

# 1. INTRODUCTION

This document, referred to as a 'Clause 4.6 Variation' has been prepared in support of the subject DA to Campbelltown City Council seeking consent to the demolition of existing structures and construction of a seniors housing development on land at Old Menangle Road, Campbelltown. The proposed development includes a departure from the maximum building height development standard pursuant to Division 3, Section 87(2)(c) of State Environmental Planning Policy (Housing) 2021 ('Housing SEPP').

This Clause 4.6 Variation has been prepared in accordance with Section 35B of the Environmental Planning and Assessment Regulation 2021. It sets out why strict compliance with the maximum building height standard is unreasonable or unnecessary in the circumstances and the environmental planning grounds justifying the departure.

## 1.1 The Site

The site the subject of the DA comprises the following land parcels and has a total area of 5,963.4m<sup>2</sup>, with frontages to both Old Menangle Road and Camden Road:

Lot & DP	Existing Development
Part Lot 10 DP 1134526	The area of Lot 10 subject to the development proposal currently forms an at-grade car parking area used by patrons of the Campbelltown Catholic Club.
Lots 3 & 4 DP 193040	An existing single storey brick and tile dwelling and associated outbuildings.
Lot 61 DP 997095	Emily Cottage, a heritage item of local heritage significance.

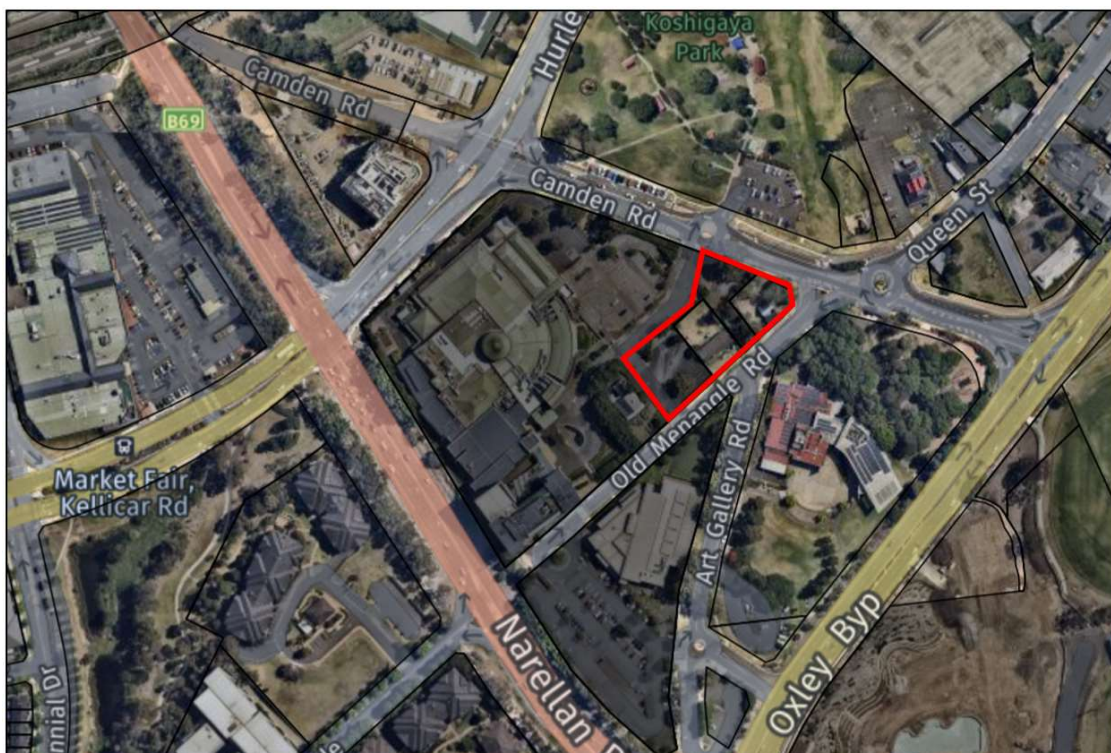


Figure 1: The Site denoted by red outline (Source: Nearmap, 2023).

Immediately adjoining the site to the north-west is an existing vehicular access driveway that services the Campbelltown Catholic Club carpark, off Camden Road. The Campbelltown Catholic Club building and at-grade car parking is located to the north-west on Lot 10 DP 1134526. Also located on Lot 10 is the Rydges 4-star Hotel and Aquafit gym, to the south and west of the subject site. Koshigaya Park is located to the north-east of the site. Immediately to the south-east of the site is the Campbelltown Arts Centre and the Japanese Garden and Tea House.

