

# **Attachment D**

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| <p><b>Clause 4.6 Variation Request – Height of Buildings</b></p> |
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# Clause 4.6 Request to vary a Development Standard

338 Botany Road, Alexandria  
Mixed Use Development including Affordable Housing



Submitted to the City of Sydney Council  
on behalf of St George Community Housing

**April 2024**



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## 1. Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Sydney Local Environmental Plan 2012* (SLEP 2012).

This Request relates to Clause 4.3 Height of Buildings of the SLEP 2012.

This Request has considered the detailed guidance within the NSW Department of Planning and Environment (DP&E) guideline *Varying Development Standards: A Guide, August 2011* (DP&E Guide) and planning system circular PS 20-002 *Varying Development Standards, May 2020*, and addresses the findings and established principles (as relevant) of the following judgements of the Land and Environment Court:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46
- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and [2015] NSWCA 248
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112
- *Big Property Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021] NSWLEC 1243

The following sections of this Request critically analyse the proposed variation to the maximum 33m height of building standard applying to the site, its impact and reasonableness.

This analysis demonstrates that an exception to the height of buildings development standard is warranted in this instance.

The following sections of this Request critically analyse the proposed height variation, its impact and reasonableness. This analysis demonstrates that an exception to the height of buildings development standard is warranted in this instance and will provide for a significantly better urban outcome than a compliant development.

## 2. Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* was introduced to create a common format for local environmental plans across NSW and all councils have now adopted local environmental plans based on the Standard Instrument (SI).

The SI includes various development standards as a means to achieving environmental planning objectives and these standards can be numerical or performance based.

Clause 4.6 of the SI allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard.

The DPE Guide confirms that the NSW planning system allows for flexibility in planning controls, in certain circumstances, through the provisions of Clause 4.6 of the SI.

The DPE Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. Table 1 provides a summary of the relevant planning context and provides a key numerical overview of the proposed variation.

| Information Requirement                 | Comment   |
|---|---|
| Relevant Applicable Planning Instrument | <i>Sydney Local Environmental Plan 2012 (SLEP 2012)</i>   |
| Zoning of the Land                      | E3 Productivity Support   |
| Objectives of the Zone                  | <p>The objectives of the E3 zone are:</p> <ul style="list-style-type: none"> <li>• <i>To provide a range of facilities and services, light industries, warehouses and offices.</i></li> <li>• <i>To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.</i></li> <li>• <i>To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity.</i></li> <li>• <i>To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.</i></li> <li>• <i>To provide opportunities for new and emerging light industries.</i></li> <li>• <i>To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site.</i></li> <li>• <i>To encourage employment opportunities.</i></li> <li>• <i>To promote land uses with active street frontages.</i></li> <li>• <i>To provide for land uses that support the viability of adjoining industrial land uses</i></li> </ul> |
| Development Standard to be Varied       | Height of buildings   |
| Nature of the Development Standard      | A numerical height control (33m).   |

| Information Requirement   | Comment  |
|---|--|
| Relevant Development Standard Clause                                  | Clause 4.3 of the SLEP 2012  |
| Objectives of the Development standard                                | <p>The objectives of Clause 4.3 Height of buildings development standard are:</p> <ul style="list-style-type: none"> <li>(a) to ensure the height of development is appropriate to the condition of the site and its context,</li> <li>(b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,</li> <li>(c) to promote the sharing of views outside Central Sydney,</li> <li>(d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,</li> <li>(e) in respect of Green Square— <ul style="list-style-type: none"> <li>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and</li> <li>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces.</li> </ul> </li> </ul> |
| Development Standard Numeric Control for the Site                     | Maximum height of 33m metres (refer to Figure 2).  |
| Proposed Numeric Control  | Maximum height of 36.2 metres (refer to Figure 3).   |
| Percentage Variation Between the Proposal and the Planning Instrument | An increase of 3.2 metres represents an 9.7% increase over the SLEP 2012 height of buildings development standard of 33m.  |

