

Attachment C

Clause 4.6 Variation Request – Height of Buildings

Clause 4.6 Variation Request



Glebe Mid-Rise Project

17-31 Cowper Street and 2A-2D Wentworth Park Road, Glebe

Prepared on behalf of: NSW Land and Housing Corporation

October 27, 2021

Document control

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Project summary

Applicant	NSW Land and Housing Corporation
Land to be developed	17-31 Cowper Street and 2A-2D Wentworth Park Road, Glebe
Legal description	Lot 17 and 18 DP244897
Project description	Glebe mid-rise development project

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Executive Summary

This report has been prepared to request a variation to a development standard subject to Clause 4.6 of the *Sydney Local Environmental Plan 2012* (Sydney LEP) in connection with a development application (D/2021/493) for mixed use social housing at 17-31 Cowper Street, Glebe (Lot 17 DP244897) and 2A-2D Wentworth Park Road, Glebe (Lot 18 DP244897). The total site area comprises 1,789sqm. The two parcels of land are separated by Park Lane and referred to as the North Site and South Site.

The site is currently zoned R1 General Residential under the Sydney LEP. The built form controls that apply to the site were amended as follows on 10 September 2021 by way of a Planning Proposal which sought to facilitate the mixed use housing renewal.

- Varied height controls up to a maximum of RL36m (Figure 1)
- Bonus FSR up to a maximum of 4.3:1 for the North Site and 3.1:1 for the South Site.

A DA for the site was lodged in May 2021 which was fully compliant with the bonus FSR controls and height controls however to respond to Council's assessment of the DA a number of changes have been made to the proposed development which necessitate a variation to the height controls to allow for an exceedance on the South Site at the southwest corner where an RL4.5m height limit is identified by the Sydney LEP.

It should be noted that the proposed variation achieves an improved urban design outcome and is as a direct result of design changes suggested by Council's Design Advisory Panel subcommittee.

Originally this area identified as having a height limit of 4.5m was envisaged to be landscaped area to accommodate deep soil and retention of the existing tree which resulted in the lower height control being applied through the Planning Proposal. During Council's assessment of the DA the proposed terrace building has been shifted towards the southern boundary in response to recommendations from Council's Design Advisory Panel subcommittee which was established to consider the DA. The subcommittee raised concerns about amenity of the terraces and adjacent communal courtyard and sought consideration of alternative design options.

Three separate meetings were held between LAHC, Council and the subcommittee during August 2021 in which a range of alternative options were considered for the design of the terraces.

At the meeting of 23 August 2021, the subcommittee endorsed the option which sought to shift the terraces to the southern boundary necessitating removal of the landscaped area and tree. Subsequently on 27 August 2021, City of Sydney recommended that the proposed development be amended to be generally consistent with the option considered by the subcommittee and noted its support for removal of the tree.

In response on the 17 September 2021 a revised development proposal was submitted to further refine the option presented to the subcommittee. The alternative design delivers multiple benefits including:

- Relocation of the private open space from the rear to the front of the terraces providing greater solar access and amenity with overlooking of the park and a north east facing aspect
- Reduced the depth and increased width of the terraces increasing daylight and solar access to the habitable spaces and greater outlook to the park
- Increased the width of the communal courtyard providing greater amenity and usability
- Reconfiguration of the access ramps from the street level to the courtyard maximising the usable communal space
- Increased separation between the residential flat building and the terraces maximising privacy and amenity for residents

- All bedrooms now face northwest providing improved privacy and improved outlook across MJ Doherty Reserve
- Inclusion of a direct pedestrian connection from the courtyard to Park Lane resulting from full separation of the terrace building from the residential flat building
- Increased deep soil for with the deep soil on the South Site increasing from 18.9% to 21.5%
- The separation of the terrace from the RFB has resulted in improved overland flow reducing flood planning level for the terraces and the internal courtyard allowing for improved amenity and relationship with the adjacent street.

The redesign also includes a replacement tree and landscaped area to be located on the north side of the terraces fronting Park Lane ensuring that the 18% canopy cover requirements of the site specific DCP could be achieved with the overall site achieving 18.1% canopy cover. The alternative design also maintains consistency with the maximum FSR controls which apply to the site.

To achieve the alternative design which has been supported in principle by Council staff, a clause 4.6 variation is required to vary the RL4.5m height limit which applies at the south-western corner of the site. A small area of the site will be affected by the variation with the proposed height of RL14.950 exceeding the maximum height of RL4.5m by 70%. It is noted this affects only a small portion of the site with the height complying with the directly adjacent height limit of RL15m.

The proposed change would significantly improve the amenity of the proposed development whilst maintaining an appropriate level of amenity and solar access to the surrounding area as follows:

- Minimal visual impacts noting that a two storey building is already located close to the southern boundary
- No additional overshadowing of MJ Doherty Reserve
- No additional overshadowing of the single storey terraces to the south west of the site
- Minor additional overshadowing of the two storey social housing dwellings to the south of the site, with direct solar access to the north frontages from 12pm onward ensuring a high level of solar access is maintained.

The proposed variation is considered to satisfy the requirements of Clause 4.6 of the LEP on the basis that:

- Compliance with the development standard is unreasonable or unnecessary noting that the proposed height of the terraces is consistent with the adjacent maximum height controls which also applies to this use and that there would not be any unreasonable environmental impacts
- There are sufficient environmental planning grounds to justify contravening the development standard as outlined above
- The proposed development will be in the public interest because it is consistent with the objectives Clause 4.3 Height of Buildings and the R1 General Residential zone which applies to the site
- The concurrence of the Secretary of the Department of Planning, Industry and Environment is not required.

The proposal satisfies the 'five part test' which has been established by the NSW Land and Environment Court which may be considered in applying Clause 4.6 to determine whether the objection to the development standard is well founded.

The proposal also satisfies the requirements of draft amendments to clause 4.6 of the Standard Instrument LEP which were exhibited from the 31 March until 12 May 2021.

On this basis the variation is considered appropriate and in the public interest.

1 Background

This report has been prepared to request a variation to a development standard subject to Clause 4.6 of the *Sydney Local Environmental Plan 2012* (Sydney LEP) in connection with a development application (D/2021/493) for mixed use social housing at 17-31 Cowper Street, Glebe (Lot 17 DP244897) and 2A-2D Wentworth Park Road, Glebe (Lot 18 DP244897). The total site area comprises 1,789sqm. The two parcels of land are separated by Park Lane and referred to as the North Site and South Site.

The site is currently zoned R1 General Residential under the Sydney LEP. The built form controls that apply to the site were amended as follows on 10 September 2021 by way of a Planning Proposal which sought to facilitate the mixed use housing renewal.

- Varied height controls up to a maximum of RL36m (Figure 1)
- Bonus FSR up to a maximum of 4.3:1 for the North Site and 3.1:1 for the South Site.

The *Sydney Development Control Plan 2012* (Sydney DCP) was also amended to remove the site from a Heritage Conservation Area and include site specific development controls to guide future development.