The site is centrally located in proximity to key health, retail and cultural facilities including:

Queen Street retail precinct, including Campbelltown Mall, various medical centres and restaurants	Approximately 350m walk
Macarthur Square shopping centre, including an Events Cinema	Approximately 1.4km drive
HJ Daley Library	Approximately 500m walk
Campbelltown Arts Centre	Approximately 290m walk
Campbelltown RSL	Approximately 1.6km drive
Campbelltown Public Hospital	Approximately 1.5km drive
Campbelltown Private Hospital	Approximately 900m drive
Genesis Care Centre	Approximately 600m walk

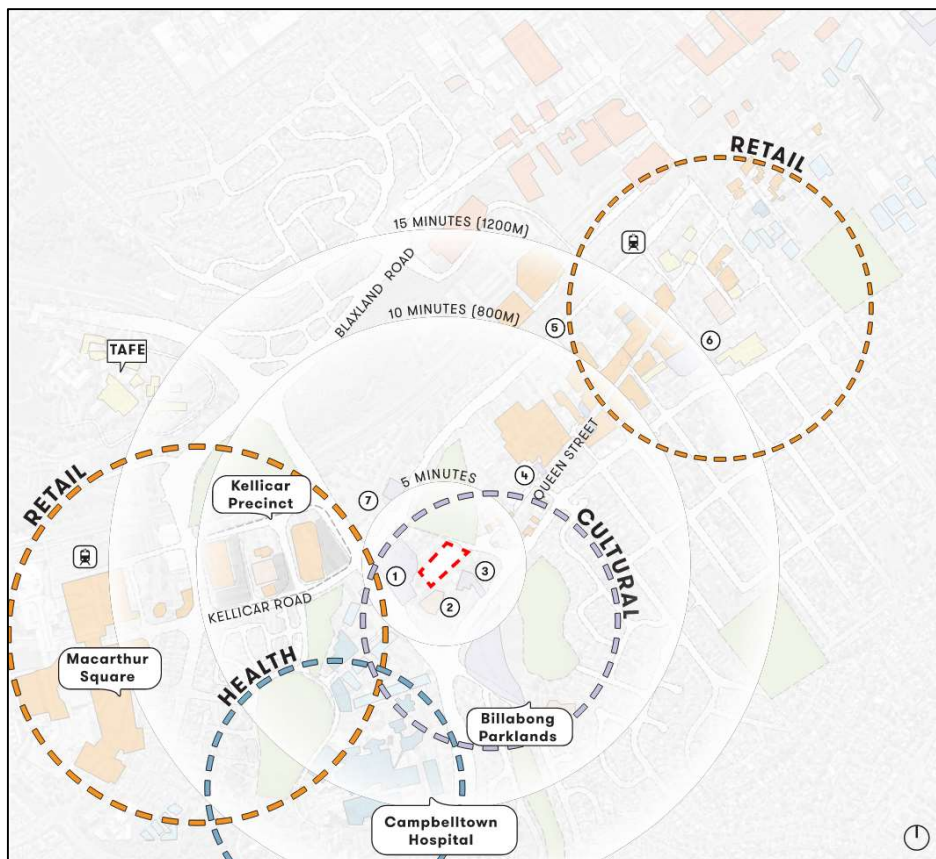


Figure 2: Site proximity to retail, health & cultural precincts (Source: Scott Carver, 2023).

## 1.2 The Proposal

Consent is sought for the demolition of existing structures including a single storey brick and tile dwelling, associated outbuildings and hardstand carpark and the construction and operation of an eight (8) storey seniors housing independent living unit development. The proposed building comprises:

- Three levels of basement car parking including two (2) levels of resident car parking (125 spaces) and one (1) level of Catholic Club staff parking (88 spaces); to compensate for the at-grade club car parking spaces lost as a result of the proposed development. Access to the resident level is proposed via the existing internal access driveway for the Catholic Club development, off Camden Road. Access to the staff parking level is to be gained internally from the existing Catholic Club basement.
- The ground floor incorporates an entrance lobby / reception and communal amenities for residents including a pool, golf, wellness facility, workshop, lounge, library, lounge, cinema and function space, consultation space and office. The ground floor also includes back of house areas including plant rooms, a waste room and comms room in addition to 10 visitor car parking spaces. A Porte cochere arrangement off Old Menangle Road provides the primary access to the lobby and reception area
- Seven (7) levels of seniors housing comprising 61 x 2 bedroom independent living units and 31 x 3 bedroom independent living units. Each unit has access off a living area to a private terrace. Level 1 includes a terrace with a communal garden.
- Emily Cottage is proposed to be adaptively reused to provide a wine room and library, with a communal garden for the enjoyment of residents and their families.

