

# **Attachment E**

<p><b>Clause 4.6 Variation Request – Height of Buildings</b></p>
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The logo for URBIS, consisting of the word "URBIS" in a bold, sans-serif font, enclosed within a square frame. A thick black horizontal line extends from the right side of the square frame across the top of the page, and a thick black vertical line extends upwards from the top of the square frame.

# **CLAUSE 4.6 VARIATION TO DEVELOPMENT STANDARD:**

## **HEIGHT OF BUILDINGS**

23-27 Bourke Road & 41-43 Bowden  
Street, Alexandria

Prepared for  
**TIME & PLACE PTY LTD**  
January 2022

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# 1. INTRODUCTION

This Clause 4.6 Variation Request (**this Request**) has been prepared by Urbis on behalf of Time and Place (**the applicant**) to support the Detailed Development Application (**DA**) for construction of a four-storey commercial building at 23-27 Bourke Road and 41-43 Bowden Street, Alexandria (**the site**).

The proposed Detailed DA follows on from the approved Concept DA (**D/2019/817**) and Competitive Design Process (**Design Competition**) undertaken between September 2020 and November 2020, whereby, the winning project architects John Wardle Architects (**JWA**) were announced.

This request seeks to vary the maximum height of buildings development standard prescribed for the site under clause 4.3 of the *Sydney Local Environmental Plan 2012* (**SLEP 2012**). SLEP 2012 prescribes a maximum building height of 18 metres for the site.

The proposal has a maximum height of RL 30.4 metres (ranging between 21.03 - 22.57 metres measured to the top of plant and lift overruns), constituting a height exceedance of between 3.03m - 4.57m or 16.8% - 25.4% of the height control. In addition, an architectural roof feature is also proposed which exceeds the maximum building height standard. This exceedance is permitted with consent under clause 5.6 of the SLEP 2012 and is representative of a non-compliance of 6.95m (38%). Council have also requested the inclusion of roof top shading devices, which will exceed the height limit by 2.01m (11%).

This variation request is made pursuant to clause 4.6 of SLEP 2012.

For a request to meet the requirements of clause 4.6(3) of the SLEP 2012, it must adequately demonstrate:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

This request contains justified reasoning for the proposed variation to the height development standard and demonstrates that:

- The objectives of the development standard will be achieved, notwithstanding that the development standard will be exceeded, and in doing so, establishes that compliance with the standard is unreasonable or unnecessary (Initial Action at [17]) – Refer to **Section 7.2** of this Request.
- The proposal is consistent with the objectives of the zone in which the proposed development is proposed to be carried out, being the B6 Enterprise Corridor zone - Refer to **Section 7.2** of this Request.
- Whilst the height development standard will be exceeded, there are sufficient environmental planning grounds to support the proposed development – Refer to **Section 7.3** of this Request.

This request should be read in conjunction with the Statement of Environmental Effects prepared by Urbis, dated 24 August 2021 and accompanying design and technical documentation.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** brief overview of the planning framework which permits variations to the height of buildings standard.
- **Section 5:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 6:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 7:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.

- **Section 8:** summary and conclusion.

## 2. SITE CONTEXT

### 2.1. SITE DESCRIPTION

The site is known as 23-27 Bourke Road and 41-43 Bowden Street, Alexandria and is located within the City of Sydney local government area (LGA). The site occupies two land allotments and is legally described as Lot 17 in DP 747148 and Lot 16 in DP 747148.

The site comprises a regular rectangular shaped allotment with a frontage of approximately 79m to Bowden Street and 94m to Bourke Road. The site has a total site area of 8,090sqm and will have a site area of 7,747sqm following the proposed footpath widening and public domain works which are to be dedicated to Council.

The topography of the site is relatively flat with a slight fall of approximately 1-2 metres from south to north (refer to Site Survey attached to the SEE). The site has some existing tree planting and landscaping in the car park areas along the south-eastern boundary and in the northern corner of the site to Bowden Street. There are existing street trees along both site frontages.

The site currently contains a single storey warehouse building and a two-storey warehouse building, such that Lot 17 (23-27 Bourke Road) has a dual frontage to Bourke Road as well as Bowden Street, whereas, the Lot 16 (41-43 Bowden Street) has single frontage to Bowden Street. Vehicular access is provided along the Bourke Road and Bowden Street, such that separate entries are provided for each building. Both allotments provide on-site parking along the southern and north-eastern side respectively.

The surrounding land to the north, south, east and west comprises light industrial developments. An aerial photograph of the site is included at **Figure 1**.

A series of site photographs are provided in **Figure 2** over the page.

Figure 1 Aerial Photograph of the site



Source: Urbis

Figure 2 Site Photographs



Picture 1 View of site from corner of Bourke Road and Bowden Street



Picture 2 View of existing building at 23-27 Bourke Road looking west from Bowden Street frontage



