

AMENDED CLAUSE 4.6 VARIATION REQUEST

Height of Buildings Development Standard
North Sydney Local Environmental Plan 2013

Mater Hospital - 35 Rocklands Road, Wollstonecraft

May 2018

INTRODUCTION

This amended clause 4.6 variation request accompanies the amended Statement of Environmental Effects (SEE), dated 24 April 2018, submitted to North Sydney Council for the proposed extension to the Mater Hospital at 35 Rocklands Road, Wollstonecraft. The proposal to extend the hospital has been amended following the receipt of objections from surrounding residents feedback from Councils Design Excellence Panel (12.12.17) and further Council advice (NSC let.21.12.17). This request should be read in conjunction with the amended SEE and the revised architectural plans provided by Zone Architects.

1. SITE AND PROPOSAL

The subject site is known as the Mater Hospital at 35 Rocklands Road, Wollstonecraft and contains the main 4 storey hospital building with carparking to the rear of the site. The hospital, along with the Mater Clinic at 3-9 Gillies Street and the heritage listed building at 11-13 Gillies Street, used for medical and health related purposes, make up the Mater Campus. The legal description of the subject site is Lots 54-60 in Deposited Plan 826360.

The subject site is shown in the aerial photograph in Figure 1 below.

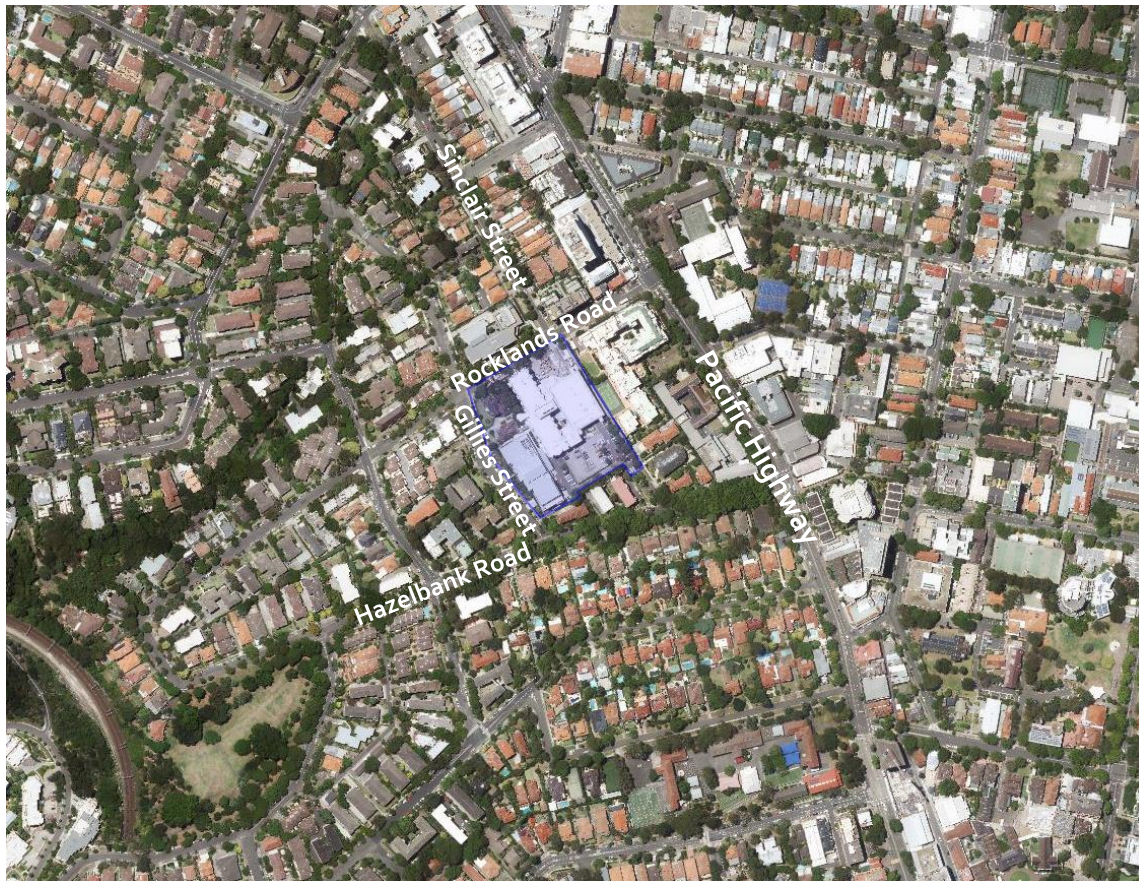


Figure 1: Aerial Photo of the site (Source: Spatial Services Portal NSW Government)
Location of subject site shaded in blue

The revised proposal involves the construction of two 2 storey buildings extending from the eastern façade of the main hospital building, over the existing rear carparking area to the rear of the site.

The location of the proposed additions is shown in Figure 2 below.