The originally submitted design, based on flood level information obtained from Campbelltown City Council at the time, adopted a finished ground floor level of RL 71.100. In response to further flood level information subsequently provided by the Council, the finished ground floor level has been amended to RL 71.600.

## 2. STANDARD THE SUBJECT OF THE VARIATION REQUEST

### 2.1 Section 4.3 of the CLEP 2015 & Section 87(2)(c) of the Housing SEPP

A departure is sought from the maximum building height development standard afforded to development pursuant to Chapter 3, Part 5, Division 3, Section 87(2)(c) of the Housing SEPP (Additional floor space ratios).

Section 87 of the Housing SEPP permits an additional 15% of the maximum permissible floor space ratio ('FSR') for development involving independent living units at the subject site, provided the building has a height of not more than 3.8m above the maximum permissible building height. As there is no maximum permissible FSR applying to the site, the additional floor space is essentially subject to the maximum permissible building height development standard at s87(2)(c).

The maximum permissible building height for the purposes of Section 87(2)(c) is determined via a combination of the provisions of Clause 4.3 of the CLEP 2015 and Section 87(2)(c) of the Housing SEPP. The CLEP 2015 prescribes a maximum building height of 19 metres to the site. Section 87(2)(c) provides an additional 3.8 metres; resulting in a maximum permissible building height of 22.8 metres.



The proposed development has the following maximum building heights exceedances above 22.8m:

Portion of building	Building Height	Numerical exceedance	Percentage of exceedance
Roof	25.573m to 27.22m	+2.673m to +4.42m	11.72% to 19.38%
Screening	28.02m	+5.22m	22.89%
Lift-overrun	28.65m	+5.85m	25.65%

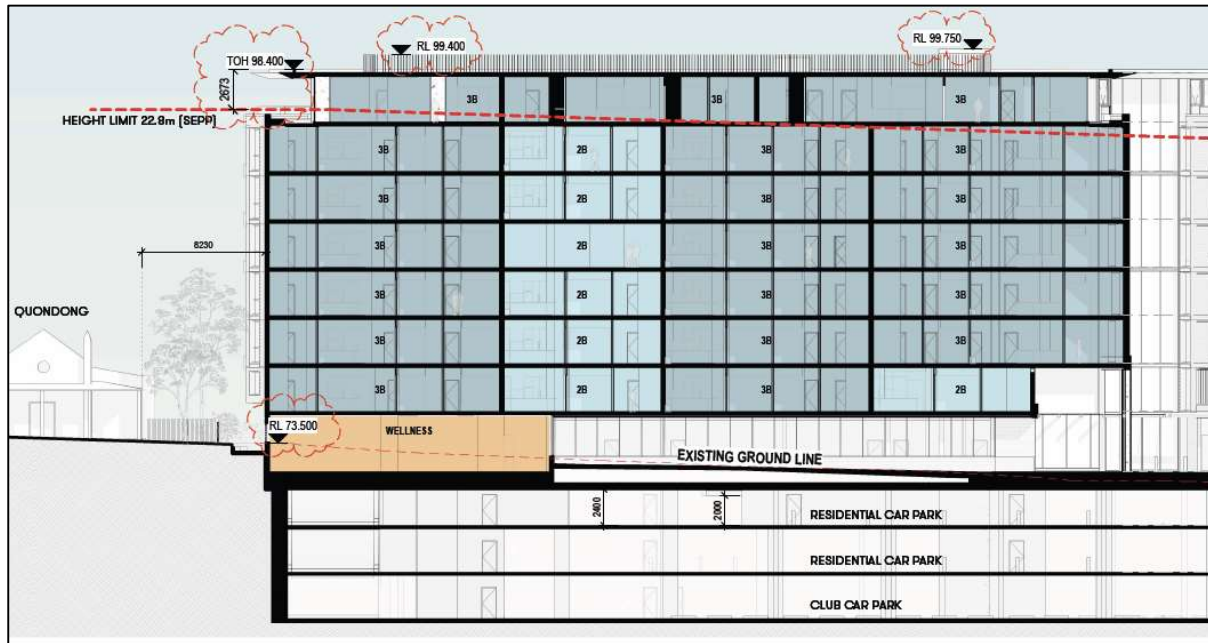


Figure 3: Extract - Longitudinal Section of Scott Carver plan *Overall Sections – Sheet 1* (Dwg no. AD-DA301 Rev: 3)

The maximum contravention of the 22.8m building height applies to the lift-overrun component of the building at 28.65m, which comprises a minor portion of the building.

