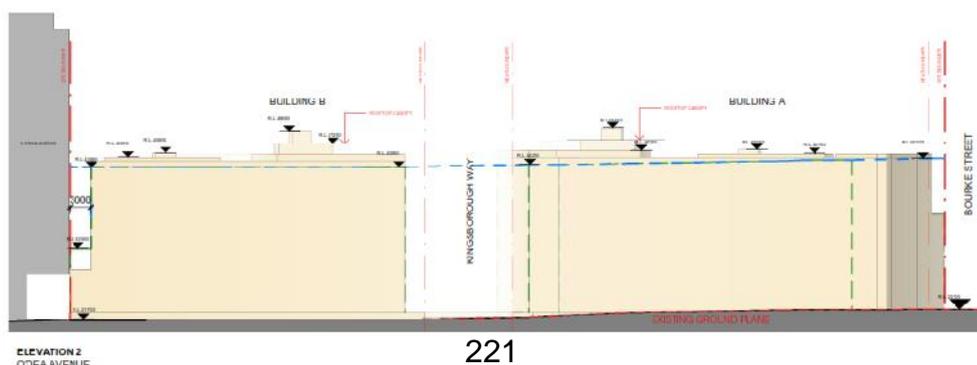
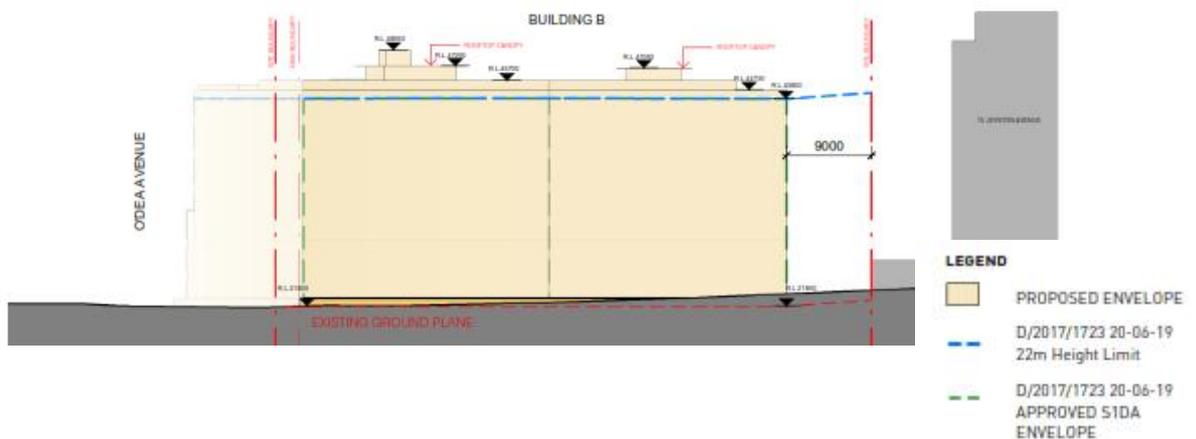
2.0 CLAUSE 4.6 VARIATION REPORT

Standard to be varied

- 2.1 Clause 4.3 of the LEP relates to height. The accompanying map specifies a maximum height of 22 metres.
- 2.2 The proposed heights for the buildings are provided below:

Building Envelopes	Maximum height permitted	Proposed to parapet (max)	Variation	Proposed height to Awning to COS (max)	Variation	Proposed height to top of Lift overruns (max)	Variation
Block A	22 metres	22.64m	640mm	24.78 – 26.04m	2.78m – 4.04m	26.74m	4.74m
Block B	22 metres	22.79m	790mm	25.6m	3.6m	26.93m	4.93m

- 2.3 The maximum variation sought is 4.93 metres to the top of the lift overruns. This has been reduced from the original DA submission. It is also noted that the southern lift in each building will no longer access the rooftop level, reducing the extent of variation. One lift in each building will provide access to the rooftop communal open space. The awnings are minimal structures to enhance the amenity of the communal open space. The variation is also outlined in the revised envelope diagrams below:



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

- 2.4 The proposed variation to the height control is assessed with consideration to the principles established by the Land and Environment Court in *Whebe V Pittwater Council [2007] NSW LEC 82*. His Honour Preston CJ set out 5 ways of establishing that compliance with the standard is unreasonable or unnecessary. The 5 parameters were further tested in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* where Justice Pain found that meeting the objectives of the standard was not sufficient to demonstrate that compliance was unreasonable or unnecessary.
- 2.5 In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*, it was held that *'establishing that the development would not cause environmental harm and is consistent with the objectives of the development standard is an established means of demonstrating compliance with the development standard is unreasonable or unnecessary'*.
- 2.6 In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018* Preston CJ held that *'an applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way'*
- 2.7 Accordingly, clause 4.6(3) of the LEP can be satisfied if a development satisfies one or more of the 5 ways which are addressed in detail below:

(a) The proposal meets the objectives of the development standard notwithstanding its non-compliance with the standard.

