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**URBIS**

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

1-3 Lachlan Avenue, Macquarie Park

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# 1. INTRODUCTION

This Clause 4.6 Variation Request ('the Request') has been prepared on behalf of Eco World (Macquarie) Pty Ltd ('the applicant') and accompanies a Development Application ('DA') for demolition of structures, excavation and construction of a 16-storey residential apartment building at 1-3 Lachlan Avenue, Macquarie Park.

The Request seeks an exception from the maximum height of building prescribed for the site under clause 4.3 of *Ryde Local Environmental Plan 2014* (RLEP). The variation is request is made pursuant to clause 4.6 of RLEP 2014.

This report should be read in conjunction with the Statement of Environmental Effects prepared by Urbis Pty Ltd and dated 10 May 2021 and subsequent correspondence to Ryde Council since lodgment.

The following sections of the report include:

- **Section 2:** description of the site and its local and regional context, including key features relevant to the proposed variation.
- **Section 3:** brief overview of the proposed development as outlined in further detail within the SEE and accompanying drawings.
- **Section 4:** identification of the development standard which is proposed to be varied, including the extent of the contravention.
- **Section 5:** outline of the relevant assessment framework for the variation in accordance with clause 4.6 of the LEP.
- **Section 6:** detailed assessment and justification of the proposed variation in accordance with the relevant guidelines and relevant planning principles and judgements issued by the Land and Environment Court.
- **Section 7:** summary and conclusion.

# 2. SITE CONTEXT

## 2.1. SITE DESCRIPTION

The site is known as 1-3 Lachlan Avenue, Macquarie Park and is legally described as SP6481. It is a rectangular shaped allotment with an eastern splay corner and an area of approximately 2,751m<sup>2</sup>. The site has a street frontage to Lachlan Avenue.

The site contains a moderate slope which descends approximately 7.6m from east to west. The site has some existing vegetation but mainly contains buildings, hardscaped and soft landscaping.

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

The key features of the site are summarised in the following table.

Table 1 Site Description

Feature	Description
Street Address	1-3 Lachlan Avenue, Macquarie Park
Legal Description	SP6481
Site Area	2,751m <sup>2</sup>
Site Dimensions	Approximately 40m x 69m with an eastern splay corner
Easements and Restrictions	Ausgrid line at eastern corner, proposed to be realigned
Site Topography	Sloping from west to east
Vegetation	Existing trees and soft landscaping proposed to be removed.
Existing Structures	Currently accommodates a three-storey apartment building.