Figure 2: Aerial Photo of the site (Source: Spatial Services Portal NSW Government)
Location of proposed extensions outlined in red

The proposed development is shown in the architectural plans and comprises the Mater Palliative Care Service Unit, Day Surgery and Ambulatory Care Centre, Executive offices and Consulting suites over basement level car parking, separated across two buildings. The Executive offices building, also containing the consulting suites, is located along the northern boundary of the site, adjacent to the residential flat building at No. 41 Rocklands Road. The Mater Palliative Care Service (MPCS) building, also containing the Day Surgery and Ambulatory Care Centre, is located along the southern boundary of the site adjacent to the Mater Clinic. Each proposed building is 2 storeys in height and are separated by a landscaped courtyard for use by patients and visitors of the Palliative Care Service Unit.

The Executive offices building is separated from the main hospital building allowing for the existing vehicular access to the lower carparking levels and pedestrian access into the rear part of the site to be retained. The MPCS building is attached to the main hospital building with the levels of the proposed addition aligning with the first 2 levels of the existing hospital to ensure easy access and circulation between the new and existing development. Both buildings include entryways from the landscaped courtyard and lift access from the basement level parking areas.

The subject site has a maximum permissible building height of 12m pursuant to clause 4.3 of the NSLEP 2013 and the corresponding Height of Buildings (HOB) map. The existing building ranges in height from 17.7m to 23m, including the plant room on the roof. The proposed extensions are well below the height

of the existing building and generally comply with the 12m height limit for the site except for a relatively minor exceedance towards the south-eastern parts of the Palliative Care building, due to the sloping nature of the site. The greatest exceedance of the height control occurs along the boundary of the site and the existing Mater Clinic to the South. The Mater Clinic makes up part of the hospital site and therefore the consideration of impacts has been undertaken for the surrounding residential developments only.

2. NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

Clause 4.6 provides flexibility to vary the development standards specified within the LEP where it can be demonstrated that the development standard is unreasonable or unnecessary in the circumstances of the case and where there are sufficient environmental grounds to justify the departure.

Clause 4.6(3) of the NSLEP 2013 outlines the requirements to be addressed to give grounds of objection to the development standard, including:

- 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.

Under Clause 4.6(4)(a) of the NSLEP 2013, consent for a development that contravenes a development standard must not be granted unless, in addition to the issues in Subclause 4.6(3), the consent authority is satisfied that:

- (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.

This variation request has been prepared with regard to the following considerations:

- Clause 4.6 of the NSLEP 2013;
- The relevant case law, specifically the considerations for assessing development standards set out by Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC; and
- 'Varying development standards: A Guide', published by the Department of Planning and Infrastructure in August 2011.

In summary, while the proposal does not comply with the building height standard of the NSLEP 2013 due to a slight exceedance toward the eastern and south-eastern corner of the site, it is well below the height of the existing hospital building and is consistent in height and scale with the surrounding developments.

Such a variation is reasonable on the basis that a) the breach of the height control is considered to be minor and does not result in a material impacts to the surrounding residential properties and has been designed to maintain existing solar access, privacy and the retention and sharing of views, and b) the