- 2.8 Yes, the proposal meets the objectives of the standard as demonstrated below.
- (a) *to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) *to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- 2.9 The primary areas of non-compliance relate to the parapet, light weight awnings to the communal open space and lift overruns on the roof. The lift non-compliance is confined to areas setback from the edge of each building and the roof level variations do not consume the entire footprint of the buildings. The height is lowered in part to improve the interface with the neighbouring properties stepping the building form towards the through site link.
- 2.10 The height of the development is compatible with the desired future character of the Zetland area and will be consistent with surrounding development. The site is identified as a key site at the corner of O'Dea Avenue and Bourke Street.
- 2.11 The site is surrounded by residential apartment developments to the east and south and a future proposed building to the west.

2.12 The height controls surrounding the site vary as shown in the figure below. The height control to the west is consistent with the subject site, but to the east and south increases to 45 metres and 35 metres respectively and then steps back down in height to 18metres. Heights to the south of Kingsborough Way also vary from 29 metres to 42 metres and stepping back down to 25 metres. The height controls in the immediate precinct are varied and result in a series of buildings of varying heights. Refer to figure below:

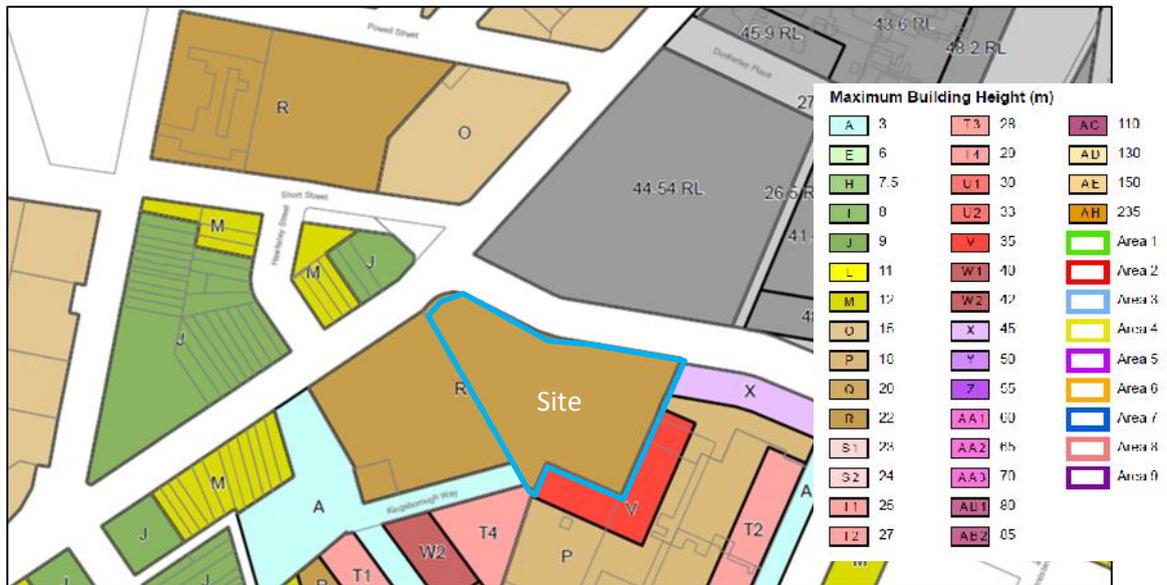


Figure 1: Height of Building Map Extract from SLEP 2012

2.13 The variations sought under this application will still achieve the transition of building height envisaged by the controls. A consistent height will be achieved along Bourke and O’Dea with the variations not readily visible from the public domain. Given the location of the variations, and the strong building address to street frontages, the buildings will sit appropriately in the context of the heritage item opposite.

2.14 Given the varied height of buildings in the vicinity of the site, the minor variation to the height control on this site will not be clearly evident. The seven storey buildings will sit appropriately in the context and will maintain the transition in height between buildings.

(c) to promote the sharing of views,

2.15 The proposed buildings have been positioned to improve the interface with the surrounding residential buildings to improve the vista and view sharing from their apartments. The development footprint compensates for the lack of compliant setbacks on the building to the east resulting in increased setbacks and shifting of floor space. As a result, improving view sharing than what might otherwise result from a complaint building.

