

Attachment E

<p>Clause 4.6 Variation Request - Height of Building</p>

URBIS

CLAUSE 4.6 (HEIGHT OF BUILDING) VARIATION REQUEST

Block E, 155 Mitchell Road, Erskineville

Prepared for
CORONATION PROPERTY CO.
24 July 2024

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Report Number	FINAL

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24.07.24_FINAL CLAUSE 4.6 (HOB) VARIATION REQUEST - BLOCK E, 155
MITCHELL STREET, ERSKINEVILLE

REQUEST TO VARY CLAUSE 4.3 – HEIGHT OF BUILDINGS IN SYDNEY LOCAL ENVIRONMENTAL PLAN 2012

Address: 155 Mitchell Road, Erskineville

Date: 07 June 2024

SITE AND PROPOSED DEVELOPMENT

1. Site Description

The key features of the site are summarised in the following table.

Table 1 Site Description

Feature	Description
Street Address	155 Mitchell Road, Erskineville
Legal Description	Part Lot 4 DP1236425
Site Area	4,688m ²
Easements and Restrictions	(A) and (B) – Water supply easements, 6 and 8 wide. (C) – Restriction on the use of land. (D) – Registered planning agreement. (H) – Easement for support variable width. (T1) – Easement for turning area variable width.
Site Topography	The site relatively flat, with a fall from the northwestern corner (RL9.22) to the southeastern corner (RL8.05).
Vegetation	The site is cleared of vegetation and trees.
Existing Development	The site currently comprises hardstand areas. The existing warehouses on the Building E site have been demolished under a separate approval. The site is cleared of vegetation and trees.
Local Context	The immediate surrounds to the Ashmore Estate include a variety of recently constructed residential flat buildings, terraces, and low-density residential dwelling houses to the north, west and south of the estate with commercial premises interspersed with mixed use developments. Of note is the Erskineville Oval north of the estate and Erskineville Station being approx. 600m northwest from the estate.
Adjacent Development	The Ashmore Estate has already undergone two design competitions and detailed DA processes (Blocks A, B, C and D) in accordance with the Concept DA approvals, including: <ul style="list-style-type: none"> Block B & C (D/2017/681) (Refer to '2' in Figure 2) is located to the east of the site and have been constructed – a 4-8 storey residential flat building (Block B) providing 157 dwellings and a 4 to 8 storey mixed-use development (Block C) providing 171 dwellings, ground floor retail and centre-based childcare facility.

Feature	Description
	<ul style="list-style-type: none"> ▪ Block A (D/2019/393) (Refer to '3' in Figure 2) is located to the northeast of Block E and is currently under construction - a part three, four and eight storey residential flat building comprising 178 units with one basement level. ▪ Block D (D/2019/291) (Refer to '4' in Figure 2) is located to the north of Block E and construction has not yet commenced - Six two storeys plus attic terrace houses with roof top terraces and one basement level. <p>74 Macdonald Street, Erskineville is located directly west of the site and comprise an existing seven storey development with a central east-west pedestrian link and a north-south pedestrian link located along the common boundary of 74 Macdonald Street and the subject site (Refer to '4' in Figure 2). It is intended for the through site link proposed within Block E to be connected with the east-west pedestrian link at 74 Macdonald Street.</p>
<p>Access Network</p>	<p>The site is located in close proximity to a number of public transport nodes that provide services to the City, Parramatta, Bondi Junction</p> <p>The site is located approximately 600m from Erskineville Station. Erskineville Station provides the following train services:</p> <ul style="list-style-type: none"> ▪ T2 Parramatta or Leppington to City ▪ T3 Liverpool or Lidcombe to city ▪ T4 Bondi Junction to Waterfall or Cronulla <p>The site is also 1.2 km from Macdonaldtown Station which provides the following services:</p> <ul style="list-style-type: none"> ▪ T1 Emu Plains or Richmond to City ▪ T2 City to Parramatta or Leppington ▪ T3 City to Liverpool or Lidcombe via Bankstown <p>Furthermore, the site is well serviced by bus services, with the nearest bus stop within 200m from the site, and servicing the following routes:</p> <ul style="list-style-type: none"> ▪ 370: Coogee to Glebe point Road. ▪ 352: Marrickville Metro to Bondi Junction Via Oxford St, Crown St and King St <p>Existing access to the site is via Ashmore Street to the north with secondary access via Mitchell Road. The site does not have direct connection to classified road.</p>