Table 1: DPHI Guide recommended planning information and numeric overview

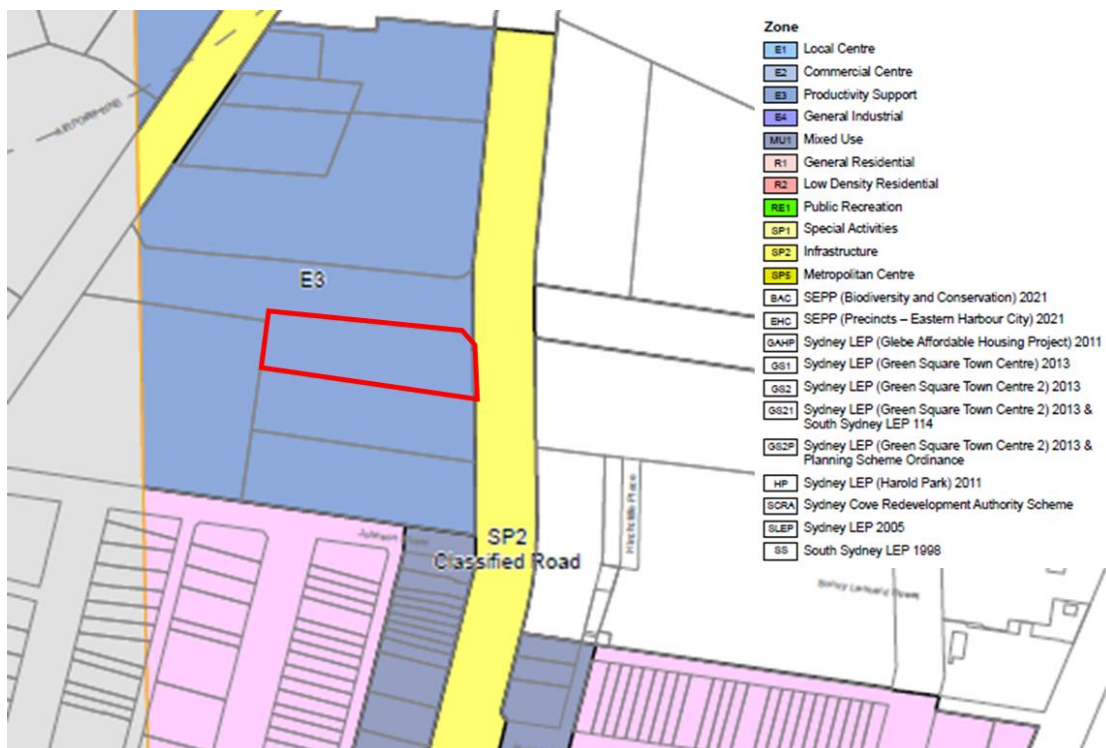


Figure 1: Zoning map excerpt (Source: SLEP 2012)