### 3. THRESHOLDS THAT MUST BE MET

#### 3.1 Clause 4.6 of CLEP 2015

Clause 4.6 of the CLEP 2015 provides (our emphasis added):

- (1) *The objectives of this clause are as follows—*
  - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this **or any other environmental planning instrument**. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

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

Clause 4.6(2) refers to *any other environmental planning instrument*, which includes a reference to the Housing SEPP; permitting the granting of development consent for the development even though it would contravene the maximum permissible building height development standard imposed by the Housing SEPP.

The following Section 4 addresses the matters at Clause 4.6(3)(a) and (b) and Clause 4.6(4) is a matter for the consent authority.

### 3.2 Relevant Case Law Authority

In addition to the provisions of Clause 4.6, there are several key judgements of the NSW Land and Environment Court that provide further guidance in justifying a variation to a development standard, as detailed below.

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* emphasises that the proponent must address the following:
  - Compliance with the development standard is unreasonable and unnecessary in the circumstances.
  - There are sufficient environmental planning grounds to justify contravening the development standard.
- In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established five (5) potential ways for determining whether a development standard could be considered unreasonable and unnecessary:
  - The objectives of the standard are achieved notwithstanding the non-compliance with the standard.
  - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.
  - The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
  - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or
  - The zoning of the particular land is unreasonable or inappropriate so a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.
- In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified the appropriate approach to the consideration of Clause 4.6, significantly that the clause does

not require that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not.

## **4. JUSTIFICATION FOR THE CONTRAVENTION OF THE DEVELOPMENT STANDARD**

### **4.1 Establishing if the development standard is unreasonable or unnecessary**

Subclause 4.6(3)(a) and the judgement in *Four2Five Pty Ltd v Ashfield Council* emphasise the need for the applicant to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances of the case.

In establishing that compliance with maximum building height development standard is unreasonable and unnecessary, we need to understand the objective of the bonus 3.8m building height provision at Section 87 of the Housing SEPP. Section 87 incentivises the delivery of seniors housing in medium and high-density urban areas by affording floor space ratio ('FSR') bonuses, including a 15% FSR bonus for independent living units. To facilitate the additional FSR, without the need for a Clause 4.6, Section 87 also affords development a commensurate additional 3.8m in building height above the maximum permissible building height.

The 3.8m building height bonus limits the extent of the height increase to facilitate development in a manner that does not unreasonably impact the character and amenity of the locality.

The scale of the building, when considered in the context of existing maximum building heights of the surrounding areas, provides a transition from the Park Central development to the south-west, on the southern side of Narellan Road which has an established maximum building height of 22.5m and the CBD core to the north-east which is currently subject to a maximum 32m building height; that could increase in the future.

The height of the building is commensurate in scale to the established Rydges building to the west, owing to the site levels. The roof RL of the development is only marginally higher than the finished level of the Rydges building parapet by 0.78m, which in elevation form, presents a consistent streetscape to Old Menangle Road.

The recessing of the uppermost building level further reduces the mass impression of the building from the Old Menangle Road frontage and ensures that amenity impacts on adjoining developments are minimised, including the Arts Centre. A comparative shadow analysis between a Housing SEPP compliant building height and the proposed building height demonstrates that, owing to the orientation of the site, the development would generate only a marginal increase to overshadowing of the Arts Centre site from 3pm at the Winter solstice.

The development has been designed to respond to the surrounding and future context of the locality, as envisaged in the *Reimagining Campbelltown City Centre Master Plan* (Reimagining Campbelltown), which acknowledges *"the best design solutions deliver place-based outcomes that respond to context and are instinctively stitched into their surroundings."* Strict compliance with Section 87(2)(c) of the Housing SEPP is considered unreasonable and unnecessary given strict compliance with the development standard would limit the opportunity for the development to deliver a building that is site responsive and presents a built form scale that is appropriate to the locality.

Having regard to the above, the strict application of the building height development standard pursuant to Section 87 of the Housing SEPP is unnecessary and unreasonable in the circumstances of the case.

## 4.2 Sufficient environmental planning grounds to justify contravening the development standard

The environmental planning grounds that support the departure from the maximum building height development standard are detailed and discussed below.

