



School Infrastructure NSW (SINSW)

## Clause 4.6 Variation to Height

Proposed Alterations and Additions - Concord High School

5 Stanley Street, Concord

June 2023

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## Table of Contents

1	Introduction.....	5
1.1	Location of Property .....	5
1.2	Proposed Development .....	5
1.3	Summary of Planning Instrument and Development Standard to be Varied .....	6
1.4	Nature of the Contravention .....	7
2	Clause 4.6 Assessment .....	9
2.1	Overview of Clause 4.6 Exceptions to development standards.....	9
2.2	Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? .....	11
2.2.1	Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case? .....	11
2.2.2	Is the underlying objective or purpose not relevant to the development with the consequence that compliance is unnecessary? .....	12
2.2.3	Would the underlying objective or purpose be defeated or thwarted if compliance was required? .....	12
2.2.4	Has the development standard been virtually abandoned or destroyed by Council's own actions departing from the standard? .....	13
2.2.5	Is the zoning of the land unreasonable or inappropriate? .....	13
2.3	Are there sufficient environmental planning grounds to justify contravening the development standard? .....	14
2.3.1	Scenic Values.....	14
2.3.2	View Loss.....	15
2.3.3	Overshadowing .....	16
2.3.4	Visual Privacy .....	19
2.3.5	Acoustic Privacy .....	20
2.3.6	Maintenance of Open Space .....	20
2.4	Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out? .....	21
2.4.1	What are the Objectives of the Development Standard? .....	21
2.4.2	Objectives of the Zone .....	22
2.4.3	Objectives / Aims of the LEP.....	22
2.5	Planning Secretary Concurrence .....	24
2.5.1	Whether contravention of the development standard raises any matter of significance for State or regional environmental planning? .....	24
2.5.2	Would the contravention raise any significant matter or hinder the attainment of the objects of the Act? .....	24
2.5.3	Is there public benefit in maintaining the development standard? .....	25
2.6	Is the objection well founded? .....	25
3	Conclusion .....	26

## List of Figures

Figure 1: Extract from Site Plan (Source: JDH Architects, 2023) .....	6
Figure 2: Height of Buildings Map extract (Source: ePlanning Spatial Viewer/CBLEP 2013) .....	7
Figure 3: Section A (Source: JDH, 2023) .....	8
Figure 4: Section B (Source: JDH, 2023) .....	8
Figure 5: Stanley Street looking east (Source: Google Streetview, 2020) .....	15
Figure 6: Crane Street looking east - vegetation obstructs views from the north (Source: Google Streetview, 2020) .....	15
Figure 7: Aerial Photo of Locality (Source: Nearmap 2023) .....	16
Figure 8: Shadows (9am – 21 June) .....	17
Figure 9: Shadows (12pm – 21 June) .....	18
Figure 10: Shadows (3pm – 21 June) .....	18
Figure 11: View of Council park, space to the east to be shaded for small portion day (Source: BRS, 2022) .....	19
Figure 12: Extract from proposed Streetscape Elevation – Stanley Street (JDH, 2023) .....	21

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## 1 Introduction

This report has been prepared by Barker Ryan Stewart on behalf of School Infrastructure NSW (SINSW), which is a public authority, in relation to a Crown development application for proposed alterations and additions at Concord High School.

In accordance with Clause 4.6 of the Canada Bay Local Environmental Plan (CBLEP) 2013, a contravention of the building height standard is proposed.

This Clause 4.6 submission should be read in conjunction with the Statement of Environmental Effects prepared by Barker Ryan Stewart and the architectural plans designed by JDH Architects.

### 1.1 Location of Property

Concord High School is located at 5 Stanley Street, Concord. The subject site comprises the following allotments:

- Lot 15 DP 8687;
- Lot 18 DP 8687;
- Lot 19 DP 8687;
- Lot 20 DP 8687;
- Lot 1 DP 60167;
- Lot 1 DP 1114919;
- Lot 2 DP 1114919; and
- Lot 3 DP 1114919.

### 1.2 Proposed Development

The proposed development generally incorporates the following:

- Demolition of existing structures within the development footprint and the south eastern car park;
- Construction of Block X, incorporating a new hall/ gymnasium;
- Construction of Block Y, including a canteen, movement studio, performing arts and physical education facilities;
- Construction of Block Z, which comprises a new four-storey building containing staff and administration facilities, support learning, visual arts workshop, and GLS;
- New games courts to the north east of the site adjacent to Crane Street;
- Western car park upgrade and extension to offset the loss of the existing car park referred to above
- within the development footprint;
- Landscape works including new tiered seating adjacent to the existing sports field;
- Light refurbishment of Block A library facilities; and
- The relocation of modular Block I to the west of the western car park.

An extract of the proposed Site Plan is provided in Figure 1 below for context. The upgrades will primarily accommodate the school's existing student base, providing high-quality, purpose built facilities and learning spaces catering for an increase of 25 students.



