

# Clause 4.6 Variation Request

Clause 4.3 – Height of Buildings  
10 – 28 Lawrence Street, Freshwater

Submitted to Northern Beaches City Council  
on behalf of Lawrence St Pty Ltd



### 'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.



### 'Dagura Buumarri'

Liz Belanjee Cameron

'Dagura Buumarri' – translates to Cold Brown Country. Representing Victoria.



### 'Gadalung Djarri'

Liz Belanjee Cameron

'Gadalung Djarri' – translates to Hot Red Country. Representing Queensland.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We pay our respects to their Elders past, present and emerging.

In supporting the Uluru Statement from the Heart, we walk with Aboriginal and Torres Strait Islander people in a movement of the Australian people for a better future.

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# 1.0 Introduction

## 1.1 Overview

This Clause 4.6 Variation Request has been prepared by Ethos Urban on behalf of Lawrence St Pty Ltd (the Proponent). It is submitted to Northern Beaches Council (Council) in support of a Development Application (DA) for a four-storey shop-top housing development comprising 30 residential apartments and ground floor retail tenancies at 10-28 Lawrence Street, Freshwater (the site).

Specifically, consent is sought for the following:

- Site preparation works and the demolition of all existing buildings on the site;
- Construction and use of a four-storey shop-top housing development, comprising:
  - 1,379m<sup>2</sup> of retail floorspace across 4-9 tenancies (subject to future fitout) including signage;
  - 3,299m<sup>2</sup> of residential GFA, including 522m<sup>2</sup> of affordable housing, across 30 residential apartments comprising:
    - 6 x one-bedroom apartments;
    - 15 x two-bedroom apartments;
    - 9 x three-bedroom apartments;
  - Rooftop communal open space;
  - A bilevel subterranean basement with 45 residential and 63 retail car parking spaces;
- A 268m<sup>2</sup> public plaza fronting Lawrence Street;
- Public domain landscaping including within the new public plaza and buffer planting zone along the rear of the site; and
- Vehicular access via Dowling Street and pedestrian access via Lawrence Street.

Clause 4.6 of the *Warringah Local Environmental Plan 2011* (WLEP 2011) enables the consent authority to grant consent for development even though the development contravenes the development standard. This Clause 4.6 Variation Request relates to the development standard for building height under clause 4.3 of the WLEP 2011 and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Ethos Urban to which it is attached.

This document demonstrates that compliance with the height of buildings control is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the development standard. As such, this document satisfies the provisions of clause 35B(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regs).

In the sections below, this Clause 4.6 Variation Request demonstrates that:

- The objectives of clause 4.3 of the WLEP 2011 are achieved notwithstanding non-compliance with the standard. Specifically:
  - Objective (a): Notwithstanding the height variation, the development is compatible with the height and scale of surrounding and nearby development. The height variation frees up area in the lower levels to deliver a 268m<sup>2</sup> public plaza open to the sky that presents a more sympathetic interface with surrounding sites and the coastal setting of Freshwater.
  - Objective (b): Detailed analysis has demonstrated that the variation would not result in unacceptable impacts with regards to visual impact, disruption of views, loss of privacy or loss of solar access. The public plaza facilitated by the height variation has clear view impact benefits, considerably reducing the appearance of building scale and bulk in particular when seen from Freshwater Road.
  - Objective (c): The proposed development (variation included) is consistent with and reinforces the desired coastal character of Freshwater, including its 'narrow lot' character through an articulated built form broken up into four distinct 'blocks'. The height variation enables a public plaza enhancing the role of Freshwater Village as a centre for the local community.
  - Objective (d): The proposal (variation included) will provide for acceptable visual impacts from public places including Lawrence Street.
- There are sufficient environmental planning grounds to justify contravening the development standard as:
  - The underlying intent of the height variation is to provide for a 268m<sup>2</sup> public plaza rather than to provide additional residential floorspace beyond what a fully compliant built form can deliver. Due to it being open

to the sky, delivering the public plaza has resulted in significant potential floorspace at all levels of the building to be forfeited, thereby requiring this variation to ensure its continued viability.

- The variation is in part due to the significant sloping topography at the site, which drops towards Lawrence Street and the east. Due to this, while parts of the development exceed the height limit, others remain below it. This is especially true for the southern rear boundary (which is especially sensitive due to it being an interface with R2 Low Density Residential zoned land) where the entirety of the built form lies below the height limit.
- The extent of the variation relates predominantly to the rooftop communal open space and lift overrun. The communal space is intended to provide a high level of residential amenity for both the site's market and affordable housing residents rather than to provide additional habitable floorspace above the height plane. With regards to lift overruns, it is common for consent authorities to grant height variations for lift overruns as long as they are suitably screened from the streetscape, given they by their very nature are highly localised and need to rise above the roofline of a building.
- The delivery of the proposed development (variation included) will provide critical market and affordable housing supply to an area with one of the highest rates of housing unaffordability in Sydney and New South Wales more broadly. This would be compromised if the proposed development were to not be delivered.
- The proposed development (including height variation) is consistent with the Objects of the EP&A Act, including promoting the orderly and economic use and development of land, and promoting the delivery and maintenance of affordable housing.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the WLEP 2011.

## 1.2 Clause 4.6 of the WLEP 2011

The objectives of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards, and to achieve better outcomes for and from development by allowing flexibility in particular circumstances. 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:

- Compliance with the development standard is unreasonable or unnecessary in the circumstances (clause 4.6(3)(a)), and
- There are sufficient environmental planning grounds to justify the contravention of the development standard (clause 4.6(3)(b)).

Specifically, Clause 4.6(3) of the *Warringah Local Environmental Plan 2011* (WLEP 2011) provides that:

### **4.6 Exceptions to development standards**

(3) *Development consent must not be granted for 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.*

The relevant matters contained in clause 4.6 of the WLEP 2011 with respect to the height of building development standard, are each addressed below in **Sections 5.0** and **6.0** including with regard to these decisions.

## 1.3 Legal Guidance

The Land and Environment Court has established a set of factors to guide assessment of whether a variation to development standards should be approved. The original approach was set out in the judgment of Justice Lloyd in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89 in relation to variations lodged under *State Environmental Planning Policy 1 – Development Standards* (SEPP 1). This approach was later rephrased by Chief Justice Preston, in the decision of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*). While these cases referred to the former SEPP 1, the analysis remains relevant to the application of Clause 4.6(3)(a).

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Wehbe*);
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*);
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*)

In accordance with the above requirements, this Clause 4.6 Variation Request:

- Identifies the site and proposed development (**Section 2.0**);
- Identifies the development standard to be varied (**Section 3.0**);
- Establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (**Section 5.0**); and
- Demonstrates there are sufficient environmental planning grounds to justify the contravention (**Section 6.0**).

### 1.3.1 Interpretation of Ground Level (Existing)

This Clause 4.6 Variation Request has been prepared to consider both interpretations of ground level (existing) as taken from *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (*Bettar*), and *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (*Merman*). Refer to **Section 4.0** below.



## 2.0 Site and Proposed Development

The below represents an extract from the Statement of Environmental Effects (SEE) prepared by Ethos Urban to which this Clause 4.6 Variation Request is attached.

Further detail on the site and a description of the proposed development can be found at sections 3 and 4 of the SEE respectively.