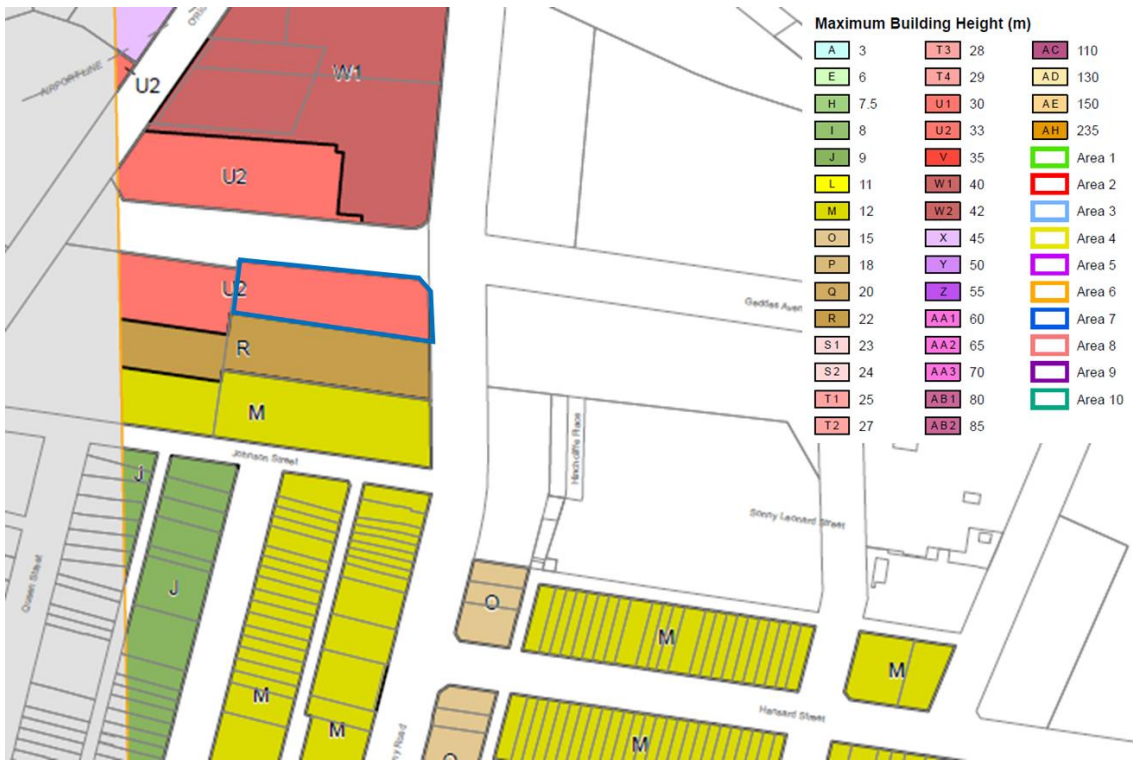


Figure 2: Height of buildings development standard map excerpt (Source: SLEP 2012)



Figure 3: Section showing proposed maximum height (Source: DKO)



### 3. Proposed Development

The Applicant is seeking approval for a detailed DA, in accordance with Section 4.22 of the EP&A Act.

As detailed in the associated Statement of Environmental Effects, the proposed development comprises:

- construction of a 10-storey mixed use development;
- a built form broken up into 2 distinct tower forms connected via a recessed central element;
- provision of affordable rental housing units comprising 111 apartments including:
  - 13 x studios;
  - 30 x 1 bed;
  - 58 x 2 bed;
  - 10 x 3 bed;
- 303m<sup>2</sup> ground floor commercial/retail floorspace;
- communal areas including rooftop open space and a resident community hub;
- 4 on-site disabled car parking spaces and 1 drop off car space at ground level;
- on-site loading bay;
- landscaping;
- civil works;
- earthworks; and
- remediation.

## 4. Legislative Context

### 4.1. Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the SLEP 2012 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (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.*

Subclause (3) of Clause 4.6 is relevant and development consent can only be granted subject to its consideration.

#### 4.1.1. Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

### 4.2. Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request. These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248*
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*
- *Linfield Developments Pty Ltd v Cumberland Council [2019] NSWLEC 131*
- *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*
- *Big Property Pty Ltd v Randwick City Council [2021] NSWLEC 1161*
- *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243*

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

#### **4.2.1. Winten Property Group Limited v North Sydney Council (2001)**

The *Winten Property Group Ltd v North Sydney Council (2001)* case posed the following questions to be addressed when considering objections to development standards:

- Is the planning control in question a development standard?
- If so, what is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Section 1.3 of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)
- Is the objection well founded?

#### **4.2.2. Wehbe v Pittwater Council (2007)**

This case expands on the findings of *Winten Property Group Limited v North Sydney Council (2001)* case and establishes a five-part test 'Wehbe tests' to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
5. The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

It is noted that the DP&E Guide was formulated on the basis of the findings of the *Winten Property Group Limited v North Sydney Council (2001)* case and the Wehbe Tests.

