

**CLAUSE 4.6 VARIATION  
REQUEST  
RYDE LEP 2014  
CL. 4.3 BUILDING HEIGHT**

**14- 16 COTTONWOOD  
CRESCENT, MACQUARIE  
PARK**

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# 1. INTRODUCTION

This updated Clause 4.6 variation request has been prepared by Urbis on behalf of The Trustee for LegPro 48 Unit Trust (the applicant) in respect of amended plans submitted for LDA2018/506. The proposed development comprises the demolition of existing structures, site excavation, and construction of a mixed use building comprising residential apartments, as well as a Café, at 14-16 Cottonwood Crescent, Macquarie Park (SP6262 and SP5906).

The request seeks to vary the maximum Building Height development standard prescribed for the subject site under Clause 4.3 of the *Ryde Local Environmental Plan 2014* (RLEP 2014).

The variation request is made pursuant to Clause 4.6 of the RLEP 2014.

## 2. ASSESSMENT FRAMEWORK

### 2.1. CLAUSE 4.6 OF RYDE LOCAL ENVIRONMENTAL PLAN 2014

Clause 4.6 of RLEP 2014 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of Clause 4.6 are:

- *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, Clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- 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.*

Furthermore, the consent authority must be satisfied 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, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary 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 Secretary before granting concurrence.*

[Note: Concurrence is assumed pursuant to *Planning Circular No. PS 18-003 Variations to Development Standards* dated 21 February 2018].

This document forms a Clause 4.6 written request to justify the contravention of the Building Height development standard in Clause 4.3. The assessment of the proposed variation has been undertaken in accordance with the requirements of the RLEP 2014, Clause 4.6 Exceptions to Development Standards.

### 2.2. NSW LAND AND ENVIRONMENT COURT: CASE LAW

Several key New South Wales Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached.

The correct approach to preparing and dealing with a request under clause 4.6 is neatly summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118:

*[13] The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard.*

*[14] The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as*

to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see *Woolworths Ltd v Pallas Newco Pty Ltd* (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard: see *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135; [2000] HCA 5 at [28]; *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79; [2001] NSWLEC 46 at [19], [29], [44]-[45]; and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 at [36].

- [15] The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.
- [16] As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in *Wehbe v Pittwater Council* at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.
- [17] The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: *Wehbe v Pittwater Council* at [42] and [43].
- [18] A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: *Wehbe v Pittwater Council* at [45].
- [19] A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: *Wehbe v Pittwater Council* at [46].
- [20] A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: *Wehbe v Pittwater Council* at [47].
- [21] A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: *Wehbe v Pittwater Council* at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in *Wehbe v Pittwater Council* at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.
- [22] These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.
- [23] As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

- [24] The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].
- [25] The consent authority, or the Court on appeal, must form the positive opinion of satisfaction that the applicant’s written request has adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b). As I observed in *Randwick City Council v Micaul Holdings Pty Ltd* at [39], the consent authority, or the Court on appeal, does not have to directly form the opinion of satisfaction regarding the matters in cl 4.6(3)(a) and (b), but only indirectly form the opinion of satisfaction that the applicant’s written request has adequately addressed the matters required to be demonstrated by cl 4.6(3)(a) and (b). The applicant bears the onus to demonstrate that the matters in cl 4.6(3)(a) and (b) have been adequately addressed in the applicant’s written request in order to enable the consent authority, or the Court on appeal, to form the requisite opinion of satisfaction: see *Wehbe v Pittwater Council* at [38].
- [26] The second opinion of satisfaction, in cl 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that the applicant’s written request has adequately addressed the matter in cl 4.6(4)(a)(ii).
- [27] The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).
- [28] The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the *Planning Circular PS 18-003* issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.
- [29] On appeal, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the *Court Act*. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41].



## 3. SITE AND LOCALITY

### 3.1. SITE ANALYSIS

The site is known as 14-16 Cottonwood Crescent, Macquarie Park and is legally described as SP6262 and SP5906. It is a rectangular shaped allotment with an area of approximately 2,499sqm with street frontages to both Cottonwood Crescent and Waterloo Road. The site also fronts the Shrimptons Creek corridor to the east.