### 2.1 The Site

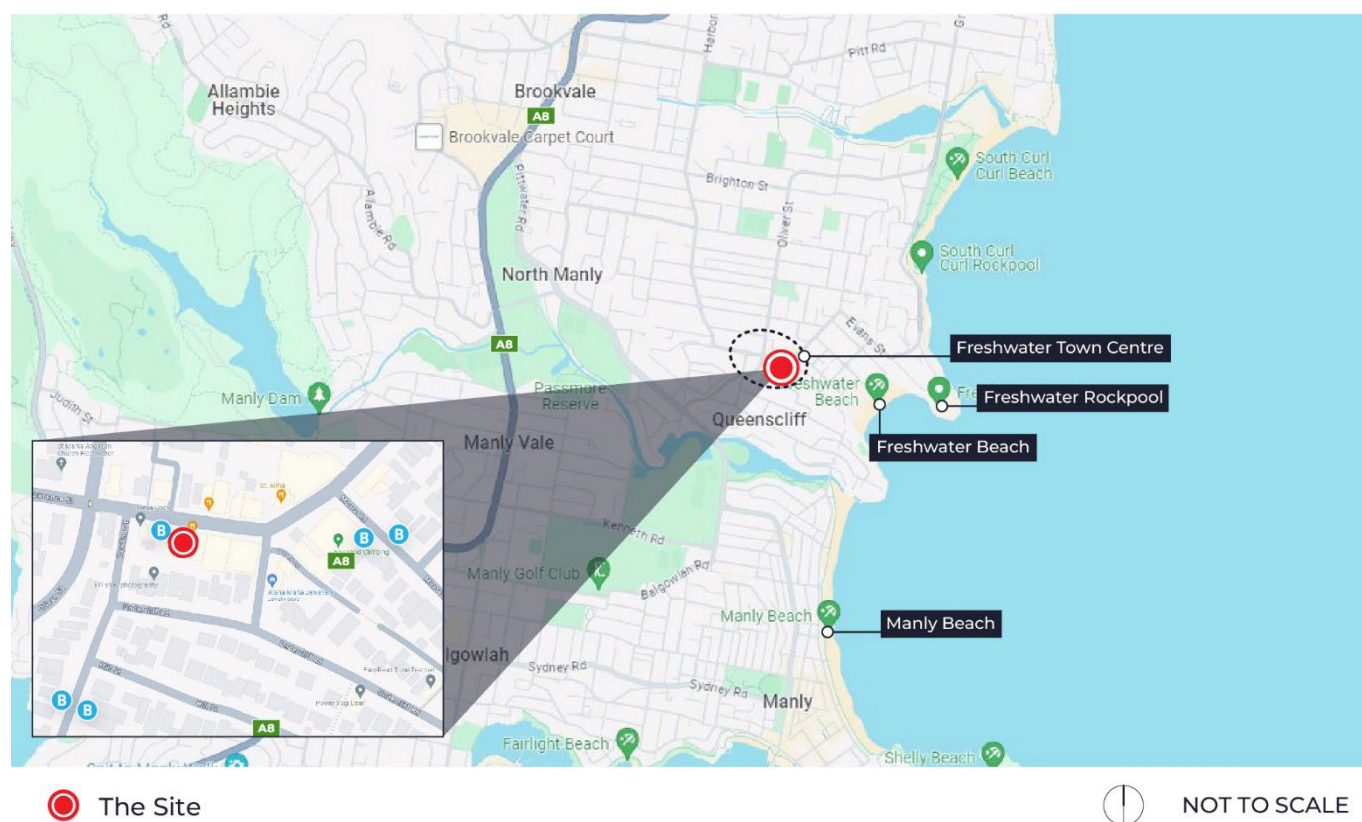
#### 2.1.1 Site Location and Context

The site is located at 10 – 28 Lawrence Street, Freshwater within the Northern Beaches Local Government Area (LGA), formerly the Warringah Council LGA. The site is located approximately 600 metres north-west of Freshwater Beach, 2km north of The Corso, Manly, and 12.7km north-east of the Sydney CBD.

The local context surrounding the site is best described as mixed-use low and medium density development and low-density residential development.

The site is in the Freshwater Town Centre which consists of a variety of small-scale retail premises, providing goods and services for the surrounding communities of Freshwater and Queenscliff. The town centre includes a range of premises, including a supermarket, newsagent, bank, medical practice, pharmacies, and several restaurants and cafés. The built form of the town centre predominately consists of one to three storey retail and shop-top housing developments.

Low density residential development is located to the immediate south of the site and a mixture of retail premises are located to the north and east. An existing shop-top housing development is adjacent to the eastern boundary of the site on the corner of Albert Street and Lawrence Street. The site's surrounding context is captured in **Figure 1** below.



**Figure 1** Site context

Source: Google Maps, edits by Ethos Urban



2.1.2 Site Description

The site is known as 10-28 Lawrence Street, Freshwater and is bound by Lawrence Street to the north and Dowling Street to the west. The topography of the site experiences a steep slope of approx. 6-7m descending from west to east. Vehicular access is currently provided via Dowling Street to the rear of the site.

The site has an approximate total area of 2,568m<sup>2</sup> and is rectangular in shape. Existing built form on the site comprises several one to two-storey buildings with retail tenancies and food and drink premises fronting Lawrence Street, as well as rooftop parking. The site is legally made up of five allotments, as summarised in **Table 1** and **Figure 2** below.



Figure 2 Site aerial

Source: Ethos Urban

Table 1 Site legal description

Lot no (Figure 2)	Address	Allotment	Existing built form
1	10 Lawrence Street	Lot 1 DP 595422	1-storey building with rooftop parking
2	16 Lawrence Street	Lot 45 DP 974653	1-storey building
3	20 Lawrence Street	Lot 1 DP 578401	2-storey building
4	22 Lawrence Street	Lot 1 DP 100563	2-storey building
5	28 Lawrence Street	Lot 1 DP 900061	2-storey building

A site survey of existing site conditions has been provided at Appendix A of the SEE to which this Clause 4.6 Variation Request is attached.

2.2 Description of the Proposed Development

This Development Application seeks consent for a four-storey shop-top housing development comprising 30 residential apartments and ground floor retail tenancies at 10-28 Lawrence Street, Freshwater (the site).

Specifically, consent is sought for the following:

- Site preparation works and the demolition of all existing buildings on the site;
- Construction and use of a four-storey shop-top housing development, comprising:
  - 1,379m<sup>2</sup> of retail floorspace across 4-9 tenancies (subject to future fitout);
  - 3,299m<sup>2</sup> of residential GFA, including 522m<sup>2</sup> of affordable housing, across 30 residential apartments comprising:
    - 6 x one-bedroom apartments;
    - 15 x two-bedroom apartments;
    - 9 x three-bedroom apartments;
  - Rooftop communal open space;
  - A bilevel subterranean basement with 44 residential and 62 retail car parking spaces;
- A 268m<sup>2</sup> public plaza fronting Lawrence Street;
- Public domain landscaping including within the new public plaza and buffer planting zone along the rear of the site; and
- Vehicular access via Dowling Street and pedestrian access via Lawrence Street.

An artist's impression of the proposed development (specifically the public plaza) is provided in **Figure 3** below.



**Figure 3** *Artist's impression of the proposed development – view from new public plaza*

Source: Chrofi

A numerical summary of the proposed development is provided in **Table 2** below.

**Table 2**      *Key development information*

Component		Proposal
Site area		2,580m <sup>2</sup>
Gross floor area	Residential	3,299m <sup>2</sup> (including 522m <sup>2</sup> affordable housing)
	Retail	1,379m <sup>2</sup>
	Total	4,678m <sup>2</sup>
	% as affordable housing	522m <sup>2</sup> – 11.16% of all GFA
Building height		16.35m (Bettar) 18.65m (Merman)
Apartment mix	1-bedroom	6 (20%)
	2-bedroom	15 (50%)
	3-bedroom	9 (30%)
	Total	30 apartments
Building setbacks (Level 1)	North (Lawrence Street)	0 – 10.3m
	South (rear)	2.5m – 13.9m
	East	0m
	West	0m
Car parking	Retail	62
	Residential	44
	Total	106
Communal open space	Rooftop communal space	171m <sup>2</sup>
Public open space	Public plaza	268m <sup>2</sup>