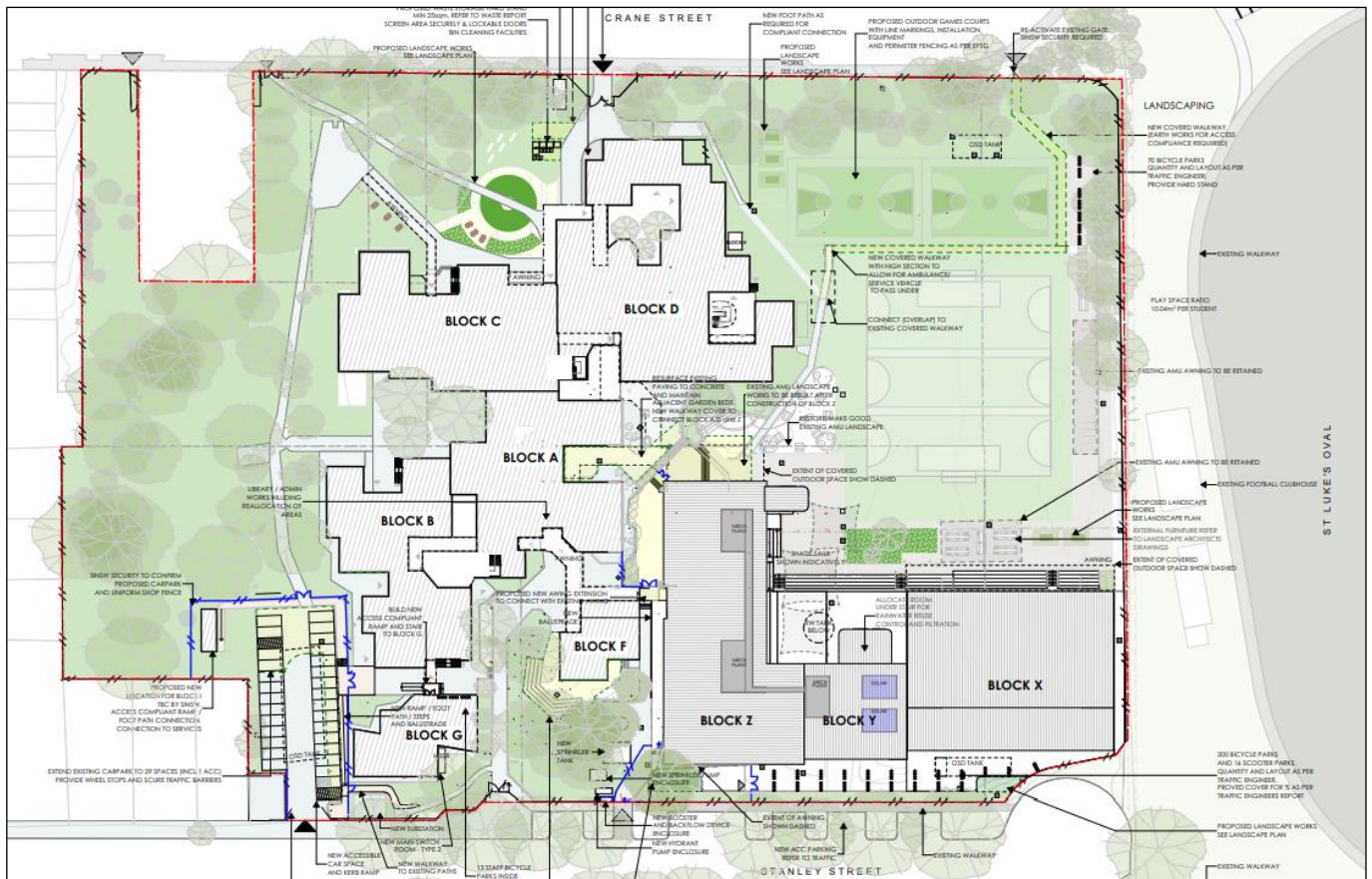


Figure 1: Extract from Site Plan (Source: JDH Architects, 2023)

### 1.3 Summary of Planning Instrument and Development Standard to be Varied

The development proposes a variation to Clause 4.3 Height of buildings and the associated maximum building height as indicated on the height of buildings map provided under CBLEP 2013. Clause 4.3 has been reproduced below as well as an extract from the Height of Buildings Map in Figure 2, outlining the site in red.

#### 4.3 Height of buildings

- (1) The objectives of this clause are as follows—
  - (a) to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively contribute to the streetscape and public spaces,
  - (b) to protect the amenity of residential accommodation, neighbouring properties and public spaces in terms of—
    - (i) visual and acoustic privacy, and
    - (ii) solar access and view sharing,
  - (c) to establish a transition in scale between medium and high density centres and adjoining lower density and open space zones to protect local amenity,
  - (d) to ensure that buildings respond to the natural topography of the area.
- (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.
- (3) Despite subclause (2), the maximum height for a building on an internal lot in Zone R1 General Residential, Zone R2 Low Density Residential or Zone R3 Medium Density Residential is 5.4m.