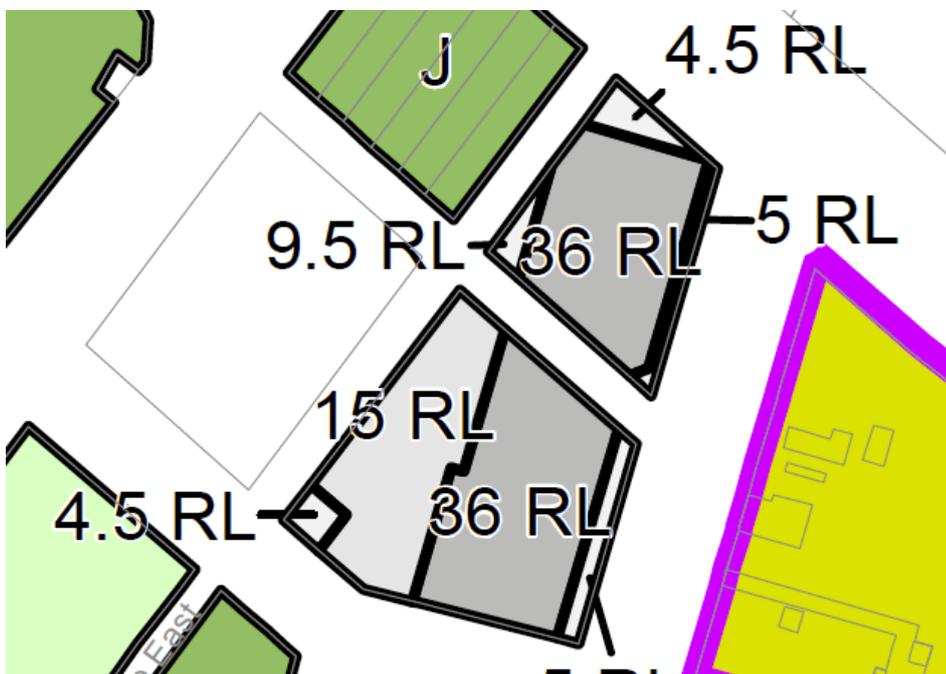


Figure 1: Sydney LEP: Maximum height of buildings

A DA for the site was lodged in May 2021 and sought approval for the following:

North Site: 2A-2D Wentworth Park Road

- 35 apartments within a residential flat building up to 8 storeys
- 180sqm of ground floor non-residential floor space facing Wentworth Park Road.

South Site: 17-31 Cowper Street

- 5 x three bedroom terrace style dwellings overlooking MJ Doherty Reserve comprising three storeys
- 35 apartments within a residential flat building up to 8 storeys
- 75sqm of ground floor non-residential floor space facing Cowper Street.

The DA was fully compliant with the bonus FSR controls and height controls however to respond to Council's assessment of the DA a number of changes have been made to the proposed development which

necessitate a variation to the height controls to allow for an exceedance on the South Site at the southwest corner where an RL4.5m height limit is identified by the Sydney LEP.

Originally this area of the site was envisaged to be landscaped area to accommodate deep soil and retention of an existing tree which resulted in the lower height control being applied through the Planning Proposal. However, during Council's assessment of the DA changes have been made to the layout and design of the proposed terraces houses at the south west of the site in response to recommendations from Council's Design Advisory Panel subcommittee which was established to consider the DA. The subcommittee raised concerns about amenity of the terraces and adjacent communal courtyard and sought consideration of alternative design options. The subcommittee made the following comments in this regard:

- *The terraces are constrained and appear to provide sub-optimal levels of amenity for future occupants. Specifically, concern is raised in relation to:*
 - *The minimal separation provided between the rear of the terraces and the southern RFB.*
 - *The size of the private open spaces at the rear of the terraces. The amenity of these spaces is compromised due to overshadowing impacts and overlooking impacts from the southern RFB.*
 - *Limited windows within the terraces which reduce daylight access.*
 - *The internal planning which limits opportunities for good cross ventilation and daylight.*
- *There is an opportunity to rethink how these terraces work to resolve the above issues. The Subcommittee recommends the applicant considers a contemporary interpretation of a terrace typology to assist in resolving the above issues.*

Three separate meetings were held between LAHC, Council and the subcommittee during August 2021 in which a range of alternative options were considered for the design of the terraces.

At the meeting of 23 August 2021, the subcommittee endorsed an option which sought to shift the terraces to the southwest boundary necessitating removal the landscaped area and tree. Subsequently on 27 August 2021, City of Sydney recommended that the proposed development be amended to be generally consistent with the option considered by the subcommittee and noted its support for removal of the tree.

In response on the 17 September 2021 a revised development proposal was submitted which further refined the option presented to the subcommittee. The alternative design delivers multiple benefits including:

- Relocation of the private open space from the rear to the front of the terraces providing greater solar access and amenity with overlooking of the park and a north east facing aspect
- Reduced the depth and increased width of the terraces increasing daylight and solar access to the habitable spaces and greater outlook to the park
- Increased the width of the communal courtyard providing greater amenity and usability
- Reconfiguration of the access ramps from the street level to the courtyard maximising the usable communal space
- Increased separation between the residential flat building and the terraces maximising privacy and amenity for residents
- All bedrooms now face northwest providing improved privacy and improved outlook across MJ Doherty Reserve
- Inclusion of a direct pedestrian connection from the courtyard to Park Lane resulting from full separation of the terrace building from the residential flat building

- Increased deep soil for with the deep soil on the South Site increasing from 18.9% to 21.5% (see Figure 6 and Figure 7)
- The separation of the terrace from the RFB has resulted in improved overland flow reducing flood planning level for the terraces and the internal courtyard allowing for improved amenity and relationship with the adjacent street.

The redesign also included a replacement tree and landscaped area to be located on the north side of the terraces fronting Park Lane ensuring that the 18% canopy cover requirements of the site specific DCP could be achieved with the overall site achieving 18.1% canopy cover. The alternative design also maintains consistency with the maximum FSR controls which apply to the site.

The ground floor layout of the terraces as lodged and as amended are shown in Figure 2 and Figure 3 respectively. The overall site layout as lodged and as amended is shown in Figure 4 and Figure 5 respectively.