2.16 The development has been skilfully designed to ensure view sharing is achieved to surrounding notwithstanding the variation to the height control. The rooftop plant has been relocated to level 6 resulting in the deletion of units to maximise the opportunity for view sharing. The southern lifts of both buildings will no longer service the communal open space, stopping at level 6. A detailed view sharing analysis prepared by PTW Architects accompanies this submission. Furthermore, a detailed analysis of applicable units within 15 & 17 Joynton Ave has been prepared and is attached to this submission at **Annexure 1**.

2.17 Adjoining the site to the south and east at 15 and 17 Joynton Avenue and 5 O’Dea Ave contains 6 multi storey residential buildings, in a development known as Emerald Park. The 10 storey building at 5 O’Dea Ave was built to its western boundary with no setback from the common boundary with the subject site. The building contains windows for light and balconies with openings on the boundary facing the subject site above RL32.00. There are no easements in place or protection to these openings. Notwithstanding, the development setbacks above a height of RL32.00 to maintain a vista from these openings. In addition, the 8 storey building at 15 and 17 Joynton Ave was approved and constructed with non-complying ADG setbacks at less than 6 metres.

2.18 In order to promote the sharing of views across the site, the building envelope provides setbacks beyond the ADG separation controls. This has resulted in a shift of building envelope and a resultant variation to the height controls.

(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,

2.19 The proposed building heights offer an appropriate transition with adjoining sites. The minor exceedance is acceptable as it will enable the roof to be utilised for additional communal open space and facilitates the increased setbacks at lower levels.

2.20 As discussed above, the building heights will maintain an appropriate transition with the varied heights in this precinct.

(e) in respect of Green Square:

(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and

(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.

2.21 The heights will be consistent across the site. The building footprints have been designed to define the public domain and all facades have been designed to achieve an appropriate street interface with existing and new roads and public domain works.

2.22 Ground floor residential units and serviced apartments will overlook and have direct access to the adjoining streets and private open space that connects to the public through-site link. This will ensure provide for safe pedestrian networks that will contribute to the functioning of the public domain areas that will be improved with this development.

2.23 For the reasons discussed above, the variation to the height control will still achieve the building height objectives.

(b) The underlying objective or purpose is not relevant to the development;

2.24 The underlying objectives for height are still relevant.

(c) The underlying objective or purpose would be defeated or thwarted if compliance was required with the standard;

2.25 The underlying objective or purpose of the height control would be thwarted if compliance was required, as compliance in this instance is unreasonable as demonstrated in this section of the

report. The development, notwithstanding the variation to the height control, achieves compliance with the objectives of the development standard as determined above.

(d) The development standard has been virtually abandoned or destroyed by Council's own actions.

2.26 Council has not abandoned the height controls.

(e) The zoning of the 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 and unnecessary.

2.27 The zoning of the land B4 Mixed Uses is appropriate.

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

2.28 In the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018* it was established that a Clause 4.6 variation need not establish that a development containing a variation provides a better or even neutral outcome for a development site compared with a compliant development. Further, the environmental planning grounds relied upon must be "sufficient". There are two respects in which the request needs to be "sufficient"

1. The environmental planning grounds advanced in the written request must be sufficient "to justify the contravening of the standard". The focus is on the aspect or element of the development that contravenes the development standard, not the development as a whole.
2. The request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

2.29 There are sufficient environmental planning grounds to justify the variation as follows:

- Providing increased setbacks beyond the ADG requirements and shifting floor space which results in a variation to the height control improves the relationship with surrounding buildings. The increased setbacks is a better outcome on this site as it achieves:
 - Protection of light and ventilation to the windows on the boundary at 5 O'Dea Ave.
 - Greater separation to the units at 15 & 17 Joynton Ave which improves their visual and aural privacy and allows for greater views across the site.
 - Complaint solar access is maintained to all surrounding buildings. This was a significant constraint on this site due to the non-compliant setbacks of the building at 17 Joynton Ave. Providing increased setbacks which results in a variation to the height control enables complaint solar access to adjoining buildings. Refer to Assessment of the impact of the non-compliant portions of the development at **Annexure 2** of this report. The analysis confirms compliant solar access, however, it also demonstrates in part a significant reduction in the shadow compared to the approved envelope.