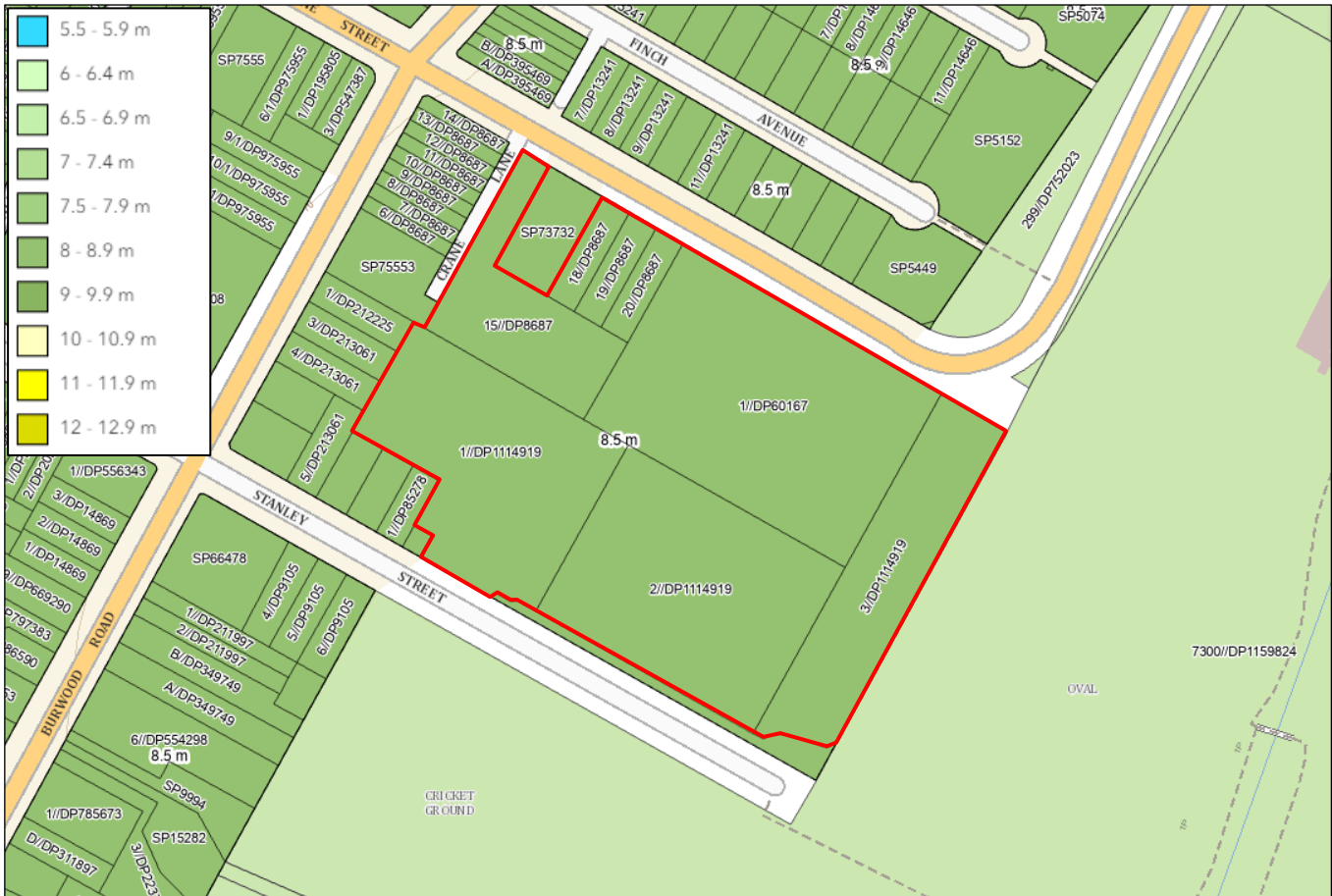


Figure 2: Height of Buildings Map extract (Source: ePlanning Spatial Viewer/CBLEP 2013)

EPI applicable	Canada Bay Local Environmental Plan 2013
Land Use Zoning:	Zone R3 Medium Density Residential
Development Standard to which the Objection Relates:	Building height under Clause 4.3 Height of buildings.
Numeric Value of the Development Standard:	The height of buildings map within CBLEP 2013 identifies a maximum building height for this site of 8.5m.
Percentage and numeric variation of the proposed development to the development standard:	The proposed development has a maximum building height of 18.29m to top of plant which represents a 9.79m (115%) variation to the 8.5m control.

1.4 Nature of the Contravention

The proposed new school buildings (Blocks X, Y and Z) represent a built form that varies in height between 8.87m to 18.29m at the top of plant. It should be noted that the maximum building height to the main roofline (not inclusive of plant height) is 16.74m.

The proposed variation to the height control is confined to the upper second to fourth storeys of the buildings. Refer to Figures 3 and 4 below for section plan extracts elevations of the proposed buildings as

Architectural section drawing of the proposed building, showing the ground floor, first floor, and roof levels. The drawing includes structural grid lines A1 through B1 and elevation markers. Key features include a stage, control room, BCR, circulation, and various rooms like 'PERFORMING ART WORKSHOP' and 'FITNESS LAB'. A note at the bottom states: 'PLEASE REFER TO ENGINEERS REPORT FOR GROUND PREPARATION'.

This application has been prepared in accordance with the NSW Department of Planning and Environment guidelines and has incorporated relevant principles identified in the following NSW Land and Environment Court decisions:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
- Wehbe v Pittwater Council [2007] NSWLEC 827
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90
- Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248
- Moskovich v Waverley Council [2016] NSWLEC 1015
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118
- RebelMH Neutral Bay Pty Ltd v North Sydney Council [2019] NSWCA 130
- SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112



## 2 Clause 4.6 Assessment

### 2.1 Overview of Clause 4.6 Exceptions to development standards

Clause 4.6(1) and (2) of the Canada Bay LEP 2013 state:

- (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.*

Clause 4.6 requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard (see *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, *Al Maha Pty Ltd v Huajun Investments Pty Ltd* (2018) 233 LGERA 170; [2018] NSWCA 245) at [23] and *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61 at [76]–[80] and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31]:

1. That the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case [clause 4.6(3)(a)];
2. That the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard [clause 4.6(3)(b)]; and
3. That the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out [clause 4.6(4)].

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be directly satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*Initial Action* involved an appeal pursuant to section 56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

In *Initial Action* Chief Justice Preston considered the proper interpretation of clause 4.6 and found that:

- Clause 4.6 does not require a proponent to show that the non-compliant development would have a neutral or beneficial test relative to a compliant development (at [87]);
- There is no requirement for a clause 4.6 request to show that the proposed development would have a ‘better environmental planning outcome for the site’ relative to a development that complies with the standard (at [88]); and
- One way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts (at [95(c)]). That is, the absence of environmental harm is sufficient to show that compliance with the development standard is unreasonable or unnecessary.

This request also addresses the requirement for the concurrence of the Secretary as required by clause 4.6(4)(b).

The development standard in clause 4.3 of the LEP is not excluded from the operation of clause 4.6 for this site by clause 4.6(8).

This submission to the building height development standard addresses sequentially each of the following sub-clauses:

- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.**
- (4) Development consent must not be granted for development that contravenes a development standard unless—
  - (a) the consent authority is satisfied that—
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and**
  - (b) the concurrence of the Planning Secretary has been obtained.**
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.**

## 2.2 Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

As found by Chief Justice Preston in *Initial Action*, compliance with the development standard will prima facie be unnecessary if it can be shown that there is an absence of environmental harm or adverse amenity impacts for the proposed development.

The Court has held that there are at least five (5) different ways, and possibly more, through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary (see *Wehbe v Pittwater Council* [2007] NSWLEC 827). It is important to note that:

- The requirement is to demonstrate that compliance is unreasonable **or** unnecessary. It does not need to be shown that compliance is both unreasonable and unnecessary;
- *Wehbe* identifies five ways of demonstrating that compliance is unreasonable or unnecessary, but the Courts have held that this list is not exhaustive (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [22])

The five (5) ways of establishing that compliance is unreasonable or unnecessary are:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The objective would be defeated, thwarted or undermined (*Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]) if compliance was required with the consequence that compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence the standard is unreasonable and unnecessary; and
5. The zoning of the land is unreasonable or inappropriate.

Note the Court confirmed it is sufficient to satisfy only one (1) of the five tests in order to satisfy clause 4.6(3)(a) (*Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 at [22] and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [28]) and *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31].

The proposed development is supported on grounds that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. In this case, as outlined below, it is demonstrated that Test 1, 3 and 5 have been met to varying degrees, with further assessment provided in Section 2.2 of this report.