Figure 1 Site Location (Building E footprint in yellow)



Source: Urbis

Figure 2 Block E Surrounding Context ('1' denotes subject site)



Source: Coronation Property Co.

2. Proposed Development

The proposal seeks development consent for:

- Staged construction of two 'L' shaped residential flat buildings providing a total of 141 apartments.
- Two levels of basement providing 111 car parking spaces, motorcycle parking spaces loading and services areas, storage cages and waste management facilities.
- Provision of an indoor communal facility - the rotunda, which comprise function room and music room.
- Landscaping throughout the site including embellishment of ground, private terrace gardens, green façade and lighting orbs and rooftop communal areas on Level 7.
- Early works and public domain works are proposed under separate DAs and submitted separately to Council.

A summary of the key features and details of the proposed development (including land use and works) is provided in the table below and highlighted in **Figure 3**:

Table 2 Development Description

Key Element	Description
New residential buildings	Construction of two 'L' shaped eight storey residential flat buildings providing a total 141 apartments. The proposal has a maximum height of 30.87m (including rooftop and plant) and a total gross floor area (GFA) of 14,011m ² .
Car parking space	<p>111 car parking spaces.</p> <ul style="list-style-type: none"> ▪ 97 residential car parking spaces (including 22 accessible parking spaces). ▪ 14 visitor car parking spaces (including 1 accessible visitor parking space). <p>2 car share spaces. 2 service parking bays. 115m² loading dock. 11 motorcycle parking spaces.</p>
Through-site link	Provision of a through-site link interconnecting the western link and McPherson Park consistent with the VPA requirements.
Communal open space	1,106m ² across the western courtyard and level 7 rooftop terrace on the northern building (excluding through-site link area).
Deep soil area	616m ² (13.14% of site area).

Figure 3 View from McPherson Park



Source: *Silvester Fuller*

PLANNING INSTRUMENT, DEVELOPMENT STANDARD AND PROPOSED VARIATION

3. What is the planning instrument you are seeking to vary?

Sydney Local Environmental Plan 2012 (SLEP 2012).

4. What is the site's zoning?

E1 Local centre.

5. What is the development standard to be varied?

Clause 4.3 – Height of building of the SLEP 2012.

The objectives of the clause are to:

- (a) to ensure the height of development is appropriate to the condition of the site and its context,*
- (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,*
- (c) to promote the sharing of views outside Central Sydney,*
- (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,*
- (e) in respect of Green Square—*
 - (i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and*
 - (ii) to ensure the built form contributes to the physical definition of the street network and public spaces.*

6. Type of development standard?

Numerical.

7. What is the numeric value of the development standard in the environmental planning instrument?

Height of building of 27m. Note that, while the proposal underwent a competitive design alternatives process, the 10 percent bonus afforded under clause 6.21D of SLEP 2012 was applied to maximum floor space ratio (FSR). The proposed development complies with the FSR development standard (with design excellence).

8. What is the difference between the existing and proposed numeric values? What is the percentage variation (between the proposal and the environmental planning instrument)?