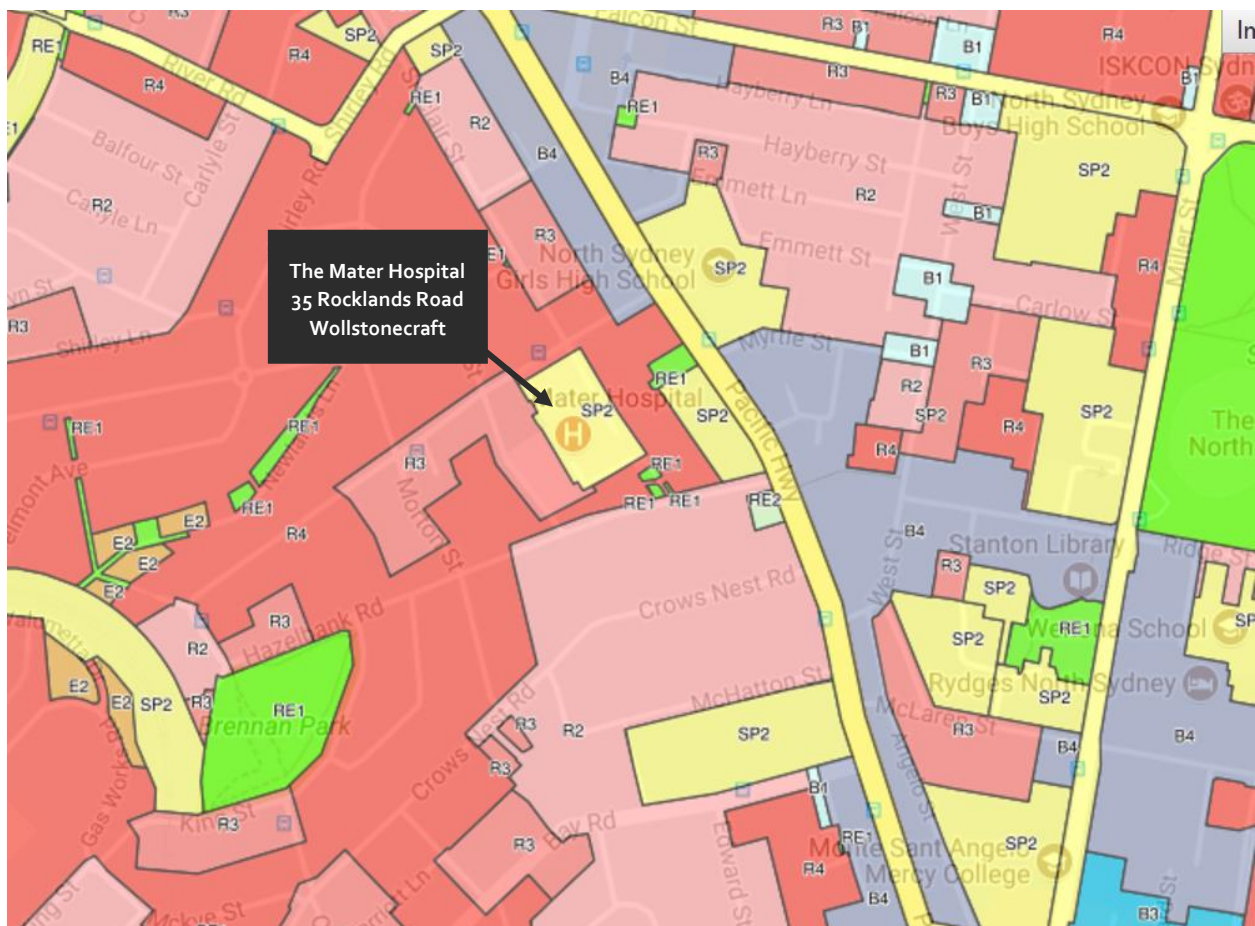
important use of the site as a health facility that services the surrounding community and seeks to provide a broad range of medical services to cater for all stages of life warrants an approach that properly considers and mitigates these factors beyond strict adherence to the LEP provisions.

3. THE RELEVANT PLANNING INSTRUMENT AND DEVELOPMENT STANDARDS THAT APPLY TO THE LAND

The Environmental Planning Instrument (EPI) to which this variation relates is the North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The subject site is zoned SP2 Infrastructure – Health Service Facility pursuant to clause 2.2 of NSLEP 2013. The Mater Campus also includes the properties at 3-13 Gillies Street, which are zoned for R3 – Medium Density Residential, however have been approved for use as medical and health service facilities.

The land use zoning is shown below in Figure 3.



Figures 3 and 4: Zoning of the subject site
Source: NSW Department of Planning and Environment, Planning Portal 2017

4. OBJECTIVES OF THE ZONE

Under the NSLEP 2013, the objectives of the SP2 – Infrastructure zone are to:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The uses permitted with consent in the SP2 zone include:

Roads; and the purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose.

Land zoning maps LZN_001 and LZN_002A of the NSLEP 2013 identify the site as SP2 – Health Service Facility.

A Health Services Facility is defined in the NSLEP 2013 as: *a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons, and includes any of the following:*

- a) *a medical centre,*
- b) *community health service facilities,*
- c) *health consulting rooms,*
- d) *patient transport facilities, including helipads and ambulance facilities,*
- e) *hospital.*

5. HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

The development standard subject to this clause 4.6 variation request is the “height of buildings” standard under clause 4.3 of the NSLEP 2013.

The objectives of this clause are as follows:

- a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- b) to promote the retention and, if appropriate, sharing of existing views,
- c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- e) to ensure compatibility between development, particularly at zone boundaries,
- f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

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.

The subject site has a maximum permissible building height of 12m as identified on the Height of Buildings (HOB) maps HOB_001 and HOB_002A in the NSLEP 2013.

The height of buildings control is shown below in Figure 4.