### 4.2.1 GOOD DESIGN THAT IS CONTEXTUALLY APPROPRIATE

The location of the development in the existing Catholic Club site, is consistent with an outcome of the Reimagining Campbelltown City Centre Master Plan ('Reimagining Campbelltown') for the Cultural Precinct; to *"build upon the success of existing assets."* The building has been sited and designed to integrate with the existing buildings on the Campbelltown Catholic Club site, presenting a built form and material palette that facilitates the development having its own unique presence whilst also maintaining consistency with the established buildings. The height of the building is commensurate in scale to the established Rydges building to the west, owing to the site levels. The roof RL of the development (RL 98.200) is only marginally higher than the finished level of the Rydges building parapet (RL 97.414) by 0.786m, which in elevation form, presents a consistent streetscape to Old Menangle Road (see **Figure 4**).

Reimagining Campbelltown identifies various precincts within the city centre. The site is located in the Cultural Precinct, which is centrally nestled between the Core CBD Precinct to the north-east and the Health, Knowledge and Innovation Precinct to the south-west.

A key outcome for the Health Knowledge and Innovation Precinct is to *"cross-pollinate business, research and ideas through higher intensity mixed use developments that co-locate health, education, retail, and ancillary residential and minor commercial uses."* The proximity and accessibility of the site to this precinct affords the opportunity to capitalise on the existing and desired future services to meet the needs of future residents.

At the heart of the Cultural Precinct is the Campbelltown Arts Centre, with Reimagining Campbelltown acknowledging that *"the development of a precinct around the arts centre will create an opportunity for the community to access a diverse range of high-quality artistic works and play a key role in development of jobs and creative economy. The Arts Centre and precinct will be amenity for residents, workers and visitors alike."* The development has been designed to create an active interface with the Campbelltown Arts Centre site immediately to the east. The main pedestrian and Porte cochere entrance of the building is off Old Menangle Road, appreciating the future redevelopment of the Arts Centre, as part of the NSW Government's WestInvest Program.

The recessing of the uppermost building level reduces the mass impression of the building from the Old Menangle Road frontage and ensures that amenity impacts on adjoining developments are minimised, including the Arts Centre. A comparative shadow analysis between a Housing SEPP compliant building height and the proposed building height demonstrates that, owing to the orientation of the site, the development would generate only a marginal increase to overshadowing of the Arts Centre site from 3pm at the Winter solstice (see **Figure 5**).

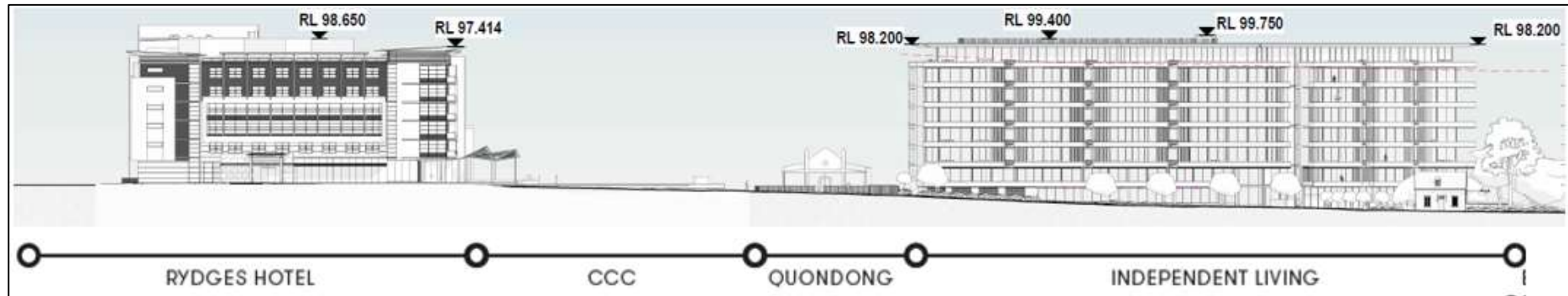


Figure 4: Old Menangle Road Street Elevation (Source: Scott Carver Architects)