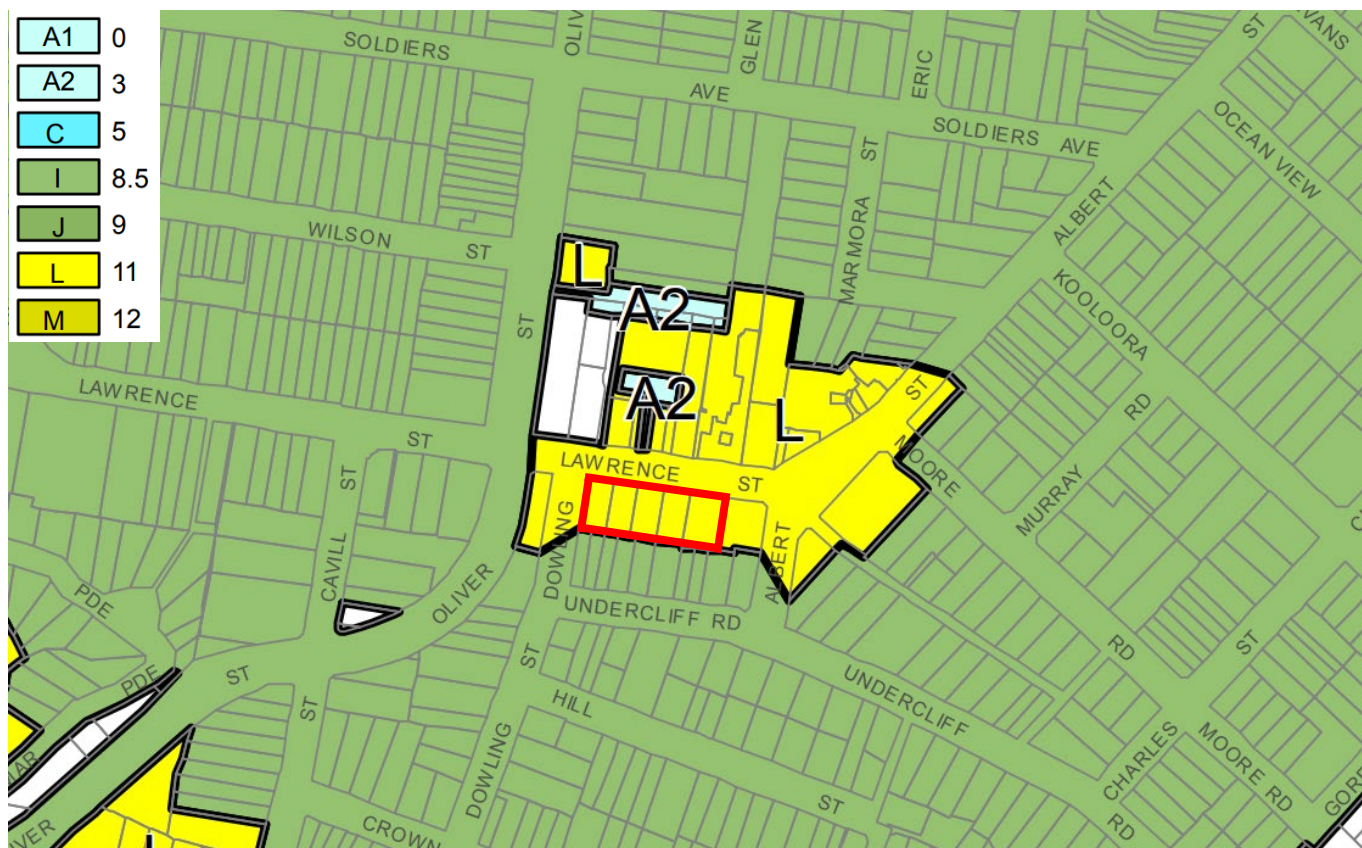
## 3.0 Development Standard to be Varied

### 3.1 Clause 4.3 – Height of Buildings

A summary of the environmental planning instrument (EPI), development standard and proposed variation is summarised in **Table 3** below.

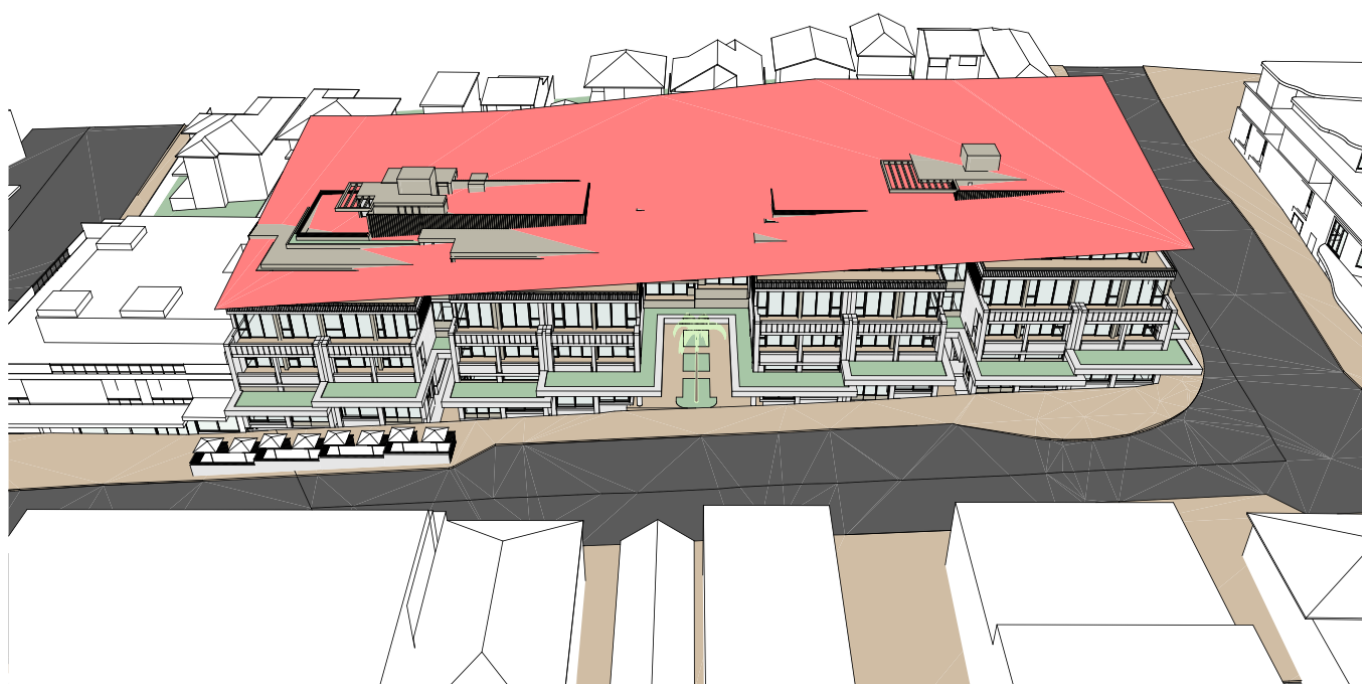
**Table 3** Planning instrument, development standard and proposed variation

Matter	Comment
Environmental planning instrument	Warringah Local Environmental Plan 2011 (WLEP 2011)
Development standard sought to be varied	<p>Clause 4.3 – Height of Buildings</p> <p>(1) The objectives of this clause are as follows—</p> <p>(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</p> <p>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</p> <p>(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</p> <p>(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</p> <p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> <p>(2A) If the Height of Buildings Map specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.</p>
Definition of building height	<p>Building height (or height of building) means—</p> <p>(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</p> <p>(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,</p> <p>including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.</p>
Type of development standard	Numerical development standard
Numeric value of the development standard in the EPI	11m (refer extract provided in <b>Figure 4</b> ).
Numeric value following application of height bonus	13.45m following application of 22.32% height bonus is applicable to the development pursuant to Part 2, Division 1, Section 16 of the <i>State Environmental Planning Policy (Housing) 2021</i> (Housing SEPP).
Extent of variation to development standard	<p>Maximum variation of:</p> <ul style="list-style-type: none"><li>• 2.9m (21.56% variation) under Bettar interpretation</li><li>• 5.2m (38.66% variation) under Merman interpretation</li></ul>
Visual representation of the proposed variation	Refer to <b>Figure 5</b> and <b>Figure 6</b> below.



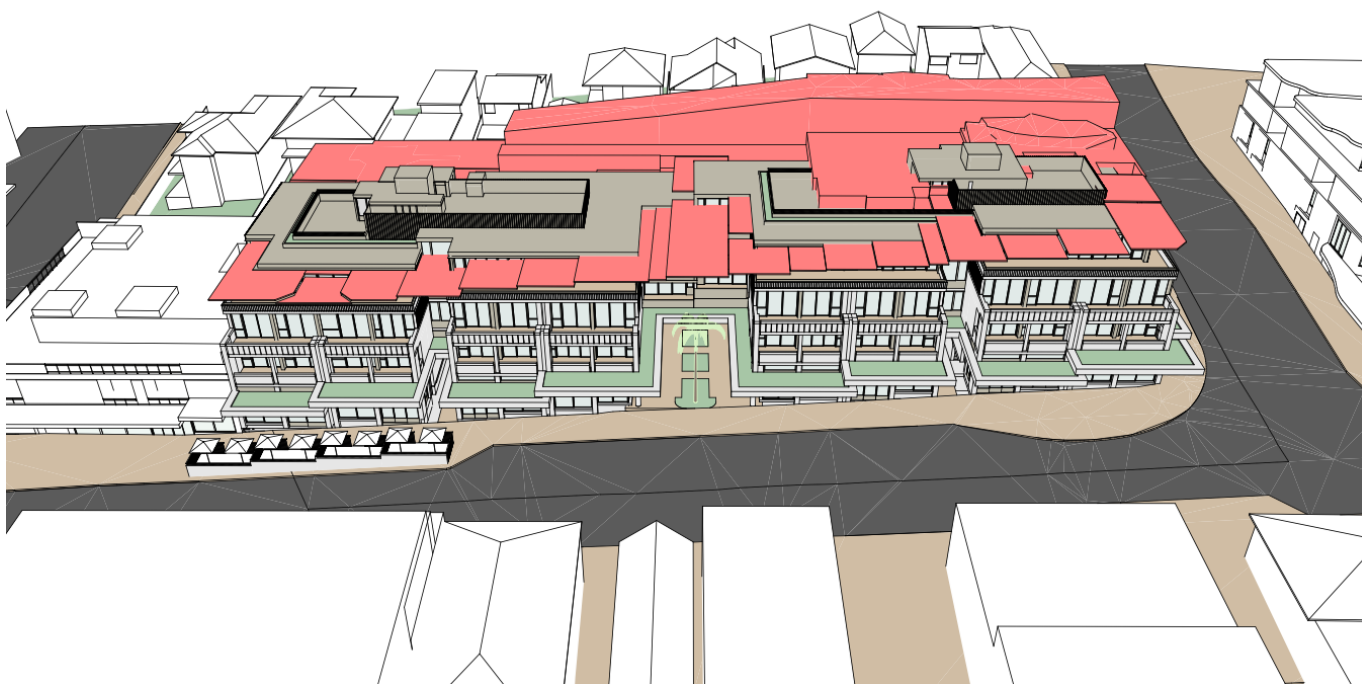
**Figure 4** WLEP 2011 height of buildings map (site outlined in red)