- Notwithstanding the height variation, the established principle of varying building height in the precinct will still be achieved. The minor variations do not affect the transition up and down surrounding the site. The buildings will appear appropriate in the context of the site at a maximum of seven storeys which is reasonable given the height control. The primary variations to the lift overruns, awnings to the communal open space will not be readily from the public domain. The y are setback from the edge of the building and their location retains key views to surrounding buildings. The exceedance of the height control will not affect the stepping up and down of building heights across the precinct.
- The proposed height will not unreasonably affect future development of adjoining sites with compliant solar access being maintained and adequate privacy through increased setbacks and position of deep soil landscaping.
- The individual elements that vary the height control have been considered in detail in the view sharing analysis and notwithstanding the variation, view sharing has been achieved.
- The design of the development has minimised the elements that exceed the height control. It is standard practice to provide rooftop plant areas which are generally excessively bulky elements. In order to reduce the extent of variation, this scheme as amended has shifted plant to level 6 resulting in a reduction of units on this level. There is also a reduction of building form at the southern end (compared with the approved envelope) of the buildings to improve solar access. This is shown in the extract below:



- The communal roof area and private rooftop terraces will provide high residential amenity for future residents and the provision of such areas will improve amenity for future residents. To minimise the variation to the height control, one lift in each building will provide access to the communal open space. There is clear and convenient access at ground level for all residents to utilise the lift to the rooftop open space.
- The development complies with the maximum FSR. The shifting of the permitted GFA around the site creates a better planning outcome compared with strict compliance with the height control.
- Part of the variation results from addressing the flooding constraints on the site. This has resulted in raised ground floor levels which affects the overall height.

2.30 Based on the above, there are sufficient planning grounds to justify the variation.

Clause 4.6(4)(a)(i) – Has the request addressed the matters in 4.6(3)

2.31 The matters required in 4.6(3) have been addressed in detail above.

Clause 4.6(4)(a)(ii) – Is the development in the Public Interest?

2.32 In the recent judgement of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 2018*, Preston CJ indicated that a consent authority must consider if the development *is in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed. It is the developments consistency with the objectives of the development standard that make the proposed development in the public interest.*

2.33 The development satisfies the objectives of the development standard as outlined above.

1.7 Yes. The zoning of the land is B4 Mixed Uses.

1.8 The proposed development maintains compliance with the objectives of the zoned B4 Mixed Use zone.

1.9 The objectives of the B4 Mixed Use zone under the Sydney LEP 2012 are as follows:

- *To provide a mixture of compatible land uses.*
- *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.*
- *To ensure uses support the viability of centres.*

1.10 The development satisfies the objectives in the following ways:

- Residential uses are an appropriate type of development within the current zone and they are complimentary to the nearby residential and mixed-use zones, particularly given the proximity of the Green Square town centre.
- Serviced apartments are an appropriate use within the locality given the proximity to services and public transport. This use will encourage public transport use as well as walking and cycling.
- The site is located within 800m of Green Square railway station and there are frequent bus services along O’Dea Avenue providing services to and from East Gardens to Circular Quay, San Souci to Circular Quay and Botany and Gore Hill. This will encourage public transport use.
- The development will encourage walking to nearby services and public open space.
- A retail premise is proposed to be incorporated into the ground level of the building on the corner of O’Dea Avenue and Bourke Street, this intersection is highly pedestrianised and will have great visual presence.
- The size of the retail premises will not compromise the viability of the nearby Green Square Town Centre.
- The proposed new road connection and improved footpaths will also assist in encouraging walking and cycling, through improved connectivity.
- The additional residential and serviced apartment development will support the existing and future services and facilities located within Zetland and each building envelope will integrate appropriately into the public domain and surrounding development.

1.11 The site is located within an area that has and is currently transitioning to provide higher density residential development. The proposed residential and serviced apartment development will assist the City of Sydney Council in achieving their housing targets established under the Plan for Growing Sydney.

- 1.12 It is therefore considered that the development, notwithstanding the variation to the development standard, achieves the objectives of the B4 Mixed Use zone.

Clause 4.6(5) – Secretary to consider

- 2.34 In deciding whether to grant concurrent, the Secretary must consider:
- a) Whether contravening the development standard raises any matter of significance for state of regional environmental planning, and
 - b) The public benefit of maintaining the standard; and
 - c) Any other matters required to be taken into consideration by the Secretary before granting consent:
- 2.35 The variation to the height control does not raise any matters of state or regional significance.
- 2.36 Furthermore, there is no material benefit of maintaining compliance with the standard for the reasons explored in this Clause 4.6 request.

CONCLUSION

- 2.37 This Clause 4.6 report has considered the requirements under Clause 4.6 to determine whether a variation to the height development standard is appropriate. For the reasons outlined in the report, a variation to the height control is considered appropriate.
- 2.38 The development as submitted will produce a quality urban design outcome consistent with the objectives of the standard and the B4 Mixed Use Zone. Maintaining strict compliance is considered unreasonable and unnecessary in the circumstances of this site as there are sufficient environmental planning grounds to justify the variation.