Picture 3 View of existing building at 41-47 Bowden Street



Picture 4 View of the site from the southern corner on Bourke Road



Picture 5 View of site frontage along Bourke Road looking north



Picture 6 View of site frontage along Bourke Road looking west

Source: Urbis

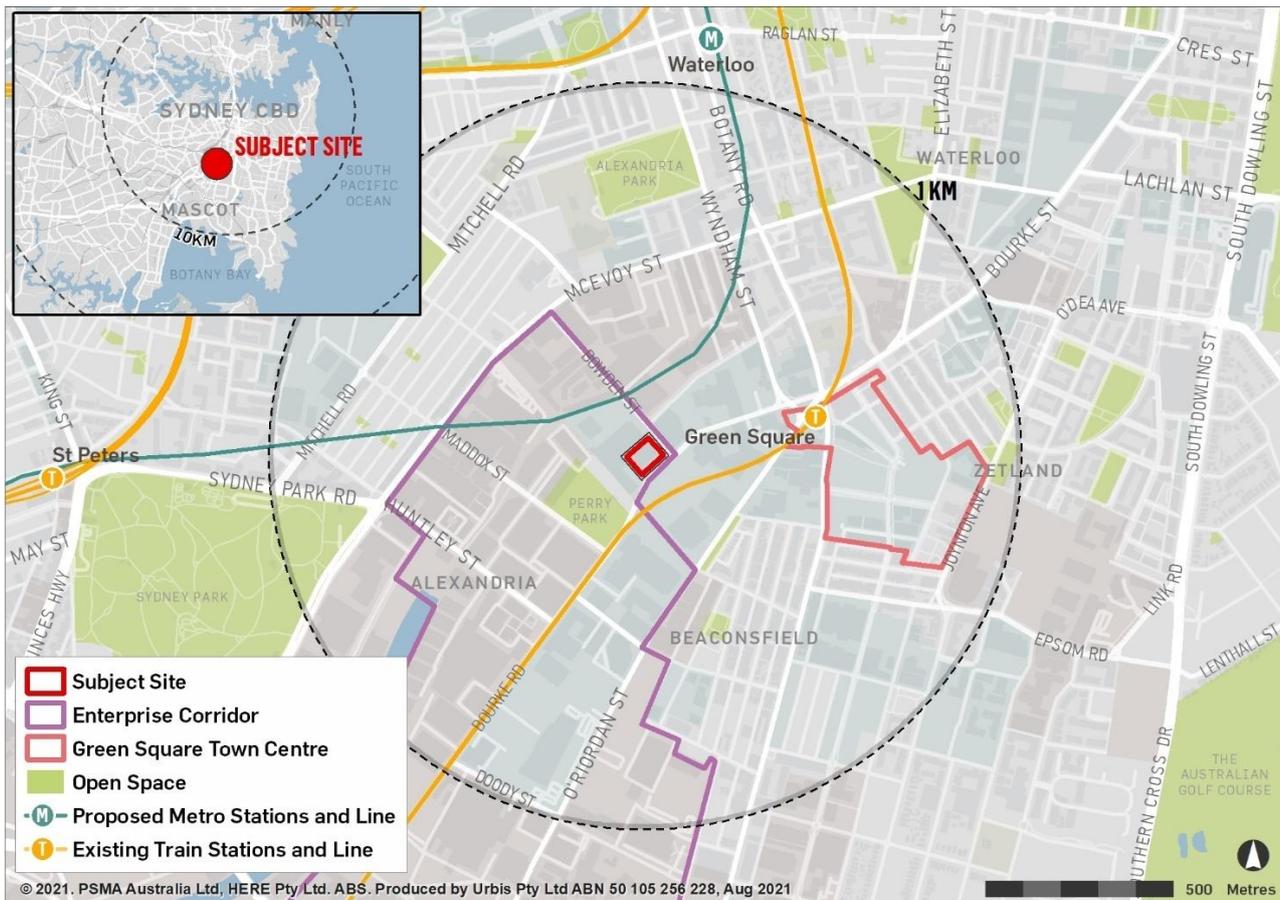
## 2.2. LOCALITY CONTEXT

The site is situated in the inner western suburb of Alexandria, approximately 3.5km from the Sydney CBD. The site is located within the City of Sydney Southern Employment Lands area and Enterprise Corridor locality.

The locality is well connected to the local and regional road network through connections to Botany Road and the M1 Motorway to the east via Bourke Road, and the A36 (King Street) to the west. The site is also serviced by the Green Square Train Station which connect to the Sydney CBD and Sydney Airport. The site will be serviced by the future Waterloo Metro Station once complete.

The site is also conveniently located adjacent to the Green Square Town Centre approximately 400m to the east, which is a dense employment and entertainment precinct providing local services.

Figure 3 Location Context Plan



Source: Urbis

## 2.3. SURROUNDING DEVELOPMENT CONTEXT

The site is bound by existing development to the north and south, Botany Road to the east and Wyndham Street to the west.

- **To the north** of the site at 19-21 Bourke Road is a two storey commercial development and has frontage to Bowden Street, Bourke Road and Mandible Street, providing landscaping along all three frontages. The development provides a through-site link connecting Mandible Street and Bourke Road. Alexandria Park and the future Waterloo Metro Station (currently under construction) sits further to the north.
- **To the east** of the site at 44-54 Bourke Road is a vehicle hardstand with a driveway along Bourke Road. The Green Square Town Centre and train station are situated further to the east.
- **To the south** of the site at 29-33 Bourke Road is a four storey building with mixed use development comprising office premises, shops and food and drink premises. The development takes an L-shape and

provides a courtyard with public art at the centre of the site. Extensive landscaping is provided on along the northern, southern and western boundary as well as the Bourke Road frontage. Perry Park sits further to the south of the site.

- **To the west** of the site at 33-39 Bowden Street is a two storey warehouse with ancillary office spaces. The development provided on site parking along the eastern side and western side, accessible through a two way vehicular access. Trees and plantings are provided within the car parking area. The street frontage is extensively landscaped providing adequate visual privacy to the development. Sydney Park sits further to the west of the site providing a large public open space area.

There are a number of new developments within the surrounding built form character as illustrated in **Figure 4**.

Figure 4 New Surrounding Developments



Picture 7 Green Square Library



Picture 8 Gunuyama Park Swimming Pool



Picture 9 Infinity Residential Building



Picture 10 Sydney Rail Operations Centre

Source: JWA

## 2.4. TRANSPORT AND ACCESSIBILITY

The site is provided vehicular access from both Bourke Road and Bowden Street. The site is also accessible from the surrounding road network including Botany Road, O'Riordan Street / Bourke Street and the M1 to the east, and McEvoy, Swanson Street and the A36 (King Street) to the west.

The site is located in a highly accessible area in terms of public transport, with multiple bus stops located along Mitchell Road, McEvoy Street, Botany Road and Maddox Street, within walking distance from site. In addition, the Green Square train station is located within 400m walking distance north-east of the site providing services to Macarthur (T8) through Sydney Airport and the Sydney CBD. During the morning and afternoon peak periods on weekdays train services run every 5-10 minutes via Green Square.

Erskineville Station is also located approximately 1.3km to the north-west and provides access to the inner western suburbs. The site will be provided access to the Waterloo Metro Station once complete.

Cycleways are provided along Bourke Road and Bowden Street adjacent the site's frontages. These cycleways form part of the broader and continuously expanding bike network within Sydney.

### 3. PROPOSED DEVELOPMENT

This Request has been prepared to accompany a Detailed DA for construction of a four-storey commercial development.

A detailed description of the proposed development is provided in the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 24 August 2021. The proposal is also detailed within the architectural, and engineering drawings attached to the SEE.