Source: NSW Government, edits by Ethos Urban



**Figure 5** 3D axonometric of the 13.45m height plane (with Housing SEPP bonus) – Bettar interpretation

Source: Chrofi



**Figure 6** 3D axonometric of the 13.45m height plane (with Housing SEPP bonus) – Merman interpretation

Source: Chrofi



## 4.0 Interpretation of Ground Level (Existing)

This Clause 4.6 Variation Request has been prepared to consider both interpretations of ground level (existing) as taken from *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (*Merman*), and *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 (*Bettar*).

The long-held approach to measuring building height under *Bettar* is to measure from the existing ground level and the natural fall of the site, as inferred from co-ordinates on the edge of the footprint of existing building(s) on the site. In *Bettar*, the Commissioner found that the existing ground level can be determined having regard to the level of the footpath at the boundary of the site as “it bears a relationship to the context and overall topography that includes the site and remains relevant once the existing building is demolished.” This conventional approach established under *Bettar* is traditionally adopted by consent authorities, including the Court. In *Bettar and Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 (*Stamford*), the Court found that existing ground level should not be taken literally and that a building should be considered in its context.

However, the *Merman* case establishes an alternative interpretation where the existing ground level is instead taken to be the extant surveyed level across the site, as stated by Commissioner O’Neill at paragraph [(73)]:

*I agree with Mr McIntyre that the ground level (existing) within the footprint of the existing building is the extant excavated ground level on the site [...]*

It is the Proponent’s position that measuring the height of buildings from the extant ground level across the site (as established under *Merman*) is an illogical approach that results in a contorted and unnatural height plane that does not relate to the existing natural ground levels at the site. The approach taken in *Stamford* and *Bettar* is considered to result in more appropriate built form outcomes that are more closely aligned with the intention of the maximum building height development standard. Adopting the *Merman* approach would result in an unnatural height plane which does not relate to the existing, gradually sloping ground level within the context of the immediate public domain, streetscape, the existing buildings at the site or the neighbouring buildings. As demonstrated in **Figure 7** above, this results in an “existing ground level” that fails to complement the site’s natural landform and topography.

Furthermore, a key consideration in applying the *Merman* method is the existing built form conditions of the site. *Merman* (3 Winston Gardens, Double Bay) specifically related to the basement of an existing building, as the site was benched (i.e., already excavated) and featured a steep topographical slope, and Commissioner O’Neill in his decision at paragraph 73 noted that “ground level (existing) [is] to be taken from the extant excavated ground level on a benched site”. This is clearly not the case with the project site, which does not contain any excavated areas or construction work. (The project site also does not feature an existing basement.) This distinction is critical, as integral nature of this differentiation highlights that the *Merman* method relates to altered ground conditions alone, rather than sites such as this Freshwater site which does not feature benching or altered ground conditions.

Nevertheless, for the avoidance of any possible doubt and to ensure all possible interpretations are considered in the assessment, this Clause 4.6 Variation Request acknowledges both interpretations of the building height control under both the *Bettar* and *Merman* decisions (which depending on the interpretation used would result in a different level of variation to the building height control). It is acknowledged that application of the *Merman* method would result in a greater variation to the height limit compared to if *Bettar* was to be applied, due to the position of the slabs of the existing buildings. Specifically, the maximum extent of the variation is 2.9m (21.56% variation) under *Bettar*, but 5.2m (38.66% variation) under *Merman*, although it is also worth noting that under *Merman* other areas of the site remain significantly below the height limit, such as at the southern boundary to the site’s rear.

However, the justification provided in **Sections 5.0** and **6.0** below applies irrespective of whether the *Bettar* or *Merman* interpretation is used. In either scenario, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify the contravention of the development standard. Although the *Merman* decision would result in a higher numerical noncompliance with the development standard, the degree of the technical non-compliance is not, in isolation, a material consideration as to whether the variation request should be upheld. *GM Architects Pty Ltd v Strathfield Council* [2016] NSWLEC 1216 at [85] establishes that there is no constraint on the degree to which a consent authority may depart from a numerical standard under Clause 4.6. For example, in *GM architects*, a height exceedance of 103 per cent was approved, along with a floor space ratio exceedance of 44.7 per cent.

## 5.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses similar language to clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the WLEP 2011 is essentially the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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 (**Fourth Method**).
- The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of building development standard pursuant to the **First Method**.

### 5.1 First Method: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The objectives of the development standard contained in clause 4.3 of the WLEP 2011 are:

*(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

*(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

*(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*

*(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

As discussed in the sections below, the proposed development will achieve these objectives of the development standard notwithstanding the proposed numerical variation to the height of buildings development standard.

5.1.1 Objective (a): to ensure that buildings are compatible with the height and scale of surrounding and nearby development

The proposed development has been carefully designed to be compatible with the height and scale of surrounding development. The built form has provisioned for progressively and varied staggered setbacks at each level from ground level up to level 3, especially towards the site's residential interface at its southern boundary, as summarised at **Table 4** below.

Table 4 Proposed setbacks to Lawrence Street and southern boundary

Level	To Lawrence Street	To southern boundary
Ground level	0m	N/A <sup>1</sup>
Level 1	0m – 10.3m	2.5m – 13.9m
Level 2	0m – 10.3m	5.2m – 13.9m
Level 3	2m – 10.3m	7.3m – 13.9m

As shown at **Figures 5 - 6** above, the proposed height variation generally pertains to the rooftop communal space, and the lift overrun which is located above the rooftop communal space to provide accessible lift access to the space. These elements have been carefully designed to be located away from the building edges at the central portion of the site, so that they are largely screened from view, reducing visual impacts when viewed from its primary frontage along Lawrence Street and the residential properties to the south.

**Figure 7** below demonstrates that the proposal will read predominantly as a progressively receding four storey built form (retail ground floor level and 3x residential levels above) when viewed from Freshwater Village, with additional impacts due to the rooftop communal space and lift overrun being minor. Additionally, the proposal provides significant articulation in setbacks that breaks up the built form into four visually distinct 'blocks', reducing perceived bulk and scale and improving visual interest when viewed from the public domain. Each of the 'blocks' are narrower than three of the four buildings currently on the site, reflecting the original street rhythm and the traditional 'narrow lot' character of Freshwater Village and emphasising the verticality of the building, as demonstrated in **Figure 8** below.



Figure 7 Artist's impression of the development, viewed from the corner of Lawrence and Dowling Streets

Source: Chrofi

<sup>1</sup> Due to the site's topography, ground level is largely underground at the site's southern boundary, with the southern residential interface provided instead along the landscaped buffer zone located on the first floor.



**Figure 8 Presentation to Lawrence Street, showing distinct built form with four individual blocks**

Source: Chrofi

It is important to note that the intent behind the proposed height variation is not to provide additional residential floorspace (and therefore, additional bulk) than what would be possible under a development that fully complies with the height limit, but is in order to facilitate a significant public benefit at the site, being that of a 268m<sup>2</sup> public plaza open to the sky that necessarily reduces the building floorplate (and thus the quantum of floorspace than can be delivered) for all levels above. Topographic challenges at the site due to its steepness have further exacerbated the need for a variation, as discussed at **Section 6.2** below.

It would be possible to deliver the quantum of proposed floorspace within the height limit, however this would reduce the design quality of the development and preclude the delivery of the public plaza nominated above. Due to it being open to the sky, delivering the public plaza has resulted in significant potential floorspace at all levels of the building to be forfeited. The quantum of residential floorspace currently proposed is necessary to ensure that the redevelopment of the site is viable, and therefore capable of delivering the envisioned rejuvenation and vibrancy to Freshwater Village (especially as a sizeable number of apartments are to be affordable housing).