### 2.2.1 Is a development which complies with the standard unreasonable or unnecessary in the circumstances of the case?

The proposed Crown development was originally identified to proceed down the State Significant Development (SSD) approval pathway due to a projected triggering of the \$50 million Capital Investment Value (CIV) threshold. Note Section 3.43 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 confirms that SSD would not require compliance with the height control under the CBLEP 2013. Detailed design and cost planning was subsequently undertaken and the development is now submitted with a CIV that does not exceed the SSD trigger. Accordingly, the LEP height limit is required to be considered at local DA stage and the proposed development results in a variation to the control.

It is also noted that Complying Development allows buildings up to four (4) storeys without the need for a Clause 4.6 justification. CDC was not available due to the heritage landscape under Schedule 5 of CBLEP 2013.

The proposed development has been designed to comply with the LEP objectives of the height control. The exceedance is localised within the centre and south-east of the site and the development minimises the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas to the east. This is discussed further in comprehensive detail in Section 2.3 of this report.

Strict compliance with the development standard is considered unnecessary in the circumstances of this proposal given the proposed height variation will result in a more amenable, practical and less environmentally impactful design outcome than a development that strictly complies with the building height limit. The retention of existing school buildings has been achieved where possible on the site in order to appropriately maintain operations within the school and retain the heritage listed landscape. The proposal will accommodate an increase in student numbers whilst maintaining appropriate outdoor space, minimising required vegetation removal and optimising the amenity for students and staff. Further the new buildings are largely screened from the public domain by an existing street tree canopy that provides a buffer between educational infrastructure, Stanley Street and surrounding development. The objectives of Clause 4.3 are therefore largely achieved notwithstanding non-compliance with the numerical standard.

The underlying objectives of the control have been achieved through the tiered scale, articulation and character of the buildings which are compatible with a medium-density environment. As demonstrated further below, the proposed building height variation will not generate any adverse environmental impacts associated with view loss, overshadowing, or visual impacts. Further, the development will facilitate appropriate levels of privacy for surrounding properties and within the school itself.

#### **2.2.2 Is the underlying objective or purpose not relevant to the development with the consequence that compliance is unnecessary?**

The underlying objectives of Clause 4.3 seek to regulate the height, bulk and scale of buildings in order to maintain the desired future character of the locality and protect the amenity of residential development and public spaces. The objective of the standard is therefore relevant to the development.

#### **2.2.3 Would the underlying objective or purpose be defeated or thwarted if compliance was required?**

The underlying objective of Clause 4.3, height of buildings, is to regulate the height and scale of the built environment in order to facilitate appropriate amenity for surrounding uses. The height control generally ensures that development is compatible with adjoining development and the streetscape.

If strict compliance in the south-east of the site was required, the proposal would result in a significantly increased building footprint that would impact the provision of outdoor learning and open space within the site. Additional vegetation removal would be required to facilitate a lower building form that could accommodate the needs of the catchment and associated student number of 1,360. The impacts associated with a lower building form compliant with the control are considered to represent an inferior outcome for a unique site that is bounded in the east and south by the local road system and public open space. The site is also heritage listed for its landscape and the removal of additional trees was not supported by Council or the project team. A better design outcome is achieved through the siting of a taller architectural form in a location that can readily support a variation to the height control.

The proposed new school buildings will improve the architectural standard of the school and locality whilst complementing established development. The height variation will not hinder the promotion and co-ordination of the orderly and economic use and development of the land, nor that of adjoining public recreational or residential lands. The proposal will improve the socio-economic welfare of the local community, accommodating existing staff and students at the school currently utilising demountable classrooms with new, high quality, purpose-built facilities and learning spaces that will substantially improve the educational outcomes and amenity of Concord High School.



Notwithstanding the numerical non-compliance with the building height control, the objectives of the zone and height control are achieved and the density of the proposal is consistent with and appropriate for the zone.

**2.2.4 Has the development standard been virtually abandoned or destroyed by Council's own actions departing from the standard?**

It is not suggested that the standard has been abandoned or destroyed and this test has not been further assessed for this proposal.

**2.2.5 Is the zoning of the land unreasonable or inappropriate?**

The R3 zoning of the site is not inherently unreasonable or inappropriate, however it should be acknowledged that the site has not been historically developed for residential development and ultimately should be treated within its context as a school site with regards to community need and the nature of its built form and use. Furthermore, the proposed development footprint is located in a portion of the site that does not adjoin any private property.

The subject site had been used as a tannery prior to commencement of school development in the late 1960s. The school currently provides a buffer between an extensive medium density residential zone, featuring a number of schools and community service developments, and an expanse of public recreational spaces around Cintra Park and St Luke's Oval. The school provides a compatible buffer between residential and public recreational land.

Notwithstanding, whilst the site adjoins residential allotments to its north and north-west, the proposed building footprint is substantially separated from these by a minimum of approximately 90m. As the proposed development footprint is largely isolated from non-school development, it should not be held to the strict standards of small scale private residential development.

### 2.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, Preston CJ observed that in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

In *Initial Action* the Court also confirmed that it is not necessary to show that there would be a better environmental planning outcome – this is not the test.

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, Pain J observed that it is within the discretion of the consent authority to consider whether the environmental planning grounds relied on are particular to the circumstances of the proposed development on the particular site, and whether they are 'sufficient'.

The predominant planning ground identified to justify the variation is based on the improved design and amenity of the built and natural environment which includes the following advantages:

- The element of the built form subject to the height variation will generate no adverse impact on any scenic values of the locality and site.
- The elements of the built form subject to the height variation have led to the retention of more trees/ landscaping that would otherwise have been required to be removed. This would have had a clear negative impact on the landscape heritage of the site.
- The element of the built form subject to the height variation will generate no adverse impact on views.
- The element of the built form subject to the height variation will generate minor solar impacts to the western fringe of the adjacent public open space in the afternoon period (21 June). This will have no significant impact on the use or enjoyment of the land.
- The element of the built form subject to the height variation has been designed to maintain internal visual privacy through the use of angled louvres and appropriate siting of windows. The development footprint does not facilitate any overlooking of neighbouring residential development therefore external privacy is maintained.
- The element of the built form subject to the height variation will generate no adverse acoustic impacts as discussed in the Noise and Vibration Management Assessment submitted under separate cover with the DA.
- The element of the built form subject to the height variation will enable protection of sufficient open space on the school site and retention of significant vegetation.