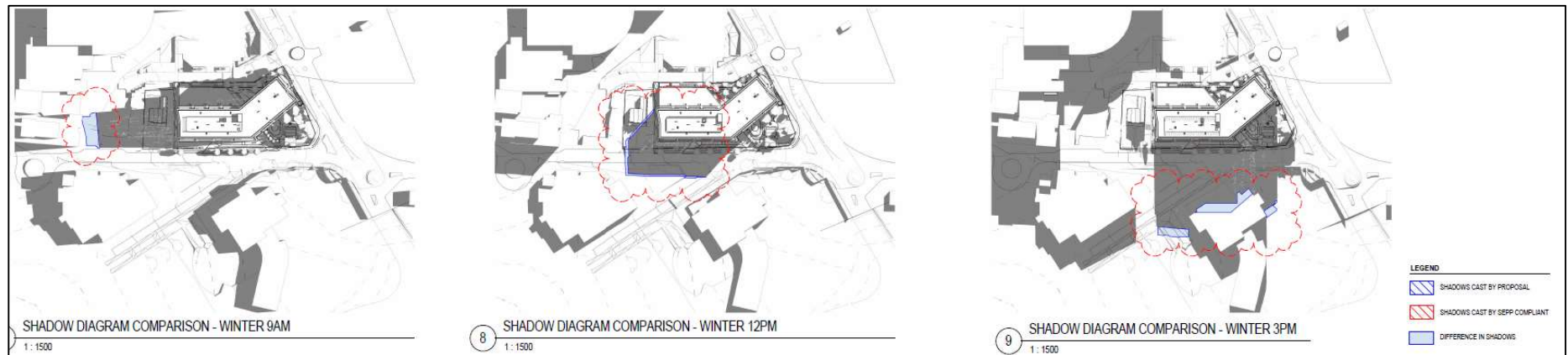


Figure 5: Extract from Scott Carver plan *Shadow Diagrams – Proposed* (Dwg no. AD-DA811 Rev: 2)



The development not only responds to the established context of the site within the Campbelltown city centre, but it also responds to the future context, as envisaged in Reimagining Campbelltown, which relevantly notes that *"capacity testing of the Master Plan, incorporating selective rezoning at the right times and sensitively accommodating additional height in key locations, identified the City Centre has potential capacity to support four times the projected floor space demand over the next 20 years."* The proposed building design is site responsive, acknowledging the site's corner location at the intersection of Old Menangle Road and Camden Road. The scale of the building, when considered in the context of existing maximum building heights of the surrounding areas, provides a transition from the Park Central development to the south-west, on the southern side of Narellan Road which has an established maximum building height of 22.5m and the CBD core to the north-east which is currently subject to a maximum 32m building height; that could increase in the future.

The impact of the proposed development on the heritage significance of Emily Cottage and Quondong has been considered as part of the Statement of Heritage Impact ('SoHI') that accompanies the DA, which relevantly concludes that *the proposed works are considered acceptable from a heritage perspective and would not result in adverse impacts to the heritage significance of the subject site or vicinity heritage items.* The SoHI acknowledges how the proposed landscape setting provides a curtilage for Emily Cottage in conjunction with the proposed building setbacks and site massing and articulation. The proposed development will contribute to achieving a vision for the Cultural Precinct in Reimagining Campbelltown; that *"within the Cultural Precinct will be a collection of unique buildings that frame and engage with the surrounding natural landscape."*

#### 4.2.2 DELIVERY OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The development has been designed to achieve a 5 Star Green Star Buildings Certification, using the Green Star Buildings tool. An internationally recognised rating system, Green Star sets the standard for healthy, resilient, positive buildings that:

- Reduce the impact of climate change;
- Enhance health and quality of life;
- Restore and protect biodiversity and ecosystems;
- Drive resiliency in buildings, fitouts and communities; and
- Contribute to market transformation and a sustainable economy.

#### 4.2.3 DELIVERY OF HOUSING FOR AN AGEING POPULATION

The Campbelltown Local Strategic Planning Statement 2020 ('LSPS') relevantly acknowledges *"our existing community has a large ageing population"* with *"the late working age group between 55 – 69 years expected to grow by less than 30% whereas the retirees age group 70 and above, will more than double."* The proposed development is consistent with Planning Priority 2 of the LSPS, which relates to creating high quality diverse housing, in the right locations. The provision of 92 independent living units will contribute to accommodating Campbelltown's ageing population, in an accessible location that is well serviced by a range of retail, medical, social and cultural facilities to meet the needs of residents.

## **5. CONCLUSION**

It is requested Campbelltown City Council exercise its discretion and find this Clause 4.6 request adequately addresses the matters required to be demonstrated by Subclause 4.6(3) of the CLEP 2015. The variation request is well founded and there are sufficient environmental grounds to justify the contravention of the maximum building height development standard.

**Paul Hume**  
Senior Town Planner  
Premise

10 September 2024