A summary of the key features of the proposed development is provided below:

- Design, construction and use of a four-storey mixed-use commercial development with a maximum height of RL 30.4 metres (ranging between 21.03 - 22.57 metres measured to the top of plant and lift overruns), comprising:
  - Ground floor consisting of flexible office premises, food and drink premises or shops, loading and servicing provisions, bicycle parking and end of trip facilities, and
  - Three storeys of commercial office space above the ground level.
- One storey basement accessed from Bourke Road, comprising:
  - 179 car parking spaces for commercial office and retail uses (including 3 car share spaces and 8 accessible parking bays with associated shared zone),
  - 15 motorcycle parking spaces,
  - 4 SRV service vehicle spaces, and
  - Storage and services provisions.
- Provision of an internal through site link and a pedestrian link (laneway) along the north western boundary,
- A four-storey tree house structure adjacent to the central courtyard comprising a stack of naturally ventilated meeting spaces,
- Provision of signage zones for building and business identification and wayfinding signage,
- Public domain works within the widened Bourke Road footpath to be dedicated to Council,
- Removal of 29 existing trees,
- Landscaping works including, ground plane perimeter landscaping along Bourke Road and Bowden Street, an internal ground floor landscaped courtyard and internal level 1 landscaped terrace, break-out landscape terraces and a landscaped terrace and roof top garden at Level 4,
- Hours of operation of the ground level retail premises of 7am to 10pm Monday to Sunday.

Figure 5 Artist's Impression of Proposed Development



Source: John Wardle Architects

Table 1 Numeric Overview

Parameter	Proposed
Site Area	<ul style="list-style-type: none"> <li>▪ 8,090sqm (prior to land dedication)</li> <li>▪ 7,747sqm (after land dedication to Council)</li> </ul>
Land Use	<p>Commercial uses:</p> <ul style="list-style-type: none"> <li>▪ Flexible ground floor office premises and food and beverage or shop tenancies</li> <li>▪ Office premises above at levels 1 to 3</li> </ul>
Height of Building	<ul style="list-style-type: none"> <li>▪ RL 30.4 metres to highest point of top of plant / PV panels (height of the building ranges between 18 - 22.57 metres, excluding the architectural roof feature)</li> <li>▪ 4-storeys in height</li> <li>▪ The proposed architectural roof feature has a proposed height of RL 34.15 (24.95m)</li> </ul>
Gross Floor Area (GFA)	<ul style="list-style-type: none"> <li>▪ Commercial GFA – 16,306sqm</li> <li>▪ Retail GFA – 1,492sqm</li> <li>▪ Total– 17,798sqm (excluding EOTF)</li> </ul>

<b>Parameter</b>	<b>Proposed</b>
	<ul style="list-style-type: none"> <li>▪ EOTF – 260sqm</li> </ul>
<b>Floor Space Ratio</b>	2.2:1 (based on site area prior to land dedication)
<b>Setbacks</b>	<ul style="list-style-type: none"> <li>▪ 6m setback to north-eastern boundary</li> <li>▪ 6m setback to south-eastern boundary</li> <li>▪ 3m setback to north-western boundary</li> <li>▪ Nil to 3m setback to south-western boundary</li> </ul> <p><i>Note: shading devices protrude 0.45m into setback areas</i></p>
<b>Parking and Loading</b>	<ul style="list-style-type: none"> <li>▪ Vehicular parking – 179 spaces (including, 3 car share spaces and 8 accessible parking bays)</li> <li>▪ Motorcycle parking – 15 spaces</li> <li>▪ Loading – 1 x MRV space and 1 x SRV (at ground level loading dock) and 4 x SRV/van spaces (in basement)</li> </ul>
<b>Bicycle Parking</b>	<ul style="list-style-type: none"> <li>▪ Commercial office and retail uses – 115 spaces</li> <li>▪ Visitor – 24 spaces (adjacent the public domain)</li> </ul>
<b>End of Trip Facilities</b>	<ul style="list-style-type: none"> <li>▪ 115 lockers</li> <li>▪ 12 shower and change rooms</li> </ul>
<b>Deep Soil Planting Area</b>	1,210sqm (15.6% of the site – after land dedication)
<b>Landscape Area</b>	1,799sqm (including ground floor courtyard, level 1 terrace, perimeter landscaping, break-out terraces and rooftop terrace on level 4)

## 4. PLANNING FRAMEWORK

The SLEP 2012 is the primary environmental planning instrument applying to the site and prescribes the height of buildings standard of 18 metres under clause 4.3. The SLEP 2012 includes additional clauses which permit variations to the height of buildings standard subject to demonstrating compliance with the relevant provisions and performance criteria. These are discussed in further detail below.

Clause 5.6 – ‘Architectural Roof Features’ of SLEP 2012 allows for development consent to be granted for development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height of buildings standard prescribed by clause 4.3, subject to satisfying the specified criteria. The objectives of clause 5.6 are:

- (a) to allow minor architectural roof features to exceed height limits,*
- (b) to ensure that any architectural roof feature does not cause an adverse visual impact or adversely affect the amenity of neighbouring premises,*
- (c) to ensure that architectural roof features are considered in the design of a building and form an integral part of a building’s design*

As per clause 5.6(3), development consent must not be granted unless the consent authority is satisfied that:

- (a) the architectural roof feature—*
  - (i) comprises a decorative element on the uppermost portion of a building, and*
  - (ii) is not an advertising structure, and*
  - (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and*
  - (iv) will cause minimal overshadowing, and*
- (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.*

The proposed development utilises clause 5.6 to permit the architectural roof feature at the eastern corner of the site on the corner of Bourke Road and Bowden Street which extends beyond the 18-metre height of buildings standard under clause 4.3. An assessment of the proposals compliance with the above provisions is provided in **Section 6.4.2** of the SEE accompanying the DA.

For completeness and at the direction of the City of Sydney, this clause 4.6 has been updated to address the height exceedance as a result of the architectural roof feature.

# 5. VARIATION TO HEIGHT OF BUILDINGS STANDARD

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 7** of the report.

## 5.1. DEVELOPMENT STANDARD

As per clause 4.3, the site is subject to a maximum building height of 18 metres (see **Figure 6** below).