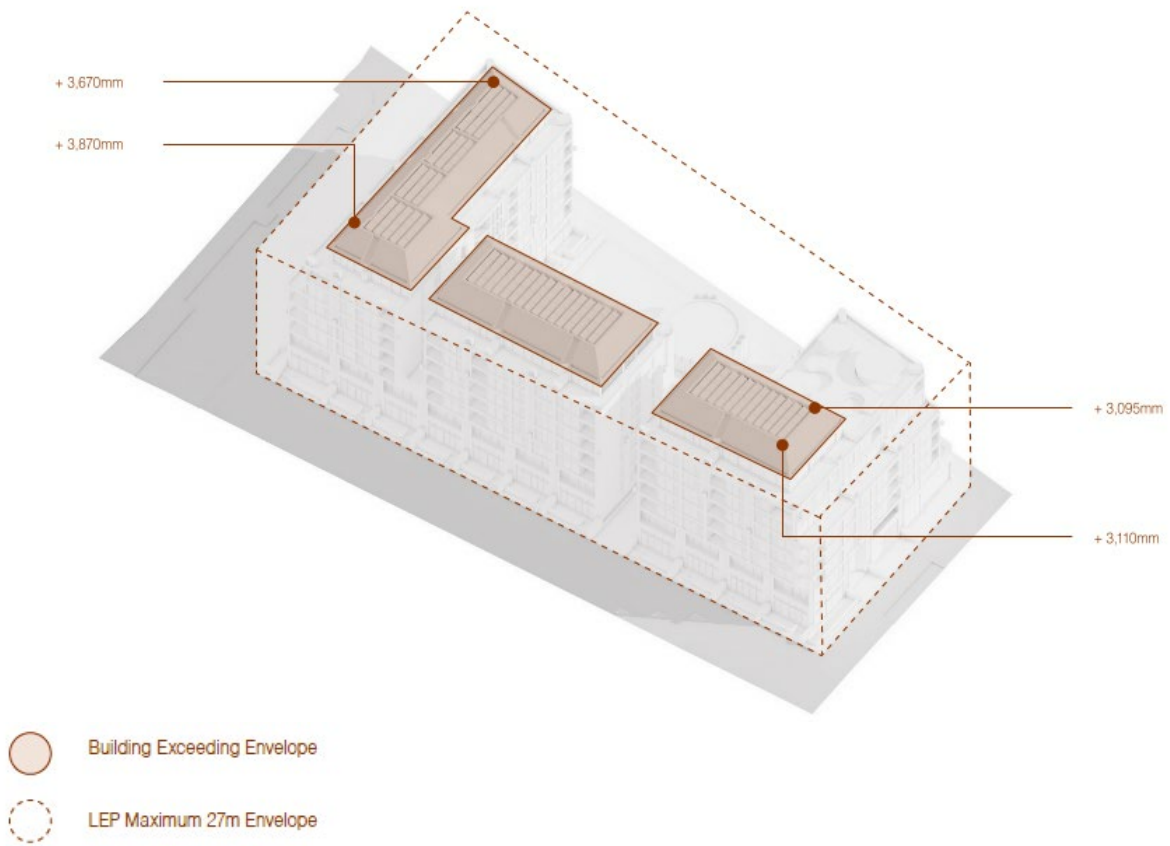
The proposal exceeds the maximum 27 metre height of building development standard by between 3.095m (11.5%) and 3.87m (14.3%).

The area of non-compliance relates to rooftop plant contained within an articulated roof form (Refer to Figure 5), which does not contain GFA. There is also a minor height exceedance (to 200mm) at the south building's southeastern corner, which comprise ceiling space of the apartment below.