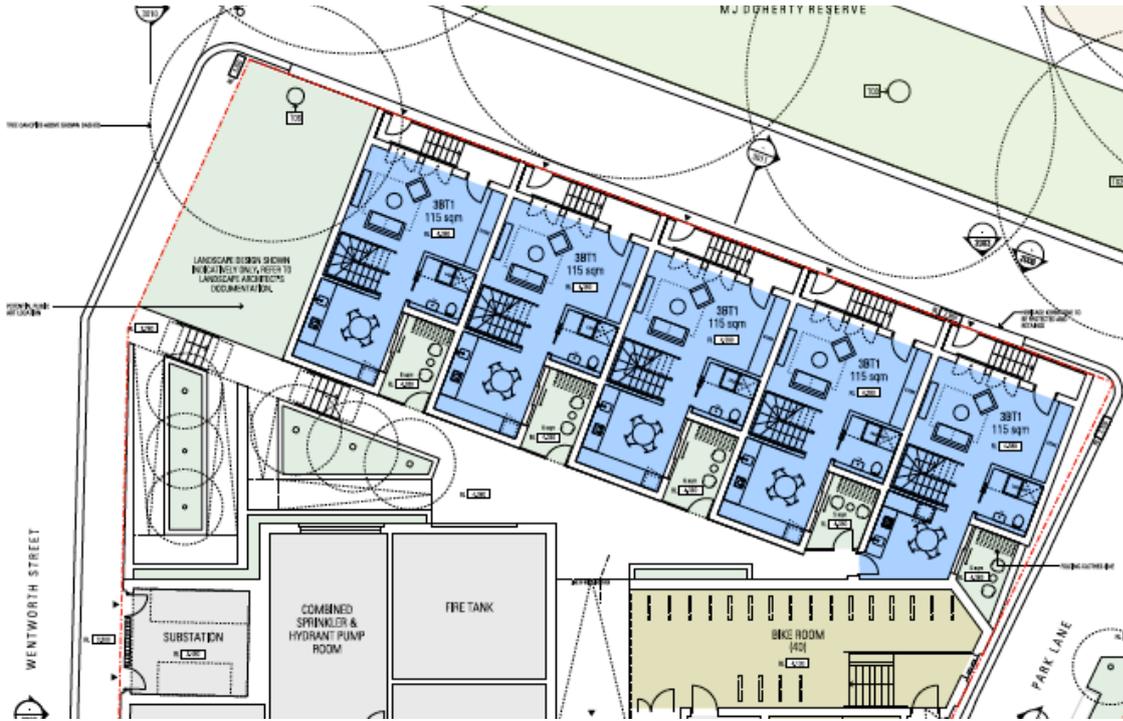


Figure 2: Original ground floor terrace layout

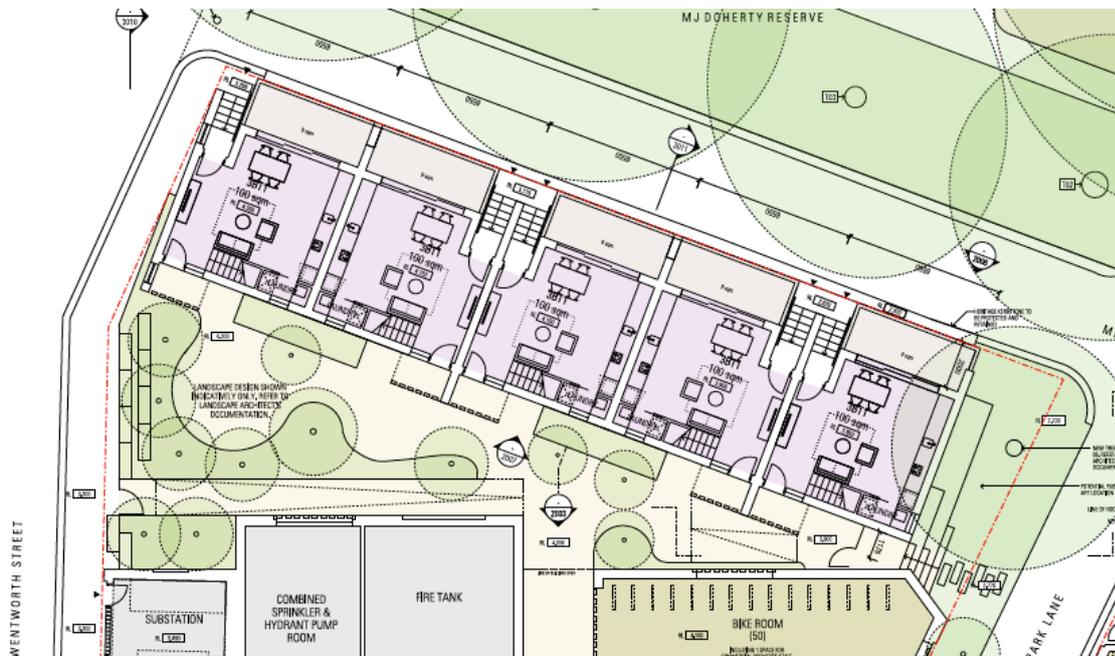


Figure 3: Amended ground floor terrace plan



Figure 4: Original ground floor site layout

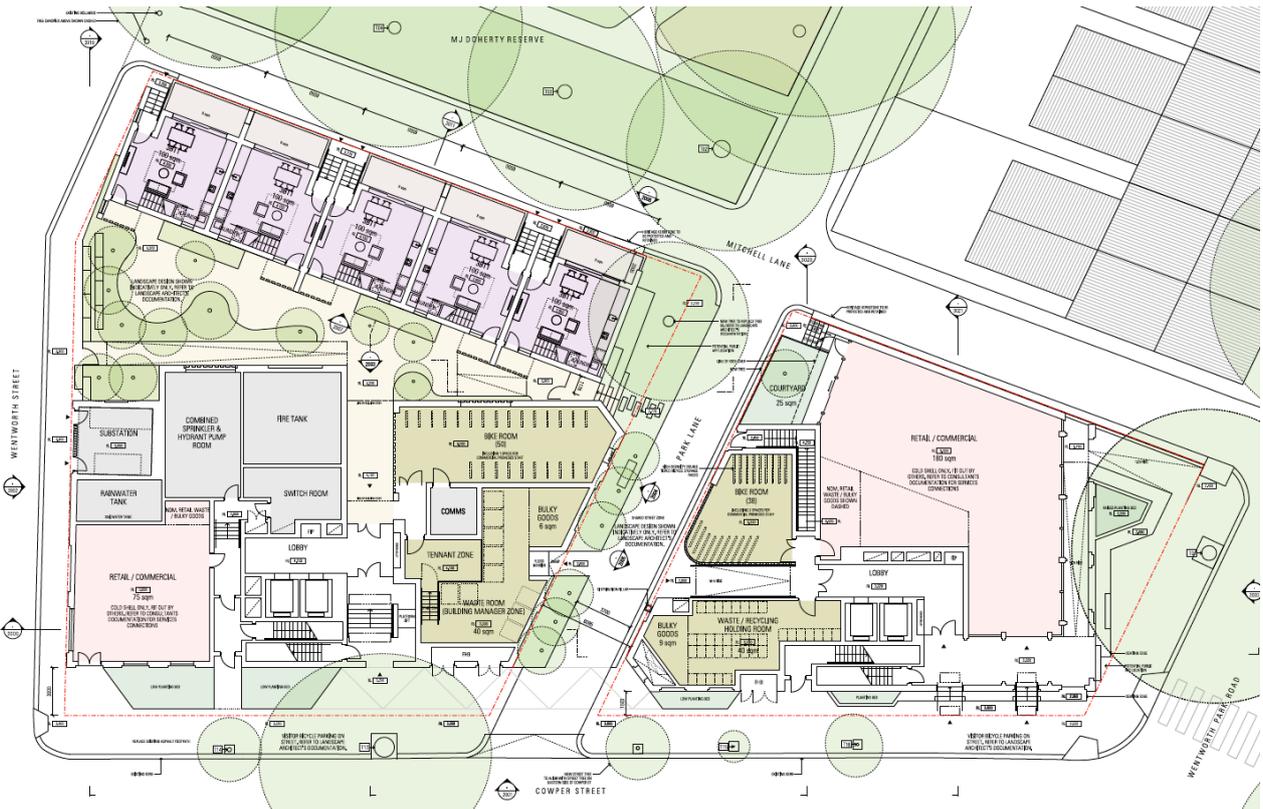


Figure 5: Amended ground floor site layout

- KEY**
- Deep Soil Zones (Inside Site)
 - Deep Soil Zones (Park Ln)
 - Other Landscape Areas
 - Indicative OSD tank locations
(Location inside building footprint does not impact deep soil zone)

SOUTH SITE

- Total Area: 1162.8 m²
- Deep Soil Area: 220m²
- Deep Soil Percentage: 18.9%

NORTH SITE

- Total Area: 625.7 m²
- Deep Soil Area: 55m²
- Deep Soil Percentage: 8.8%

COMBINED (SITE)

- Total Area: 1788.5 m²
- Deep Soil Area: 275m²
- Deep Soil Percentage: 15.4%

PARK LN CONTRIBUTION

- Added Deep Soil Area: 29.3m²

NOTE

Site Specific DCP - pg 9 - Deep Soil requirements:
"A minimum of 8% of the total (combined) site area must be provided as deep soil as per 6.3K.4(5)."

Site Specific DCP - pg8 - Deep Soil definition:
"No structures may encroach on the landscaped areas except access paths, ramps and stairs and external sun shading elements above the canopy of the trees at maturity."