In accordance with SLEP 2012, building height is defined as:

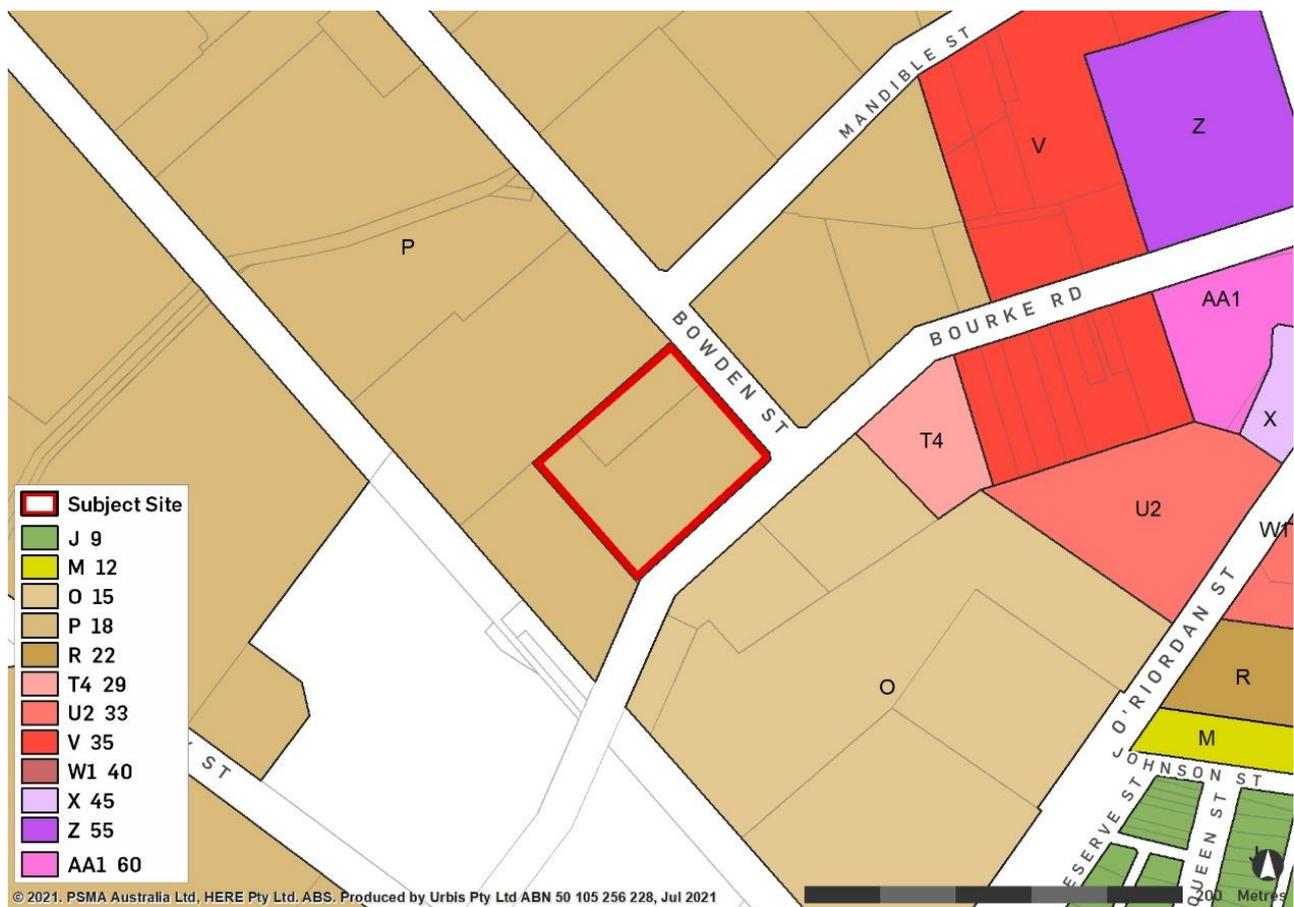
**building height (or height of building)** means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum 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.

Figure 6 Excerpt from SLEP 2012 Height of Buildings Map



Source: SLEP2012 (as modified by Urbis)

## 5.2. PROPOSED VARIATION: CLAUSE 4.3 HEIGHT OF BUILDINGS STANDARD

This clause 4.6 variation request seeks to gain approval for a variation to the maximum building height. Due to the slope of the site, the height exceedance presents differently along each elevation. A summary of the proposed building height increase across each elevation is summarised in **Table 2**.

Table 2 Proposed Building Height Increase

Height Control	Building Elevation / Component	Existing Ground Level (lowest)	Proposed Height (maximum)	Proposed Variation
18m	South-east – top of rooftop plant and lift overruns	RL 9.37	21.03m (RL 30.4)	3.03m
18m	North-west – top of rooftop plant and lift overruns	RL 8.3	22.1m (RL 30.4)	4.1m
18m	North-east – top of rooftop plant and lift overruns	RL 7.83	22.57m (RL 30.4)	4.57m
18m	North-east – roof slab level	RL 7.83	18.37m (RL 26.2)	0.37m
18m	South-west – top of rooftop plant and lift overruns	RL 8.84	21.56m (RL 30.4)	3.56m
18m	Architectural roof feature – corner of Bowden Street and Bowden Road	RL 9.2	24.95m (RL 34.15)	6.95m
18m	Roof shading structure	RL 9.19	20.01m (RL 29.20)	2.01m

The maximum height of the proposed building is 22.57m, measured to the top of rooftop plant and lift overruns, representing a non-compliance of 4.57m (25.4%).

In addition, an architectural roof feature is also proposed which exceeds the maximum building height standard. This exceedance is permitted with consent under clause 5.6 of the SLEP 2012 and is representative of a non-compliance of 6.95m (38.6%).

The area of height non-compliance relates to the rooftop plant, lift overrun, parapet, roof shading structure and a minor slab protrusion in the northern corner only. A summary of each non-compliant element is further discussed under the following subheadings. In addition, for completeness, a summary of the architectural roof feature non-compliance has been provided.

### 5.2.1. Roof Top Plant and Services

The maximum height of the building is required to be increased beyond 18m to between 21.03m to 22.57m at isolated locations to accommodate roof top plant, services and parapet, which is a fundamental component to the proper functioning of the commercial building. Depending upon the location across the site, the rooftop services range between 3.03m to 4.57m above the approved envelope.

The proposed development has made provision for plant room in the basement where possible, with the remaining located on the rooftop being the only reasonable locations to house the buildings services.

Consistent with the Competitive Design Process final submission, the Detailed DA proposal includes an internal void through the building to a courtyard at ground level along with an accessible rooftop terrace. These areas provide significant amenity to the future occupants and the public, however, greatly reduce the floor plate area available to accommodate plant and services that would otherwise be available.

