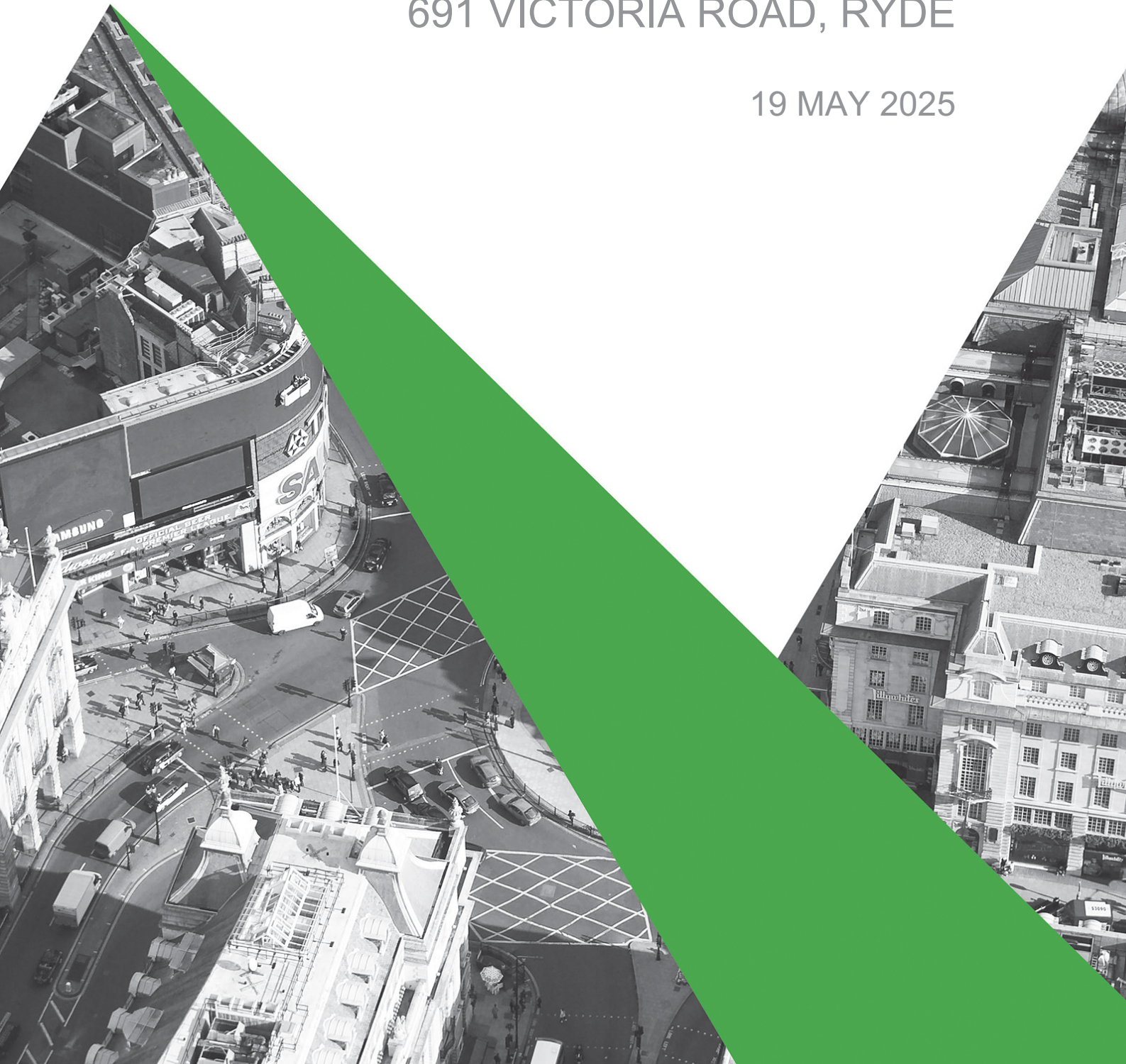


Clause 4.6 Variation Request Building Height

691 VICTORIA ROAD, RYDE

19 MAY 2025



QUALITY ASSURANCE	
PROJECT:	Clause 4.6 – Height
ADDRESS:	691 Victoria Road, Ryde
COUNCIL:	City of Ryde
AUTHOR:	Think Planners Pty Ltd

Date	Purpose of Issue	Rev	Reviewed	Authorised
November 2023	Submission	Final	EJ/JW	JW
September 2024	Post S34 Submission	Final	JW	JW
19 May 2025	Amended Proposal for Hearing	Final	BC/JW	JW

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CLAUSE 4.6 DEPARTURE – HEIGHT

BACKGROUND & RATIONALE FOR THE DEPARTURE

This Clause 4.6 departure has been prepared in support of a development application that seeks approval for demolition, tree removal and construction of a mixed use development at 691 Victoria Road, Ryde.