ANNEXURE ONE

View Sharing Analysis

To be read in conjunction with the view study titled '15 & 17 Joynton, Zetland View Sharing Analysis' prepared by PTW dated July 2020

View Sharing Analysis

- Further consideration of view sharing is provided below, with an assessment against the 'Principles of View Sharing' established within the court judgement *Tenacity Consulting v Warringah (2004) NSWLEC 140*.
- To ascertain whether view sharing is reasonable, an assessment against the four steps, established in the above judgement, is required. The four steps are:

Step 1: What Views Are Affected.

Step 2: What part of the property are the views obtained from.

Step 3: Extent of Impact.

Step 4: Reasonableness of the proposal that is causing the impact.

- As shown in the PTW report '15 & 17 Joynton, Zetland View Sharing Analysis dated July 2020' there are several units potential affected across Levels 7, 8, 9 and 10 within the adjoining properties. Views are from living areas, primary balconies, bedrooms, secondary balconies and roof terraces. The views were based on a series of photos taken from two units and verified against a 3D model of the CBD.
- The following table provides an assessment against the four steps:

Unit	View	Part of Property Views Obtained from	Extent of Impact	Reasonableness
15 Joynton Avenue, Zetland				
701	Level 7 - CBD, Westfield Tower and sky views.	Living room balcony standing across a side boundary.	Partial view loss. Westfield Tower and city skyline retained equivalent to approximately 50% and results in minor view loss. In effect the amended DA will provide increased view lines towards the east of the city with a decrease in built form.	View sharing is achieved and improved with the amended envelope.
702	Level 7 - Minor portion of the top of the CBD buildings to the west.	Living room balcony standing across a side boundary.	The amended design will improve views to the east when compared to the Stage 1 DA envelope. Westfield Tower and buildings to the east of the Tower will have increased views with the amended DA. There is a negligible effect.	View sharing is achieved and improved with the amended envelope.
703				

Unit	View	Part of Property Views Obtained from	Extent of Impact	Reasonableness
704	Level 7 – No views towards the CBD due to Stage 1 DA approved envelope.	Living room balcony standing across a side boundary.	No view to City under approved Stage 1 DA or the submitted and amended DA. There is a negligible effect.	Reasonable, as no view is currently available due to approved Stage 1 envelope. No further impact beyond approved Stage 1 DA.
705				
802	Level 8 – No views towards the CBD due to Stage 1 DA approved envelope.	Living room balcony standing across a side boundary.	No view to City under approved Stage 1 DA or the submitted and amended DA. There is a negligible effect.	Reasonable, as no view is currently available due to approved Stage 1 envelope. No further impact beyond approved Stage 1 DA.
801	Level 8, 9 and 10 – Views to the north-west towards the CBD and Westfield Tower.	Level 8 – bedroom & balcony Level 9 – living room & balcony Level 10 – Roof terrace Across a side boundary.	Level 8 - Minor city view loss from the bedroom balcony on level 8 to the western of the city CBD, iconic view of Westfield tower retained. Level 9 – views retained to CBD, Westfield Tower and wider area. Level 10 – as above, unaffected views. Impact is negligible.	View sharing is achieved. Views maintained from the living room, primary balcony and roof terrace.
803	Level 8, 9 and 10 – Views to the north-west towards the CBD and Westfield Tower.	Level 8 – bedroom & balcony Level 9 – living room & balcony Level 10 – Roof terrace Across a side boundary.	Levels 8, 9 and 10 will retain clear city views from all levels. Additional roof structures will be setback to retain clear views of the city from level 8 and up. Negligible impacts.	View sharing achieved as city views retained across all three levels.
804	Level 8, 9 and 10 – Views to the north-west towards the CBD and Westfield Tower.	Level 8 – bedroom balcony Level 9 – living room balcony Level 10 – Roof terrace Across a side boundary.	Level 8 minor portion of the roof pergola will reduce part of the CBD view, however, top of Westfield Tower will still be visible. Levels 9 and 10 – will retain all views. The impact is minor as on the bedroom level and negligible on Levels 9 and 10 with the living and rooftop terrace views remaining unaffected.	View sharing achieved. Views maintained from the living room, primary balcony and roof terrace.