9. Visual representation of the proposed variation (if relevant)

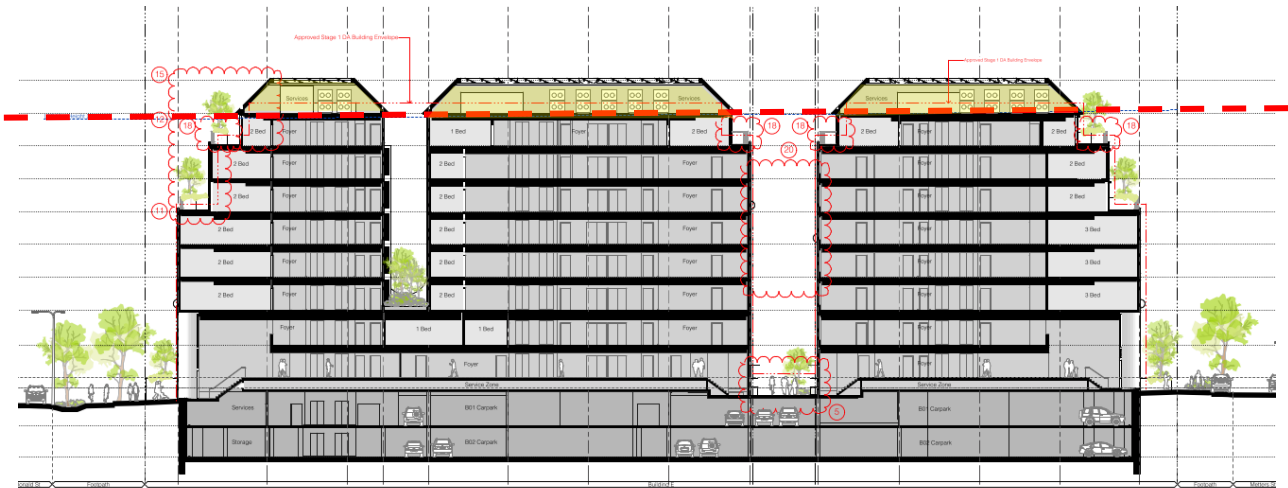
Figure 4 and Figure 5 below provide a representation of the proposed height of building variation.

Figure 4 Height Non-Compliance



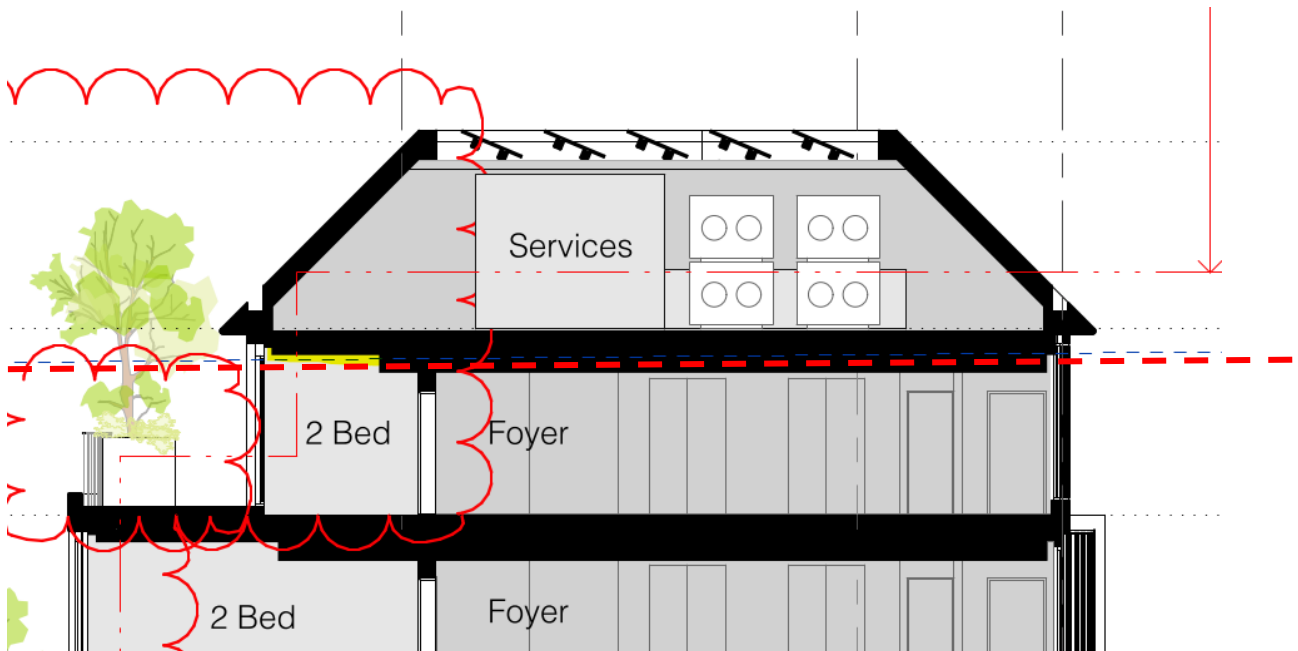
Source: *Silvester Fuller*

Figure 5 Sectional Diagram (area of non-compliance are shaded yellow and max height plane in red)