These environmental planning grounds are investigated in more detail below.

#### 2.3.1 Scenic Values

The development proposes a localised exceedance of the maximum building height; however, the design has been undertaken with consideration of the site context and surrounding development. The development footprint is suitably separated from the nearest residential development in Stanley Street and will be screened by mature street trees located within the road reserve. This is illustrated in Figure 5 which depicts Stanley Street looking south from outside the nearest residential development at No 2 Stanley Street.

Similarly, views of the buildings from development to the north of the school site will be almost entirely obstructed by dense, existing boundary vegetation along Crane Street, as shown in Figure 6. The proposed vegetation removal in the north east of the site will not impact the existing line of vegetation along Crane Street and therefore visual obscurity of the southern fringe of the site will largely be retained. Given the level of visual obscurity from development to the north, the height variation, proposed on the opposite side

of the site with orientation to Stanley Street, will generate no adverse impacts to the scenic values of the site.

Additionally, the high quality design responds to the character and scenic landscape of the area, utilising suitable articulation and a materials palette that is consistent with existing site aesthetics. Accordingly, it is considered that the architectural design, inclusive of the localised height exceedance, will assist with high quality improvements to the scenic values of the school and the locality.



Figure 5: Stanley Street looking east (Source: Google Streetview, 2020)



Figure 6: Crane Street looking east - vegetation obstructs views from the north (Source: Google Streetview, 2020)

### 2.3.2 View Loss

The site and surrounding development are not currently afforded any significant views within the locality and the works will not generate any impact to existing view lines. As evident in Figures 5 and 6 above and Figure 7 below, the school site is bounded by public open space to the north-east, east and south, and the location of the proposed height exceedance in the south-east of the site, has been located to minimise any view impacts.



As per discussion above, views of the building envelope will be significantly obscured by existing street trees or boundary vegetation. The proposed removal of vegetation in the south east corner of the development footprint will not facilitate any greater visibility of the site, in relation to view loss, noting this area adjoins St Luke's Oval.

Accordingly, the proposed localised exceedance of the height control will not generate any detrimental impact on any existing view lines.



Figure 7: Aerial Photo of Locality (Source: Nearmap 2023)

### 2.3.3 Overshadowing

Shadow diagrams prepared for the works are reproduced in Figures 8-10 below.

At 9am shadows are cast to the south within Stanley Street and a small portion of St Luke's Oval as shown in Figure 8. Note the proposed works are unlikely to exacerbate shadowing of St Luke's Oval given the existence of mature street trees that already cast shadows in this area. The proposal does not generate shadowing of any residential or commercial development at 9am.

At midday the development casts shadows almost wholly within the Stanley Street frontage and road reserve as evident in Figure 9. The proposal does not generate shadowing of any residential or commercial development at midday.

At 3pm the proposal shadows are accommodated within the Stanley Street road reserve and a small portion of St Luke's Oval to the east of the site (refer to Figure 10). This afternoon shadowing of the western fringe of St Luke's Oval is considered to be inconsequential given the public open space achieves full sun



through to the early afternoon and this impacted area accounts for a very small area amount of the public open space provision. The minor additional shadowing will not jeopardise the use or amenity of the public open space and it is considered that the proposed design represents a considered response to the site and surrounding development.

Whilst the localised height exceedance contributes to a minor increase in shadow lines within the road reserve and the adjacent public open space, these shadows will not jeopardise the use or reasonable enjoyment of the athletics area or amenities buildings at St Luke's Oval to the east which retain full sunlight until the early afternoon period (refer to Figure 11 for details of the area subject to minor afternoon shadows). Accordingly, the height exceedance will not unreasonably limit the solar access of surrounding public open space or any private development in the locality.

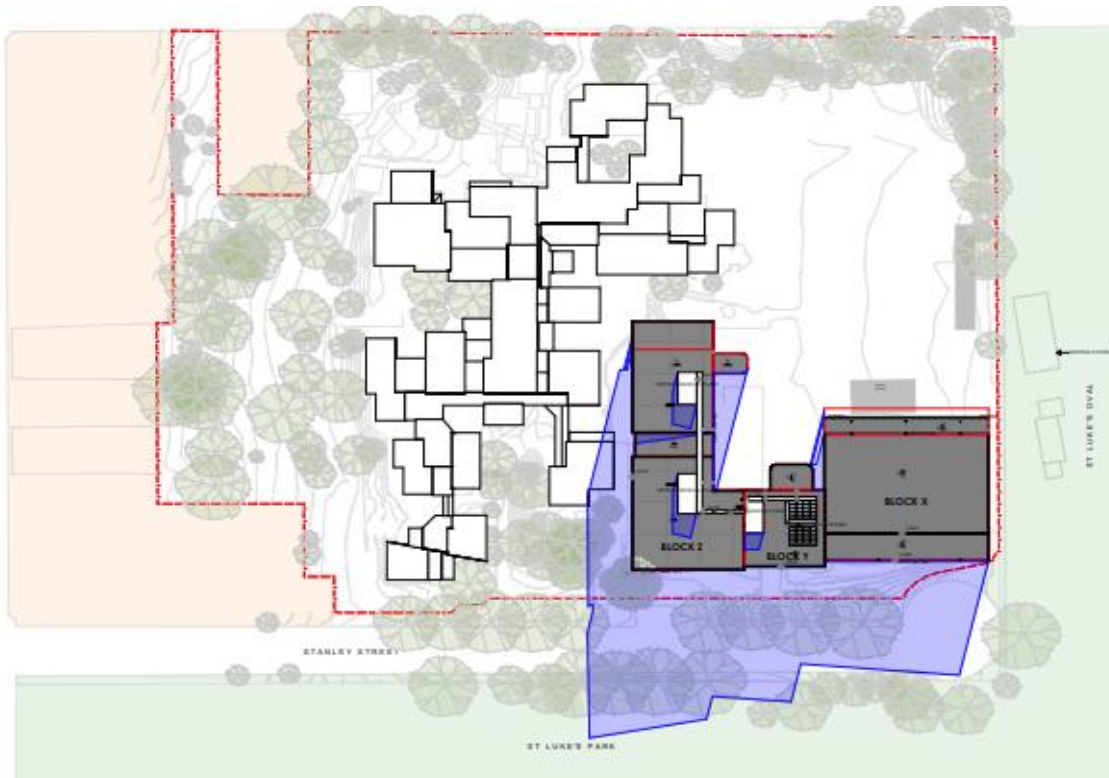


Figure 8: Shadows (9am – 21 June)