Unit	View	Part of Property Views Obtained from	Extent of Impact	Reasonableness
805	Level 8, 9 and 10 – Views to the north-west towards the CBD and Westfield Tower.	Level 8 – bedroom balcony Level 9 – living room balcony Level 10 – Roof terrace Across a side boundary.	Level 8 minor portion of the roof pergola will reduce part of the CBD view, however, top of Westfield Tower will still be visible. Levels 9 and 10 – will retain all views. The impact is minor as on the bedroom level and negligible on Levels 9 and 10 with the living and rooftop terrace views remaining unaffected.	View sharing achieved. Views maintained from the living room, primary balcony and roof terrace.
806	Level 8, 9 and 10 – Views to the north-west towards the CBD and Westfield Tower.	Level 8 – bedroom balcony Level 9 – living room balcony Level 10 – Roof terrace Across a side boundary.	Level 8 minor portion of the roof pergola will reduce part of the CBD view, however, top of Westfield Tower will still be visible. Levels 9 and 10 – will retain all views. The impact is reasonable on Level 8, being to the bedroom. The impact on Levels 9 and 10 are negligible from the living and rooftop terrace views remaining unaffected.	View sharing achieved. Views maintained from the living room, primary balcony and roof terrace.
807	Level 8, 9 and 10 – Views to the north-west towards the CBD and Westfield Tower.	Level 8 – bedroom balcony Level 9 – living room balcony Level 10 – Roof terrace Across a side boundary.	Level 8 portion of the roof pergola and services will reduce views through to the CBD view, however, top of Westfield Tower will still be visible. Levels 9 and 10 – will retain all views. The impact is reasonable on Level 8, being to the bedroom. The impact on Levels 9 and 10 are negligible from the living and rooftop terrace views remaining unaffected.	View sharing achieved. Views maintained from the living room, primary balcony and roof terrace.
808	Level 8, 9 and 10 – Views to the	Level 8 – bedroom balcony	Level 8 portion of the roof pergola and	View sharing achieved. Views maintained from the living

Unit	View	Part of Property Views Obtained from	Extent of Impact	Reasonableness
	north-west towards the CBD and Westfield Tower.	Level 9 – living room balcony Level 10 – Roof terrace Across a side boundary.	services will reduce views through to the CBD view, however, top of Westfield Tower will still be visible. Levels 9 and 10 – will retain all views. The impact is reasonable on Level 8, being to the bedroom. The impact on Levels 9 and 10 are negligible from the living and rooftop terrace views remaining unaffected.	room, primary balcony and roof terrace.
812	Level 9 and 10 – Views to the north-west towards the CBD and Westfield Tower.	Level 9 – living room balcony	Uninterrupted views to CBD and Westfield Tower from both levels. Negligible impact.	View sharing achieved. Views maintained from the living room, primary balcony and roof terrace.
811		Level 10 – Roof terrace Across a side boundary.		
17 Joynton Avenue, Zetland				
713	Level 7 and 8 – views towards horizon. No views of CBD.	Level 7 – living room balcony Level 8 – bedroom balcony. Across a side boundary.	The approved Stage 1 envelope and modified Stage 2 DA will have a similar effect. As approved, this unit does not have city views and the horizon line is hidden by the approved Stage 1 envelope.	All six units are positioned on Level 7. The approved Stage 1 envelope and modified Stage 2 DA will have a similar effect. As approved, this unit does not have city views and the horizon line is hidden by the approved Stage 1 envelope. Reasonable. Available view remains as approved.
711	Level 7 – views towards horizon. No views of CBD.	Level 7 – living room balcony Across a side boundary.	All five units are positioned on Level 7. The approved Stage 1 envelope and amended Stage 2 DA will have a similar effect. As approved, these units do not have city views and the horizon line is hidden by the approved Stage 1 envelope.	Reasonable. Available views remain as approved.
701				
702				
703				
704				

Unit	View	Part of Property Views Obtained from	Extent of Impact	Reasonableness
			There is a negligible effect.	
821	Level 8 – views towards horizon. No views of CBD.	Level 8 – living room balcony. Across a side boundary.	This unit is positioned on Level 8. It does not have direct city views. The amended envelope will affect some views across the horizon due to roof structure, however, no significant views are affected.	Reasonable. Available views remain generally as approved.
801	Level 8 – views towards the horizon and some CBD views to the northern side.	Level 8 – Living room balcony. Across a side boundary.	These units are positioned on Level 8. The city views available with the approved Stage 1 envelope will remain. There will be some minor elements that will increase on the horizon but overall significant views towards city remain unaffected. View impact is minor.	Reasonable. View sharing achieved.
802				
803				
804				
818	Level 8 and 9 – views towards the CBD and Westfield Tower.	Level 8 – Living room balcony. Level 9 – Roof terrace. Across a side boundary.	All 11 units are positioned on Level 9 and 10. No impact on city views and Westfield Tower from living area and rooftop terraces. Negligible view loss.	No impact to the iconic views.
819				
820				
813				
812				
811				
810				
809				
808				
807				
806				
805	Level 8 and 9 – views towards the southern end of the CBD. No views of central CBD or Westfield Tower.	Level 8 – Living room balcony. Level 9 – Roof terrace. Across a side boundary.	No impact on southern city views from living area and rooftop terraces. Negligible view loss.	No impact to the iconic views.