The site is identified by Ryde LEP 2014 as having a mapped height of 18.5m and then Clause 4.3A (1) identified a further 3m height where by the proposal is a mixed use development on a lot at least 900sqm and a development with a new laneway- which is the case with this scheme.

Therefore the maximum height permitted is 21.5m to the development.

It is noted that the development is seeking to vary this control with portions of the building form, communal open space and associated roof elements and lift overrun exceeding the maximum height limit.

The design of the proposed development has been informed through careful consideration of the most appropriate design response on the site- as compared to the DCP envelopes. This has been informed by an Urban Design Study by Bonus and Associates and ongoing discussions with Council.

The logic and rationale of the height breach is:

- The provision of a better design outcome having regard to the site configuration and constraints and context- i.e. being more site responsive as to where the building volumes sit and a better distribution of the permissible GFA as compared to the DCP envelopes.
- The lifting of the building along the corner and the removal of built form in the 'tail' of the site is an improvement in terms of relationships to adjoining properties and amenity for future residents.
- The public laneway and through site link splits the building mass down and results in a redistribution of the GFA into the remaining buildings with a more prominent built form on the corner of Blaxland Road/Princes Street.
- The GFA of the scheme is compliant with the 2.5:1 provision- it is simply redistributed across the site.
- The lot orientation and relationship to adjoining properties means the bulk and scale is set away from those properties to alleviate amenity impacts (overshadowing, visual impact and the like)

The rationale is best understood comparing the DCP envelope with the proposed building envelope, and these are shown over the page.

Figure 1: Built form structure plan (Source: Ryde DCP 2014)



Figure 2: Proposed Built Form



The comparison of these envelopes shows:

- Greater breathing space, and green space, around the buildings;
- More landscape and deep soil to the edges of the buildings for landscape opportunities.
- Elimination of the tail of the southern building.
- Provision of a north/south through site link.
- Improved relationships to the adjoining properties to the west.

Therefore the height breach facilitates a redistribution of GFA across the site (noting the GFA of the scheme is compliant with the 2.5:1 provision, being 2.46:1- it is simply redistributed across the site). This is a better design response through adoption of smaller, but taller, building footprints. This is the basis of the height breach and suitable environmental planning grounds.

THE DEVELOPMENT STANDARD TO BE VARIED

As illustrated below, the site is identified by Ryde LEP 2014 Height map Sheet HOB_006 as having a mapped height of 18.5m.

Figure 3: Ryde LEP Height Map HOB_006 extract (Source E Planning 2022)



As set out above the site is subject the following building height:

- The Height base is 18.5m based on the mapping;
- Clause 4.3A Area F permits a further 3m as shown in the extract below.



4.3A Exceptions to height of buildings

- (1) The maximum height for a building on land in an area shown in Column 1 of the table to this subclause that is permitted by clause 4.3 is increased by the additional height specified opposite the area in Column 2, if the land and the development meet the specifications shown opposite the area in Column 3.

Column 1	Column 2	Column 3
Area identified on Height of Buildings Map	Additional building height	Specifications relating to the Area
Area A	6 metres	The lot on which the building is sited has an area of at least 800 square metres
Area B	2 metres	The lot on which the building is sited has an area of at least 1,200 square metres
Area C	6 metres	The lot on which the building is sited has an area of at least 1,200 square metres
Area D	6 metres	The lot on which the building is sited has an area of at least 2,000 square metres
Area E	3 metres	The development is a mixed use development and provides laneway access that is not a private driveway or private laneway
Area E	6 metres	The lot on which the building is sited has an area of at least 900 square metres and the proposed development is a mixed use development and provides laneway access that is not a private driveway or private laneway
Area F	3 metres	The lot on which the building is sited has an area of at least 900 square metres and the development is a mixed use development and provides laneway access that is not a private driveway or private laneway

- (2) Despite clause 4.3, the maximum height of a dual occupancy (attached) and a multi dwelling housing on land in Zone R2 Low Density Residential is 5 metres for any dwelling that does not have a road frontage.