Picture 1 Built form within area of non-compliance

Source: Silvester Fuller



Picture 2 Area of non-compliance that comprises minor GFA

Source: Silvester Fuller

JUSTIFICATION FOR THE PROPOSED VARIATION

10. How is compliance with the development standard unreasonable or unnecessary in the circumstances of the particular case?

Table 3 Unreasonable or Unnecessary Assessment

Key Questions	Response
a) Are the objectives of the development standard achieved notwithstanding the non-compliance?	<p>The relevant objectives of the height of building development standard are:</p> <p><i>(a) to ensure the height of development is appropriate to the condition of the site and its context,</i></p> <p><i>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</i></p> <p><i>(c) to promote the sharing of views outside Central Sydney,</i></p> <p><i>(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,</i></p> <p><i>(e) in respect of Green Square—</i></p> <p style="padding-left: 40px;"><i>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</i></p> <p style="padding-left: 40px;"><i>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.</i></p> <p>The proposal complies with each of the listed objectives as outlined below:</p> <p>a. The area of height of non-compliance relates to the roof form, which is further setback from the building line and has been designed with a hipped form. Two degrees of setback and pitched form reduce visual impact when viewed from the public domain, allowing the consistent 5 storey street wall form to be the prominent visual character.</p> <p>In addition, the areas of non-compliance do not contribute to an additional storey that exceeds or is inconsistent with the scale of and height character of surrounding development. The overall height of the development will be complementary to the scale of development to the east and west, and future development to the south (which range between six to eight storeys). Therefore, despite the height non-compliance, the development will be sympathetic to the range of building height in the immediate locality such that it will ‘sit comfortably’ in its future context.</p> <p>Context character if further assessed in Section 11.</p> <p>b. The closest heritage conservation area is approx. 45m from the site – and is separated by other approved buildings.</p> <p>The development is therefore unlikely to impact on heritage conservation areas to further to the north of the site given the distance and presence of other buildings between the site and conservation area. The area of non-compliance will therefore not impact the transition in density to these heritage items.</p> <p>c. There are no identified significant views within the Ashmore Estate and the buildings are of comparable heights so in this instance the building setbacks are as important to ensure views are shared between buildings. The area of non-</p>

Key Questions	Response
	<p>compliance is further setback from the building line, therefore view impact is minimised.</p> <p>Furthermore, the proposal will have no material impact on the desired distant CBD skyline view from the top of the hill at Sydney Park.</p> <p>d. The subject site is not within Green Square Town Centre, so this objective is not applicable to the proposed variation.</p> <p>e. The subject site is not Green Square so this objective is not applicable to the proposed variation.</p>
<p>b) Are the underlying objectives or purpose of the development standard not relevant to the development? (Give details if applicable)</p>	<p>N/A.</p>
<p>c) Would the underlying objective or purpose be defeated or thwarted if compliance was required? (Give details if applicable)</p>	<p>N/A.</p>
<p>(d) Has the development standard been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard?</p>	<p>The following development applications have been approved with height variations made under clause 4.6:</p> <ul style="list-style-type: none"> ▪ D/2017/681 (Building B & C) <ul style="list-style-type: none"> – Building B: 6.44m above 15m height standard (42.9% variation) – Building C: <ul style="list-style-type: none"> ○ C01 = 2.4m above 27m height standard – 9.31m above 15m height standard to height standard (8.9% to 62.1% variation). ○ C02 = 0.7m above 18m height standard (3.9% variation). ▪ D/2019/393 (Building A) – 11.85m above 15m height limit (79% variation) <p>The above demonstrates the extent of departure from the SLEP 2012 HOB development standard Council have permitted, effectively abandoning the control.</p>
<p>e) Is the zoning of the land unreasonable or inappropriate so that the development standard is also unreasonable or unnecessary?</p>	<p>N/A.</p>

11. Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes.