#### **4.2.3. Four2Five Pty Ltd v Ashfield Council (2015)**

The outcome of these cases (initially heard and then upheld at appeal) concluded that in addition to considering the Wehbe Tests, Requests must also demonstrate that:

- the grounds for departing from the development standard must be particular to the circumstances of the proposed development on the subject site; and
- compliance with the development standard is unreasonable or unnecessary, in addition to demonstrating that the proposal was consistent with the objectives of the development standard and/or land use zone.

#### **4.2.4. Initial Action Pty Ltd v Woollahra Municipal Council [2018]**

*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] (Initial Action) further clarifies the correct approach for the consideration of clause 4.6 requests. Clause 4.6 does not require that a development that contravenes a development standard to have a *neutral or better* environmental planning outcome than a fully compliant development.

The legal consequence of the decision in *Initial Action* is that Clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

In *Initial Action*, the Court also confirmed that the five common ways of establishing that compliance with a development standard is unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) continue to apply.

#### **4.2.5. Linfield Developments Pty Ltd v Cumberland Council (2019)**

The ‘third’ Wehbe test is concerned with the underlying object or purpose of the development standard and that it would be defeated, thwarted or undermined if strict compliance was required. The reference to ‘undermined’ is an extension of Wehbe which was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]) (Linfield). In Linfield, the court found that:

*“...requiring compliance would thwart or undermine at least one of the objectives of the height control development standard...”*

#### **4.2.6. SJD DB2 Pty Ltd v Woollahra Council (2020)**

The *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 established greater flexibility in applying clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site. The outcome of this case concluded the following questions should be asked in relation to the request to vary a development standard:

1. what was the desired future character?
2. is the proposal consistent/compatible with that desired future character?
3. has any visual intrusion been minimised?
4. have the controls been previously abandoned?

#### **4.2.7. Big Property Pty Ltd v Randwick City Council (2021)**

*Big Property Pty Ltd v Randwick City Council [2021] NSWLEC 1161* (Big Property) is also a relevant case associated with a clause 4.6 request in the context of the desired future character of an area. This judgement established that the desired future character should not solely be determined by the development standards that control building envelopes, stating:

*“...As generic standards, they do not necessarily account for existing and approved development, site amalgamations, the location of heritage items or the nuances of an individual site. Nor can they account for provisions under other EPIs that incentivise particular development with GFA bonuses or other mechanisms that intensify development...”*

#### **4.2.8. HPG Mosman Projects Pty Ltd v Mosman Municipal Council (2021)**

Similar to the *Big Property* case, in *HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021] NSWLEC 1243* (HPG) a clause 4.6 request was considered in the context of desired future character. This case determined that desired future character of an area can be evaluated by reference to matters other than the controls and objectives of the development standard.

*“...The desired future character of an area is not determined and fixed by the applicable development standards for height and FSR, because they do not, alone, fix the realised building envelope for a site”.*

## 5. Assessment of the Variation to Height of buildings development standard

The maximum height of buildings development standard constitutes the built form baseline from which any variation request is measured and assessed.

The SLEP 2012 sets a standard height development control of 33m for the entire site.

The proposal seeks to increase the maximum height of buildings development standard development control by 3.2m (9.7%) to accommodate a built form that is appropriate for the conditions of the site and its context, both physically and strategically, and which is envisaged for the site under the Employment Lands Affordable Housing Strategy and SLEP 2012.

The following assessment comprehensively considers the provisions of Cl 4.6 which has also been informed by an analysis of the relevant case law.

### 5.1. Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

*Wehbe* establishes a five-part test ‘Wehbe tests’ to ascertain whether strict compliance with a development standard is unreasonable or unnecessary. An assessment against the relevant tests are provided below to outline how compliance with the height of buildings development standard is unreasonable and unnecessary.