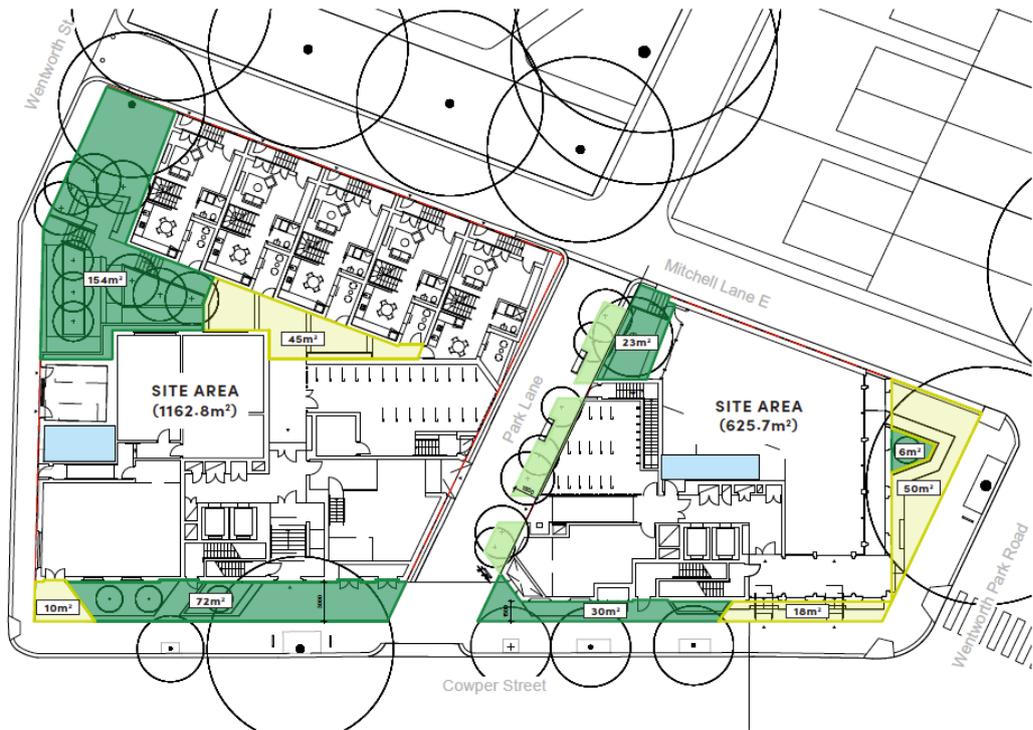


Figure 6: Original landscaped area and deep soil

- KEY**
- Deep Soil Zones (Inside Site)
 - Deep Soil Zones (Park Ln)
 - Other Landscape Areas
 - Indicative OSD tank locations
(Location inside building footprint does not impact deep soil zone)

SOUTH SITE

- Total Area: 1162.8 m²
- Deep Soil Area: 251m²
- Deep Soil Percentage: 21.5%

NORTH SITE

- Total Area: 625.7 m²
- Deep Soil Area: 59m²
- Deep Soil Percentage: 9.4%

COMBINED (SITE)

- Total Area: 1788.5 m²
- Deep Soil Area: 310m²
- Deep Soil Percentage: 17.3%

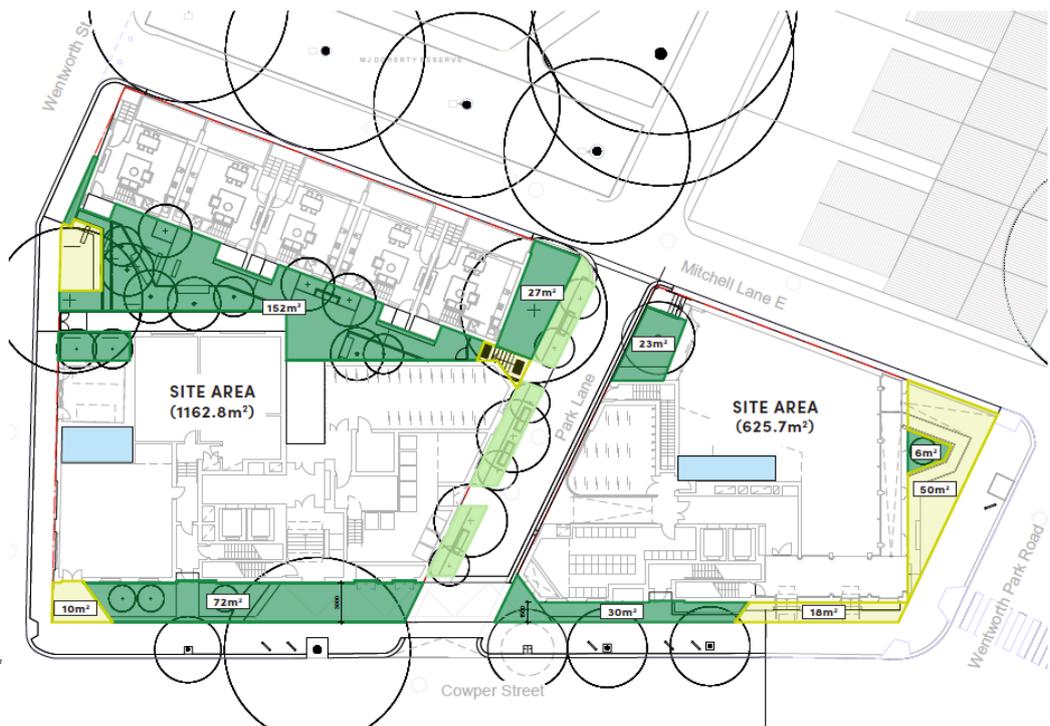
PARK LN CONTRIBUTION

- Added Deep Soil Area: 41.2m²

NOTE

Site Specific DCP - pg 9 - Deep Soil requirements:
"A minimum of 8% of the total (combined) site area must be provided as deep soil as per 6.3K.4(5)."

Site Specific DCP - pg8 - Deep Soil definition:
"No structures may encroach on the landscaped areas except access paths, ramps and stairs and external sun shading elements above the canopy of the trees at maturity."



1:250@A3 N

Figure 7: Proposed landscaped area and deep soil

2 Sydney LEP Clause 4.6 provisions

Clause 4.6 of the Sydney LEP includes provisions that allow Council to vary development standards in certain circumstances. The objectives of clause 4.6 are:

- To provide an appropriate degree of flexibility in applying certain development standards to particular development.
- To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Clause 4.6 requires Council to consider a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

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

In making its determination Council must also consider whether 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.

Clause 4.6 requires the concurrence of the Secretary of the Department of Planning, Industry and Environment. However, all consent authorities have been granted assumed concurrence under *Planning Circular PS 20-002 Variations to Development Standards* (5 May 2020). The assumed concurrence includes a condition that numerical standards (such as height of buildings) cannot be varied by greater than 10% if determined by a delegated authority. It is noted that this restriction does not apply where the Council or Planning Panel is the decision maker. Accordingly, the assumed concurrence applies in this instance.

The Department of Planning, Industry and Environment has issued *Varying Development Standards – A Guide 2011* to assist applicants in applying to vary development standards. The guide sets out a ‘five part test’ which has been established by the NSW Land and Environment Court which may be considered in applying Clause 4.6 to determine whether the objection to the development standard is well founded.

The matters outlined above have been considered and addressed by this report.

3 Extent of variation to development standards

This clause 4.6 Variation Request seeks a minor variation to the RL4.5m height limit which applies at the south-western corner of the site. The diagrams at Figure 8 and Appendix A show the area of the site which will be affected by the proposed variation with the height of RL14.950 exceeding the maximum height of RL4.5m by 70%. It is noted this affects only a small portion of the site with the height complying with the directly adjacent height limit of RL15m. The height plane diagram at Figure 9 shows the extent of variation in 3D form and as outlined in this report the variation will have significant amenity benefits for the proposed development and minimal amenity impacts on the surrounding area.