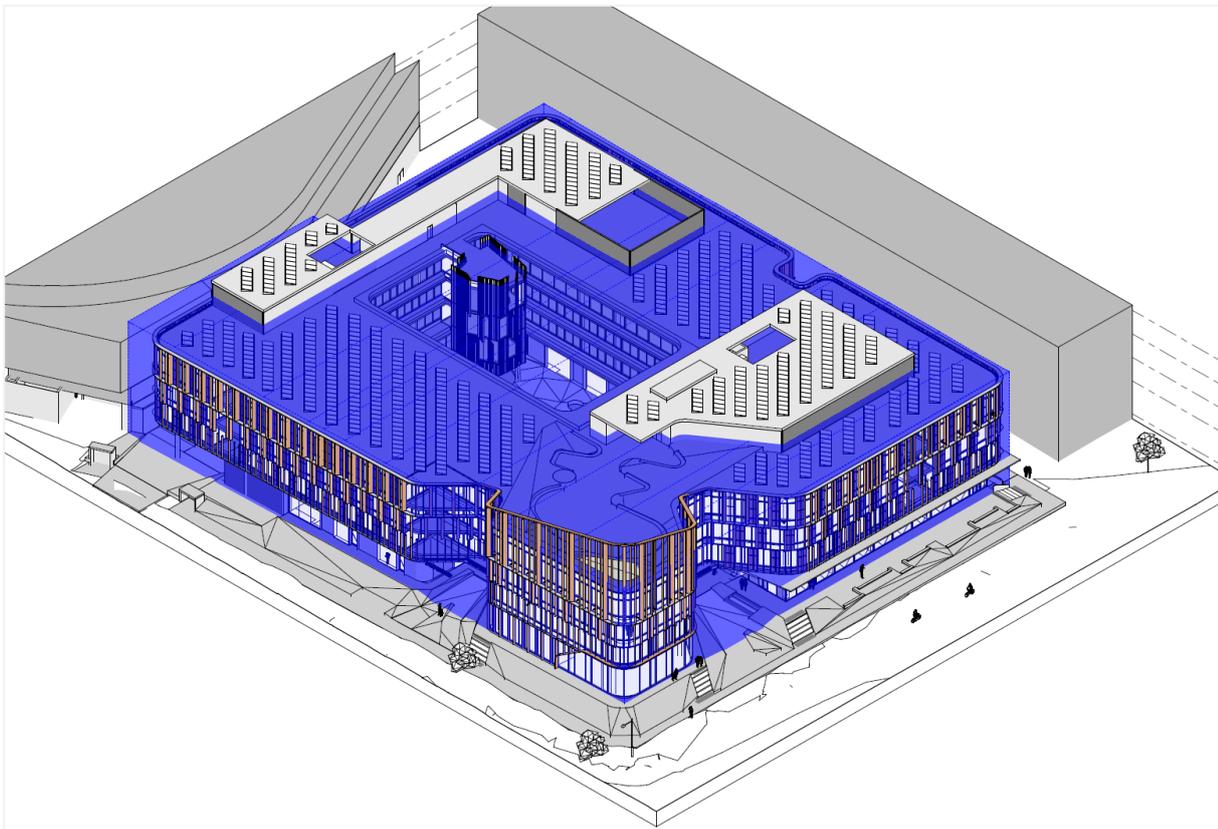
Further, to comply with the sustainability targets set out in Condition 10 (6-star NABERS energy rating) along with a targeted Green Star rating, one of the measures put forward to achieve this requires the provision of approximately 2,500m<sup>2</sup> of solar panels which effectively consumes the majority of the spare area on the roof.

The solar panels will generally be concealed by the building's parapet due to their height and profile.

The building plant, roof top lift lobby and lift overruns are the tallest elements on the roof. To mitigate their impacts, they have been strategically setback from Bourke Road and Bowden Street frontages. These setbacks will assist with mitigating shadow and visual impacts to and from the public domain and neighbouring developments.

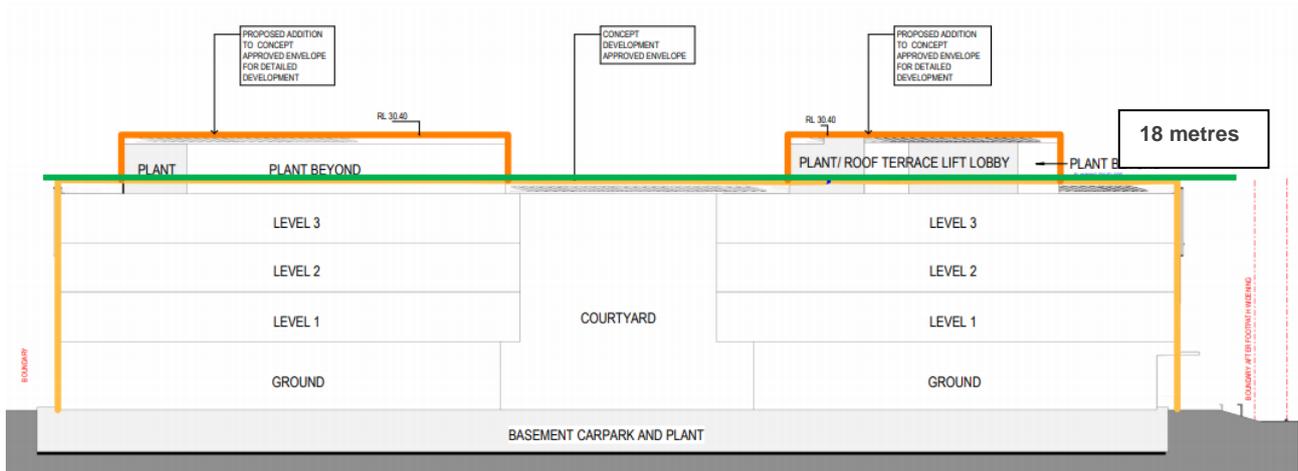
A Height Plane Diagram has been prepared by JWA, which clearly articulates the specific parts of the building that vary from the development standard as they protrude the height plane (refer to **Figure 7** and **Figure 8** below).

Figure 7 Building Envelope Height Plane Diagram



Source: John Wardle Architects

Figure 8 Building Height Plane – Section Plan



Source: John Wardle Architects

### 5.2.2. Slab Protrusion in Northern Corner

The proposed development results in a portion of the slab along the northern most corner of the site along Bowden Street sitting above the 18m height plane by approximately 0.4m at RL 26.2m

The north eastern corner is the lowest point of the site. In order to keep a level ground plane and address the flooding constraints, the ground level needs to be raised to RL 9.1m across the site as required by Condition 4(a)(iv) of the Concept DA consent.