#### 5.1.1. Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the height of buildings development standard will be achieved notwithstanding the non-compliance with the standard as outlined below.

| Clause 4.3 Height of buildings development standard  |  |
|--|--|
| Objectives   | Achievement of Objectives  |
| (a) to ensure the height of development is appropriate to the condition of the site and its context, | <p>The proposed height exceedance is limited to the parapet, lift overrun, fire stair, hot water services and solar panels. These elements are relatively minor and will generally not be visible from the street. As such, they do not contribute to the bulk and scale of the building. Refer to figure 5.</p> <p>As discussed within the Statement of Environmental Effects (SEE), surrounding development has resulted in significant uplift in the locality and examples of other height variations, including under D/2021/700 at 326 Botany Road.</p> <p>On this basis, the proposal will suitably integrate with the emerging character of the area and its surrounding context.</p> |

| <b>Clause 4.3 Height of buildings development standard</b>   |   |
|--|---|
| (b) to ensure appropriate height transitions between new development and heritage items and buildings in heritage conservation areas or special character areas,   | The site is not located in a heritage conservation area and is not in proximity to any heritage items.  |
| (c) to promote the sharing of views outside Central Sydney   | The proposed minor variation will generally not impact view sharing when compared to a height compliant scheme. No significant views or view corridors are identified over the site.  |
| (d) to ensure appropriate height transitions from Central Sydney and Green Square Town Centre to adjoining areas,  | <p>The minor height variation, which is limited to mechanical services, with the exception of the parapet, does not hinder the appropriate height transition to surrounding development and areas.</p> <p>It is noted that neighbouring developments range from 5 to 16 storeys as detailed below:</p> <ul style="list-style-type: none"> <li>• <b>North</b> – concept approval for a mixed use development comprising retail and commercial uses with shop top housing for the purposes of affordable housing with a height ranging from 9 to 12 storeys, to the north at 330 Botany Road (D/2021/1484);</li> <li>• <b>East</b> – a 16-storey residential flat building to the east currently under construction at 499 Botany Road, Zetland (D/2015/688); and</li> <li>• <b>West</b> – an approved five-storey commercial development adjoining the western boundary of the site at 22 O’Riordan Street (D/2019/686 and D/2021/529).</li> </ul> <p>It is considered that the 10 storey building height will provide an appropriate transition between the above properties and ensure an appropriate urban design outcome for the broader area.</p> |
| (e) in respect of Green Square—<br>(i) to ensure the amenity of the public domain by restricting taller buildings to only part of a site, and<br>(ii) to ensure the built form contributes to the physical definition of the street network and public spaces. | As demonstrated by the shadow diagrams provided in the Architectural package, the proposal does not result in undue shadows to the public domain. Additionally, the articulation of the building provides physical definition to the street and public domain.  |

Table 2: Consistency with Height of buildings development standard objectives

The proposed development has therefore demonstrated to be consistent with the objectives of the height of buildings development standard, as outlined in Table 2.