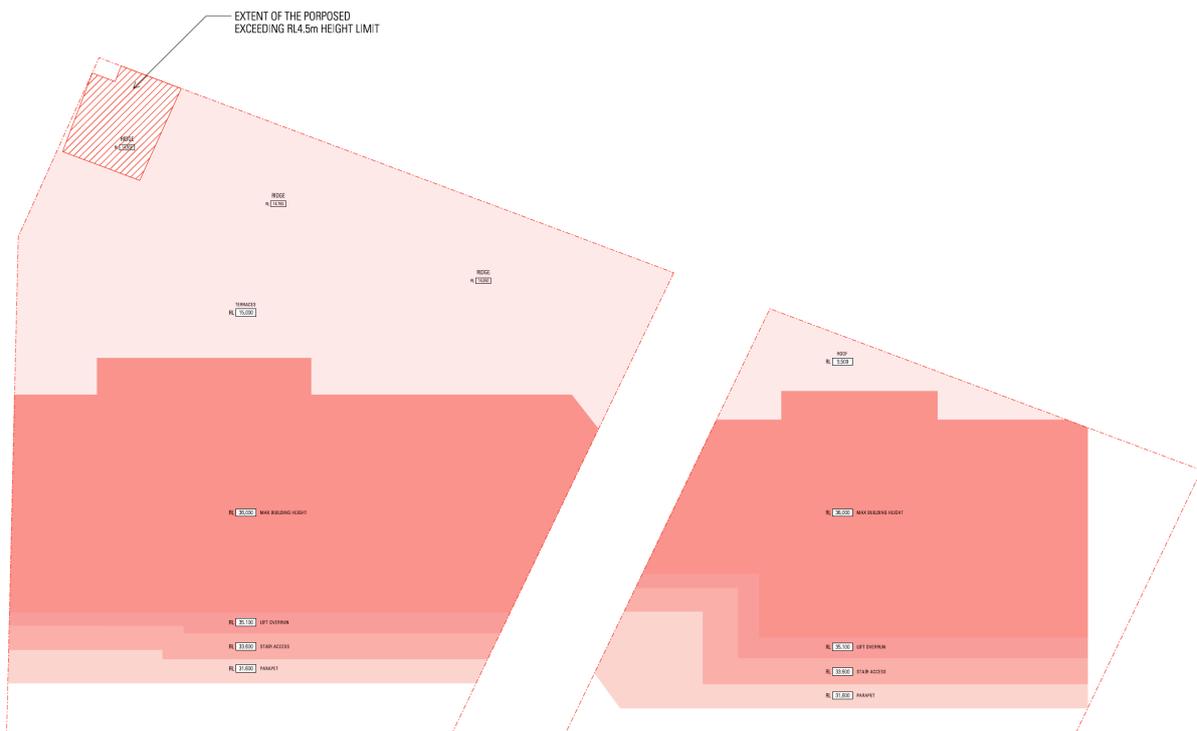


Figure 8: Extent of variation - plan



Figure 9: Extent of variation – 3D views

4 Justification of variation

This section of the report provides consideration of the requirements of Clause 4.6 as well as the ‘five part test’ set out in *Varying Development Standards – A Guide 2011*.

4.1 Consideration of Clause 4.6 requirements

Clause 4.6(3)(a): compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

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

As outlined in Section 1, the 4.5m height limit was applied to respond to the Planning Proposal reference design, which setback the terraces from the south-west corner to allow for a small landscaped area and retention of an existing tree in this location. It is noted that the tree was originally proposed to be retained at the requested by Council.

It is clear from the Sydney LEP Height of Buildings map that the approved maximum height for the terraces was RL15m which applies adjacent to the RL4.5m height limit. The proposed height of the terraces is below the required RL15m. The exceedance within the RL4.5m area has resulted from a redesign of the terraces which was requested by Council and the Council’s Design Advisory Subcommittee and seeks to improve amenity for the terraces and the adjacent communal open space. The amended design has been supported by both Council and the subcommittee.

As demonstrated in the sections below the variation will deliver significant amenity improvements for the proposed development and will not result in any unreasonable amenity impacts on the surrounding area. Further it will not impact on the ability of the proposal to achieve the relevant objectives of the Sydney LEP as set out in Clause 4.3 – Height of Buildings and for the R1 General Residential zone which applies to the site.

Clause 4.6(3)(a): there are sufficient environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify the proposed variation as outlined below.

The variation has allowed for a redesign of the location and layout of the proposed terrace style dwellings which will deliver multiple amenity improvements to the proposed development as summarised below.

- Relocation of the private open space from the rear to the front of the terraces providing greater solar access and amenity with overlooking of the park and a north east facing aspect
- Reduced the depth and increased width of the terraces increasing daylight and solar access to the habitable spaces and greater outlook to the park
- Increased the width of the communal courtyard providing greater amenity and usability
- Reconfiguration of the access ramps from the street level to the courtyard maximising the usable communal space
- Increased separation between the residential flat building and the terraces maximising privacy and amenity for residents
- All bedrooms now face northwest providing improved privacy and improved outlook across MJ Doherty Reserve
- Inclusion of a direct pedestrian connection from the courtyard to Park Lane resulting from full separation of the terrace building from the residential flat building
- Increased deep soil for with the deep soil on the South Site increasing from 18.9% to 21.5% (see Figure 6 and Figure 7).

- The separation of the terrace from the RFB has resulted in improved overland flow reducing flood planning level for the terraces and the internal courtyard allowing for improved amenity and relationship with the adjacent street.

Inclusion of additional landscaped area and a replacement tree to be located on the north side of the terraces will also ensure that 18% canopy cover requirements of the site specific DCP can be achieved with the overall site achieving 18.1% canopy cover. As evident in Figure 10 below the canopy of the existing tree is relatively small and is constrained by the adjacent trees within MJ Doherty Reserve. Accordingly, it is considered that its removal will not have a significant impact on the amenity of the surrounding public domain, particularly noting the proposed replacement tree planting.

The proposed height variation will also not result in any significant amenity impacts on the surrounding area. The proposed terraces adjoin the local open space (MJ Doherty Reserve) to the west, two storey social housing apartments to the south, and single storey terraces to the south east.

The proposed terraces would move closer to the southern boundary meaning the built form would be closer to the social housing dwellings and terraces to the south and south west. However, the existing two storey building on the site is located very close to the boundary as shown in Figure 10 below. The proposed three storey terrace building would not result in any significantly greater visual impacts than the existing building.



Figure 10: View to the south west corner of the site Wentworth Street

A comparison of the shadow diagrams from the original DA plans and the amended DA plans show there would be no additional overshadowing of MJ Doherty Reserve or the existing terraces to the south west as

a result relocation of the proposed terraces into the area with a maximum height of RL4.5m. There would be a minor increase in overshadowing to the two storey social housing dwellings. This is limited to part of the front private open space and front façade between 10am and 11am as shown in Figure 13 and Figure 14 respectively. However, the frontage of this building would receive full solar access from 12pm onward meaning that 3 hours of solar access would be maintained to this part of the building. This is considered to be an acceptable level of impact.