The site contains a moderate slope which descends approximately 3.7 metres from the south west at Cottonwood Crescent / Cottonwood Reserve boundary (RL45.2m) to south east towards the Shrimptons Creek corridor boundary at Waterloo Road (RL41.51m). The site has some vegetation but mainly contains buildings, hardscape and grassed landscaping.

An aerial photograph of the site is included at **Figure 1**.

Figure 1 – Aerial Photograph of the Subject Site



Source: Nearmap, Urbis

The site contains two residential flat buildings, each on their own separate lot and each being three storeys in height from the street level of Cottonwood Crescent with under croft and at grade car parking.

### 3.2. SURROUNDING CONTEXT

Immediately to the south east of the site is the Shrimptons Creek corridor, and adjacent the site is Cottonwood Reserve a public open space.

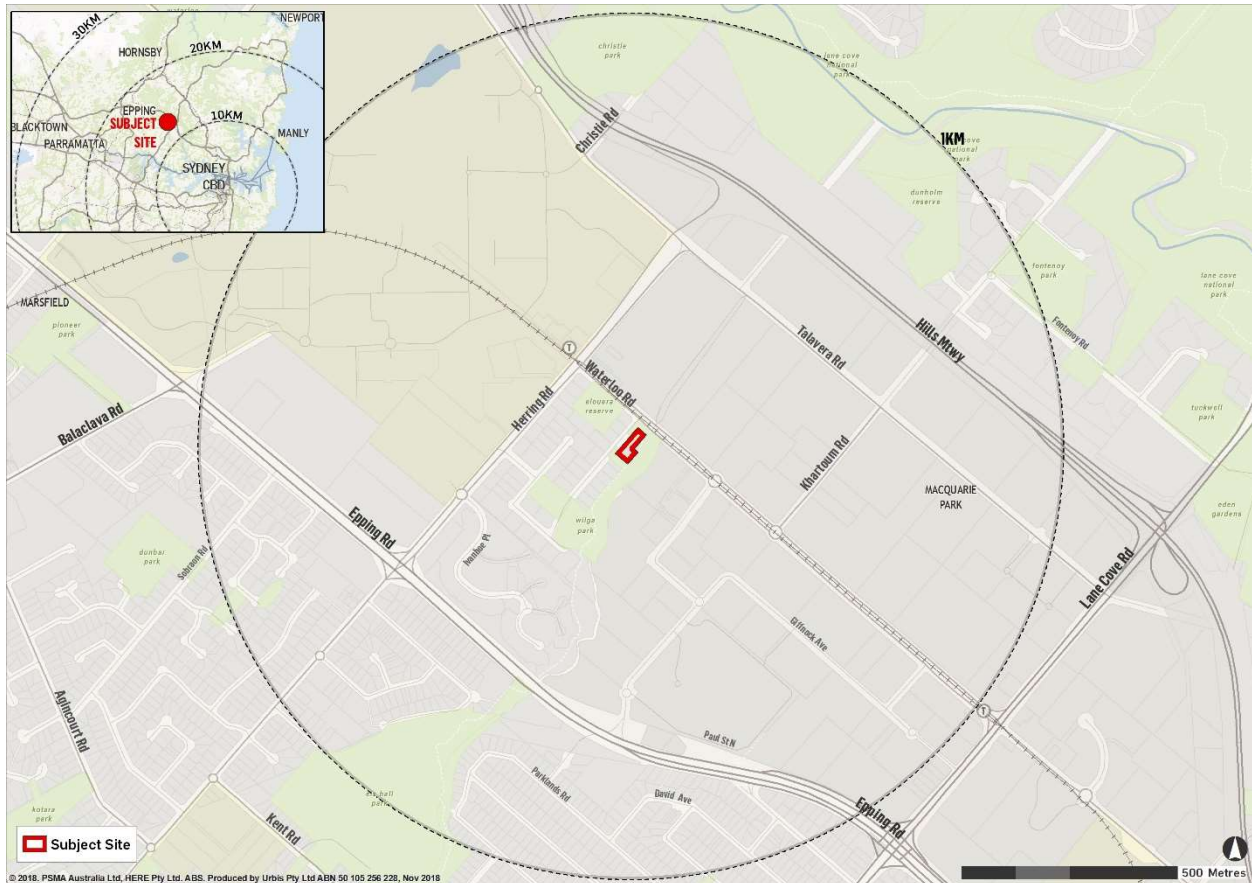
Residential development in Macquarie Park has traditionally been characterised by 3 to 4 storey walk-up apartment blocks, of the style on the subject sites at present. However, the character of the immediate context is changing and is anticipated to further change dramatically over time.