There are sufficient environmental planning grounds to justify contravening the development standard as follows.

Massing and Built Form

The majority areas of non-compliance relate to the articulated roof form, which comprise of rooftop plant and building services rather than additional GFA. The potential massing, built form and privacy impacts of this variance are addressed by the following:

- The area of building height non-compliance is primarily driven by the flooding constraints of the site, the PMF level for the lowest end of the site (southeastern corner) being 2.29m above natural ground level. Compliance with the FPLs ultimately contributed to roof form being above the SLEP 2012 height of building control.
- The rooftop-built form is setback 5.4m from the Kooka Walk boundary (east), 9.6m from the MacDonald Street boundary (south) and 9m from the Metters Street boundary (north). These significant setbacks minimise the visual prominence of these elements when viewed from the immediate public domain area, as seen in **Figure 6**.

Figure 6 View from MacDonald Street



Source: Silvester Fuller

- The additional built form does not disrupt the desired transition of height across the precinct. Despite the non-compliance the proposal will be viewed primarily as a five-storey built form from along Metters Street, which provides a variety in height from the six-storey street wall height at 74 Macdonald Street to the seven-storey street wall height at Building C. Similarly, along MacDonald Street, despite the non-compliance the proposal is able to provide a break in the consistency of building height from the six-storey street wall height at 74 Macdonald Street to the seven-storey street wall height at Block C. The proposal

also responds to the future built form at Block F, which will be an eight-storey built form fronting MacDonald Street. Overall and despite the non-compliance, the proposal is able to achieve transition in height and contribute to being a marker building to the Park, which is aligned with the DCP vision for the area (Refer to **Figure 7**).

Figure 7 Ashmore Height in Storeys Stage 1 Plan



Source: Architectus

- The design of the articulated roof form is considered “expressive and provide a neat skyline” as noted by the Selection Panel during the Competitive Design Alternative Process for the proposal. The roof form provides built form screening to unsightly plant room and equipment while naturally resolving the dwelling sections of the proposal with light materiality and a gentler slope. The design assists with the design quality of the proposal while acting as an effective method to resolve otherwise unsightly plant and service facilities.
- The minor portion of GFA captured in the area of non-compliance (200mm within the south building’s southeastern dwelling) is a result of the site slope, a small area which does not contribute significantly to the overall GFA of the proposal. The proposal remains consistent with the approved GFAs under the Concept Stage 1 DA (with design excellence bonus). No additional privacy concerns will result from this 200mm exceedance.
- Finally, the additional height is the direct result of the responding to the design Panel’s recommendation and pursuit of the additional GFA allowable when a design alternatives process is undertaken. This is consistent with approved outcomes on Blocks A, B and C within the precinct have approved for additional storey and height of building non-compliances as design excellence was deemed to be achieved.

Overall, the proposal achieves a positive contextual fit and the areas of non-compliance have been appropriately designed to maintain the character and amenity of the surrounding Ashmore Estate and MacPherson Park.

Amenity

The services contained within the roof form are building services and structures that provide accessibility, cooling/heating systems and energy saving measures, which are all necessary to deliver contemporary amenity to the future residents of the proposal. These structures satisfy the objectives of the *Environmental Planning and Assessment Act 1979*, especially objectives (b) and (g) which relate to promoting ecologically sustainable development and good amenity in the built environment.

Overshadowing

Silvester Fuller have assessed the overshadowing impact associated with the height of building control area of non-compliance.

The proposal overall will result in a small amount of additional overshadowing within the streetscape to the west from 9am to 11am. After 11am the additional shadow falls within the footprint of the subject site with areas of reduced shadow. From 1pm to 3pm additional shadow falls within the public domain to the east. Minor additional shadow falls within McPherson Park from 2pm with some areas of reduced shadow.