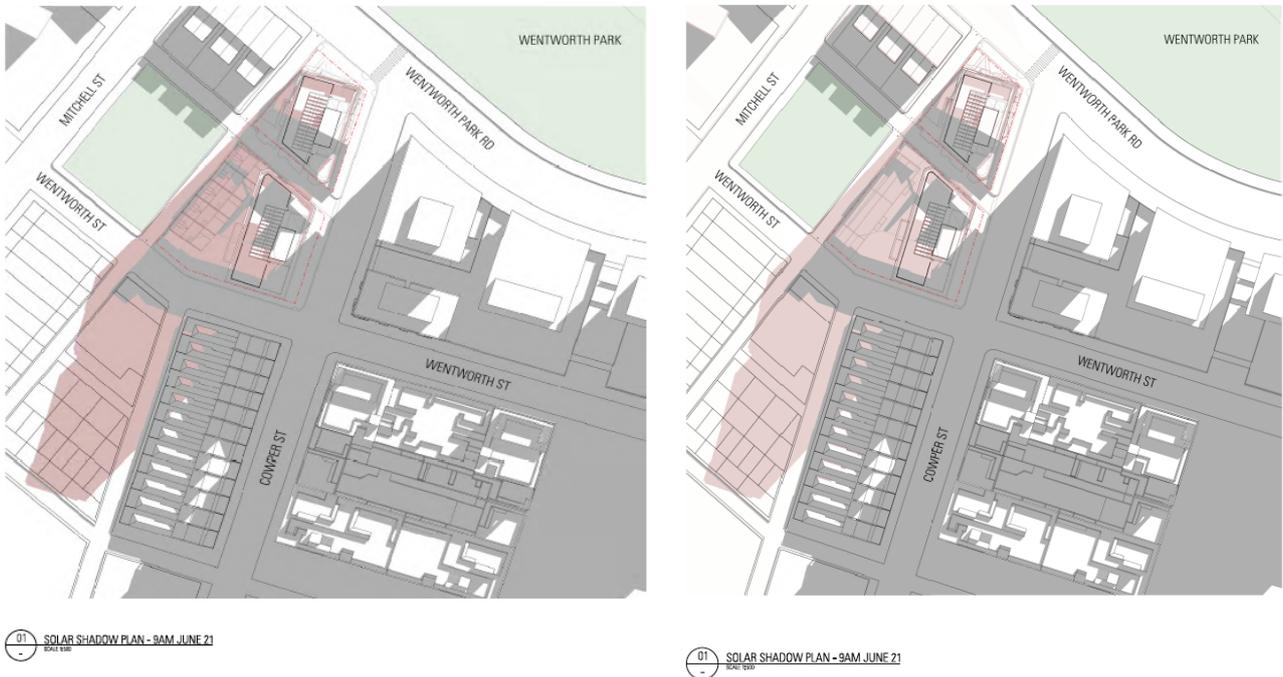


Figure 11: Solar access 9am – original DA (left) / amended DA (right)

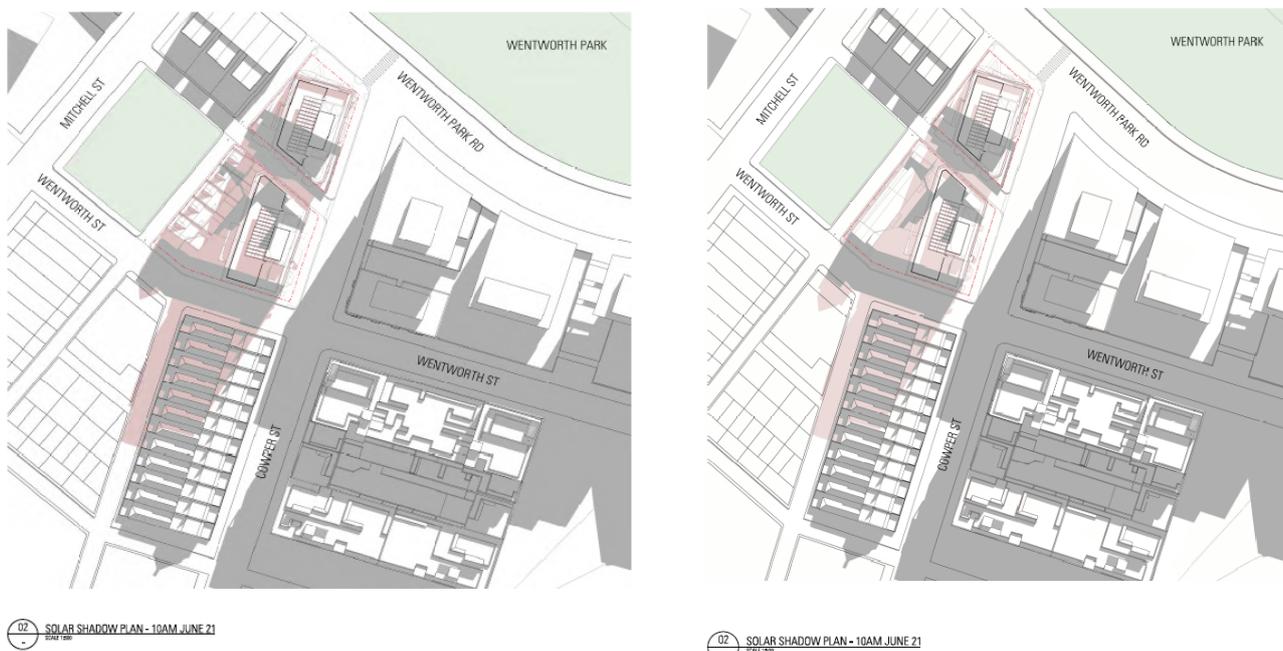
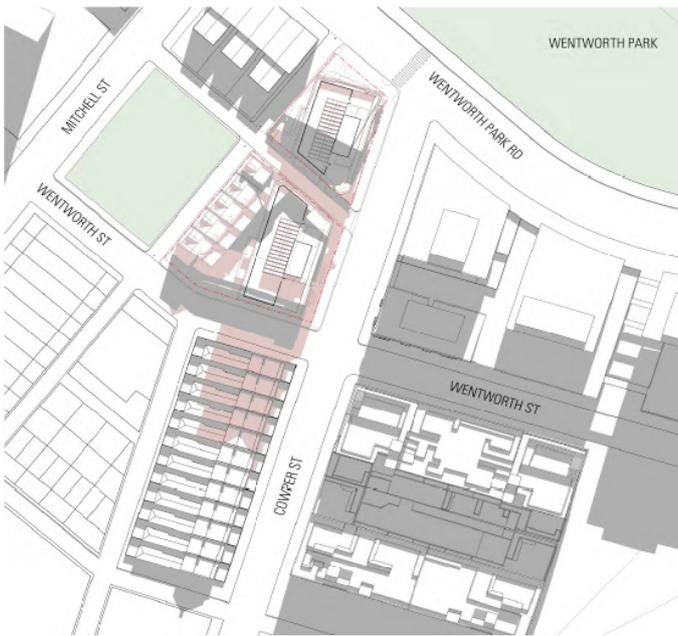
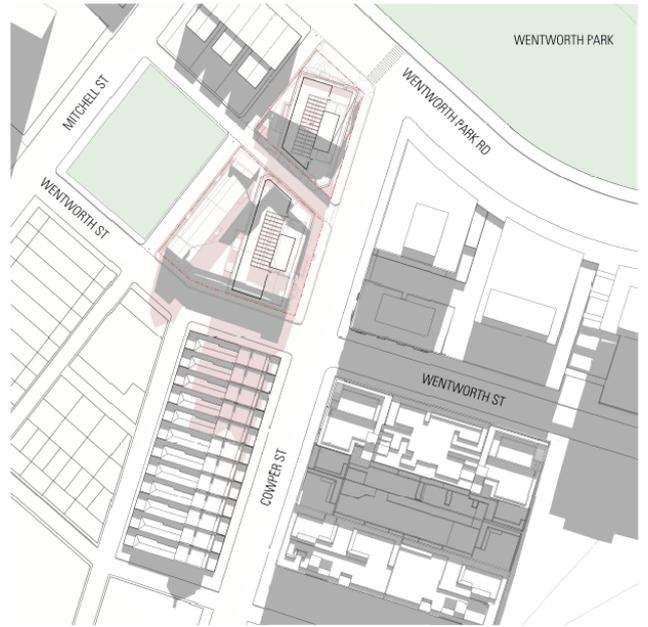