The State Government's declaration of two priority precincts known as Macquarie University Station (Herring Road) and North Ryde Station highlights the strategic intent for new housing opportunities on the edges of the existing commercial core, to take advantage of the improved public transport connections between Macquarie Park and other metropolitan centres throughout Sydney.

This is reflected in the high-density mixed-use character proposed by the NSW Department of Planning's Herring Road Precinct Plan which aims to deliver over 5,000 dwellings, while the North Ryde Station Precinct will deliver a further 3,000 dwellings in high rise dense urban forms.

The location of the site is indicated at **Figure 2**.

Figure 2 – Site Location



Source: Urbis

A detailed description of the site is provided in the Statement of Environmental Effects prepared by Urbis, accompanying the submitted development application.



## 4. THE PROPOSED DEVELOPMENT

### 4.1. DEVELOPMENT OVERVIEW

The amended plans submitted in respect of LDA2018/506 seeks consent for the following:

- Demolition of existing buildings on site.
- Tree removal, excavation and site preparation works.
- Construction of a 20-storey mixed use building comprising office/retail uses on the ground floor and 132 residential units. The proposed residential apartment mix is 10 x studio apartments, 29 x one-bedroom apartments, 79 x two-bedroom apartments and 14 x three-bedroom apartments.
- Construction of five levels of basement parking.
- Construction of a 'Cyclist Café' tenancy at the Waterloo Road frontage.
- Associated landscaping and public domain works; and
- Augmentation of physical infrastructure and utilities as needed.

### 4.2. MASSING AND BUILT FORM

The massing of the building presents as a tower, with a 3-storey podium (including the Cyclist Café) fronting Waterloo Road. This approach has the following advantages:

- The design has been amended (the Cyclist Café has been integrated with the second storey communal open space) to achieve a 3-storey height transition to Waterloo Road,
- Pushing the primary building bulk to the West opens up links across the site and creates a large, accessible and well-surveilled public plaza fronting onto Waterloo Rd which receives solar access.
- The Cyclist Cafe exists as an active retail element to activate this currently underutilised area.
- The massing and maintains the existing view corridors across the site by breaking down the building mass and allowing landscaping to be interspersed throughout the ground plane. This space provides opportunities for pedestrian connections from Cottonwood Crescent through to Shrimptons Creek; and

The residential tower will measure 20 storeys in height and is sloped to match the cross-fall of the site from the southern frontage down to the north (4m). The residential tower entry will be oriented toward Cottonwood Crescent.

Please refer to the Design Report at **Appendix B** for further details.

## 5. EXTENT OF CONTRAVENTION

### 5.1. VARIATION TO MAXIMUM BUILDING HEIGHT

The maximum height of building control under the RLEP 2014 is 65m. The extent of the proposed height variation pertains to elements of the mechanical plant, and the topmost portions of lift over run. The maximum proposed building height is:

- 67m to the mechanical plant and lift over-run structure above the level 19 apartments fronting Cottonwood Crescent.

Selected DA drawings show the specific parts of the building which project above the 65m height plane (refer to **Appendix A**). The 65m building height control has been measured in accordance with the RLEP 2014 definition:

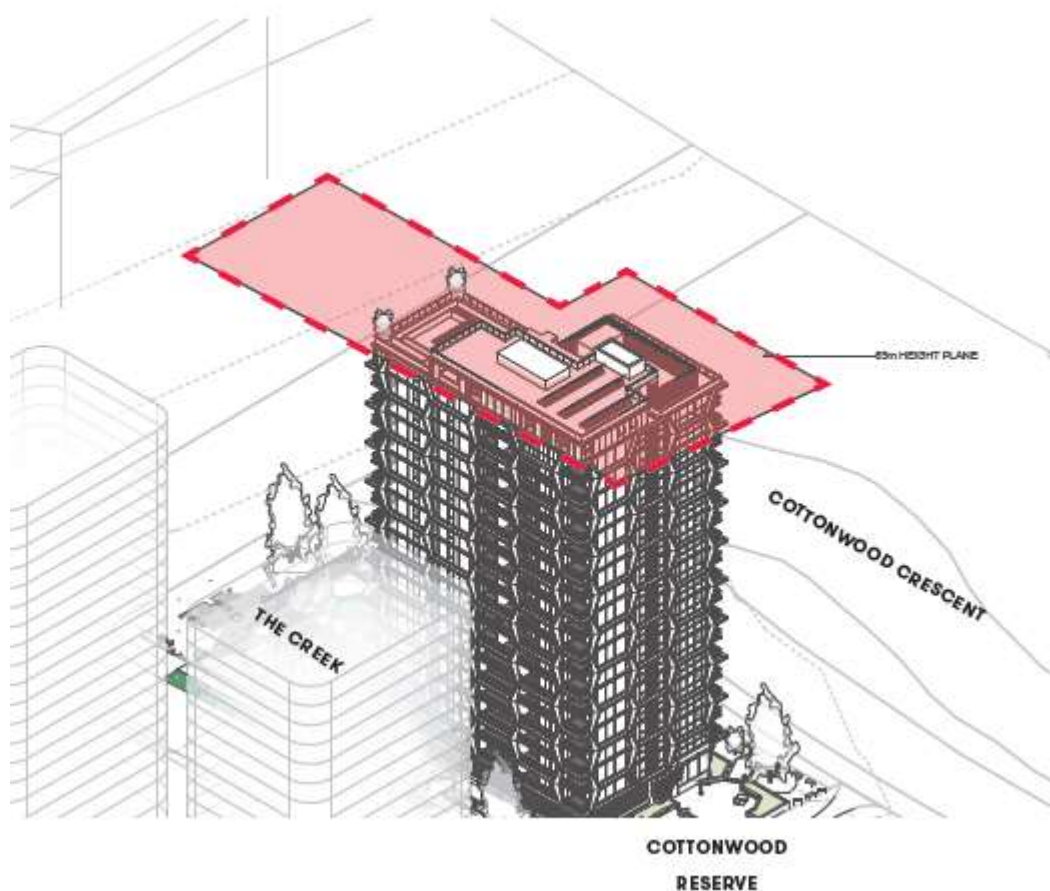
**building height (or height of building)** means:

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Extracts of the marked-up plans at Appendix A are provided in the figures on the following pages.

Figure 3 – Massing



Source: Scott Carver Architects

Figure 4 – Massing



Source: Scott Carver Architects

The following building elements will be located **above** the 65m building height plane:

- Upper portion of the Lift Over Run; and
- Mechanical plant and solar panels.

No habitable space is located above the 65m height line.

## 6. CLAUSE 4.6 VARIATION REQUEST: HEIGHT OF BUILDINGS

The following sections of the report provide an assessment of the request to vary the development standard relating to the maximum height of buildings in accordance with Clause 4.6 of RLEP 2014.

### 6.1. CLAUSE 4.3 HEIGHT OF BUILDINGS

The maximum height of buildings development standard under RLEP 2014 is 65m.

The objectives of the height of buildings development standard as per subclause 4.3(1) of RLEP 2014 are as follows:

- a) *to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development.*
- b) *to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area.*
- c) *to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure.*
- d) *to minimise the impact of development on the amenity of surrounding properties.*
- e) *to emphasise road frontages along road corridors.*

### 6.2. KEY QUESTIONS

#### Is the Planning Control a Development Standard?

The maximum height of buildings control prescribed under Clause 4.3 of the RLEP 2014 is a development standard capable of being varied under Clause 4.6 of SLEP 2012.

#### Is the Development Standard Excluded from the Operation of Clause 4.6?

The development standard is not excluded from the operation of Clause 4.6 as it does not listed within Clause 4.6(6) or Clause 4.6(8) of RLEP 2014.

#### What is the Underlying Object or Purpose of the Standard?

The objectives of the height of buildings standard as per RLEP 2014 are set out in Section 6.1 of this letter.

### 6.3. CONSIDERATION

#### 6.3.1. Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

The common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary are listed within the ‘five-part test’ outlined in *Wehbe v Pittwater [2007] NSWLEC 827*. These tests are outlined in Section 2.2 of this letter (paragraphs [17]-[21]).