- The proposal is a mixed use development and provides laneway access.
- This permits a maximum height of 21.5m for the development.

A height blanket and section drawings are provided overleaf to demonstrate the nature of the departure and the portion of the buildings that exceed the height control.

Figure 2: Height Blanket 1

21.5m LEP HEIGHT BLANKET SHOWN IN BLUE

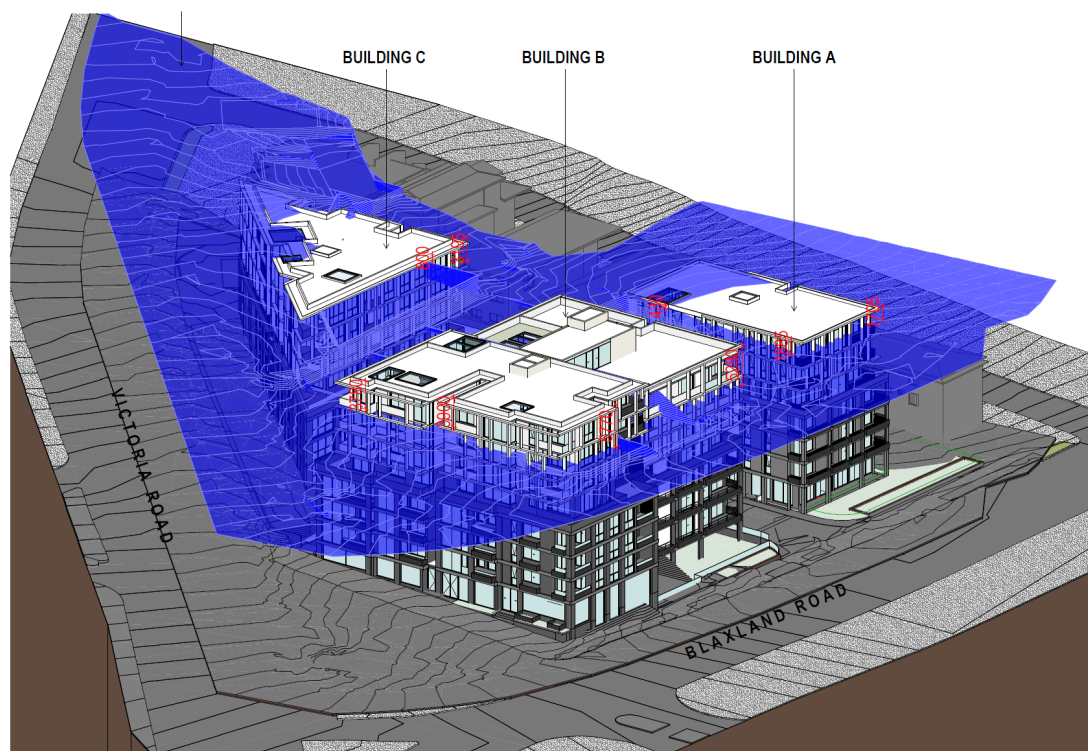




Figure 3: Height Blanket 2

21.5m LEP HEIGHT BLANKET SHOWN IN BLUE

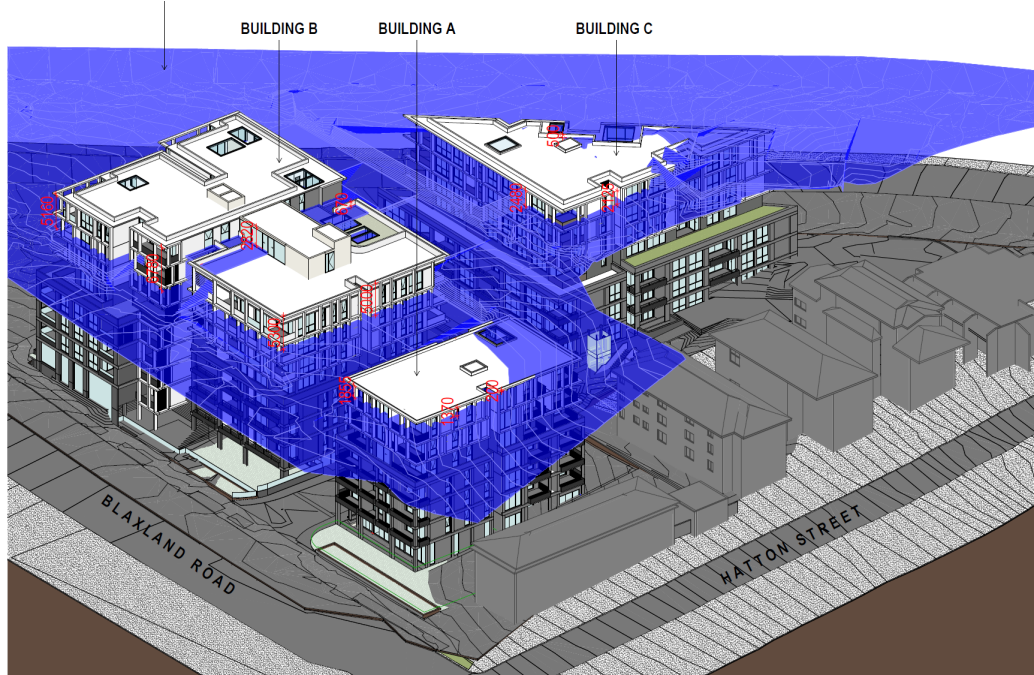
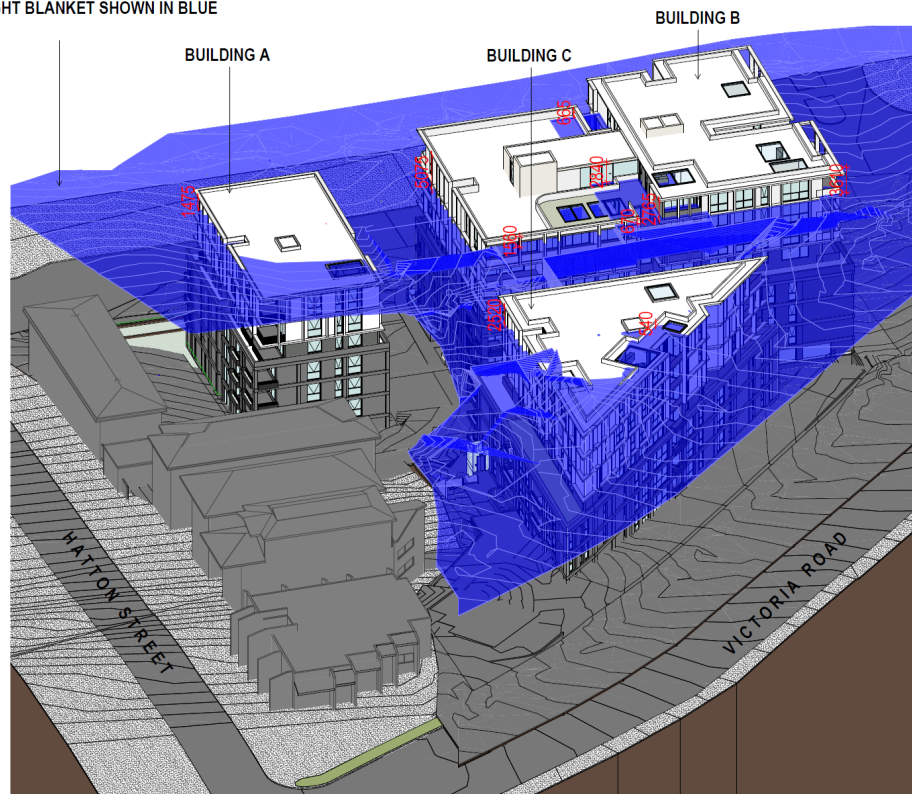


Figure 3: Height Blanket 3

21.5m LEP HEIGHT BLANKET SHOWN IN BLUE



As illustrated above the departure relates to the building on the corner of Blaxland Road and Princes Street and then the triangular building facing Victoria Road- which arise from a compressed footprint and greater breaks between buildings than contemplated by the DCP envelopes. This is as well as the desire to celebrate the corner of Blaxland Road/Benson Place and Victoria Road.

The proposal presents the following maximum departures to the 21.5m height control:

Building Element	Maximum Height Breach	Height	% Exceedance
Building A	200mm to 1.855m	21.7m – 23.355m	0.93% to 8.62%
Building B	665mm to 6780m	22.155m – 28.28m	3.04% to 31.53%
Building C	500mm to 3.95m	22m -24.695m	2.32% to 14.86%

Clause 4.6 of the Ryde LEP 2014 provides that development consent may be granted for development even though the development would contravene a development standard. This is, provided that the relevant provisions of the clause are addressed.