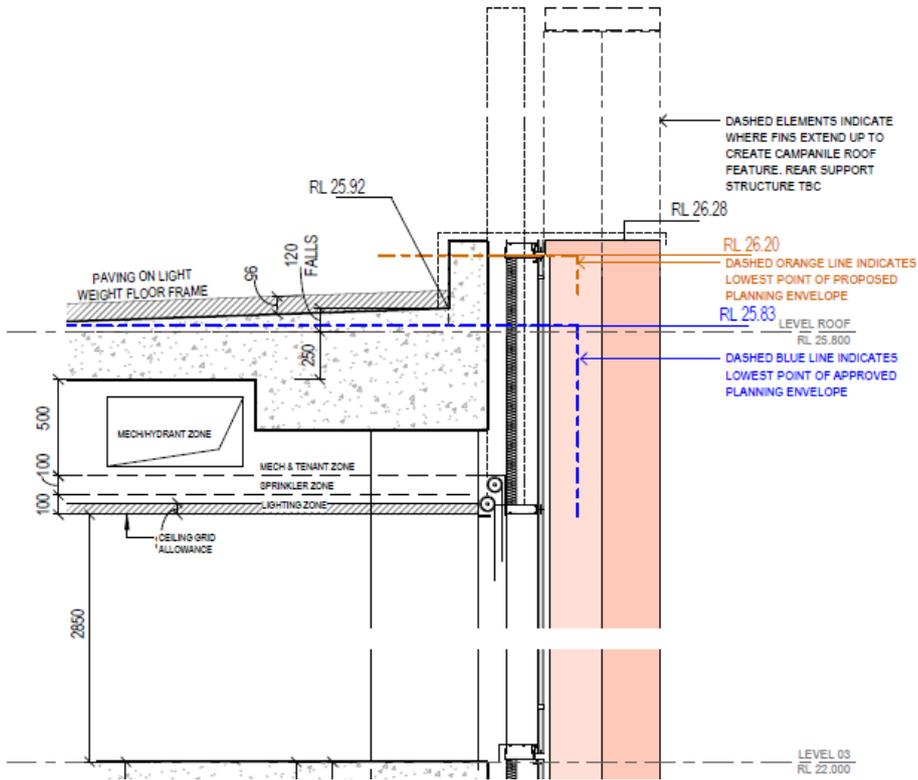
The raising of ground level together with a desire to establish large floor to ceiling heights at ground level to enhance the user experience and amenity results in the very minor protrusion of the slab in this portion of the site. The proposed protrusion is illustrated in **Figure 9** and **Figure 10**.

Figure 9 Detailed DA – Extract of North Eastern Elevation



Source: John Wardle Architects

Figure 10 Detailed DA - Section Drawing



Source: John Wardle Architects

### 5.2.3. Roof Shading Structures

At the request of City of Sydney, the proposed rooftop garden area has been upgraded to include fixed shading structures. These structures are proposed to provide shading to users of this space and therefore improve the amenity and usability of this space. The proposed roof shading structures will exceed the prescribed height limit by approximately 2m.

To mitigate the impacts of the shading structures, they have been strategically setback from Bourke Road and Bowden Street frontages. These setbacks will assist with mitigating shadow and visual impacts to and from the public domain and neighbouring developments.

The roof shading structures will result in no overshadowing impacts to neighbouring properties and public domain areas beyond that considered and assessed under the Concept DA (D/2019/817) and approved building envelope. The proposed structures are illustrated in **Figure 11**.

Figure 11 Roof Shading Structure Render



Source: John Wardle Architects

## 5.2.4. Architectural Roof Feature

In accordance with clause 5.6 and consistent with the Design Competition winning scheme, the proposed development comprises an architectural roof feature at a height of RL 34.15m being the campanile on the corner of Bourke Road and Bowden Street.

The campanile architectural roof feature will be visible from the majority of viewpoints in the public domain. This is consistent with its intention to serve as a landmark feature at the junction of two major and a third planned road in Alexandria.

The roof feature is consistent with the design presented as part of the design competition winning entry and was identified by the Selection Panel as a defining element that should be retained throughout the next stages of the process. The proposed architectural roof feature is illustrated in **Figure 12**.

Figure 12 Architectural Roof Feature



Picture 11 Massing diagram of architectural roof feature

Source: John Wardle Architects



Picture 12 Render of architectural roof feature

Source: John Wardle Architects

## 6. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of the SLEP 2012 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of SLEP 2012 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.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a DA that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have been obtained. In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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 Secretary before granting concurrence.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning, Industry and Environment (DPIE) Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the *Environmental Planning and Assessment Regulation 2000* and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

This clause 4.6 request demonstrates that compliance with the height of buildings standard prescribed for the site in clause 4.3 of SLEP 2012 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the height of buildings development standard be varied.

## 7. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the height of buildings development standard in accordance with clause 4.6 of the SLEP 2012.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the SLEP.

### 7.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The height of buildings development standard prescribed by clause 4.3 of SLEP 2012 is a development standard capable of being varied under clause 4.6(2) of SLEP 2012.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of SLEP 2012.

### 7.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [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”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of buildings development standards as specified in clause 4.3 of SLEP 2012 are detailed in **Table 3** below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 3 Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
<p><i>to ensure the height of the development is appropriate to the condition of the site and its context.</i></p>	<p>The proposed design seeks to provide a contemporary built form which will contribute to the immediate urban context of the neighbourhood and the emerging character of the Enterprise Corridor locality as identified under the <i>Sydney Development Control Plan 2012 (SDCP)</i>. The proposed development has been designed based on a clear knowledge of the spatial and contextual considerations.</p> <p>The proposed non-compliance primarily relates to rooftop plant and services which is setback from the street frontage ensuring it does not contribute to any perceivable bulk or visual impact when viewed from the Bowden Street and Bourke Road frontage and associated public domain. Further, the proposed design ensures the non-compliant section does not compromise the amenity of surrounding developments. The non-compliance was anticipated at the time of the Competitive Design Process and is attributed to the void through the building along with roof top terrace which provide significant private and public amenity but greatly reduce the floor area that is otherwise available to accommodate roof top plant.</p> <p>The second non-compliance relating to the building slab in the northern most corner is minor and will not be perceivable from any view point. The non-compliance in this location is a result of the slope of the land and a desire to create a level ground plane across the site together with large floor to ceiling heights to maximise amenity at the ground plane.</p> <p>The third non-compliance relates to the proposed roof top fixed shading structures. These structures are proposed to provide shading to users of this space and therefore improve the amenity and usability of this space. The proposed roof shading structures will exceed the prescribed height limit by approximately 2m.</p> <p>The fourth non-compliance relates to the proposed architectural roof feature, which has a proposed height of RL 34.15m. The campanile architectural roof feature will be visible from the majority of viewpoints in the public domain. This is consistent with its intention to serve as a landmark feature at the junction of two major and a third planned road</p>