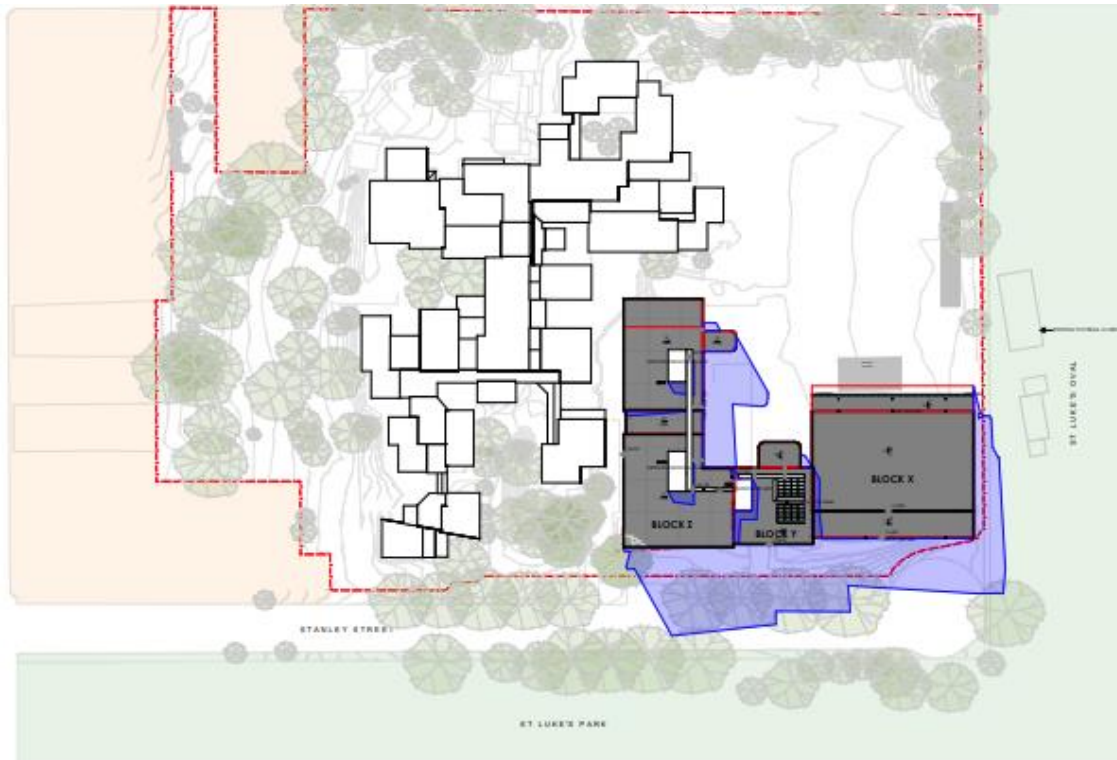


Figure 9: Shadows (12pm – 21 June)

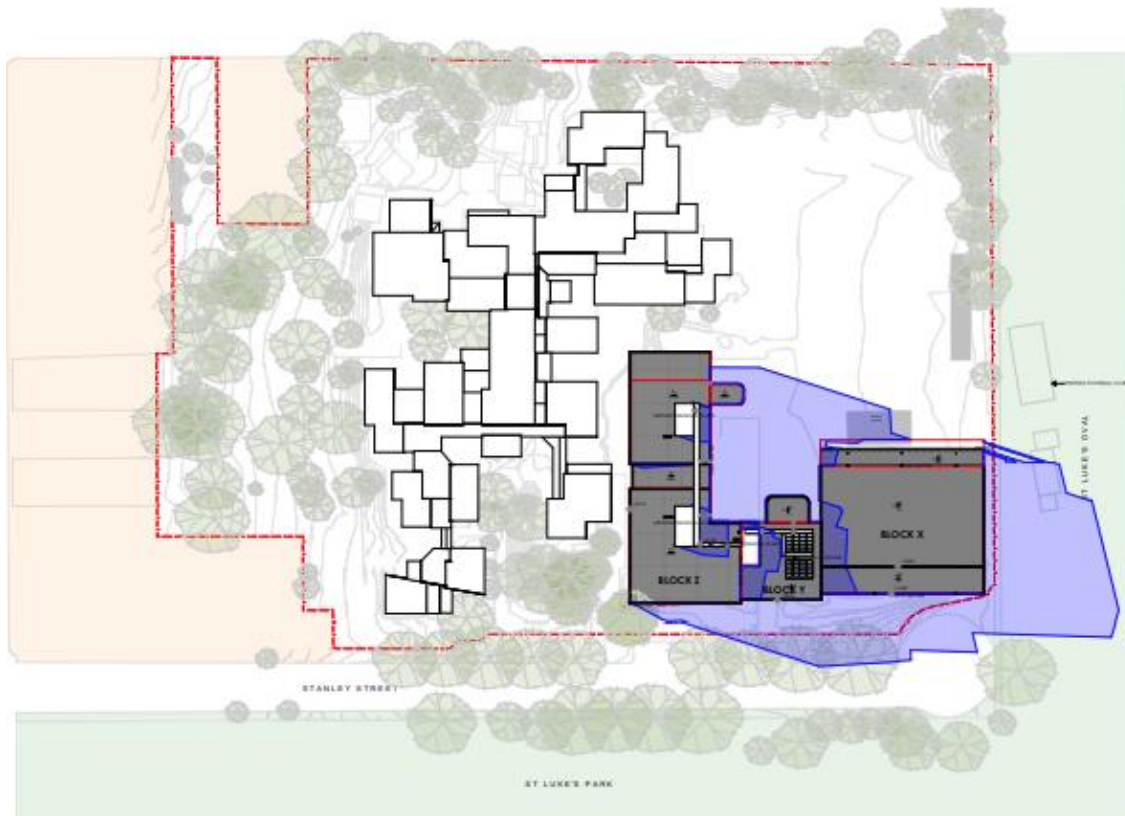


Figure 10: Shadows (3pm – 21 June)





Figure 11: View of Council park, space to the east to be shaded for small portion day (Source: BRS, 2022)

#### 2.3.4 Visual Privacy

The privacy of adjoining residential properties has been considered in the design of the development and the works will not facilitate any overlooking into windows, private open space or building entry points of surrounding residential development.