The applicant asks that the Consent Authority consider this request, and grant development consent to the proposal, despite the departure from the control, for the reasons stated below.

PROVISIONS OF CLAUSE 4.6

Clause 4.6 of the Ryde LEP 2014 provides that development consent may be granted for development even though the development would contravene a development standard. That clause is in the following terms:

Clause 4.6 of the Ryde Local Environmental Plan 2014 provides that development consent may be granted for development even though the development would contravene a development standard. This is provided that the relevant provisions of the clause are addressed, in particular subclause 3-5 which provide:

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows—

(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.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) 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.

Note—

The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).

(4) The consent authority must keep a record of its assessment carried out under subclause (3).

(5) *(Repealed)*

Clause 4.6 does not restrain the consent authority's discretion as to the numerical extent of the departure from the development standard. Each of the relevant provisions of Clause 4.6 are addressed in turn below.

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(a) a development standard for complying development,

(b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,

(c) clause 5.4,

RELEVANT MATTERS TO BE DEMONSTRATED IN CLAUSE 4.6

As Clause 4.6 provides, to enable development consent to be granted, the applicant must satisfy the consent authority that:

this request has adequately addressed the matters required to be demonstrated by subclause (3), namely that:

- a. compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b. there are sufficient environmental planning grounds to justify contravening the development standard¹;*

The request deals with each relevant aspect of clause 4.6 on the following pages.

NSW CASE LAW

This request also addresses several relevant Land and Environment Court cases including, *Micaul Holdings Pty Ltd v Randwick City Council*, *Moskovich v Waverley Council* and *Initial Action Pty Ltd v Woollahra Municipal Council*.

The key tests or requirements arising from the above judgements is that:

- The consent authority be satisfied the proposed development will be in the public interest because it is “*consistent with*” the objectives of the development standard and zone is not a requirement to “*achieve*” those objectives. It is a requirement that the development be compatible with the objectives, rather than having to ‘achieve’ the objectives;
- Establishing that ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*;
- When pursuing a clause 4.6 variation request it is appropriate to demonstrate *that there are sufficient environmental planning grounds to justify contravening the development standard*, and
- The proposal is required to be in ‘the public interest’.

It is important to note that the Chief Judge of the Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) has further clarified the correct approach to the consideration of clause 4.6 requests including that the clause does not require that a development that contravenes a development standard must have a *neutral or better* environmental planning outcome than one that does not.

An extract of this judgment is provided below:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.

In relation to the current proposal the keys are:

- Demonstrating that the development remains consistent with the objectives of the height standard;
- Demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard;
- Satisfying the relevant provisions of Clause 4.6.

These matters are addressed overleaf, noting that the proposal has a bulk and scale that is consistent with the emerging built form in this high density residential area and the height breach is a necessary component of this type of development.

COMPLIANCE UNREASONABLE OR UNNECESSARY

Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, for the reasons which follow.

Compliance with the objectives of the development standard and the zone are achieved despite non-compliance with that standard. The objectives of the height development standard are stated as:

(1) The objectives of this clause are as follows—

(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,

(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,

(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,

(d) to minimise the impact of development on the amenity of surrounding properties,

(e) to emphasise road frontages along road corridors.

The current development proposal remains consistent with the objectives of the clause and is a more appropriate outcome on the site because of the following:

- In relation to objective (a) the development proposal is consistent with the intent of the maximum height control and will provide an attractive series of buildings that addresses the site's frontage to Victoria Road and Blaxland Road and provides a streetscape that is in proportion and in character with nearby development given the observed forms of development in the locality and the location of the breach is located centrally to the building and is not visually prominent from the public domain or adjoining properties. The building edges, including Building A, seek to provide a suitable transition to existing and potential future forms. The greater building separation, reduced building envelopes, and resulting additional height enables the building to be in proportion with and in keeping with the character of nearby development and this is assisted greatly through removal of the 'tail' of Building C which would be very close to the existing apartment buildings in Hatton Street. This assists in ensuring that the buildings proposed are in proportion with an in keeping with the character of nearby development.