An applicant does not need to establish all of the tests. **It may be sufficient to establish only one way**, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way

The development is justified against one of the Wehbe tests as set out below.

**Test 1: The objectives of the development standard are achieved notwithstanding non-compliance with the standard**

The proposed development achieves the objectives of the development standard as outlined within Table 1.

Table 1 – Assessment of Achievement of Objectives of Building Height standard

Development Standard Objective	Achievement of Objective
<p>(a) <i>to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development;</i></p>	<p>This objective is not relevant to the current character of buildings in this locality but is most relevant to the intended future development character which is encouraged through the current height and FSR provisions applicable to this part of Macquarie Park.</p> <p>The existing residential flat building typologies on sites in the immediate locality are of designs that responded to the previous planning framework, with a 3-storey presentation to the street. These are not representative of the development character envisaged by the current planning controls – being tall tower residential and mixed-use buildings.</p> <p>The proportioning of the entire building façade fronting Cottonwood Crescent is consistent with what is envisaged for this precinct which is undergoing transition. Only mechanical plant and the lift over run project above the maximum height plane as it presents to Cottonwood Crescent.</p> <p>The streetscape presentation to Waterloo Road is consistent with the intended development character of sites to the north west and south east along this frontage. The tall building is commensurate in height with sites immediately adjacent. Only a minor projection of the lift overrun, and solar panels will project above the maximum height plane as it presents to Waterloo Road.</p> <p>Overall, the street frontage presentation of the building is commensurate with the anticipated building height envisaged for this precinct by the current planning controls.</p> <p>The proposed building height achieves this objective.</p>
<p>(b) <i>to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area;</i></p>	<p>The massing strategy built form &amp; shadow impact analysis contained within the Design Report demonstrate that the proposed building form generates more slender shadows than a complying envelope.</p>

Development Standard Objective	Achievement of Objective
(c) <i>to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure;</i>	<p>The proposed building form, and those minor elements which project above the building height plane, minimise overshadowing to surrounding sites. Those elements projecting above the height plane will have negligible shadow impact on the surrounding public open space and will, for the most part, cast shadows onto the building form itself.</p> <p>The proposal will significantly improve the appearance of the Macquarie Park area which is undergoing transition. The proposal achieves this objective.</p> <p>This development results from the consolidation of two allotments, the redevelopment of dated apartment stock and delivery of both residential accommodation and retail in close walking distance to Macquarie University metro station and bus interchange.</p> <p>The proposal achieves this objective.</p>
(d) <i>to minimise the impact of development on the amenity of surrounding properties;</i>	<p>The elements that project above the height plane do not impact the amenity of surrounding properties in any way. Shadowing cast by these elements is either negligible or falls within the shadows of the building below the height plane. The elements do not result in imposition of building bulk or cause privacy impacts to neighbours or the public domain.</p> <p>The proposal achieves this objective.</p>
(e) <i>to emphasise road frontages along road corridors.</i>	<p>The subject site fronts the road corridor of Waterloo Road. The proposed building height emphasises this road corridor. The minor exceedance in height by the lift over run and solar panels on the Waterloo Road elevation does not detract from the achievement of this objective.</p> <p>The proposal achieves this objective.</p>

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

**Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary**

Not relied upon.



**Test 3: The underlying objective or purpose of the standard would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable**

Not relied upon.

**Test 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**

A number of Clause 4.6 variations to the Height of Building development standard (within the B4 mixed use zone) have been approved by Ryde Council and/or the Sydney North Planning Panel over the preceding 20 months. The extent of variations approved range up to 36.5% over the relevant height of building standard however, for the majority, relate to smaller built elements at the upper level of the building form. The relevant 4.6 building height variations are detailed in Table 2.