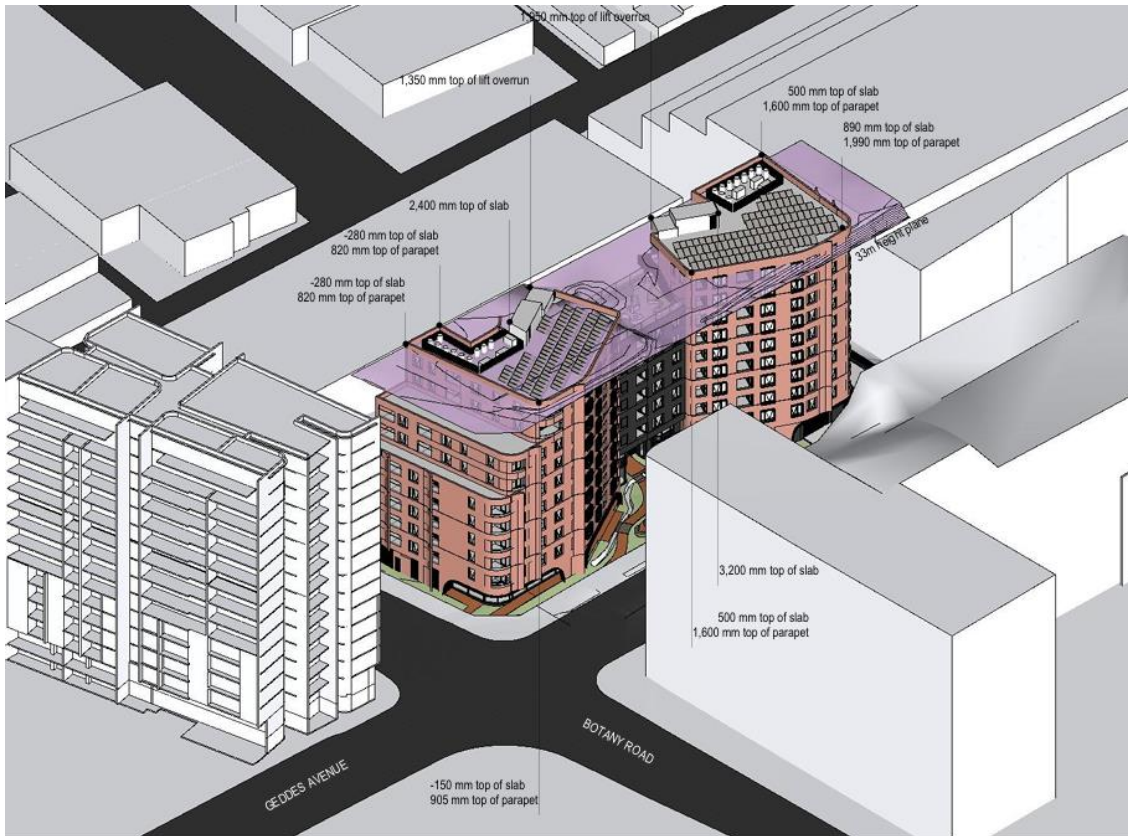


Figure 4: Height Plane Plan (Source DKO)

**5.1.2. Wehbe Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable**

Strict compliance with the height of buildings development standard would defeat, thwart and undermine the underlying object or purpose of the height of buildings development standard. This was applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 (at [24]).

The objects that would be defeated, thwarted or undermined if strict compliance was required in this case are clause 4.3(1)(a) of the SLEP 2012, as detailed below.

Clause 4.3(1)(a) states:

*to ensure the height of development is appropriate to the condition of the site and its context,*

The height exceedance ensures the proposal aligns with objective (a).

The desired future character of an area is set by a range of factors, other than a specific objective of a development standard, as outlined in recent court cases. Specifically, SJD, Big Property and HPG determined that the desired future character of an area should be evaluated by reference to matters such as other applicable environmental planning instruments, surrounding development and the specific nature of the site.



In the context of the site, development nearby should be considered. This is discussed in greater detail below.

### *Surrounding development*

Surrounding development is a clear indicator of future character of an area. Nearby developments include:

- 499 Botany Road, Alexandria - Construction of a 16 storey mixed use development containing 130 dwellings and five retail tenancies. Excavation of the site for two levels of basement car parking connected with the approved basement of Site 9B.
- 501-509 and part 511-515 Botany Road, Zetland - Demolition of existing structures, tree removal, remediation, excavation, shoring and piling works and construction of a mixed use development on sites 10A, 10B and 11C within the Green Square Town Centre incorporating 133 apartments and 1,074sqm of commercial and retail space. The development includes landscaping and open space works, construction of part of Hinchliffe Street, road widening and land subdivision.
- 320-324 Botany Road, Alexandria - Demolition, excavation, remediation and construction of a mixed-use building up to 16 storeys containing office and retail with basement level car parking.
- 326-328 Botany Road, Alexandria - Demolition of existing structures, excavation, remediation and construction of a 10-storey commercial building. This includes basement car-parking, vehicle access from Botany Road, co-working space at ground and commercial offices above.
- 330 Botany Road – Concept approval for a mixed use development comprising retail and commercial uses with shop top housing for the purposes of affordable housing with a height ranging from 9 to 12 storeys.