- In relation to objective (b) the departure will not unreasonably impact on the solar access of adjoining properties or the public areas in the vicinity of the site noting that Building A is largely compliant with the height limit in proximity to that adjoining site to the west. In addition the breaking of the buildings up into smaller footprints seeks to minimise overshadowing. In relation to compatibility as noted against objective (a) the proposal significantly improves the appearance of the area through removal of car showrooms and replacement with a high quality mixed use proposal desired by the planning controls. The height breach further improves the appearance of the area by breaking down the building volumes and providing a prominent building to the prominent streetscape locations. This is assisted through the new laneway and landscaped space between buildings that is achieved, and assisted by, the provision of additional height through redistribution of the floor space into taller and more narrow buildings.
- In relation to objective (c) the proposal consolidates the allotments into the desired redevelopment pattern for the precinct and provides an integrated land use and transport development in the vicinity of key public transport (bus routes on Blaxland Road and Victoria Road).
- In relation to objective (d) the design of the proposal and the height breach seeks to minimise the impact of development on the amenity of surrounding properties. This is through:
 - The lifting of the building along the corner and the removal of built form in the 'tail' of the site is an improvement in terms of relationships to adjoining properties and amenity for future residents.
 - The public laneway and through site link splits the building mass down and results in a redistribution of the GFA into the remaining buildings with a more prominent built form on the corner of Blaxland Road/Princes Street. The GFA of the scheme is compliant with the 2.5:1 provision being at 2.46:1- it is simply redistributed across the site.
 - The lot orientation and relationship to adjoining properties means the bulk and scale is set away from those properties to alleviate amenity impacts (overshadowing, visual impact and the like)

Further in this regard it is noted:

- The variation will not lead to a significant reduction in solar penetration on site or to adjoining properties nor will it lead to any unacceptable sunlight loss or overshadowing- solar access is improved through greater breaks in the building and enable north-south solar penetration.
- The proposed variation will not lead to view loss or interrupt views to and from the site again with more slender and smaller building footprints.
- The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal.

- The proposal has been designed to ensure that privacy impacts are mitigated and that the proposal will not obstruct existing view corridors.
- In relation to objective (e) the height breach enables a greater emphasis to the key roads- being Victoria Road and Blaxland Road and forms a marker building that is desired in the Precinct.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.

ENVIRONMENTAL PLANNING GROUNDS

The following factors demonstrate that sufficient environmental planning grounds exist to justify contravening the floor space ratio development standard. For that purpose, the critical matter that is required to be addressed is the departure from the development standard itself, not the whole development.

It is noted that the development is seeking to vary this control with portions of the building form, communal open space and associated roof elements and lift overrun exceeding the maximum height limit.

The design of the proposed development has been informed through careful consideration of the most appropriate design response on the site- as compared to the DCP envelopes. This has been informed by an Urban Design Study by Bonus and Associates.

The logic and rationale of the height breach is:

- The provision of a better design outcome having regard to the site configuration and constraints and context- i.e. being more site responsive as to where the building volumes sit and a better distribution of the permissible GFA as compared to the DCP envelopes.
- The lifting of the building along the corner and the removal of built form in the 'tail' of the site is an improvement in terms of relationships to adjoining properties and amenity for future residents.
- The public laneway and through site link splits the building mass down and results in a redistribution of the GFA into the remaining buildings with a more prominent built form on the corner of Blaxland Road/Princes Street.
- The GFA of the scheme is compliant with the 2.5:1 provision- it is simply redistributed across the site.
- The lot orientation and relationship to adjoining properties means the bulk and scale is set away from those properties to alleviate amenity impacts (overshadowing, visual impact and the like)

The rationale is best understood comparing the DCP envelope with the proposed building envelope contained at Figure 1 and 2 of this request.

The comparison of these envelopes shows:

- Greater breathing space, and green space, around the buildings;
- More landscape and deep soil to the edges of the buildings for landscape opportunities.
- Elimination of the tail of the southern building.
- Provision of a north/south through site link.
- Improved relationships to the adjoining properties to the west.

Therefore the height breach facilitates a redistribution of GFA across the site and a better design response through adoption of smaller, but taller, building footprints.

This is the basis of the height breach and suitable environmental planning grounds.

The departure to the height standard furthers the objects of the Environmental Planning and Assessment Act 1979 as set out below:

- To promote the orderly and economic use and development of land
- To promote good design and amenity of the built environment through the provision of a suitable design response and suitable distribution of the permitted floor area in a more considered and site responsive design approach that is facilitated by the building height departure.

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

CONCLUSION

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The objection is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.