Table 2 – Approved Height of Building Variances 2017-2019

Site	Approval Date	Variation extent
53-71 Rowe Street, Eastwood LDA2019/0073	23 October 2019	15.9%
102 to 104 Bowden Street Meadowbank LDA2018/0048	13 December 2018	14.80%
52 Blaxland Road Ryde LDA2018/0058	11 October 2018	5.40%
312 Victoria Road Gladesville	11 October 2018	16-19.2%
9 Peach Tree Road Macquarie Park	31 August 2018	4.36m / 9.7%
175-177 Shaftsbury Road, Eastwood	10 May 2018	4.69%
140-144 Culloden Road. Marsfield	12 April 2018	9.4% - 15.7%
39-41 Devlin Street, Ryde	28 February 2018	36.5%
80 Waterloo Road, 16 Byfield Street, Macquarie Park	11 October 2018	10.7%
173 Shaftsbury Road, 29 Glen Street Eastwood	10 October 2017	6.4%
2 Kim Street, Gladesville	16 October 2017	3.2%
14-16 Pope Street and 1A Smith Street, Ryde	5 September 2017	10.9% - 24.5%
82-84 Waterloo Road, Macquarie Park	27 July 2017	1.38% - 4.23%
10 Monash Road and 2 College Street, Gladesville	8 August 2017	0.64% - 2.25%
13-19 Glen Street, Eastwood	29 August 2017	7.3%

The number and extent of variations to the Height of Building standard demonstrate that Council and the Sydney North Planning Panel has a record of supporting various non-compliances to the building height standard, throughout the local government area.

When compared to the extent of these applications, the subject Height of Building variation is minor – proposing a variation of 3.07% - which is within the realm of what has previously been approved by Council or the Regional Panel.

Having regard to the evidence that the Council and Panel have approved similar and larger variations in the locality and broader LGA, it could be concluded that strict application of the standard has been abandoned, hence compliance is unnecessary and unreasonable.

**Test 5: The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary**

Not relied upon.

### Concluding Remark

The proposal therefore satisfies clause 4.6(3)(a).

### 6.3.2. Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including the following:

- There are no material impacts arising from the elements projecting above the building height plane. These elements comprise mechanical plant and lift over run. No material overshadowing or other amenity impact to surrounding properties will arise from these elements.
- Those elements projecting above the height plane do not comprise habitable floor area and so do not contribute to the bulk of the building or intensity of its use. Further, these assist in ensuring a high quality and complete design for the building.

In conclusion, there are sufficient environmental planning grounds to justify convening the development standard.

### 6.3.3. Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Table 3 below sets out how the proposal is consistent with the objectives of the Height of Building Standard.

Table 3 – Assessment of Consistency with Objectives of Height of Building standard

Development Standard Objective	Consistency with Objective
<i>(a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development;</i>	<p>This objective is not relevant to the current character of buildings in this locality but is most relevant to the intended future development character which is encouraged through the current height and FSR provisions applicable to this part of Macquarie Park.</p> <p>The existing residential flat building typologies on sites in the immediate locality are of designs that responded to the previous planning framework, with a 3-storey presentation to the street. These are not representative of the development character envisaged by the current planning controls – being tall tower residential and mixed-use buildings.</p> <p>The proportioning of the entire building façade fronting Cottonwood Crescent is consistent with what is envisaged for this precinct which is undergoing transition. Only mechanical</p>

Development Standard Objective	Consistency with Objective
	<p>plant and the lift over run project above the maximum height plane as it presents to Cottonwood Crescent.</p> <p>The streetscape presentation to Waterloo Road is consistent with the intended development character of sites to the north west and south east along this frontage. The tall building is commensurate in height with sites immediately adjacent. Only a minor portion of the lift overrun and solar panels will project above the maximum height plane as it presents to Waterloo Road.</p> <p>Overall, the street frontage presentation of the building is commensurate with the anticipated building height envisaged for this precinct by the current planning controls.</p> <p>The proposed building height achieves and is therefore also consistent with this objective.</p>
<p><i>(b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area;</i></p>	<p>The proposed building form, and those minor elements which project above the building height plane, minimise overshadowing to surrounding sites. Those elements projecting above the height plane will have negligible shadow impact on the surrounding public open space and will, for the most part, cast shadows onto the building form itself.</p> <p>The proposal, including the architectural façade elements that project above the building height plane form part of a cohesive façade design for the building, which will significantly improve the appearance of this locality which is undergoing transition.</p> <p>The proposed building height achieves, and is therefore also consistent with, this objective.</p>
<p><i>(c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure;</i></p>	<p>This development results from the consolidation of two allotments, the redevelopment of dated apartment stock and delivery of both residential accommodation and retail in close walking distance to Macquarie Park metro line and bus interchange.</p> <p>The proposed building height achieves and is therefore also consistent with this objective.</p>