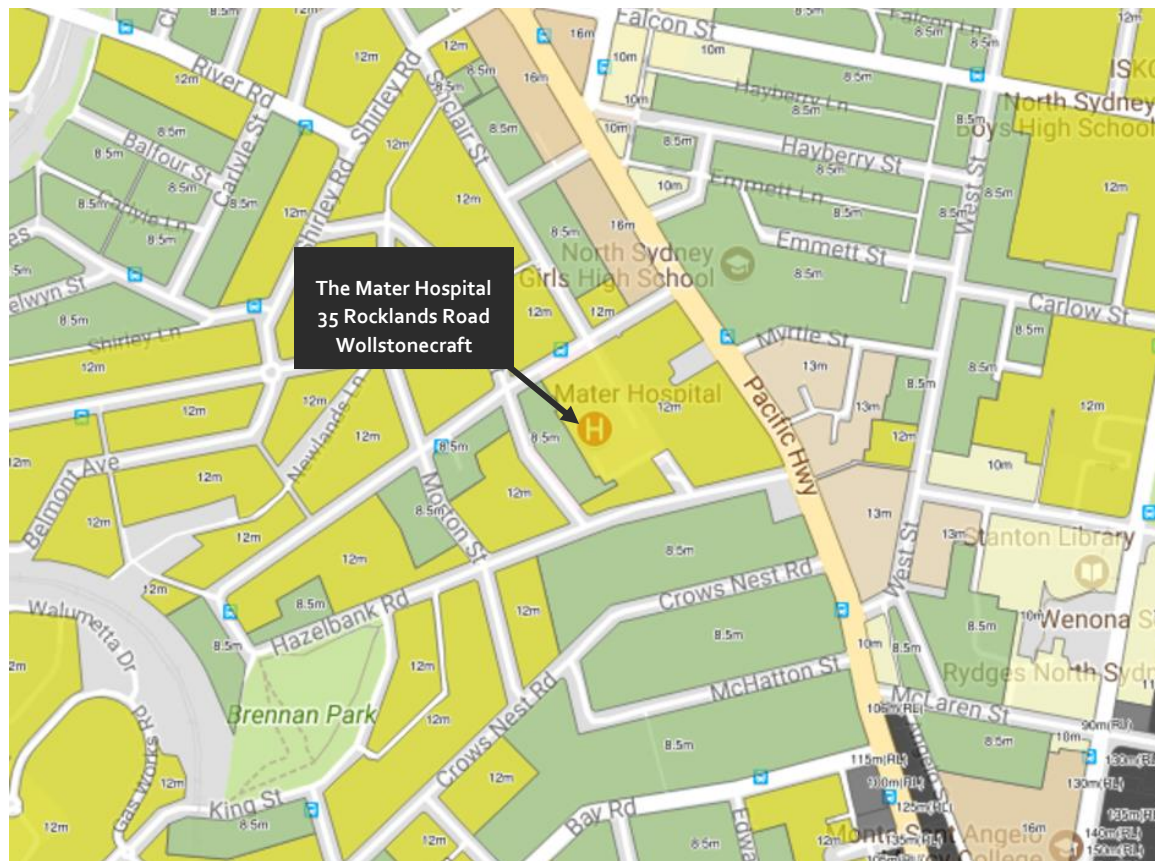


Figure 4: Height of building control of the subject site (Source: NSW Department of Planning and Environment, Planning Portal 2017)

The extensions to the rear of the main hospital building are proposed to be 2 storeys, which is well below the height of the existing building. The height exceedance mainly occurs along the south-eastern corner of the MPCS building. While every effort has been made to design the proposed extensions to align with the natural topography of the site, due to the steep decline at this point and the operational medical requirement to match the levels of the existing hospital, the extension will exceed the height limit by a maximum of 3.9 m at the south-eastern corner of the MPCS building tapering away to zero at the northern face. Figure 5 below shows the extent of the height exceedance along the eastern boundary of the site.