Section 5.5.4.2 of Sydney Development Control Plan 2012 requires a minimum of 60% of the total area of McPherson Park is to have direct solar access between 10am and 2pm at the winter solstice.

Notwithstanding the minor areas of additional shadow, a minimum 68.15% of McPherson Park can still achieve direct solar access between 10am and 2pm at the winter solstice.

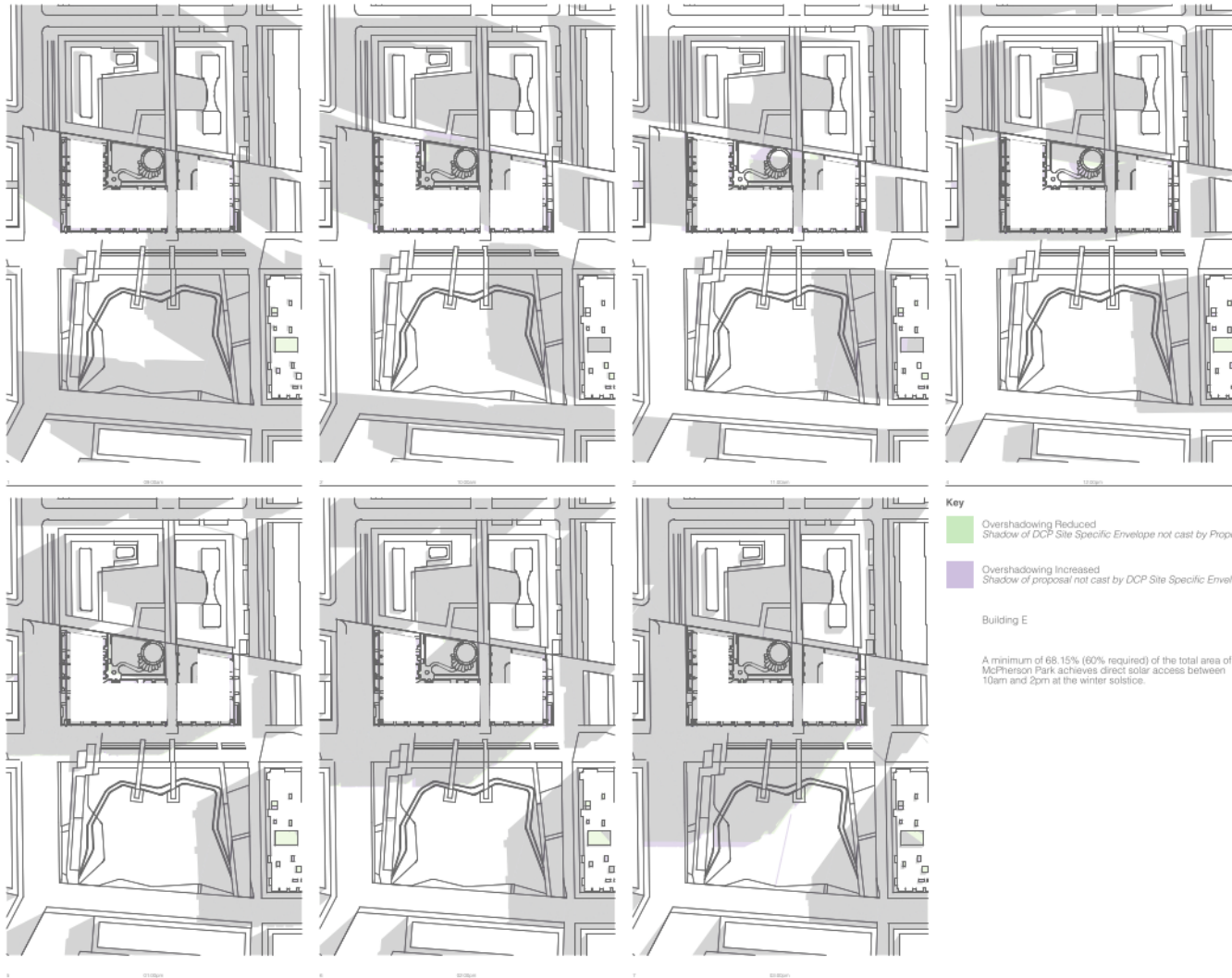
Accordingly, the proposal is able to comply with DCP control and will not result in unreasonable overshadow impacts to McPherson Park.