It would be unreasonable for the consent authority to require the delivery of both these public benefits, and a built form that fully complies with the height limit, for the following reasons:

- The delivery of the public plaza is above and beyond what is required under the relevant planning controls. A public plaza at the site is not contemplated in the controls for Freshwater Village in the Warringah DCP.
- As demonstrated in **Figures 5 – 6** above, the variation generally relates to the residents' communal open space and lift overrun (as interpreted under *Bettar* – refer to **Section 4.0**). The intent is to provide for a high level of residential amenity rather than provide additional uplift in the form of extra residential floorspace.
- The development is already providing substantial affordable housing (6 out of 30 apartments) to alleviate housing affordability and diversity challenges in Freshwater and the Northern Beaches LGA more broadly.

Therefore, the question becomes whether the proposal provides a higher level of compatibility with the height and scale of surrounding and nearby development compared to a built form that fully complies with the height of buildings planning control but does not provide for such a public plaza.

It is the Proponent's position that the proposed development (height variation included) represents clearly a superior outcome that makes use of public open space and articulation to deliver a built form that is more respectful and sympathetic to the character, vibrancy and activation of Freshwater Village than one which complies with the height plane, but does not provide for this public benefit.

### **5.1.2 Objective (b): to minimise visual impact, disruption of views, loss of privacy and loss of solar access**

The proposed development and height variation will not generate unacceptable visual, privacy, or solar access impacts.

#### **Visual impact and disruption of views**

A View Analysis has been prepared by Ethos Urban at Appendix F of the SEE. The report addresses the view impacts of the proposal, especially from properties directly adjacent to and most affected by the proposed built form (adjacent in Dowling Street and from the south along Queenscliff Road).

In summary, the View Analysis finds that:

- The proposal will have the greatest view impact on nearby residential properties on Lawrence Street, Undercliff Road and Dowling Street. The qualitative view impact of the proposal ranges from negligible to moderate.
- The scale and massing of the proposal and therefore its view impact is shaped by the intent to avoid a single block form by creating a public plaza fronting Lawrence Street and its articulation into multiple 'blocks'.
- While this reduces the appearance of building bulk when seen from Lawrence Street, it results in minor variation to the height controls under the WLEP 2011 and the Housing SEPP, and the front upper-level setback control. Crucially, the View Analysis finds that this height variation will not result in significant, adverse view impacts. The report further finds that:
- The shaping of massing away from the rear boundary enabled by the employment of these strategies retains a view corridor for impacted properties on Dowling Street and reduces the impact of building scale and bulk for properties to the immediate south of the site on Undercliff Road.
- These skilful design measures represent a considered response to site and context parameters, and a balance between retaining the applicant's development potential and amenity and reducing view impact on neighbours.

The View Analysis also notes the following with regards to the proposed height variation more specifically:

*In particular, it is noted that rather than providing additional residential floorspace, the intent of this [height] variation is to:*

- *deliver additional public benefit in the form of the 268sqm public plaza fronting Lawrence Street*
- *deliver a high quality, contextually appropriate design comprising a built form that respects the narrow lot character of Freshwater through articulation into 4 distinct 'blocks'.*

*This public plaza and distinct block form have clear view impact benefits, considerably reducing the appearance of building scale and bulk in particular when seen from Freshwater Road.*

Given the above, the proposed height variation does not generate adverse view impacts and in fact results in positive outcomes for Freshwater Village as it enables a built form that has clear view impact benefits.

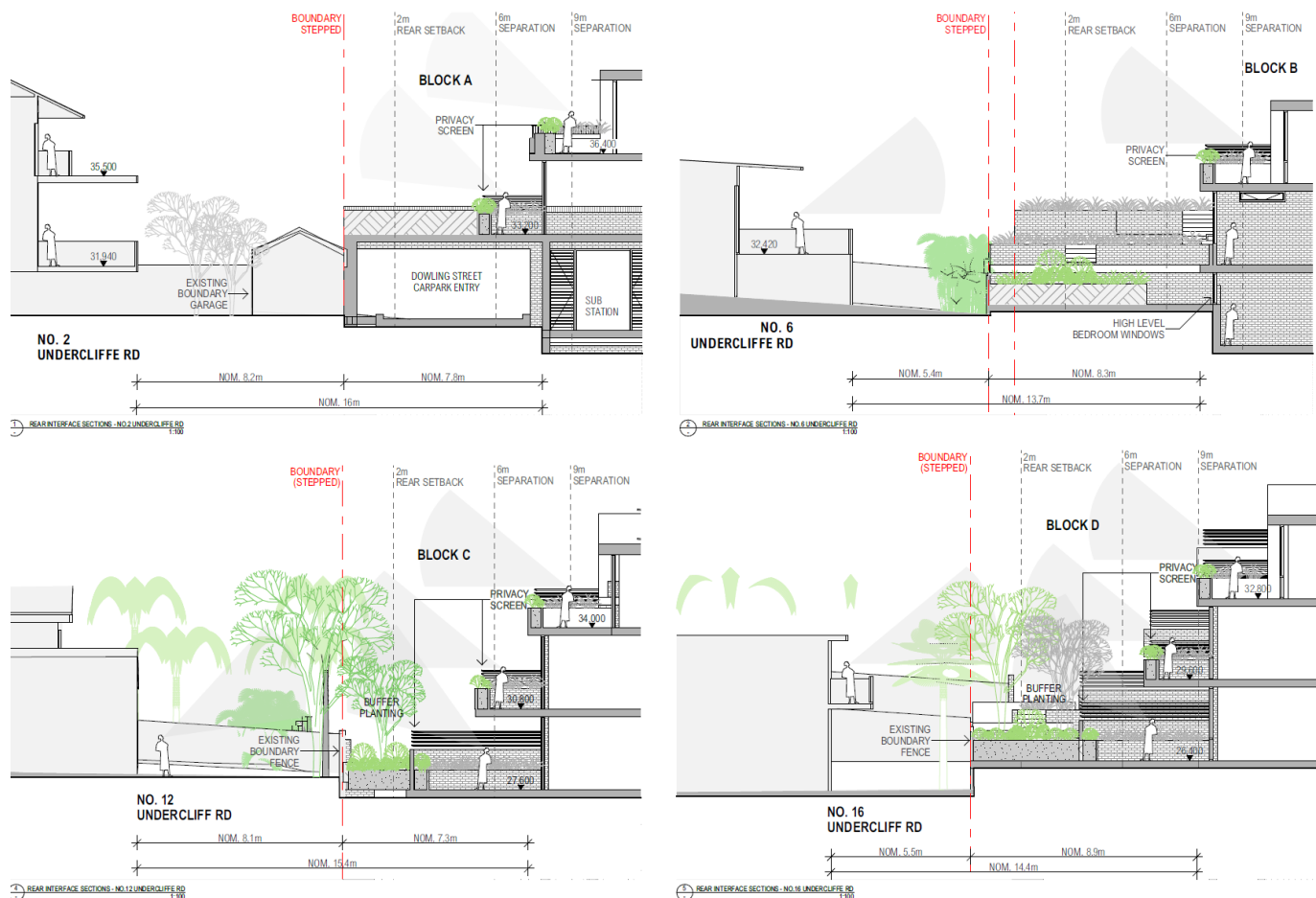
### **Visual privacy**

The proposed development (height variation included) will not result in adverse visual privacy impacts. The development employs significant vegetative landscaping along the southern frontage within the buffer zone between the proposed building and the boundary, in addition to privacy screens for the proposed balconies, mitigating against unacceptable visual privacy impacts.

It is important to note that as the proposed variation relates only to the upper levels of the building that have been progressively set back a significant distance from the southern residential properties, any additional visual privacy implications of the variation itself are minor. The building floorplates have been designed with a significant level of articulation, including to the site's southern rear boundary, maximising the extent of landscaping provided to the rear buffer zone. For example, the building articulation has enabled setbacks up to 9.7 metres to be provided to 10 Undercliffe Road, and 13.9 metres to 14 – 16 Undercliffe Road.

Detailed rear interface sections have been provided at Drawing A-DA-302 within the Architectural Plans (Appendix A of the SEE), demonstrating that the combination of buffer zone landscaping and privacy screens will deliver an appropriate visual privacy interface along the southern frontage. An excerpt is provided in **Figure 9** below.