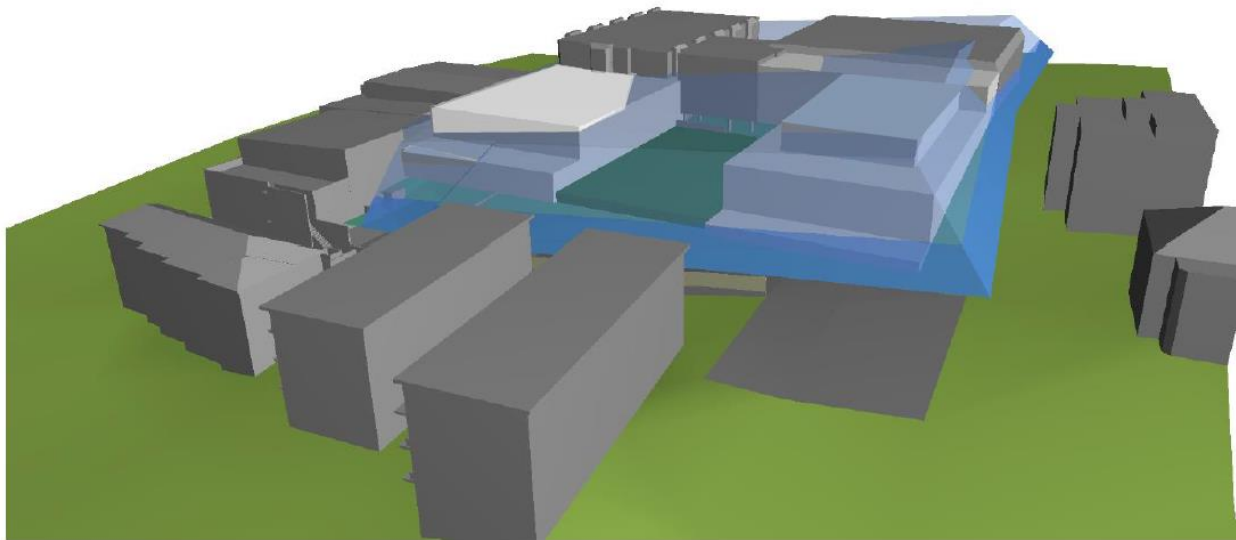


Figure 5: 3D image of development with building height envelope

CLAUSE 4.6 ASSESSMENT

This section assesses the proposed variation to consider whether compliance with the building height standard can be considered unreasonable or unnecessary in this specific circumstance, and whether there are sufficient environmental planning grounds to justify contravening the development standard.

6. CLAUSE 4.6 AND CASE LAW CONSIDERATIONS

The following assessment is structured in accordance with the three matters for consideration as phrased in the *Wehbe* decision:

- 1) The applicant must satisfy the consent authority that "the objection is well founded", and compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- 2) The consent authority must be of the opinion that granting consent to the development application would be consistent with the policy's aim of providing flexibility in the application of planning controls where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in s5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*; and
- 3) It is also important to consider:
 - a) whether non-compliance with the development standard raises any matter of significance for State or regional planning; and
 - b) the public benefit of maintaining the planning controls adopted by the environmental planning instrument.

Consideration has also been given to the findings of the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson and upheld on appeal by Justice Pain. This

case found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

- Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity); and
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone which applies to site.

An assessment of the proposed variation to the HOB standard against the provisions of Clause 4.6 and the relevant case laws is provided in the following sections.

6.1 THE OBJECTION IS WELL FOUNDED AND COMPLIANCE WITH THE STANDARD IS UNREASONABLE OR UNNECESSARY

In the *Wehbe* decision, Preston CJ set out five ways in which an objection to a development standard can be supported:

- 1) ***the objectives of the standard are achieved notwithstanding non-compliance with the standard;***
- 2) *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3) *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore 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 compliance with the standard is unnecessary and unreasonable;*
- 5) *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.*

6.1.1 THE OBJECTIVES OF THE STANDARD ARE ACHIEVED NOTWITHSTANDING NON-COMPLIANCE WITH THE STANDARD

The first consideration, demonstrating that the objectives of the height standard can be achieved notwithstanding noncompliance, is most important to the assessment of this objection. The compliance of the proposed development and variation with the objectives of the height standard in Clause 4.3 of the NSLEP 2013 and compliance with the zone objectives is demonstrated below.

Compliance with the objectives of the HOB development standard

A) TO PROMOTE DEVELOPMENT THAT CONFORMS TO AND REFLECTS NATURAL LANDFORMS, BY STEPPING DEVELOPMENT ON SLOPING LAND TO FOLLOW THE NATURAL GRADIENT TO PROMOTE DEVELOPMENT

The topography of the area is gently sloping, extending from the Pacific Highway down towards the south-east, as described in the Character Statement for the Waverton and Wollstonecraft Planning Area. The developments in the area generally reflect this natural gradient by following the slope of the existing topography and stepping down from 41 Rocklands Road, to the main hospital building at 35 Rocklands Road and then down to those developments along Gillies Street and Hazelbank Road.

The amended plans show that the development has been redesigned to be well below the height of the existing hospital building at 35 Rocklands Road and to better align with the existing pattern of surrounding building heights that conforms to the natural gradient of the land.

B) TO PROMOTE THE RETENTION AND, IF APPROPRIATE, SHARING OF EXISTING VIEWS

The upper levels of the residential flat building at 41 Rocklands Road enjoy views towards the Sydney CBD to the east-southeast, regional views of the mountains in the west-southwest, and part regional views towards the coast to the south over the existing hospital campus. A substantial portion of the views to the south are currently obscured by existing landscaping along the boundary with 41 Rocklands Road and the hospital site.

Vistas towards the city and the mountains will be preserved, however there will be a minor impact to the views over the hospital campus towards the south due to the proposed addition extending out over the existing carparking area. However, the amended design removes the previously proposed level 3 to ensure that views across the Mater Campus from the north are largely retained.

While there is a minor impact on existing views from the north, these views are obtained across the site and are not considered to be highly valuable or iconic views, such as those of the CBD and mountains. It should also be noted that the development will only encroach part way into this view corridor allowing for the retention of the majority of the existing view over the proposed development. This impact of views to the south is considered to be minimal due to the existing limitations on these views as a result of existing established landscaping along the boundary of the site. Further, the views to the east and west will be unaffected by the proposal.

The previously proposed Level 3 has been removed from the proposal to ensure an equitable sharing of views across the site. It is submitted that there is little more that can be done to mitigate view loss issues without compromising the development potential of this site. The amended proposal is an appropriate compromise for site development and neighbour amenity.