The overshadowing diagrams confirm that whilst the additional height does result in a small amount of additional overshadowing, the extent is indiscernible in the context of the wider Ashmore estate.

The area of non-compliance has no additional impact on solar amenity to Block G, which retains 71% solar access to apartments consistent with the requirements of the ADG. 5 Hadfields Street to the southwest of the site currently does not achieve the ADG required minimum 2 hours sun light. The area of non-compliance does not further reduced solar access by more than 20% access to 5 Hadfields Street consistent with Objective 3B-2 of the ADG.

Solar access diagrams illustrate the extent of additional overshadowing are provided at **Figure 8**.

Figure 8 Solar Access from 9am to 3pm



Source: Silvester Fuller

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Views

The area of non-compliance on the roof form is minor considering the approved concept building envelope and the location of Block E. Being west of McPherson Park and within a cluster of other residential flat buildings of similar building height, views from McPherson Park and Sydney Park to the south will not be impacted because of the area of non-compliance.

The area of non-compliance will not result in any detrimental view impacts to surrounding development when compared to a complying design. The non-compliant roof elements are related to building servicing features, which provide essential amenity to the residents and are necessary within the development. Therefore, the proposed height of building non-compliances is considered appropriate and can be supported on environmental planning grounds.

12. Is there any other relevant information relating to justifying a variation of the development standard? (If required)

Public Interest

For development that contravenes a development standard, the consent authority must be satisfied the proposal will be in the public interest. This is achieved via consistency 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**. The proposal is also consistent with the land use objectives that apply to the site under SLEP 2012. The site is located within the E1 Local Centre 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 E1 Local Centre Land Use Zone Objectives

Objective	Assessment
To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.	The proposed area of non-compliance with the height of building control enables the delivery of a mix of apartments which provide good amenity to the future residents of Block E.
To encourage investment in local commercial development that generates employment opportunities and economic growth.	The height non-compliance will not have a direct impact on investment in local commercial development. Securing development approval that will facilitate additional housing will however have a positive indirect impact as it will support the continued investment in other development blocks in the estate that are flagged to incorporate retail uses, and thereby facilitating further job creation in future.
To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.	The height non-compliance will support the delivery of new residential dwellings, which meet current design and amenity standards in an urban renewal precinct which includes a new local centre. The non-compliant roof elements can support the delivery of contemporary apartments with equitable access, good solar access, cross ventilation and acoustic amenity without creating adverse environmental impacts. Further, the proposed Block E proposes 141 residential dwellings. The influx of new residents as a result of this increase in dwellings will help support the ongoing viability of existing retail and childcare

	land uses within the Ashmore Precinct and the planned nearby future mixed use retail stage (Block F & I) of the project.
To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.	<p>The height non-compliance will not adversely impact the achievement of this objective.</p> <p>The active non residential land uses have been identified by Council's policy to exist on the eastern side of McPherson Park, and not this site. The proposed development is for two residential flat buildings. The ground level will however be activated via direct dwelling entries off Kooka Walk to optimise casual surveillance of the public domain.</p>
To maximise public transport patronage and encourage walking and cycling.	<p>The height non-compliance will not adversely impact the achievement of this objective.</p> <p>More broadly the development supports the intensification of activity around existing public transport and bicycle infrastructure, and provide the requisite on-site facilities to support this as required by Council policies. Accordingly, it is expected future residents, visitors and employees contained to the proposal will increasingly choose to travel by bike or public transport instead of a car.</p>

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