<b>Development Standard Objective</b>	<b>Consistency with Objective</b>
<i>(d) to minimise the impact of development on the amenity of surrounding properties;</i>	<p>The proposal has been designed to meet ADG design criteria in accordance with SEPP 65. The building is sufficiently separated from neighbouring residential properties such that impact on those properties is minimised.</p> <p>The elements that project above the height plane do not impact the amenity of surrounding properties in anyway. Shadowing cast by these elements is either negligible or falls within the shadows of the building below the height plane. The elements do not result in imposition of building bulk or cause privacy impacts to neighbours or the public domain.</p> <p>The proposed building height achieves and is therefore also consistent with this objective.</p>
<i>(e) to emphasise road frontages along road corridors.</i>	<p>The subject site fronts the road corridor of Waterloo Road. The proposed building height emphasises this road corridor. The minor exceedance in height on the Waterloo Road elevation does not detract from the achievement of this objective.</p> <p>The proposed building height achieves and is therefore also consistent with this objective.</p>

The proposal is also consistent with the B4 Mixed Use land use zone objectives that apply to the site under RLEP 2014. This is addressed in Table 4.

Table 4 – Assessment of Compliance with B4 Mixed Use Zone Objectives

<b>Objective</b>	<b>Consistency with Objective</b>
<ul style="list-style-type: none"> <li>To provide a mixture of compatible land uses.</li> </ul>	<p>The proposed building comprises both residential and retail land uses which are compatible for the site and respond to the needs of the future population whilst having regard to the proximate Macquarie Shopping Centre.</p> <p>The proposal is consistent with this objective.</p>
<ul style="list-style-type: none"> <li>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</li> </ul>	<p>The subject site is within close walking distance to high frequency transport services, and cycle links connecting with local employment locations and the wider Metropolitan area.</p> <p>The proposal includes accommodation for residential dwellings as well as retail floor space, in an integrated manner close to public transport, pedestrian links and cycle tracks.</p>

Objective	Consistency with Objective
	The proposal is consistent with this objective.
<ul style="list-style-type: none"> <li>To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.</li> </ul>	<p>The proposal supports both residential accommodation and retail employment opportunities via the provision of the Cyclist Café on this site.</p> <p>The proposal is consistent with this objective.</p>
<ul style="list-style-type: none"> <li>To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.</li> </ul>	The proposal will provide attractive residential accommodation suitable for occupation by students and staff of the University and nearby business thereby encouraging the location of these activities within the Macquarie Park corridor.

### Concluding Remark

The proposal meets the requirements of Clause 4.6(4)(a)(ii) and is considered to be in the public interest as the development is consistent with the objectives of the both development standard and the B4 Mixed Use land use zone.

#### 6.3.4. Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The proposed non-compliance with the maximum height of building development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.

#### 6.3.5. Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

The proposed development achieves the objectives of the building height development standard and the land use zoning despite the non-compliance.

It has been demonstrated that the proposed variation arises due to the slope of the land and the height of the lift overrun, mechanical plant and solar panels.

Those elements exceeding the height of building standard will not generate adverse environmental impacts - such as overshadowing or overlooking – to neighbouring residential dwellings or open space. Requiring strict compliance and the removal of the protruding elements will not result in an improved design or built form outcome.

As such, there would be no public benefit in maintaining the development standard in this case.

#### 6.3.6. Clause 4.6(5)(c) – Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

Concurrence can be assumed. Nevertheless, there are no known additional matters that need to be considered within the assessment of the Clause 4.6 Request and prior to granting concurrence, should it be required.

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This report is dated 19<sup>th</sup> March 2020 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd's (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of MP No 1 Holdings PTY Ltd atf MP No 1 Unit Trust (**Instructing Party**) for the purpose of Clause 4.6 Variation Request (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

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# **APPENDIX A      ELEVATIONS & HEIGHT CONTROL DIAGRAMS**



## HEIGHT PLANE

- All habitable rooms are under 65m height plane
- Small portion of LO, solar panels, and mechanical services exceed 65m height plane