As demonstrated by the above assessment, view loss impacts associated with the development are reasonable and have been mitigated as far as possible through appropriate building siting and design.

C) TO MAINTAIN SOLAR ACCESS TO EXISTING DWELLINGS, PUBLIC RESERVES AND STREETS, AND TO PROMOTE SOLAR ACCESS FOR FUTURE DEVELOPMENT

To the south of the existing hospital building is the Mater Clinic which forms part of the Mater Campus and to the east of the subject site are the 4 storey residential flat buildings at 20-22 Hazelbank Road. The buildings on Hazelbank Road are oriented with the principle living areas facing north and south. The western elevations of these developments, which face the boundary shared with the Mater, are either blank or contain service rooms that are partly shaded by existing trees.

The residential flat building at 1 Gillies Street, located to the south-east of the proposed addition, partly overlaps the subject boundary and the boundary with the Mater Clinic. There are two principal living areas located on each level of the building, however they are mostly obscured by existing mature trees.

A solar access assessment has been undertaken for the revised proposal to determine any impacts to neighbouring properties. During Winter, the principal living areas located in the three blocks of units will receive in excess of the 3 hours of solar access required between the hours of 9:00am and 3:00pm, comfortably meeting the solar access requirements prescribed under the DCP.

The solar access consideration has been addressed in the amended SEE report and demonstrates that the proposed exceedance of the 12m building height for the south-eastern corner of the proposed buildings would not create any unreasonable additional impact on solar access for the nearest properties or surrounding public domain.

D) TO MAINTAIN PRIVACY FOR RESIDENTS OF EXISTING DWELLINGS AND TO PROMOTE PRIVACY FOR RESIDENTS OF NEW BUILDINGS

The amended design locates consulting suites in the Executive offices building and residential apartments at No. 41 Rocklands Road opposite each other along the northern boundary. To ensure privacy is maintained for both the existing residents and the future patients the proposed development has been setback a minimum of 10m from the residential building at No. 41 Rocklands Road. The existing established vegetation along this boundary is also proposed to be retained with additional planting of trees, shrubs and ground covers proposed to help in reducing privacy impacts associated with the proposal. To further reduce any potential for overlooking all windows along the northern façade of the building will be screened with angled screens covered with plants. This feature will also act as sun-control and provide an attractive external appearance to the building.

The closest interface with surrounding residential properties for the MPCS building is at the eastern boundary of the site (20-22 Hazelbank Road and 1 Gillies Street). The amended proposal has been designed to maintain the current levels of visual privacy for surrounding residents and will provide high levels of privacy for future patients and practitioners at the Palliative Care Service Unit. Living wall screens have been added to the eastern elevation to soften the appearance of the building and provide privacy to the neighbours from the windows at the ends of the corridors. Further, the proposed building separation, the increased setback to the Ambulatory Care unit on Level 2 and the existing established vegetation along this boundary will adequately limit any potential impact on privacy to the residential developments to the east of the site.

E) TO ENSURE COMPATIBILITY BETWEEN DEVELOPMENT, PARTICULARLY AT ZONE BOUNDARIES

The Mater Hospital site is zoned SP2 – Health Services Facility, with the surrounding area zoned either R3 or R4 residential. The proposed 2 storey extensions are compatible with the size and bulk of the surrounding developments at the zone boundary.

The residential flat buildings adjacent to the site to the north and east are on land zoned R4. The Executive offices building is setback at least 10m from the residential flat building at No. 41 Rocklands Road, providing sufficient separation between the two developments.

The nearest building to the east of the site has a setback of approximately 3m from the boundary. There is an existing vehicular access ramp located along the eastern boundary of the site separating the existing hospital carparking area from the surrounding developments. Following consideration of submissions and feedback received from Council the upper level of the MPCS building has been setback a further 6m from the rear boundary of the site reducing the appearance of the development and providing increased separation between the health facility and adjoining residential uses.

The height and bulk of the proposed development is consistent in size with the surrounding residential flat buildings and the proposed setbacks mean any visual or aural impact from the proposed development would be minimal.

F) TO ENCOURAGE APPROPRIATE SCALE AND DENSITY OF DEVELOPMENT THAT IS IN ACCORDANCE WITH, AND PROMOTES THE CHARACTER OF, AN AREA

The proposed extensions would be in keeping with the character and scale of the other buildings in the surrounding area. There are a number of multi-storey residential flat buildings with boundaries adjoining the Mater Campus, including:

- 41 Rocklands Road – up to 10 storeys;
- 1 Sinclair Street – 4 storeys;
- 20-22 Hazelbank Road – 4 storeys; and

- 1 Gillies Street – 4 storeys.

