

# OBJECTION TO CLAUSE 4.6 VARIATION (BUILDINGS G, A & F)

Timber Yards State Significant Development

## 1. Introduction

This submission objects to the clause 4.6 variation sought for **Buildings G, A and F** in the Timber Yards State Significant Development proposal.

These buildings significantly exceed the **Housing SEPP cl 16(3)** height standards applicable to their frontages.

### Height Exceedances

#### Sydenham Road (Building G)

- LEP height control: **11 m**
- SEPP bonus height ( $\times 1.2$ ): **13.2 m**
- Proposed height: **~28.7 m**
- **Exceedance:** approx. **15.5 m ( $\approx 117\%$ )**

#### Farr Street (Buildings A, F and part of G)

- LEP height control: **20 m**
- SEPP bonus height: **up to 24 m permissible**
- **Building A:** proposed **31.2 m**  $\rightarrow$  **+7.2 m ( $\approx 30\%$ )**
- **Building F:** proposed **29.2 m**  $\rightarrow$  **+5.2 m ( $\approx 21.7\%$ )**
- **Building G (Farr-facing portion):** proposed **28.7 m**  $\rightarrow$  **+3.3 m ( $\approx 13.7\%$ )**

These exceedances create overshadowing, bulk, transition and character impacts that **do not arise under a compliant envelope**.

## 2. Impacts Arising Only From the Additional Height

### 2.1 Overshadowing (Primary Issue)

The applicant's own comparative diagrams show:

- **Additional winter overshadowing** to dwellings on Sydenham Road.
- This shadow occurs **only** in the over-height scheme.
- The compliant 13.2 m envelope **avoids this impact entirely**.
- Affected areas include **private open space and living rooms** during peak winter sun hours.

This is a clear planning impact triggered solely by the height contravention.

## 2.2 Visual and Bulk Impacts

- The proposal creates a **bulky, visually dominant edge** on Sydenham Road and Farr Street.
- Height is concentrated in locations where the planning framework expects **transition down**, not up.
- The compliant envelope presents a materially lower and more appropriate edge condition.

## 2.3 Traffic and Yield Effects

- Additional height → additional GFA → additional dwellings → **additional vehicle movements**.
- The applicant does not separate traffic effects arising from the **exceedance** versus the **underlying redevelopment**.

## 2.4 Precedent Effects Across the Precinct

Approving heights more than 120% above the SEPP limit will:

- Undermine the intended **height hierarchy** in the precinct.
- Make future departures difficult to resist.
- Shift the precinct away from the **Victoria Road-to-Sydenham Road step-down model** envisaged under cl 6.31 and the DCP.

## 3. Clause 4.6(3)(a): Compliance Has Not Been Demonstrated to Be Unreasonable or Unnecessary

Clause 4.6(3)(a) requires the applicant to **demonstrate** that compliance with the development standard is unreasonable or unnecessary.

The applicant relies on the **First** and **Third** Wehbe Methods. Neither is satisfied.

### 3.1 First Wehbe Method — “Objectives Achieved Despite Non-Compliance”

The relevant development standard is **Housing SEPP cl 16(3)** (maximum height under ARH bonus).

The standard's purpose is to:

- Set the **outer height limit** when using affordable housing uplift.
- Maintain a **predictable and capped** built form outcome.
- Achieve a **step-down** to sensitive interfaces ( in conjunction with the LEP height control).
- Avoid **overshadowing and excessive bulk** (in conjunction with the LEP height control).

This purpose is **not achieved** because:

- Building G exceeds the limit by **117%**.
- Buildings A and F exceed the **24 m limit** by **30%** and **21.7%**.
- These exceedances create the very impacts (shadow, bulk, transition failure) the standard aims to avoid.

**The First Wehbe Method is not satisfied.**

### **3.2 Third Wehbe Method — “Purpose of the Standard Not Relevant”**

This method only applies where the purpose of the development standard is irrelevant to the site.

Here:

- The SEPP height standard is **fundamental** to setting the built form envelope.
- It remains directly engaged because exceeding it produces concrete impacts.
- It governs the district-wide **uplift logic** for affordable housing.

**The Third Method does not apply.**

### **3.3 Conclusion on Clause 4.6(3)(a)**

Because neither Wehbe method is met, the applicant has **not demonstrated** that compliance with the height standard is unreasonable or unnecessary.

**Clause 4.6(3)(a) is not satisfied.**

## **4. Clause 4.6(3)(b): Sufficient Environmental Planning Grounds Have Not Been Demonstrated**

To justify a contravention, the applicant must demonstrate **environmental planning grounds** that relate to the **purpose** of the height standard.

However:

- No alternative massing options are tested.
- No analysis is made of shifting height **internally**.
- No case is made that height must be located at the **edge** of the site.
- OLS constraints do not explain the **location** of excess height.

There are **no demonstrated planning grounds** to justify placing the tallest built form at the most sensitive interfaces.

**Clause 4.6(3)(b) is not met.**

## **5. Relationship Between Bonus Height and Bonus Floor Space**

The applicant assumes the full bonus FSR must be accommodated regardless of envelope constraints.

This is incorrect.

- Height and floor space are **paired controls**.
- If bonus height cannot be achieved acceptably, **bonus FSR must be capped**.
- No testing has been done of yields achievable within a compliant or justified envelope.

## **6. Desired Future Character — LEP cl 6.31 and Timber Yards DCP**

The planning framework provides:

- Greater height directed **internally** and toward **Victoria Road**.
- A **controlled step-down** to Sydenham Road and Farr Street.
- Protection of residential amenity.

Buildings G, A and F reverse this pattern by locating the taller elements at the lowest-scale edges.

This outcome is inconsistent with cl 6.31 and the DCP.

## 7. Impacts Above the Complying Envelope (Summary)

- **Additional overshadowing** to Sydenham Road dwellings.
- **Excessive bulk** and loss of transition.
- **Increased traffic and activity** due to higher GFA.
- **Precedent risk** undermining broader precinct controls.

These impacts do not occur under compliant envelopes.

## 8. Requirement for Planning Proposal Where Exceedance Exceeds 20%

As a matter of Departmental practice:

- Where an SSDA seeks to exceed development standards (height or FSR) by more than **20%**,
- The application should be accompanied by a **planning proposal** to amend the LEP.

Here:

- Building G exceeds the standard by **117%**.
- Building A exceeds by **30%**.
- Building F exceeds by **21.7%**.
- **No planning proposal has been lodged.**

This circumvents the strategic planning process and denies the community the opportunity to consider height changes through the proper mechanism.

## 9. Conclusion

The applicant has not demonstrated either limb of clause 4.6(3).  
Therefore:

- The consent authority **cannot be satisfied** that compliance is unreasonable or unnecessary; and
- The consent authority **cannot be satisfied** that sufficient environmental planning grounds justify the contravention.

**The clause 4.6 variation should not be approved for Buildings G, A or F.**