Despite the non-compliance with the numerical height standard, visual privacy is maintained through the siting of new buildings within the south east corner of the site. The development footprint, bounded by public open space to the south, east and north-east, facilitates a primary orientation of windows either within the site or to St Luke's Oval and Stanley Street road reserve.

No views are provided to any neighbouring development to the north, and views of the public domain and parklands to the east and south from Blocks Z and Y will be largely obstructed by mature street trees within the road reserve.

West-facing windows are obscured with louvres and adequate building separation, existing structures and dense vegetation and trees within the centre of the site will prevent the generation of any adverse privacy impacts to surrounding residential development on Stanley Street.

### 2.3.5 Acoustic Privacy

The height exceedances are confined to the south-east of the site and are not in close proximity to any residential receivers. The closest of the proposed buildings to residential development and the tallest, Block Z, primarily comprises indoor learning spaces and administration facilities and the acoustic output is expected to be largely consistent of that of the existing school environment. Conversely, the relocation of teaching spaces to the more isolated south east corner from demountable classrooms in the west and north of the site is likely to decrease noise in close proximity to nearby residences. A Noise and Vibration Management Plan has been prepared and issued under separate cover with the DA which confirms the development in its entirety will not generate any unacceptable acoustic impacts to the locality. Note acoustic recommendations will need to be implemented, particularly associated with evening use of the gymnasium/ hall, to maximise the acoustic amenity of the site and surrounding development.

Given the acoustic generating activities expected in the Block X Gymnasium and Hall, Block Z will provide an acoustic buffer for properties to the west and assist further in the acoustic mitigation of the site.

The architectural design responds to the context and constraints of the site and the amenity of its surroundings and will not give rise to unacceptable acoustic impacts to neighbouring development or to existing school development within the site. The height contravention accommodates teaching facilities that will be managed as a controlled acoustic environment and the design ensures acoustic generating activities to be undertaken in the gymnasium/ hall are at ground level.

### 2.3.6 Maintenance of Open Space

The element of the built form subject to the height variation will enable protection of sufficient open space on the school site and retention of significant vegetation and existing school buildings. To provide sufficient learning spaces on the school site, the proposal has chosen to increase height, rather than building footprint. This not only enables the open space areas on the site to be protected, it also enables more vegetation and trees to be maintained which results in a far superior outcome for the heritage significance of the site. This will reduce the potential for heat island impacts and will retain the green scape of the school site alongside the extensive open space corridor.



## 2.4 Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

### 2.4.1 What are the Objectives of the Development Standard?

The objectives of Clause 4.3 Height of buildings under the CBLEP 2013 are:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the desired future character of the locality and positively contribute to the streetscape and public spaces,
- (b) to protect the amenity of residential accommodation, neighbouring properties and public spaces in terms of—
  - (i) visual and acoustic privacy, and
  - (ii) solar access and view sharing,
- (c) to establish a transition in scale between medium and high density centres and adjoining lower density and open space zones to protect local amenity,
- (d) to ensure that buildings respond to the natural topography of the area.

The proposal is considered to satisfy the height objectives for the following reasons:

- The proposed development will provide a positive contribution to the streetscape, with the high level built form articulation mitigating visual bulk assisted further with a building height which tapers to the east toward St Luke's Oval.
- As discussed above, the visual, acoustic and scenic amenity of nearby residential properties and public spaces is maintained through a combination of visual screening by existing buildings and the retention of existing mature, large-canopy street trees adjacent to and within the site. The significant building separation between the new buildings and nearby residential development will ensure the works will generate no adverse impacts to the privacy of surrounding development.
- Minor overshadowing of the Stanley Street road reserve and the public open space to the south and east in the afternoon period will not jeopardise the use or function of this land and the solar affected portion of St Luke's Oval equates to a small portion of the surrounding public open space provision.
- The proposed new buildings will not obstruct any existing views within the locality and will be largely obscured from the streetscape by existing street trees and vegetation on the school site.
- The location of the new buildings both towards the centre of the school site and adjoining expansive public open spaces, allows substantial building separation between the new buildings and the nearest residential or private developments. This allows for some transition in building scale and maintenance of local amenity. The proposed building height transitions from four storeys at Building Z down to a two storey height within the gymnasium in the east of the site. Refer to Figure 12 which illustrates this appropriate transition to St Luke's Oval and surrounding public open space.
- The natural topography of the area is generally level within and surrounding the development footprint, and the development suitably responds to this.



Figure 12: Extract from proposed Streetscape Elevation – Stanley Street (JDH, 2023)

### 2.4.2 Objectives of the Zone

Under the provisions of the CBLEP 2013, the site is zoned R3 Medium Density Residential. The R3 zone objectives are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Having regard for the height variation, the proposed development is considered to remain consistent with the zone objectives for the following reasons:

- The proposed development, comprising upgraded facilities and school buildings, will provide facilities and educational services which will meet the day to day educational and developmental needs of the community, accommodating a minor increase in students base with purpose-built, high-quality infrastructure and learning spaces.
- The design of the new school buildings is generally compatible with the diverse architectural forms both within the site and the locality. Notwithstanding, the new buildings possess significant building separation from the nearest residential properties and will be visually obscured on-site and within the streetscape by existing mature street trees and internal site vegetation.
- The height variation will facilitate the siting of new development, accommodating existing student numbers and increases resulting from a growing local population, in an area of the site which will generate no significant environmental, heritage or amenity impacts to the locality.