Figure 12: Solar access 10am – original DA (left) / amended DA (right)

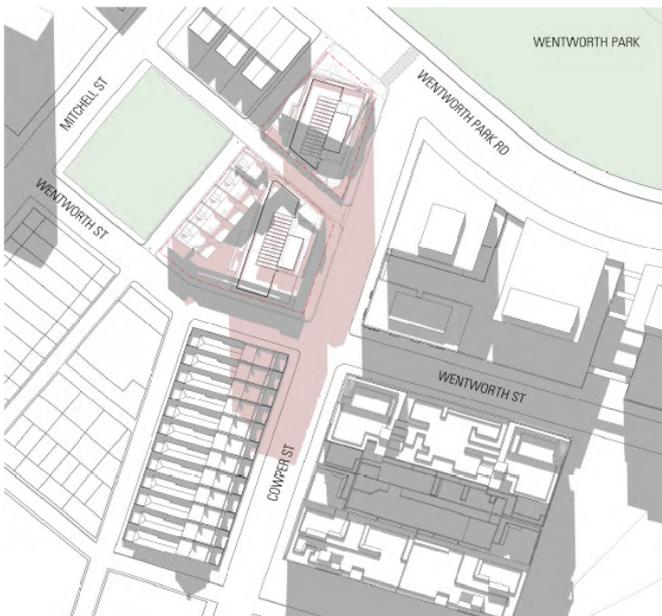


01 SOLAR SHADOW PLAN - 11AM, JUNE 21
SCALE 1:500

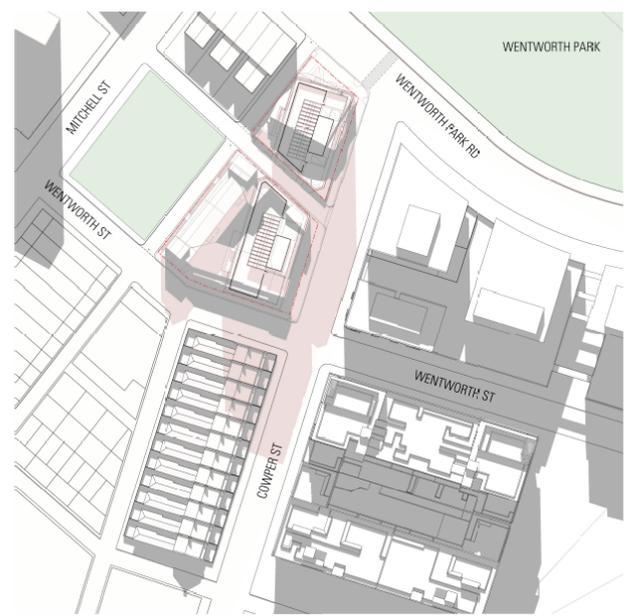


01 SOLAR SHADOW PLAN - 11AM, JUNE 21
SCALE 1:500

Figure 13: Solar access 11am – original DA (left) / amended DA (right)



02 SOLAR SHADOW PLAN - 12PM, JUNE 21
SCALE 1:500



02 SOLAR SHADOW PLAN - 12PM, JUNE 21
SCALE 1:500

Figure 14: Solar access 12pm – original DA (left) / amended DA (right)

In summary the variation will result in minimal environmental impacts, whilst significantly enhancing the amenity of the proposed development.

Clause 4.6(4)(a)(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

The proposed development is consistent with the objectives of Clause 4.3 Height of Buildings as shown in Table 1 and the objectives of the R1 General Residential zone which applies to the site as shown in Table 2.

Table 1: Consideration of Clause 4.3 Height of Buildings objectives

Objective	Consideration
To ensure the height of development is appropriate to the condition of the site and its context	The development has been designed to respond to the surrounding built form context with taller buildings located at the north and west of the site adjacent to recent redevelopment sites of a similar scale. The built form steps down towards the south west of the site to respond to the low rise dwellings within the adjacent heritage conservation area. Whilst the proposed variation seeks to move the built form closer to the south west corner it is noted that a two storey building is currently in this location. The proposed three storey terrace building would not result in any significantly greater visual impacts than the existing building.
To ensure appropriate height transitions between new development and heritage items and \ buildings in heritage conservation areas or special character areas,	As discussed above the proposed development provides for an appropriate height transition to the adjacent heritage conservation area with the built form stepping down to three storey terrace style dwellings to this frontage.
To promote the sharing of views,	The proposed development will not have any impact on significant views from surrounding buildings or the public domain noting such views are largely limited by the existing built form on the site.

Table 2: Consideration of objectives of the R1 General Residential zone

Objective	Consideration
To provide for the housing needs of the community.	The proposed development provides of the housing needs to the community, by increasing the supply of social housing within an inner city location with good access to transport, services and facilities.
To provide for a variety of housing types and densities.	The proposed development supports a variety of housing types and densities by providing increased supply of social housing.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposal supports facilities and services to meet the day to day needs of residents with ground floor non-residential uses with potential to support retail, commercial and community uses, as well as provision of on site communal open spaces.
To maintain the existing land use pattern of predominantly residential uses.	The proposal maintains the pattern of predominantly residential uses being a largely residential use with non-residential uses limited to specified areas of the ground floor to address the public domain and provide for street activation.

Clause 4.6(4)(b) the concurrence of the Secretary has been obtained

Clause 4.6 requires the concurrence of the Secretary of the Department of Planning, Industry and Environment. However, all consent authorities have been granted assumed concurrence under *Planning Circular PS 20-002 Variations to Development Standards* (5 May 2020). The assumed concurrence includes a condition that numerical standards (such as height of buildings) cannot be varied by greater than 10% if determined by a delegated authority. It is noted that this restriction does not apply where the Council or Planning Panel is the decision maker. Accordingly, the assumed concurrence applies and the concurrence of the Secretary is not required.

Clause 4.6(6) Matters for consideration by the Secretary

This section sets out that in deciding whether to grant concurrence, the Planning Secretary must consider:

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

The variation raises no matters of significance for State or regional planning. The variation is considered to be in the public interest as it will significantly improve the amenity of the proposed development whilst maintaining an appropriate level of amenity for surrounding development and the public domain.

There are no other know matters requiring the consideration of the Secretary.

4.2 Consideration of the ‘five part test’

The Department of Planning, Industry and Environment (DPIE) has issued *Varying Development Standards – A Guide 2011* to assist applicants applying to vary development standards. The guide sets out a ‘five part test’ which has been established by the NSW Land and Environment Court which may be considered in applying Clause 4.6 to determine whether the objection to the development standard is well founded. The ‘five part test’ establishes a number of ways that variations to development standards can be justified. A Clause 4.6 application is not required to meet all of the tests.

Table 3: Consideration of ‘five part test’

Objective	Consideration
The objectives of the standard are achieved notwithstanding non-compliance with the standard	The objectives of Clause 4.3 Height of Buildings can still be achieved, as outlined at Table 1, notwithstanding the non-compliance.
The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary	This test is not applicable in this instance.
The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable	This test is not applicable in this instance.
The development standard has been virtually abandoned or destroyed by council’s own actions in granting consents departing from the standard.	This test is not applicable in this instance.

Objective	Consideration
The compliance with the development standard is unreasonable or inappropriate due to the existing use of the land and current character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	This test is not directly applicable in this instance. However as discussed previously in Section 4.1 compliance with the development standard is unreasonable in this instance.

4.3 Consideration of proposed amendments to Clause 4.6 of the Standard LEP

DPIE exhibited an Explanation of Intended Effect (EIE) on proposed amendments to clause 4.6 of the Standard Instrument LEP from the 31 March until 12 May 2021.