Objectives	Assessment
	<p>in Alexandria. The roof feature is consistent with the design presented as part of the design competition winning entry and was identified by the Selection Panel as a defining element that should be retained throughout the next stages of the process.</p> <p>Aside from the height exceedance for the protruding elements, the proposed building height is consistent with the approved Concept DA building envelope (D/2019/817) which contemplated the built form context across the site.</p>
<p><i>to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas.</i></p>	<p>The subject site does not contain any heritage items, nor is it located within a heritage conservation area. Additionally, the site is not located in close vicinity to a heritage item or conservation area.</p> <p>The proposed development is four-storeys in scale which is consistent with the SDCP. Therefore, the proposal allows for a smooth transition in building height, remaining consistent with the height, scale and massing of surrounding existing and emerging developments.</p>
<p><i>to promote sharing of views.</i></p>	<p>The non-compliant sections of the development do not result in any impacts to existing views enjoyed within the vicinity of the site and the proposed built form is compatible with the built form typology of surrounding developments.</p> <p>The raised building parapet and setback to rooftop plant and lift overruns ensures these elements are largely concealed and viewed as integrated components of the built form when viewed from neighbouring properties and surrounding public domain areas. The northern slab protrusion is minor and will not be perceivable.</p> <p>Furthermore, the proposed rooftop shading devices will improve the amenity the space and will primarily be concealed by the proposed architectural roof feature.</p>
<p><i>to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas.</i></p>	<p>The proposed built form and height provides a suitable transition to the significant high-rise built form character in the nearby Green Square Town Centre, as well as the adjacent B7 Business Park zone which permits greater building heights as it</p>

Objectives	Assessment
	transitions further to the east towards the Town Centre.
<i>in respect of Green Square –</i>	
<i>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</i>	<p>The proposed design allows for an appropriate transitional arrangement having regard to the surrounding developments.</p> <p>The proposal remains consistent with the building located south of the site at 29-33 Bourke Road which is a four-storey development. The proposal provides footpath widening and public domain works along both street frontages to improve public domain amenity for pedestrians. The design has carefully considered the rooftop plant and lift overruns by setting them back from the building parapets of the façade as it presents to the street frontages and predominantly locating the elements which exceed the height towards the rear of the site. By doing this, the shadow from the rooftop elements generally falls within the shadow caused by the compliant building.</p>
<i>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.</i>	<p>Overall, the development remains compliant with the specified four storey form to the public domain and ensures that the street is clearly and physically defined. The design of the proposed development is consistent with its context and is not overbearing in scale or form that would otherwise be enclosing to the street.</p> <p>The non-compliant section of the building relating to plant and services are recessed to the greatest extent possible from the surrounding street frontages, therefore having no effect on the physical definition of the street network. The northern slab protrusion is minor and not perceivable.</p> <p>The built form is significantly setback from the respective street frontages to provide physical separation at street level and to accommodate landscaped setback areas. The campanile at the north-eastern corner of the site defines the prominent corner of the built form at this intersection. Overall, the built form clearly delineates the street network and associated public domain areas along the street frontages.</p>

Objectives	Assessment
	The architectural roof feature will serve as a landmark feature at the junction of two major and a third planned road, which will provide physical definition of the street network.

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Not relied upon.

- **The burden placed on the community (by requiring strict compliance with the height of buildings standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

The proposed height exceedance does not result in any adverse view or visual impacts and minimises overshadowing to neighbouring properties. The view analysis accompanying the DA demonstrates that due to the strategic placement of the rooftop plant and services, and the raised parapet height, these building elements will generally not be visible from key viewpoints in the public domain (refer **Figure 13** overleaf).

Figure 13 View analysis of rooftop plant and lift overruns



Picture 13 View looking north west from corner of Bourke Road and future Ashmore Connector



Picture 14 View looking south from the corner of Bowden Street and Mandible Street

Source: JWA

Similarly, the built form design maximises solar access to external spaces surrounding the site, as well as adjoining developments. The rooftop plant and services have been strategically located to not overshadow significantly beyond what is caused by the approved planning envelope at any time between 9am and 3pm in midwinter.

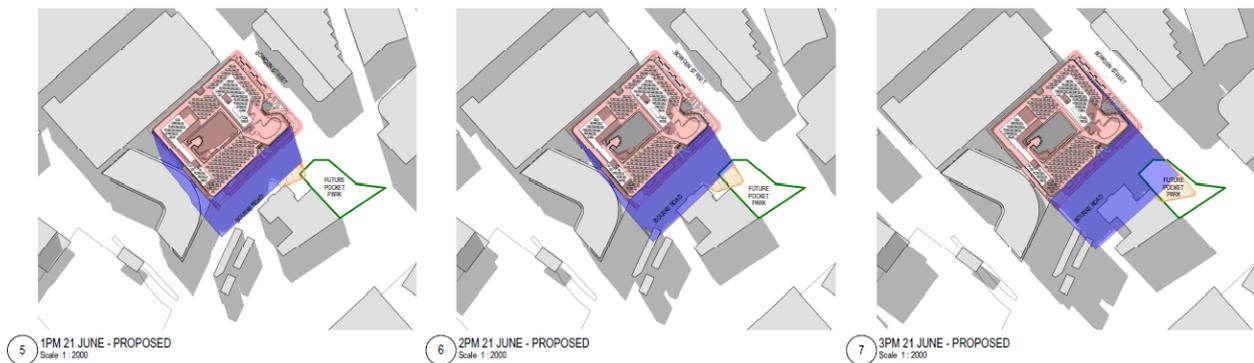
As demonstrated in **Figure 14**, the shadow impact to adjacent developments and public spaces is primarily caused by the proposed campanile feature, which is permitted with consent pursuant to clause 5.6 of the SLEP 2012. The shadow impact is considered minor and therefore acceptable as the impact is confined to the late afternoon period in mid-winter and the shadow is dappled, due to the architectural roof feature not being a solid structure.

Notably, the rooftop plant and lift overruns, raised parapet and minor protrusion of slab at the northern corner result in negligible overshadowing impacts to neighbouring properties and public domain areas beyond that considered and assessed under the Concept DA (D/2019/817) and approved building envelope.

Figure 14 Overshadowing Drawings – June 21



Picture 15 Shadow impacts from 9am to 12pm resulting from the portion of built form exceeding the approved building envelope



Picture 16 Shadow impacts from 1pm to 3pm resulting from the portion of built form exceeding the approved building envelope

Source: JWA

Conversely, strict compliance with the height of buildings standard would result in a redesign of the commercial floor plate. This would compromise the proposed internal courtyard by either reducing the size or removing this communal open space area altogether, and subsequently, reduce the amenity to future building occupants and site visitors. In addition, this would likely result in impacts to the current design of the highly permeable ground plane, active frontages and food and beverage tenancies along both street frontages, to the detriment of the local community using the site in the future.