In addition to these, the Mater Clinic is an existing 4 storey building that runs along the southern boundary of the Mater Campus, the Poche Centre and Melanoma Institute adjacent to the Mater Hospital on Rocklands Road are 5 storeys and the heritage listed building at 7-17 Sinclair Street is a large red brick building of up to 10 storeys in height.

The proposed additions to the rear of the existing hospital building at 35 Rocklands Road are well below the height of the existing building and compatible in scale to other developments in the surrounding area. The size, bulk and scale of the amended proposal is considered to be appropriate for the existing character of the area.

Compliance with the objectives of the SP2 – Infrastructure zone.

The SP2 – Infrastructure zone objectives include:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The land zoning map in the NSLEP 2013 identified the site as SP2 – Health Services Facility, which is defined as *a building or place used to provide medical or other services relating to the maintenance or improvement of the health, or the restoration to health, of persons or the prevention of disease in or treatment of injury to persons*. The proposed development complies with the objectives of this zone by providing medical and health related services to the area including: palliative care services, day surgery services, ambulatory services and medical specialist consulting suites.

6.2 NONCOMPLIANCE DOES NOT HINDER THE ATTAINMENT OF THE OBJECTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The Wehbe decision identifies consideration of Objects (a)(i) and (a)(ii) in Section 5 of the Environmental Planning and Assessment Act 1979 as necessary in assessing a variation to a development standard. These are:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,

The proposed variation will not contravene these Objects of the Act. Management of the existing urban environment to achieve better social and community outcomes will be improved by providing a facility to support the social welfare of the community. Palliative care plays a key role in providing opportunities for people with advanced disease to make choices about what treatments are acceptable to them and focuses on enhancing their quality of life together with their family carers. To be successful

palliative care needs to be supported by the full gamut of resources to meet the physical, mental and spiritual needs of patients and their carers. This extensive range of services and expertise can only feasibly be provided in a modern hospital context, both to provide round the clock personalised attention and also as a reliable base for outreach and home care. Consequently, the proposed Mater Palliative Care Service can only logically be developed on the Mater Campus where it will have ready access to the essential services for patient care. The extension to the Day Survey unit, a new Ambulatory Care Centre and provision for more specialist consulting suites are needed to ensure the feasibility of the development and the improved economic use of the land.

Strict compliance with the standard would inhibit this outcome and would not result in the orderly and economic use and development of land.

6.3 THE PUBLIC BENEFIT AND MATTERS OF STATE OR REGIONAL PLANNING

The proposed development is located in the North District of Greater Sydney. The North District's population is expected to grow significantly and its make-up will change as the overall population becomes older, with the number of people aged over 85 estimated to increase by over 85% in the next 20 years. To meet these challenges, the District will need to offer residential aged care and housing for people with a disability, as well as supporting health and social infrastructure to meet the needs of the aging population.

Providing a broad range of health services, including Palliative Care services, to the community close to where people live is important for ensuring that people can access the care that they need at every stage of life and it gives people the chance to age in place rather than move further out of the city.

6.4 DOES THE PROPOSAL COMPLY WITH THE REQUIREMENTS OF CLAUSE 4.6 (3) AND (4) OF THE LEP

Clause 4.6 of the NSLEP 2013 enables development consent to be granted to a development even though the development would contravene a development standard. The consent may only be granted if:

- the applicant has prepared a written request demonstrating that (clause 4.6(3)):
 - a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - b) there are sufficient environmental planning grounds to justify contravening the development standard; and
- the consent authority is satisfied that (clause 4.6(4)):
 - i. the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(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

This written request has been prepared to demonstrate that compliance with the development standard is unreasonable or unnecessary under the circumstances of the case, sections 6.2, 6.5 and 6.6

provide sufficient planning grounds to justify contravening the development standard, and sections 6.1, and 6.3 of this written request provide evidence that the proposed development is in the public interest because it seeks to provide improved health and medical services to cater for a growing and aging population and is consistent with the zone objectives and the objectives of the height of building standard.

This satisfies the requirements of clauses 4.6(3) and 4.6(4).

6.5 THERE ARE SUFFICIENT ENVIRONMENT PLANNING GROUNDS, PARTICULAR TO THE CIRCUMSTANCES OF THE PROPOSED DEVELOPMENT

The development site is zoned SP2 – Health Service Facility. The Mater Hospital was constructed onsite in 1990 as a new 185 bed private hospital, following the closure of the Mater Public Hospital in the early 1980s. In 2009, the hospital site was expanded to include the properties 3-13 Gillies Street and became known as the Mater Campus. These facilities, along with the Poche Centre and the Melanoma Institute on Rocklands Road, provide a broad range of important medical and health services for the surrounding community and the North Sydney LGA as a whole.

Extending the existing hospital building to the east, over the existing carparking area is a logical progression for the development of the site. Providing Palliative Care Services to the community is vital in ensuring that those in the surrounding residential area can benefit from the full range of high quality medical services available to cater for all stages of life.