- The detailed assessment that has been carried out clearly demonstrates that view sharing has been achieved. The analysis has considered the impact of the variations to the height control and confirms that appropriateness of the building form and height of the building. view sharing has been achieved. It is however noted that all views are across a side boundary. Senior Commissioner Roseth stated that *“the expectation to retain side views and sitting views if often unrealistic”*.
- Notwithstanding this, the design has skilfully been amended to ensure view sharing is achieved to all units within the adjacent buildings.
- Units 807 and 806 within 15 Joynton Avenue, Zetland are the most affected units. However, the impact has been assessed as minor as views from the living room balconies and the rooftop terrace will retain complete CBD and Westfield Tower iconic views. The affected views are from the smaller bedroom balcony on Level 7, however, on balance 2/3 of views are maintained from these units with the iconic Westfield tip remaining visible across all three levels. This is reasonable view sharing.
- Overall, the proposed development will not unreasonably affect adjoining properties as a result of the variation to the height control and view sharing has been achieved.

ANNEXURE TWO

Overshadowing Analysis of Variation to the Height Control

Overshadowing Analysis

- This section provides an assessment of the impact of the variation to the height control on the approved Stage 1 building envelope. The stage 1 building envelope was approved at a height of 22 metres across the site.
 - PTW architects have prepared a more detailed shadow study that has determined that the shadow cast across the adjoining properties has been significantly reduced, although there may be some minor negligible shifts in small areas there is a reduction in shadow cast comparative to the approved Stage 1 DA envelope.
- 1.1 The relocation of the rooftop plant to level 6, resulting in the deletion of units and the lowering of the southern lifts of each building (accessing only level 6) has significantly improved solar access for adjoining properties this is discussed below under each property. This is a positive outcome. The overall reduction in shadow to parts of the development results in the articulation of each level and the stepping down towards the neighbouring building compared with the solid 22 metre approved envelope.

890-898 Bourke Street, Zetland

- The modified envelope will see some shifts in shadow between 9.00am and 11.30am, however, from 12.00pm to 3.00pm the facade will not be impacted. The areas that exceed the height control are outlined in red. However, to offset the shadow cast by the variations to the height, the development has been reduced in other areas to improve the overall outcome. These areas are generally outlined in blue:





890-898 BOURKE_21 JUNE_12.30PM



890-898 BOURKE_21 JUNE_1.00PM



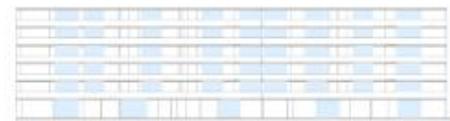
890-898 BOURKE_21 JUNE_1.30PM



890-898 BOURKE_21 JUNE_2.00PM



890-898 BOURKE_21 JUNE_2.30PM



890-898 BOURKE_21 JUNE_3.00PM

LEGEND:

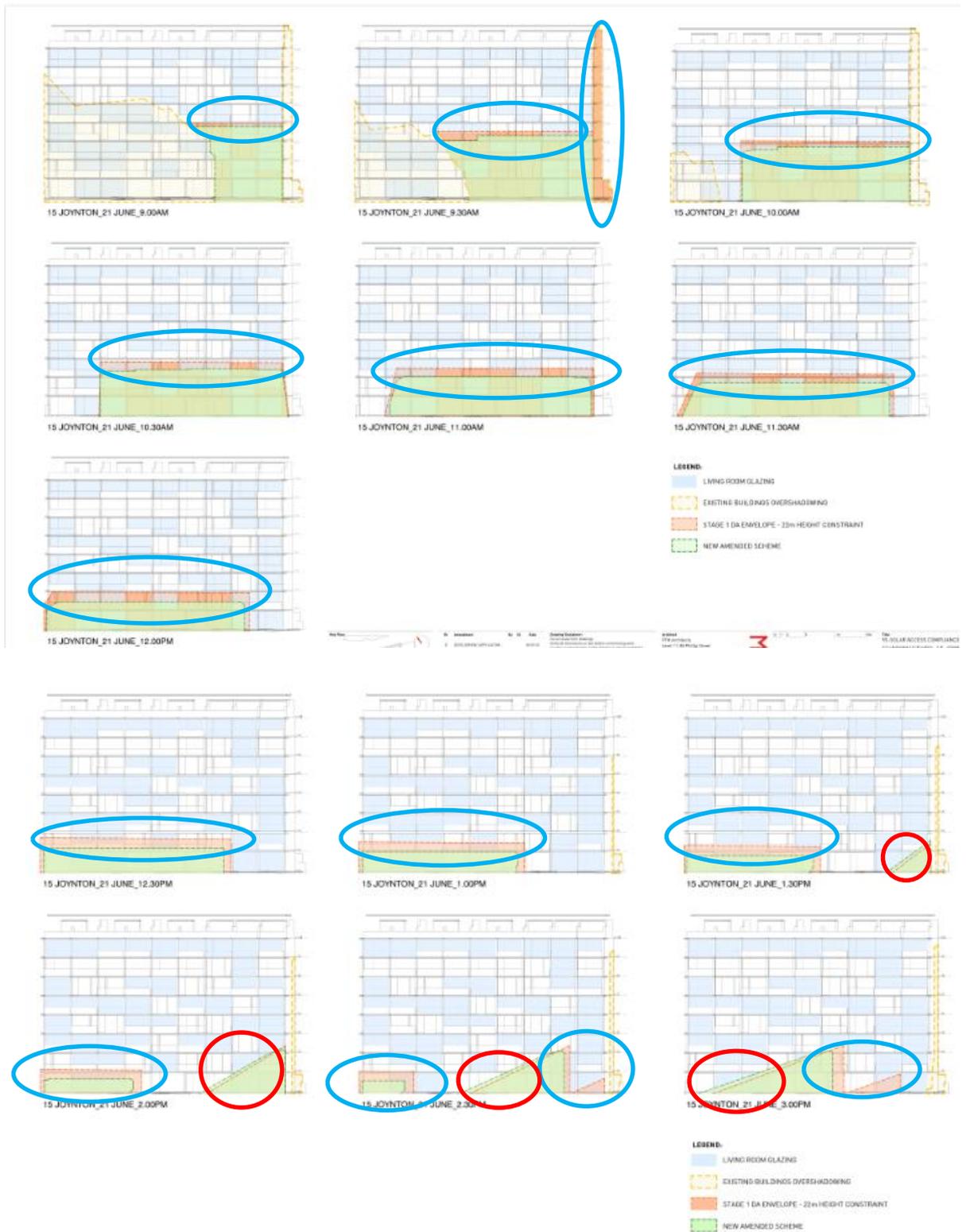
- LIVING ROOM GLAZING
- EXISTING BUILDINGS OVERSHADOWING
- STAGE 1 DA ENVELOPE - 22m HEIGHT CONSTRAINT
- NEW AMENDED SCHEME

*THE PROPOSE DESIGN DOES NOT OVERSHADOW 891-896 BOURKE ST FROM 11:45 AM ON 21 JUNE.

- There is a negligible increase from the approved envelope at 9am and 9.30am. However, the affected units achieve in excess of 2 hours solar access. The changes to the envelope have resulted on the whole significant improvements to the adjoining residential flat building between 9.30am and 11.30am.

15 Joynton Avenue, Zetland

- The amended envelope will significantly reduce shadow between 9.00am and 3.00pm on the 21 June. The areas that exceed the height control are outlined in red. However, to offset the shadow cast by the variations to the height, the development has been reduced in other areas to improve the overall outcome. These areas are outlined in blue:



➤ As shown, above there is negligible shift in shadow between 1.30pm and 3.00pm, however, the increased solar access to a substantial number of units between 9.00am and 3.00pm is significantly better outcome.

17 Joynton Avenue, Zetland

- The existing buildings, adjoining the site, overshadowed 17 Joynton Avenue during 9.00am and 11.00am.
- The approved Stage 1 envelope and modified envelope will cast shadow from 11.30am till 3.00pm.
- Due to the envelope modifications, there will be an improvement throughout most of the day with the majority of the shadow being less than the approved envelope. There are negligible areas beyond the approved Stage 1, but this does not affect the compliance of the units. The areas that exceed the height control are outlined in red. However, to offset the shadow cast by the variations to the height, the development has been reduced in other areas to improve the overall outcome. These areas are outlined in blue:



- Overall, the proposed modifications in the height will not create adverse impacts for units within the adjoining development beyond what is reasonable based on the current approved Stage 1 envelope.

- The modified envelope will have significant improvements for the adjoining sites at 890-898 Bourke Street and 15 and 17 Joynton Avenue, Zetland and should be supported.

CONCLUSION

- The above overshadowing analysis has been undertaken as a direct comparison of the approved building envelope that complied with the height control against the areas that exceed the height control. There are minor and mostly negligible increases as a result of the height variation, however in all cases, compliant solar access is achieved. A reduction in overshadowing has been achieved by the detailed design of the stage 2 DA and stepping of the building form towards the neighbouring buildings.
- The development as amended goes one step further and improves the solar access in many areas compared with the Stage 1 DA. This is a positive outcome.



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