**Figure 9** Rear interface of the development with residential properties to the south

Source: Chrofi

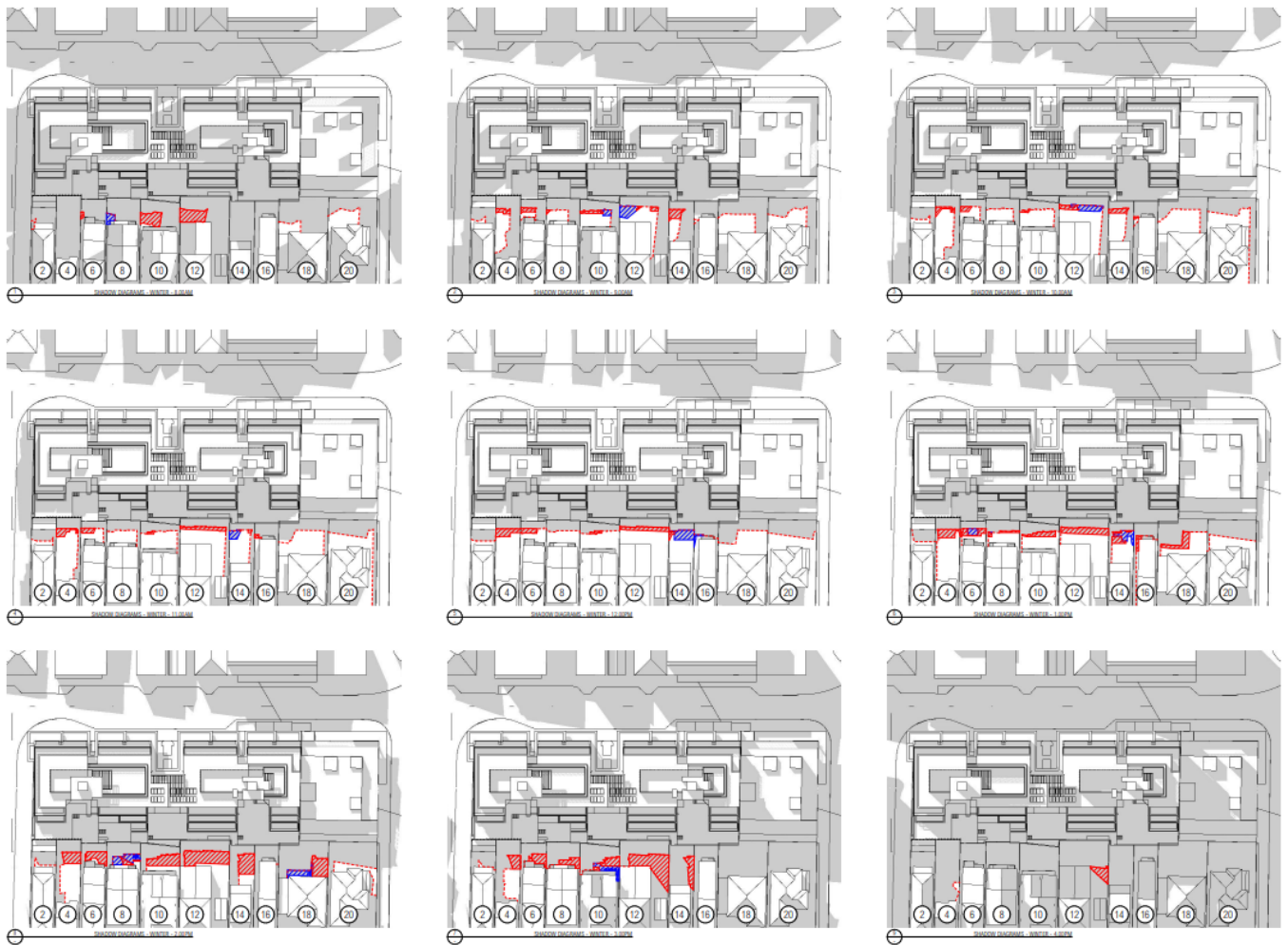
### Overshadowing

Overshadowing diagrams of the development during the winter solstice (thereby representing a 'worst case' scenario) at hourly intervals have been provided at Drawing A-DA-501 of the Architectural Plans (Appendix A of the SEE). The drawing provides a comparative assessment between overshadowing impacts of the existing built form on the site, and that of the proposed development.

The overshadowing analysis demonstrates that additional overshadowing as a result of the proposed development is largely minor when compared to existing site conditions and are largely confined to the backyards of the surrounding receivers, with only limited overshadowing falling onto the built form of these properties. Critically, it confirms that, due to the usage of staggered setbacks away from the surrounding properties, additional overshadowing caused by the height variation is minimal.

An excerpt has been provided in **Figure 10** below. The grey hatching represents the existing overshadowing on the site and surrounding developments from the current buildings, while the red hatching highlights any extent of additional overshadowing resulting from the proposed development during the winter solstice. Importantly, the blue hatching shows the additional overshadowing impacts generated by the proposed height variation. It can be seen below that this impact generated by the height variation is minor and relegated to backyards of adjacent properties. The development does not reduce any surrounding dwelling to less than the 2 hours direct sunlight mid-winter.





**Figure 10** Overshadowing impacts of the development compared to existing built form – additional overshadowing due to height variation shown in blue

Source: Chrofi

The above demonstrates that the additional overshadowing impacts onto surrounding properties because of the variation are negligible and outweighed by the substantive public benefit the public plaza enabled by the height variation delivers.

### 5.1.3 Objective (c): to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments

The proposed development has been designed to prevent adverse impacts on Warringah's coastal environments, including the desired coastal character of Freshwater Village. Bush environments are not relevant to the site which is in a highly urbanised village centre.

The desired future character of Freshwater Village is set out in Section G5, part 1 of the WDCP 2011, which lists objectives and requirements for development in Freshwater Village. An assessment of the proposal against these recommendations is provided below in **Table 5**, demonstrating compliance with the area’s desired character.

**Table 5** Assessment against built form in Freshwater Village DCP built form guidance

Objectives	Requirements	Assessment
O1. To reinforce and enhance the role of Freshwater Village as a centre for the local community.	R1. Development is to evoke the coastal setting of the area through architectural expression and public art, e.g. murals or other external treatment of buildings.	<p>The proposed development employs significant articulation in architectural expression and utilises a lightweight built form and materiality palette that evokes the coastal setting of Freshwater.</p> <p>The void area freed up at lower levels by the height variation has enabled delivery of a 268m<sup>2</sup> public plaza. The delivery of the plaza will reinforce and enhance the role of Freshwater Village as a community centre.</p>

Objectives	Requirements	Assessment
<i>O2. To achieve high quality built form that enhances the streetscapes and coastal character of Freshwater Village</i>	<p><i>R2. Buildings, including balconies and carpark entry points, fronting any public place must not contain any utility service pipe or conduit that is visible from the public place.</i></p> <p><i>Utility services including service structures, plant and equipment are to be located below ground or be designed to be an integral part of the development and suitably screened from public places including streets.</i></p>	<p>Not directly relevant to the proposed height variation.</p> <p>The proposed development does not include any utility or service pipes that would be visible from the public streetscape. Utilities have been suitably screened.</p> <p>The development will deliver a high-quality built form that will improve visual interest and the quality of built form in Freshwater Village.</p>
<i>O3. To maintain and enhance Freshwater as an attractive destination among Sydney's coastal centres</i>	<i>R3. Locate residential uses so that noise, odour and any other adverse impacts are minimised from loading bays, garbage disposal and other service areas</i>	<p>Not directly relevant to the proposed height variation.</p> <p>Residential uses have been suitably insulated from the loading and waste storage areas.</p>
<i>O4. To ensure development responds to the low scale, narrow lot pattern of Freshwater</i>	<p><i>R4. Retail entries are to be no more than 10m apart.</i></p> <p><i>A minimum floor to ceiling height of 3.3m for ground floor uses.</i></p> <p><i>R5. A minimum floor to ceiling height of 2.7m for uses above the ground floor.</i></p>	<p>The area freed up at lower levels by the height variation has enabled delivery of a 268m<sup>2</sup> public plaza in between the central two blocks.</p> <p>The proposed development breaks up its built form into four distinct 'blocks' with each of the four proposed blocks being narrower than three of the four buildings currently on the site, reflecting the original street rhythm and 'narrow lot' character of Freshwater Village and emphasising the verticality of the building.</p>
<i>O5. To achieve comfortable, functional and attractive buildings for residents, workers and visitors</i>	<p><i>R6. For any development with 10 or more shops or 500m<sup>2</sup> or more retail floor space, accessible and well signposted toilet facilities complying with AS 1428 shall be provided. These facilities shall have the same minimum opening and closing hours as the proposed development.</i></p> <p><i>Residential entries are to be separate and clearly distinguished from business entries</i></p>	<p>Not directly relevant to the proposed height variation.</p> <p>The proposed development will deliver 1,379m<sup>2</sup> of retail floorspace, across 4 – 9 tenancies (exact number and intertenancy walls subject to future fitout applications).</p> <p>Accordingly, retail toilet facilities have been provided at ground level, both in a dedicated amenities area and as part of the retail EOT facilities.</p> <p>Both residential entrances have been designed to be clearly separate and distinguished from any retail tenancy entrances.</p>

The above therefore demonstrates that the proposed development (variation included) is consistent with and reinforces the desired coastal character of Freshwater. The height variation has freed up area at the lower levels to enable a built form that delivers an activated public plaza open to the sky that enhances the role of Freshwater Village as a centre for the local community.