### 2.4.3 Objectives / Aims of the LEP

The objectives / aims of the Canada Bay LEP 2013 are:

- (2) *The particular aims of this Plan are as follows—*
- (aa) *to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
  - (a) *to create a land use framework for controlling development in Canada Bay that—*
    - (i) *allows detailed provisions to be made in any development control plan made by the Council, and*
    - (ii) *is consistent with the Canada Bay Local Strategic Planning Statement adopted by the Council on 15 October 2019,*
  - (b) *to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,*
  - (c) *to achieve high quality urban form by ensuring that new development reflects the existing or desired future character of particular localities,*
  - (d) *to promote sustainable transport, reduce car use and increase use of public transport, walking and cycling,*
  - (e) *to provide high quality open spaces and a range of recreational facilities,*
  - (f) *to conserve the environmental heritage of Canada Bay,*
  - (g) *to promote ecologically sustainable development,*
  - (h) *to facilitate public access to foreshore land.*

The proposed development, inclusive of height exceedance, is considered to be consistent with the relevant aims of the CBLEP 2013, for the following reasons:

- The proposed development will contribute to and promote the use of land for and encouragement of arts and cultural activity through the provision of a new gymnasium/ hall, movement studio and visual arts facilities at the school.
- The development will maintain and enhance the existing amenity and quality of life of the local community by providing school upgrades which will cater for the employment, welfare and recreational needs of residents and visitors.
- The architectural design is of a high quality and the contemporary design is reflecting of the existing and future desired character of the Concord suburb and Canada Bay LGA.
- The proposed development promotes bicycle use through the provision of significant bicycle storage facilities. This ultimately encourages active and sustainable transport usage.
- High quality open spaces and facilities are to be provided within the school grounds including landscaped seating areas and new games courts with orientation to Crane Street.
- Environmental impacts are minimised through the siting of the development largely within the built form footprint and the design and the appropriate management of features of environmental and heritage significance assist further in the management of the site. The variation in height facilitates a smaller development footprint which in turn assists in the retention of trees that contribute to the heritage significance of the site.
- The proposal is consistent with the requirements for ecologically sustainable development, incorporating sustainable transport initiatives, utilising natural lighting and ventilation and featuring sustainable energy sources, such as rooftop solar panels.

## 2.5 Planning Secretary Concurrence

The development proposes a variation of greater than 10%, therefore in accordance with the Planning Circular (PS 20-002), assumed Secretary's concurrence is not provided to a delegate of Council. Notwithstanding, the proposal is classified as Regionally Significant Development which will be referred to the Sydney Eastern City Planning Panel for determination. Note as per Planning Circular PS20-002, Planning Panels constituted under the Environmental Planning and Assessment Act 1979 exercise consent authority functions on behalf of a Council and do not require Secretary's concurrence.

Additional matters required in Clause 4.6(5) are addressed in subsections below.

### 2.5.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning?

The proposed variation to the building height has been justified in relation to the environmental planning considerations in Section 2.3 and the development will not raise any matters of State or regional environmental planning significance.

### 2.5.2 Would the contravention raise any significant matter or hinder the attainment of the objects of the Act?

The objects of the Act are as follows:

- (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,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The proposed variation is consistent with a number of objects including:

- Promotion of the orderly and economic use and development of land is to be achieved through integration of high quality and sustainable built form, providing for the educational needs of the existing school and the community;
- Promotion of good design and amenity of the built environment through a considered architectural response to the site and existing heritage development;
- Promotion of sustainable management of the heritage items on and adjacent to the site, therefore protecting and enhancing the cultural heritage of Concord and the Canada Bay LGA; and



- Promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.

### 2.5.3 Is there public benefit in maintaining the development standard?

No. For the reasons outlined above, the proposal is considered to be designed with consideration of the unique site location and adjoining public open space and the proposed height exceedance will not generate unacceptable adverse impacts on surrounding development, public spaces or the environment.

The proposed development will provide a range of social, economic and public benefits including but not limited to:

- The proposal, inclusive of the proposed height exceedance, has been designed to generate no unacceptable impacts to adjoining properties and the public domain.
- As areas of impact are currently and will continue to be shaded, the height exceedances do not significantly impact upon any public spaces, and the built form appropriately accommodates the visual bulk of the development through a high level of articulation when viewed from the streetscape. It should be noted that view of the proposed new buildings will be limited from the surrounding streetscape due to the existing mature tree line within the Crane Street and Stanley Street road reserves.
- The development will provide a much-needed upgrade to the school and its learning space provision for existing staff and student numbers, currently accommodated in temporary demountable classroom infrastructure in close proximity to residential receivers.
- The retention of trees that would be otherwise removed to facilitate a larger footprint and lower built form will assist in the maintenance of heritage values across the site.
- The variation in height is confined to the far south and south-east of the school site and is considered to be supportable on merits, based on suitable building separation and visual screening of the proposed building envelopes.

## 2.6 Is the objection well founded?

The objection to the contravention of the development standard has identified that the proposed height variation will result in a better environmental and urban design outcome for the constrained school site when considered against a proposal that employs strict compliance with the development standard.

The submission has also determined that the height variation will not generate unacceptable view loss, privacy, overshadowing or visual impacts.

Accordingly, this objection and submission has been considered to be well founded and should be supported.

### 3 Conclusion

Strict compliance with the development standard is considered to be unnecessary in the circumstances of the proposed development given the localised height variations will result in a better design and environmental outcome for the school and surrounds than a development that incorporates strict compliance with the height control.

The design nor the occupation of the new school buildings within the area of exceedance will generate no unacceptable amenity or environmental impacts on surrounding development, comprising Council parklands. The proposal also represents a quality upgrade to a constrained yet significant site in need of improved school infrastructure to meet existing staff and student needs.

This Clause 4.6 submission has determined that the predominant environmental planning grounds identified to justify the variation is based on the improved design and amenity of the built and natural environment which includes the following advantages:

- Improvement to the scenic values of the site and locality.
- No adverse impact on any views or vistas.
- No significant adverse impacts associated with overshadowing.
- Protection of visual privacy within the locality, external and internal to the site.
- Better maintenance of the heritage listed landscape through the design of a taller building with a smaller footprint that can facilitate the retention of more trees.
- Maintenance of appropriate acoustic privacy.

Based on these it can be determined that the proposal complies with the objectives of the building height LEP provisions, specific R3 zone objectives as well as the general objectives of the CBLEP 2013 and Environmental Planning and Assessment Act 1979.

The consent authority can be assured that contravention of the height control will not result in any unreasonable environmental planning impacts and the request for variation to the height control is therefore considered to be in the public interest.