These proposed and existing surrounding developments illustrate the emerging character of the area which include buildings that achieve a higher density when compared to the existing built form in the locality. On this basis, it is clear that the locality is undergoing a process of urban transition towards greater height and density.

In summary, a strictly compliant scheme would fail to deliver a development that aligns the desired future character of the site as determined by the matters outlined in the *SJD*, *Big Property* and *HPG* court cases.

## **5.2. Clause 4.6(3)(b) – Environmental Planning Grounds to Justify Contravening the Development Standard**

The development, including the building height non-compliances, will provide for a high quality mixed-use development with a residential aspect consisting entirely of affordable housing in a highly accessible location.

In this context there are sound planning grounds and significant benefits to justify contravening the height of buildings development standard. In particular:

- the proposed built form and localised height increase will present a significantly superior urban design outcome for the site
- the proposed development is consistent with the objectives of the E3 zone
- the proposed development is consistent with the relevant strategic state and regional plans

These matters are discussed in further detail below.

### **5.2.1. Improved Urban Design outcomes**

The proposed development has been designed in accordance with the planned capacity for the site, which is essential in providing affordable housing to assist in meeting housing targets under the Employment Lands Affordable Housing Strategy. It is important to reiterate that the departure from the height development standard is limited to the parapet, lift overrun, fire stairs, solar panels and other mechanical services. On this basis, the additional height will not be readily sighted from the public domain given its location behind parapet walls and will not contribute to any perceivable bulk or scale of the building.

In summary, the proposed height variation is considered acceptable in regard to its urban design and responsiveness to the topography and local context for the following reasons:

- The non-compliant component of the building height is located centrally to the rooftop, recessed behind parapet walls and consequently will not contribute to any perceivable bulk or scale of the building.
- The areas of non-compliance (above the 33m height plane) are concentrated towards the centre of the building, minimising overshadowing and visual impacts of the exceedance on surrounding residential properties and the public domain.
- The exceedance in height results in minimal additional overshadowing when compared to a height compliant scheme. Importantly, the proposal complies with the solar access requirements under the ADG, maintaining 2 hours of solar access to neighbouring properties between 9am – 3pm.
- Only a small portion of the proposed development is non-compliant with the height control. However, to ensure a favourable urban design outcome, the two tower forms incorporate substantial articulation and are stepped to respond to the natural topography of the site, and lower density development to the west.
- The proposed height will allow for a building with landmark qualities - an instantly recognisable development, which is desirable for a site of this size, location and importance.

### **5.2.2. The proposed development is consistent with the objectives of the zone**

The site is within the E3 Productivity Support zone in which affordable housing is explicitly permitted with consent under clause 7.13A of SLEP 2012. The concept approval also establishes that the provision of affordable housing is suitable at the site.

The proposal seeks approval for shop top housing, with the residential component being wholly provided as affordable housing. The site is located within the Green Square Urban Renewal Area, within close proximity of the Green Square Town Centre, the Green Square railway station and bus routes along Botany Road and O'Riordan Street. The

proposal will contribute to the vitality of the nearby centre and the broader Green Square redevelopment area.

The proposed development is consistent with the objectives of the E3 zone as outlined in the below table.