#### **5.1.4 Objective (d): to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities**

There are no parks, reserves or community facilities which would be a direct consideration for the proposed development. However, the site directly fronts Lawrence Street to the north, which is the key retail strip and historic centre of Freshwater Village.

The above analysis has already demonstrated that the proposal employs skilful design with extensive articulation, as well as a public plaza made possible by the proposed height variation, to deliver a sympathetic interface to Lawrence Street that is respectful of its historical narrow lot character. The View Analysis provided at Appendix F of the SEE confirms that the visual impact of the proposal from public places such as Lawrence Street to be acceptable.

Of note, the Heritage Impact Statement also notes the following with regards to the two heritage items “Harbord Literary Institute” (I71) and “Early Childhood Health Centre” (I72), located northwest of the site across Lawrence Street, as well as Lawrence Street and the Freshwater Village more broadly:

- Freshwater Village is an evolved and evolving commercial/retail centre with some residential use. Original lot boundaries and building styles, widths and heights in the Village have changed over time and continue to evolve.
- The proposed building will employ sympathetic materials to the heritage items in the vicinity, will be separated from them by four street lanes and will have no adverse impact on their setting or on any significant views to or from them. Its use of brickwork and other materials in the earth-tone colour spectrum will be sympathetic to the brick heritage items.
- The proposed building is articulated into several elements, each narrower than three of the four buildings currently on the site, thus reducing its apparent massing and better reflecting the original street rhythm and enhancing the character of the Village streetscape.

Given the above, it is apparent that the proposal will provide for acceptable visual impacts from public places including Lawrence Street.

## 5.2 Conclusion on clause 4.6(3)(a)

It has been demonstrated above that compliance with the development standard is unreasonable or unnecessary in the circumstances with regards to the First Method provided for in *Wehbe*. Specifically:

- The objectives of clause 4.3 of the WLEP 2011 are achieved notwithstanding non-compliance with the standard. Specifically:
  - Objective (a): Notwithstanding the height variation, the development is compatible with the height and scale of surrounding and nearby development. The height variation frees up area in the lower levels to deliver a 268m<sup>2</sup> public plaza open to the sky that presents a more sympathetic interface with surrounding sites and the coastal setting of Freshwater.
  - Objective (b): Detailed analysis has demonstrated that the variation would not result in unacceptable impacts with regards to visual impact, disruption of views, loss of privacy or loss of solar access. The public plaza facilitated by the height variation has clear view impact benefits, considerably reducing the appearance of building scale and bulk in particular when seen from Freshwater Road.
  - Objective (c): The proposed development (variation included) is consistent with and reinforces the desired coastal character of Freshwater, including its 'narrow lot' character through an articulated built form broken up into four distinct 'blocks'. The height variation enables a public plaza enhancing the role of Freshwater Village as a centre for the local community.
  - Objective (d): The proposal (variation included) will provide for acceptable visual impacts from public places including Lawrence Street.

## 6.0 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the WLEP 2011 requires the consent authority to be satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Initial Action* at [24]).

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site at [60]. There are sufficient environmental planning grounds to justify the contravention of the height of building development standards in this specific instance, as described in the relevant headings below.

### 6.1 Ground 1: Enables a key public benefit

As detailed above in **Section 5.0**, rather than providing additional residential floorspace, the intent of this variation is to enable a key public benefit, namely the delivery of a 268m<sup>2</sup> public plaza to provide additional street level activation and opportunities for members of the community to congregate. Due to it being open to the sky, delivering the public plaza has resulted in significant potential floorspace at all levels of the building to be forfeited, thereby requiring this variation to ensure its continued viability.

Given the above, strict compliance with the height of building standard is unreasonable as a fully compliant development would not be able to viably deliver such a public plaza. The plaza is a net positive for Freshwater Village, with the additional vibrancy and activation to Lawrence Street afforded by the plaza outweighing the minor additional environmental impact the non-compliant rooftop and lift overrun would generate.

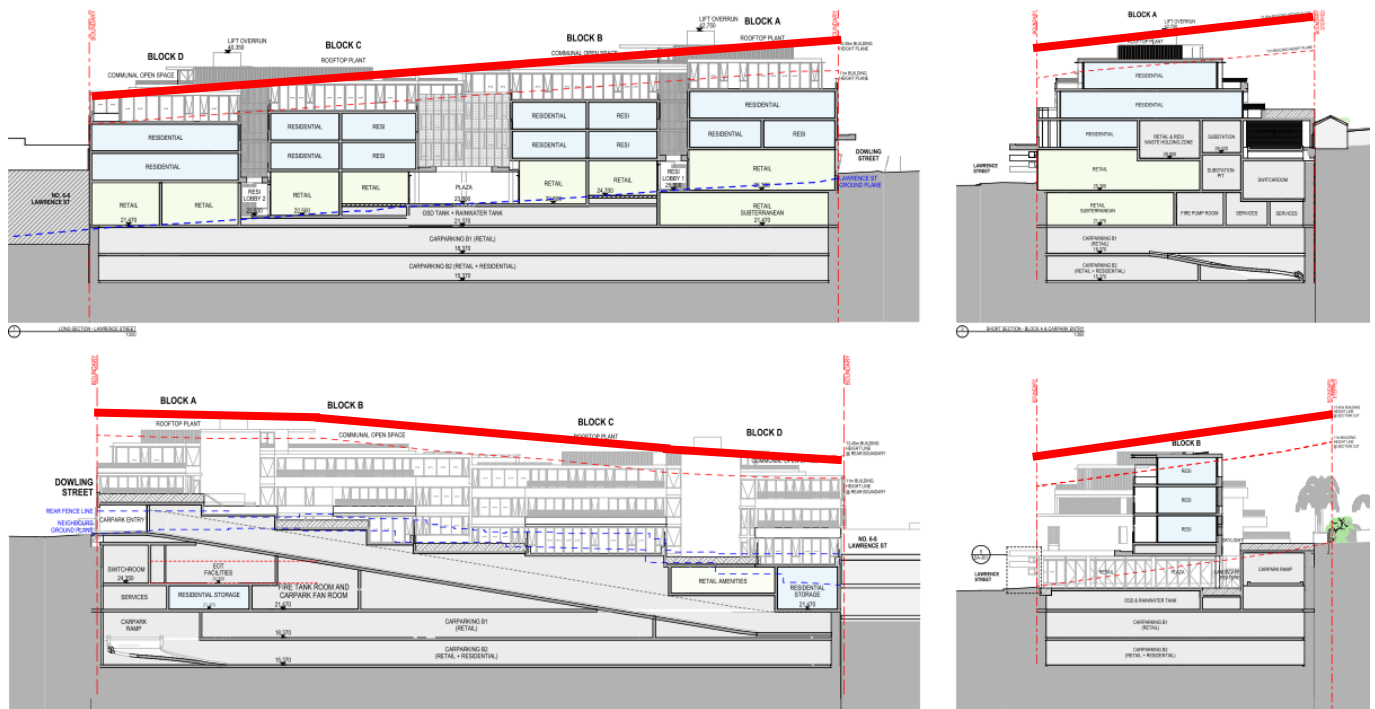
### 6.2 Ground 2: Sloping topography of the site

The extensive sloping topography of the site is an important mitigating factor which must also be considered when assessing the height exceedance at the site. The topography of the site experiences a steep slope of approx. 6-7m descending from west to east. Furthermore, the site also descends from its southern interface to the rear towards the Lawrence Street frontage towards the north. This has significant implications on how a built form can be viably designed at the site.

The development has taken reasonable steps to mitigate against these topographical changes, including the breaking down of the built form into four 'blocks' with two circulation cores so that the floor levels for each block more suitably reflect the topography and natural ground level for that portion of the site.

Nevertheless, since floorplate layouts must be flat, it is inevitable that on such a sloping site there are localised exceedances of the height plane, while other parts of the floorplate remain below the height plane (unless the entire topmost storey is removed from the development which would render the project unviable).

As demonstrated in **Figure 11** below, due to the site's steep topography, while parts of the development exceed the height limit, other areas remain below it (as calculated under *Bettar*). The sections below demonstrate that this is especially true for the southern rear boundary (which is especially sensitive due to it being an interface with R2 Low Density Residential zoned land) where the entirety of the built form lies below the height limit. Therefore, in part due to the sloping topography of the site, the proposed height variation is appropriate.