### 7.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

*“...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”*

There is an absence of environmental harm arising from the contravention and positive planning benefits arising from the proposed development as outlined in detail above. These include:

- The proposal is consistent with the objectives of the B6 Enterprise Corridor zone and Height of Buildings standard.

- The Statement of Environmental Effects prepared by Urbis demonstrates that any impacts associated with the proposed development are acceptable, particularly since there are no significant solar access impacts on neighbouring properties or the public domain as a result of the height variation.
- The additional building height is confined to rooftop plant, lift overruns, the building parapet which conceals the rooftop services equipment and very minor protrusion of slab in the northern corner only. All floor space is confined within the maximum 18 metre height control.
- The non-complaint section of the building will not be out of context with the streetscape and surrounding built form and does not contribute to any distinguishable bulk, scale or density of the building given the limited visibility from the public domain.
- The variation does not result in unreasonable adverse amenity impacts on adjacent land with regards to solar access, view sharing or visual impact and does not diminish the development potential of adjacent land in any way given it provides a suitable transition in height to existing buildings and permissible building heights on neighbouring properties.
- The rooftop plant and lift overruns are well setback from the parapet and will not be clearly visible from the public domain of Bourke Road and Bowden Street. The parapet has been raised in height to ensure the services equipment is predominantly concealed when viewed from surrounding public domain areas. In addition, the plant room is proposed to be further concealed by a combination of louvre and metal cladding screening so that it reads as part of the architectural design.
- The endorsed Design Excellence Strategy approved under D/2019/817 established the rigorous process which has been undertaken to ensure that the future detailed design of the building achieves design excellence. As part of the Competitive Design Process, the Selection Panel chose the John Wardle and Speculative Architecture submission as the winning scheme that was most capable of achieving design excellence. This was despite the building plant and services exceeding the Concept DA envelope and height control. This element of the scheme was not identified by the Selection Panel as requiring further resolution prior to the Detailed DA.
- The internal void to allow for the ground floor courtyard together with the rooftop terrace results in a reduction in the size of the available rooftop space, for plant and the proposed solar panels, however results in improved private and public amenity.
- The proposed development proposes to incorporate a solar photovoltaic (PV) system on the roof which will contribute towards achieving sustainability targets, notably a 6 Star NABERS Energy base building and 5 Star Green Star Office Design.
- The roof feature is consistent with the design presented as part of the design competition winning entry and was identified by the Selection Panel as a defining element that should be retained throughout the next stages of the process, and will help identify the building as a landmark.
- The roof top shading devices will improve the amenity for users, and were requested by Council;

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings standard non-compliance in this instance.

## **7.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)**

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).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

## 7.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in **Table 3** above. The proposal is also consistent with the land use objectives that apply to the site under SLEP 2012. The site is located within the B6 Enterprise Corridor zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 4** below.

Table 4 Assessment of compliance with land use zone objectives

Objective	Assessment
<i>To promote businesses along main roads and to encourage a mix of compatible uses.</i>	<p>The proposal provides for a commercial development along the corner of Bowden Street and Bourke Road. The development includes active uses such as food and beverage premises or shops along both street frontages, allowing the development to be a prominent and highly engaging pedestrian environment at the corner of Bourke Road and Bowden Street.</p> <p>A range of facilities are located within proximity to the site. The proposed commercial development remains compatible with, and complementary to those uses.</p>
<i>To provide a range of employment uses (including business, office, retail and light industrial uses).</i>	<p>The proposal provides a commercial development comprising of employment generating uses such as commercial office premises and retail premises. These uses will contribute to the land use offering and emerging character of the locality which is currently undergoing a transition.</p>
<i>To maintain the economic strength of centres by limiting retailing activity.</i>	<p>The proposal allows for three food and drinks premises or shops along the ground floor level allowing for adequate activation and retail activity along Bowden Street and Bourke Road.</p> <p>The proposed retail tenancies comprise 1,492sqm of floor space which is of a quantum that is expected for such a development and small in comparison to the Green Square Town Centre. As such, the proposal will not undermine or compromise the economic strength of this important strategic centre.</p>
<i>To ensure uses support the viability of any adjoining industrial zone for industrial uses.</i>	<p>The site is located in an area with a mix of commercial and industrial uses. The proposed commercial development does not negatively impact adjoining industrial uses.</p>

Objective	Assessment
	The proposed office premises and retail tenancies remain compatible with the surrounding industrial uses, providing additional employment offerings to benefit the local and wider community.

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the height of building standard as 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.

## 7.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 ‘Variations to development standards’, dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the height of buildings development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the height of buildings and the land use zone objectives despite the technical non-compliance.

The height non-compliance allows for the provision of an internal courtyard which will improve the amenity of future building occupants and site visitors. In addition, by accommodating the internal void and locating rooftop plant and lift overruns to reduce the size of the building core, the proposed development is able to provide a highly permeable and activated ground plane which will benefit the local and wider community.

In addition, the rooftop plant and services have been strategically set back from the building edge and away from the sites street frontages to Bourke Road and Bowden Street meaning it is generally not perceived from the public domain and results in negligible overshadowing impacts compared to a compliant built form.

As a result, it is concluded that 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.

- **Clause 4.6(5)(c) – are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

Concurrence can be assumed, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.

## 8. CONCLUSION

For the reasons set out in this written request, strict compliance with the Height of Buildings standard contained within clause 4.3 of Sydney LEP 2012 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the Height of Buildings standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal facilitates urban renewal within the Enterprise Corridor by replacing two warehouses with a contemporary, visually pleasing commercial development consistent with the character of the locality and that achieves design excellence.
- The economic benefits of the proposal are clear as it strengthens the economic standing of the Green Square Town Centre through an employment generating development within the adjacent Enterprise Corridor locality.
- There is no adverse consequence as a result of the non-compliance section of the building from the public domain as it is set well back from the street frontages to ensure that it has limited visual impact, while also providing a contemporary response at the subject location.
- Despite the non-compliance, the proposed built form is appropriate to the contextual considerations of the site. The site is not located in close proximity to residential development that could potentially be affected by the proposal.
- The additional height will not result in any significant detrimental amenity impacts (overshadowing, views or privacy) to surrounding development. The proposed height exceedance comprises rooftop plant and lift overruns and parapet along with a protrusion of the building slab in the northern corner and no floor space area is proposed above the height control.
- The non-compliance will not hinder the development's ability to satisfy the objectives of the B6 Enterprise Corridor zone, nor the objectives of the height of buildings standard.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the Height of Buildings standard should be applied.

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