More generally the proposal is in accordance with the objectives of the SLEP 2012 as it will support businesses within the zone and locality and will provide employment generating uses at ground floor.

| <b>E3 Productivity Support zone</b>  |  |
|--|--|
| <b>Objectives</b>  | <b>Achievement of Objectives</b>   |
| To provide a range of facilities and services, light industries, warehouses and offices.   | The proposed commercial tenancy will contribute to the variety of facilities and services within the area.   |
| To provide for land uses that are compatible with, but do not compete with, land uses in surrounding local and commercial centres.   | Given the scale of the proposed mixed use development, it is considered that it will not compete with land uses in the surrounding local and commercial centres.   |
| To maintain the economic viability of local and commercial centres by limiting certain retail and commercial activity  | The proposal will contribute to the vitality of the nearby Green Square Town Centre and the broader Green Square redevelopment area.   |
| To provide for land uses that meet the needs of the community, businesses and industries but that are not suited to locations in other employment zones.   | The proposed development will provide 111 apartments that will solely be for the purposes of affordable housing in perpetuity, providing for the needs of the community. Future residents will also support local businesses.<br><br>It is noted that the subject site has been deemed as a suitable location for the proposed mixed use development through the approval of the Concept DA. |
| To provide opportunities for new and emerging light industries   | The proposal will not preclude opportunities for new and emerging light industries.  |
| To enable other land uses that provide facilities and services to meet the day to day needs of workers, to sell goods of a large size, weight or quantity or to sell goods manufactured on-site. | The proposed commercial tenancy will be capable of providing services that meet the day to day needs of both workers and residents in the area.  |
| To encourage employment opportunities.   | The proposed commercial tenancy will provide employment generating floor space while the residential units will support the delivery of employment opportunities in the local area.  |
| To promote land uses with active street frontages.   | The ground floor commercial tenancy has been designed to provide access from both frontages it presents to, ensuring an active frontage. A colonnade built form, in lieu of an awning, has been provided above the main entry point fronting Botany Road as required under the Sydney DCP and relevant active frontages requirements.  |

| E3 Productivity Support zone   |  |
|--|--|
| To provide for land uses that support the viability of adjoining industrial land uses. | The proposal will not preclude the delivery of viability of industrial uses within the wider area. |

Table 3: Consistency with E3 zone objectives

### 5.2.3. The proposed development is consistent with the relevant strategic state and regional plans

The proposal is consistent with the relevant strategic state and regional plans as outlined at in the below table.

| Document  | Comment   |
|---|---|
| Greater Sydney Region Plan & Eastern City District Plan   | <ul style="list-style-type: none"> <li>The proposed development will ensure additional housing within an area identified for growth given its' proximity to transport infrastructure. The site presents an urban renewal opportunity close to a transport centre where links for walking and cycling are constantly being upgraded aligning with the objective. It will also aid in contributing to the housing supply targets for the Eastern City District.</li> <li>The proposal includes the provision of affordable housing to meet the challenges across the housing continuum. This will allow for a range of income levels to afford housing within close proximity to central Sydney.</li> <li>The proposal nurtures quality lifestyles through well-designed housing in neighbourhoods close to transport and other infrastructure</li> <li>The development aligns growth with infrastructure, including transport, social and green infrastructure, and delivering sustainable, smart and adaptable solutions</li> </ul> |
| City Plan 2036: Local Strategic Planning Statement (LSPS) | <p>The proposal directly aligns with the following priorities under the LSPS:</p> <ul style="list-style-type: none"> <li>Priority 2: Align development and growth with supporting infrastructure</li> <li>Priority 6: New homes for a diverse community</li> <li>Priority 12: Open, accountable and collaborative planning</li> </ul>   |

Table 4: Consistency with strategic plans

## 6. Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3) of the SLEP 2012.

It has been demonstrated that compliance with the height of buildings development standard is unnecessary and unreasonable given the specific circumstances of the proposal. In addition, clear planning grounds have been provided that justify contravening the development standard. The proposal is consistent with the objectives of the development standard and the E3 Productivity Support zone.

The variation to the height of buildings development standard would not result in a breach of any other development standards for the site and the additional population would support future and existing retail units and commercial centres.

The proposed development is considered to better satisfy the objectives of the height of buildings development standard and the E3 zone by delivering a more appropriate development outcome for the site and the broader area.

Overall, and for the reasons set out above, the proposed development represents a superior outcome for the site and it is therefore justified and appropriate that the development standard be varied as proposed.