**Figure 11** Compliance with 13.45m height limit throughout the site

Source: Chrofi, edits by Ethos Urban

### 6.3 Ground 3: Variation predominantly relates to communal open space and lift overrun

**Figure 5** in Section 3, and **Figure 11** above also clearly demonstrate the extent of the variation (as interpreted under *Bettar* – refer to **Section 6.0**) relates predominantly to the rooftop communal open space and lift overrun at the site, although it is acknowledged that localised parts of the roof form more broadly are also implicated due to the sloping topography.

In this regard, the communal open space is intended to provide for a high level of residential amenity, rather than to fit in additional uplift (residential floorspace) above the height plane. The provision of the communal open space is driven by an intention to deliver excellent amenity for both the site's market and affordable housing residents. The delivery of rooftop communal open space is above and beyond what is typically expected for a mixed-use development in a village centre. The Apartment Design Guide (ADG) acknowledges that development in locations “such as [...] sites within business zones, or in a dense urban area” like Freshwater Village may not be able to provide for communal open spaces, and therefore the development's ability to deliver such a space nonetheless is a positive amenity contribution.

With regards to lift overruns, it is common for consent authorities to grant height variations for lift overruns as long as they are suitably screened from the streetscape, given they by their very nature are highly localised and need to rise above the roofline of a building.

Therefore, the proposed variation is acceptable as it does not generally provide for additional habitable floorspace above the height plane but is instead driven by the amenity and serviceability concerns in delivering rooftop communal open space and a lift overrun to provide suitable means to access this communal space.

### 6.4 Ground 4: Delivery of substantial affordable housing

The proposed development (variation included) will deliver a substantive quantum of affordable housing. As shown on Drawing A-DA-101 of the Architectural Plans (Appendix A of the SEE), six (6) out of the 30 proposed apartments are to be affordable housing within the meaning of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP).

Specifically, the affordable apartments are the six (6) apartments accessed from the western access core at level 1 of the proposed building. To ensure that the provision is equitable, the affordable apartments comprise a variety of typologies (3 one-bedroom, 3 two-bedroom) and orientations (4 north-facing, 2 south-facing).

The delivery of the proposed development (variation included) will provide critical market and affordable housing supply to an area with one of the highest rates of housing unaffordability in Sydney and New South Wales more broadly. This would be compromised if the proposed development were to not be delivered.

6.5 Ground 5: Consistency with Objects of the EP&A Act

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the EP&A Act, including the objects in section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, as set out in **Table 6** we consider the proposed development is broadly consistent with each object, notwithstanding the proposed variation of the height of buildings development standard.

Table 6 Assessment of consistency of the proposed development with the Objects of the EP&A Act

Object	Comment
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	The proposed height variation will promote the social and economic welfare of the community through enabling the delivery a new public plaza which would provide additional retail activation and opportunities for community members to congregate.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	The building height variation will have no negative impact on environmental and social considerations and will support the economic health of the Freshwater Village locality through delivery of new retail and residential floorspace.
(c) to promote the orderly and economic use and development of land	The proposal will promote the orderly and economic use of the land by allowing the redevelopment of the site to meets its highest best use while remaining consistent with the desired coastal character of Freshwater.
(d) to promote the delivery and maintenance of affordable housing	The development will deliver 522m <sup>2</sup> (6 out of 30 apartments) of affordable housing, helping alleviate housing affordability and diversity challenges in Freshwater and the Northern Beaches LGA.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats	Not relevant to the proposed height variation.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)	A Heritage Impact Statement has been appended to the SEE which finds the heritage impacts of the height variation to be acceptable.
(g) to promote good design and amenity of the built environment	The proposed variation enables the development to deliver a 268m <sup>2</sup> public plaza that improves its design and improves amenity and vibrancy to Freshwater Village.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants	Not relevant to the proposed height variation.
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State	Not relevant to the proposed height variation.
(j) to provide increased opportunity for community participation in environmental planning and assessment	Not relevant to the proposed height variation.



## 6.6 Conclusion on clause 4.6(3)(b)

It has been demonstrated above that there are sufficient environmental planning grounds to justify contravening the development standard as:

- The underlying intent of the height variation is to provide for a 268m<sup>2</sup> public plaza rather than to provide additional residential floorspace beyond what a fully compliant built form can deliver. Due to it being open to the sky, delivering the public plaza has resulted in significant potential floorspace at all levels of the building to be forfeited, thereby requiring this variation to ensure its continued viability.
- The variation is in part due to the significant sloping topography at the site, which drops towards Lawrence Street and the east. Due to this, while parts of the development exceed the height limit, others remain below it. This is especially true for the southern rear boundary (which is especially sensitive due to it being an interface with R2 Low Density Residential zoned land) where the entirety of the built form lies below the height limit.
- The extent of the variation relates predominantly to the rooftop communal open space and lift overrun. The communal space is intended to provide a high level of residential amenity for both the site's market and affordable housing residents rather than to provide additional habitable floorspace above the height plane. With regards to lift overruns, it is common for consent authorities to grant height variations for lift overruns as long as they are suitably screened from the streetscape, given they by their very nature are highly localised and need to rise above the roofline of a building.
- The delivery of the proposed development (variation included) will provide critical market and affordable housing supply to an area with one of the highest rates of housing unaffordability in Sydney and New South Wales more broadly. This would be compromised if the proposed development were to not be delivered.
- The proposed development (including height variation) is consistent with the Objects of the EP&A Act, including promoting the orderly and economic use and development of land, and promoting the delivery and maintenance of affordable housing.

## 7.0 Conclusion

The assessment above demonstrates that compliance with the height of buildings development standard contained in clause 4.3 of the WLEP 2011 is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation has demonstrated that:

- The objectives of clause 4.3 of the WLEP 2011 are achieved notwithstanding non-compliance with the standard. Specifically:
  - Objective (a): Notwithstanding the height variation, the development is compatible with the height and scale of surrounding and nearby development. The height variation frees up area in the lower levels to deliver a 268m<sup>2</sup> public plaza open to the sky that presents a more sympathetic interface with surrounding sites and the coastal setting of Freshwater.
  - Objective (b): Detailed analysis has demonstrated that the variation would not result in unacceptable impacts with regards to visual impact, disruption of views, loss of privacy or loss of solar access. The public plaza facilitated by the height variation has clear view impact benefits, considerably reducing the appearance of building scale and bulk in particular when seen from Freshwater Road.
  - Objective (c): The proposed development (variation included) is consistent with and reinforces the desired coastal character of Freshwater, including its 'narrow lot' character through an articulated built form broken up into four distinct 'blocks'. The height variation enables a public plaza enhancing the role of Freshwater Village as a centre for the local community.
  - Objective (d): The proposal (variation included) will provide for acceptable visual impacts from public places including Lawrence Street.
- There are sufficient environmental planning grounds to justify contravening the development standard as:
  - The underlying intent of the height variation is to provide for a 268m<sup>2</sup> public plaza rather than to provide additional residential floorspace beyond what a fully compliant built form can deliver. Due to it being open to the sky, delivering the public plaza has resulted in significant potential floorspace at all levels of the building to be forfeited, thereby requiring this variation to ensure its continued viability.
  - The variation is in part due to the significant sloping topography at the site, which drops towards Lawrence Street and the east. Due to this, while parts of the development exceed the height limit, others remain below it. This is especially true for the southern rear boundary (which is especially sensitive due to it being an interface with R2 Low Density Residential zoned land) where the entirety of the built form lies below the height limit.
  - The extent of the variation relates predominantly to the rooftop communal open space and lift overrun. The communal space is intended to provide a high level of residential amenity for both the site's market and affordable housing residents rather than to provide additional habitable floorspace above the height plane. With regards to lift overruns, it is common for consent authorities to grant height variations for lift overruns as long as they are suitably screened from the streetscape, given they by their very nature are highly localised and need to rise above the roofline of a building.
  - The delivery of the proposed development (variation included) will provide critical market and affordable housing supply to an area with one of the highest rates of housing unaffordability in Sydney and New South Wales more broadly. This would be compromised if the proposed development were to not be delivered.
  - The proposed development (including height variation) is consistent with the Objects of the EP&A Act, including promoting the orderly and economic use and development of land, and promoting the delivery and maintenance of affordable housing.

Therefore, the consent authority can be satisfied that this Clause 4.6 Variation Request has demonstrated the matters in clause 4.6(3) of the WLEP 2011 and may grant development consent notwithstanding the contravention of the height of buildings development standard.