The exhibited EIE proposed that an applicant will be required to demonstrate the following essential criteria in order to vary a development standard:

- That the proposed development is consistent with:
 - The objectives of the clause containing the development standard, and
 - the zone in which the development is proposed to be carried out, **and**
- The contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes and economic outcomes; **or**
- An alternative test may be developed to enable flexibility to be applied in situations where the variation is so minor that it is difficult to demonstrate an improved planning outcome, but the proposed variation is appropriate due to the particular circumstances of the site and the proposal. The Department welcomes feedback on this proposed element which will assist in developing this alternative test.

The proposed development is consistent with the objectives of the FSR clause and the R1 General Residential zone as outlined in Section 4.1 of this report.

It is considered that the proposal would result in an improved outcome when compared with what would have been achieved if the development standard was not contravened. As outlined in Section 4.1 the variation will provide improved environmental amenity for the future residents of the proposed development whilst maintaining an appropriate level of amenity for the surrounding area. The variation enables these benefits to be achieved without the need to reduce the number of new social housing dwellings that could be accommodated on the site. It is considered that supporting the supply of social will have social and economic benefits for the local area.

On this basis the variation is considered to satisfy the draft amendments to clause 4.6.

5 Conclusion

This clause 4.6 variation seeks to vary the height control on part of the site consistent with the layout and design which has been endorsed by Council officers and the Design Advisory Panel Subcommittee established to consider the DA for the site.

The variation will provide for enhance amenity of the development by allowing the approval of design changes to the original proposed development which will deliver a number of benefits including:

- Relocation of the private open space from the rear to the front of the terraces providing greater solar access and amenity with overlooking of the park and a north east facing aspect
- Reduced the depth and increased width of the terraces increasing daylight and solar access to the habitable spaces and greater outlook to the park
- Increased the width of the communal courtyard providing greater amenity and usability
- Reconfiguration of the access ramps from the street level to the courtyard maximising the usable communal space
- Increased separation between the residential flat building and the terraces maximising privacy and amenity for residents
- All bedrooms now face northwest providing improved privacy and improved outlook across MJ Doherty Reserve
- Inclusion of a direct pedestrian connection from the courtyard to Park Lane resulting from full separation of the terrace building from the residential flat building
- Increased deep soil for with the deep soil on the South Site increasing from 18.9% to 21.5%
- The separation of the terrace from the RFB has resulted in improved overland flow reducing flood planning level for the terraces and the internal courtyard allowing for improved amenity and relationship with the adjacent street.

The redesign also includes a replacement tree and landscaped area to be located on the north side of the terraces fronting Park Lane ensuring that the 18% canopy cover requirements of the site specific DCP could be achieved with the overall site achieving 18.1% canopy cover. The alternative design also maintains consistency with the maximum FSR controls which apply to the site.

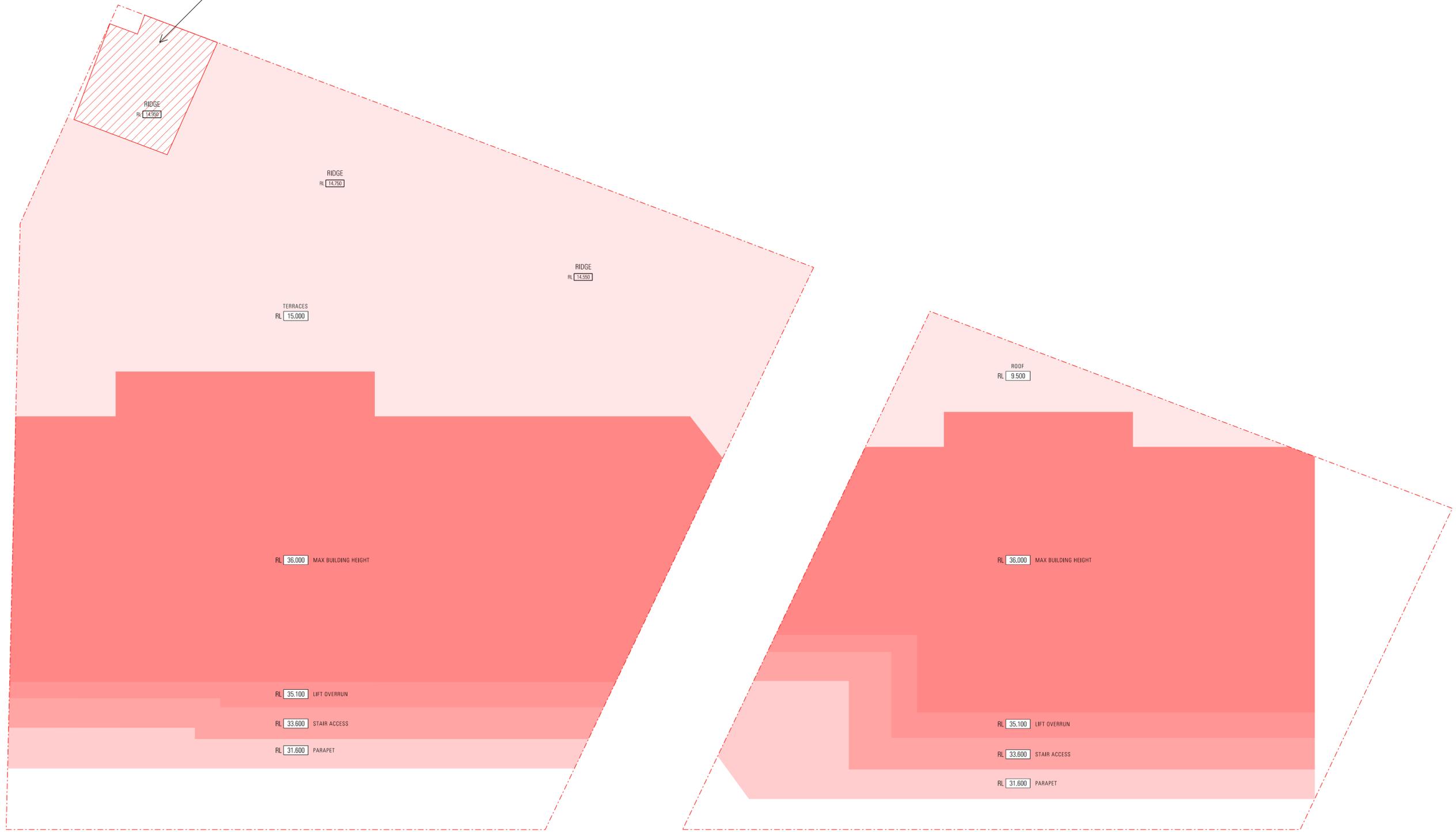
The proposed design changes would also maintain an appropriate level of amenity and solar access to the surrounding area as follows:

- Minimal visual impacts noting that a two storey building is already located close to the southern boundary
- No additional overshadowing of the single storey terraces to the south west of the site
- Minor additional overshadowing of the two storey social housing dwellings to the south of the site, with direct solar access to the north frontages from 12pm onward ensuring a high level of solar access is maintained.

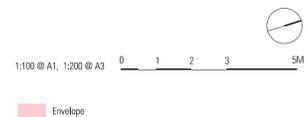
On this basis the variation is considered appropriate and in the public interest.

Appendix A Height exceedance diagrams

EXTENT OF THE PORPOSED EXCEEDING RL4.5m HEIGHT LIMIT



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JPW-SK-0068 REV01 P1
HEIGHT PLANE DIAGRAM
26-OCT-2021
19001
1:100 AT A1



3D DIAGRAM - VIEW 1



3D DIAGRAM - VIEW 2