As demonstrated in the sections above the proposed extension, while exceeding the 12m height of building limit for a small portion of the south-eastern corner of each building, has been designed to address the objectives of the height of building development standard, ensuring that access to sunlight, privacy and view sharing is maintained for surrounding residential developments and that the design of the building responds to the slope of the land by following the natural gradient. The proposed development has been redesigned following submissions received, and feedback from the Design Excellence Panel to be well below the 4 storey building height of the existing hospital onsite and also well below the height and scale of the surrounding residential flat buildings in the area.

6.6 COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE AND UNNECESSARY BASED ON PLANNING MERIT

In the sections above it has been demonstrated that compliance with the building height development standard for the site is unreasonable due to the existing site constraints, which limit the potential for the expansion of the hospital to this particular location on the site. It has also been demonstrated that compliance with the development standard is unnecessary due to the objectives of the standard and the zone continuing to be met despite the exceedance.

Notwithstanding, there are other planning considerations that go beyond the objectives of the development standard and zone that should be considered also. These include the following:

Health services: The NSCS states that it aims to improve access to health and wellbeing services, including increased services for older people and people with a disability. The proposed addition will provide a complete palliative care service to augment the Mater's existing comprehensive Cancer

services and to meet the significant unmet demand in the community. The proposal also seeks to address the provision of a much-needed extension to the existing Day Surgery unit and Ambulatory Care Centre to provide outpatient treatment support for the Mater's specialties. Additional consulting suites for the Hospital's specialist medical and surgical consultants will allow them to practice more closely and hence more efficiently with patients.

Landscaping: The revised proposal substantially increases the amount of landscaping for the site. The MPCS building has been designed to provide all the physical facilities necessary to deliver care in accordance with the principles of palliative care. Environment is important, with an emphasis on ambience, accessibility, and availability predominantly of single rooms. The landscaping to the main entry way of the MPCS building has been designed to provide a tranquil, leafy space to be enjoyed by patients and their visitors. The garden will have secluded private areas for rest and contemplation and shade trees to provide pleasant areas for walking and congregation. A rill stream and reflective ponds are proposed to add to the serenity and healing qualities of the space. The underlying structure has been designed to accommodate the varying depths of soil to support in-ground shrubs and medium trees.

Living wall screens will be used on the proposed buildings where visual and acoustic privacy is required as well as helping to soften the form and mass of the buildings and settle them into the landscaping. The living walls will also increase the comfort of the occupants by reducing the heat gain and glare, particularly from the East and West exposures.

Form, massing and scale:

The form, massing and scale of the revised development better complements the surrounding residential developments, which are between 4 and 10 storeys in height. The proposed additions reflect the existing character of the locality and has been redesigned to better align with the natural gradient of the site.

Efficient use of resources: The proposal has been designed in accordance with Council's requirements for an energy efficient development and Part J of the BCA 2006. Measures to be incorporated in the design include:

- Efficient use of solar shading panels.
- New high efficiency air conditioning chillers to replace those existing at the Hospital.
- Installation of high efficiency glazing to reduce heat loads.
- The use of high efficiency fluorescent and LED luminaires throughout.
- The installation of time controls and occupancy sensors to ensure unnecessary lighting is switched off.
- The installation of photoelectric and time controls for all exterior lighting. The installation of an array of photovoltaic solar panels to generate electricity and reduce the consumption of power from the street network.
- The installation of new gas fired condensing boilers to provide the space heating.

CONCLUSION

Consistency with the objectives of Clause 4.3 Height of Buildings and the objectives for development in the SP2 Zone satisfies the Wehbe test (i) and (iii) and the absence of any environmental impacts demonstrates that strict compliance with the building height standard of the NSLEP 2013 is both unreasonable and unnecessary in this instance.

Based on the above, there are a number of sufficient environmental planning grounds to justify contravening the development standard.

The amended SEE has demonstrated that there is no significant disruption to existing views, loss of privacy, overshadowing or visual intrusion for the adjoining residential developments to the north and east despite the minor exceedance in the height of building limit for the site. Therefore, impact to the current amenity of surrounding developments is considered appropriate for the necessary extension of the hospital building onsite to support much needed medical services.

The site constraints and special use as a Health Facility should be considered in the design analysis of the site. For the following reasons, compliance with the HOB standard of the NSLEP 2013 is considered unnecessary for this proposed development:

- The objectives of the height standard are achieved despite the minor noncompliance with the standard itself.
- The development, despite the noncompliance, still contributes to achieving the Objects of the *Environmental Planning and Assessment Act 1979*.
- Noncompliance will not undermine the public benefit and legitimacy of the standard, and no matters of State or regional planning would be affected by varying the standard.
- Maintenance of the standard is considered unnecessary and unreasonable based on planning merit that goes beyond compliance with the objectives of the development standard and zone.

For these reasons, variation to the standard should be supported as part of the assessment of the proposed development.