100/DP1262209

Subject Site

50 Metres

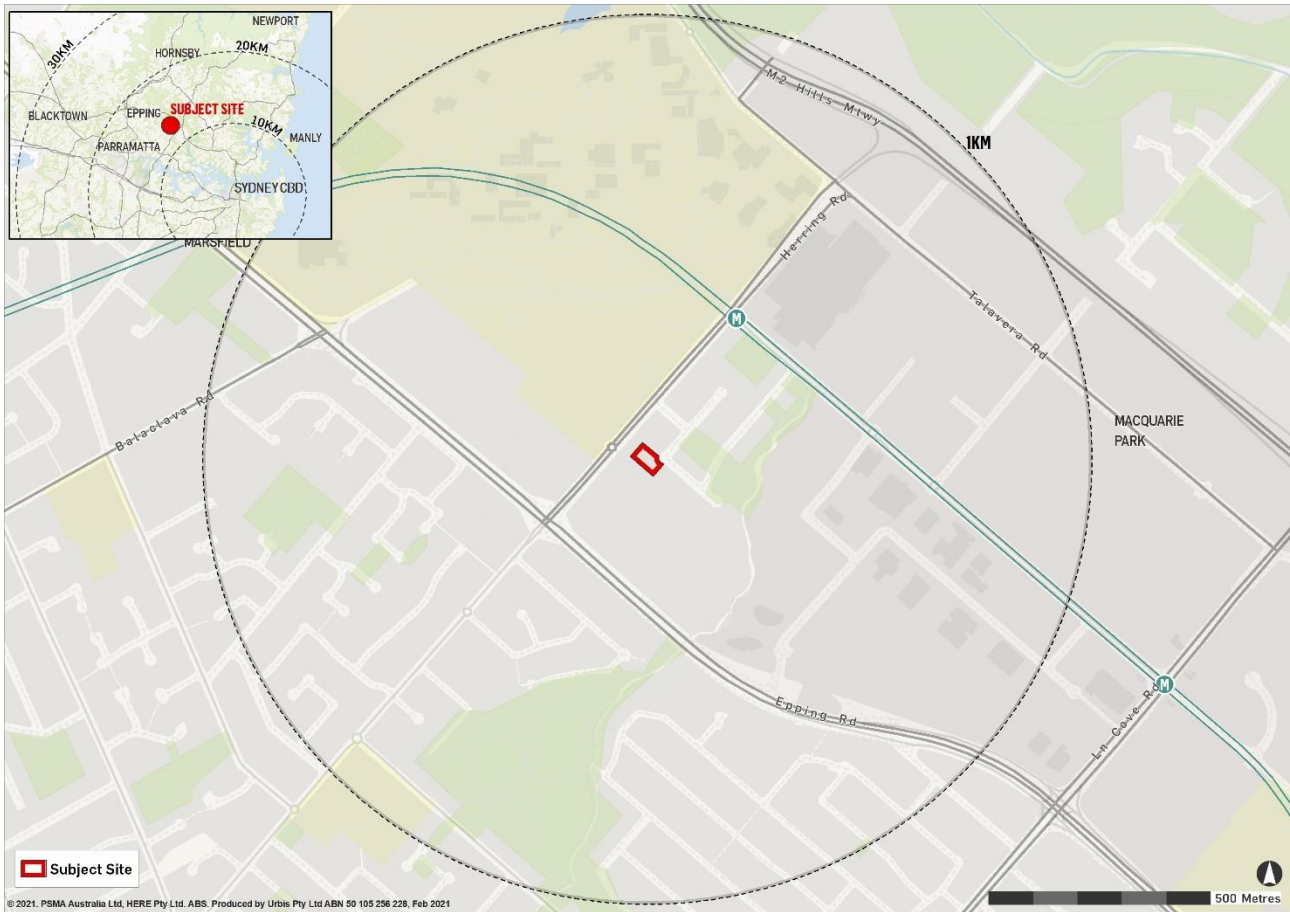
## 2.2. SURROUNDING CONTEXT

Residential development in Macquarie Park has traditionally been characterised by 3 to 4 storey walk-up apartment blocks. The character of the immediate context is changing and is anticipated to further change dramatically over time. This is reflected in the high density mixed use character proposed by the Department of Planning's Macquarie University Station Precinct (Herring Road) which aims to provide a new mixed use 'academic core' at Macquarie University, create opportunities for renewal within a 800m radius of the Macquarie University Station and deliver other amenity outcomes. The precinct is expected to deliver up to 5,800 new homes by 2031 in high rise dense urban forms. This is demonstrated in the recent residential developments that have been approved for heights of 20 to 23 storeys, largely due the 75m maximum height provision of the adjoining properties west of the site (refer Figure 3).

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



Figure 2 Location Plan



Source: Urbis

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



### 3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for demolition of the existing residential flat building and associated structures, excavation and construction of a 16-storey residential apartment building at 1-3 Lachlan Avenue, Macquarie Park.

A summary of the key features of the proposed development is provided below:

- Demolition of the existing residential building and any associated structures
- Construction of a 16-storey residential building with two basement levels, comprising:
  - A building height of up to 45m, with minor exceedances to a maximum of 47.83m.
- Vehicle access from Lachlan Avenue via a shared zone.
  - (105) residential car parking spaces and (2) visitor spaces. Car parking is located at lower ground, B1 basement and mezzanine levels.
  - Lower Ground and mezzanine level containing shared facilities including lobby seating areas, shared workspace. Communal open spaces are proposed at the upper ground and level 13 rooftop, comprising outdoor seating and an outdoor sky gym.
  - Mezzanine, upper ground and levels 1-13 comprising 123 residential dwellings totalling 11,004sqm GFA (including lobby areas) and the following mix;
    - 44 x 1-bed (36%)
    - 63 x 2-bed (51%)
    - 16 x 3-bed (13%)
- Vehicle access will be via a shared zone from Lachlan Avenue.

A numerical overview of the proposal is provided in the following table:

Table 2 Numerical Overview of Proposal

Parameter	Proposed
Total Site Area	2,750m <sup>2</sup>
Total Gross Floor Area (GFA)	11,004m <sup>2</sup>
Floor Space Ratio (FSR)	4:1
Height (storeys and maximum in metres)	45 metres with minor non-compliances of up to 47.83.
Unit Mix	123 dwellings comprising the following unit mix: <ul style="list-style-type: none"> <li>▪ 44 x 1-bed (36%)</li> <li>▪ 63 x 2-bed (51%)</li> <li>▪ 16 x 3-bed (13%)</li> </ul>
Car Parking Spaces	105 spaces plus 2 visitor car spaces
Deep Soil Area	195.63 (7.1% of site)
Communal Open Space Areas	847.61m <sup>2</sup> (30.8% of site)

### 3.1. MASSING AND BUILT FORM

The massing of the building presents as a tower, with a 4-storey podium fronting Lachlan Avenue. The massing and built form respond to the site opportunities and constraints as follows:

- The podium component relates to the existing surrounding built form character, consistent with residential apartments in the vicinity of the site, and the tower element above relates to the desired future character, responsive to the future surrounding high-density character. The tower element is further broken into two forms which turn to address the frontages at both Lachlan Avenue and Ivanhoe Place, providing a strong street address to both interfaces. The proposed units benefit from their orientation towards city and district views.
- The scheme complies with the RLEP 4:1 Floor Space Ratio (FSR) control and largely complies with the applicable setback and building separation controls, with some breaches at higher levels and some over compliance at lower levels. Separation to the western neighbour is increased, and the southern setback where the site is not bounded by any neighbouring development is reduced.
- There is a significant level change across the site and the design has sympathetically responded by designing into the lower entry and basement levels, such that the architecture is grounded within the surrounding landscape. This is further enhanced by the triple height lobby.

The residential tower will measure 45m in height, with minor exceedance, and is sloped to match the cross-fall of the site from the western boundary down to the eastern frontage (approx. 7.5m). The residential tower entry will be oriented toward Lachlan Avenue.

Please refer to the Architectural Plans at **Appendix A** of the DA Package for further details.

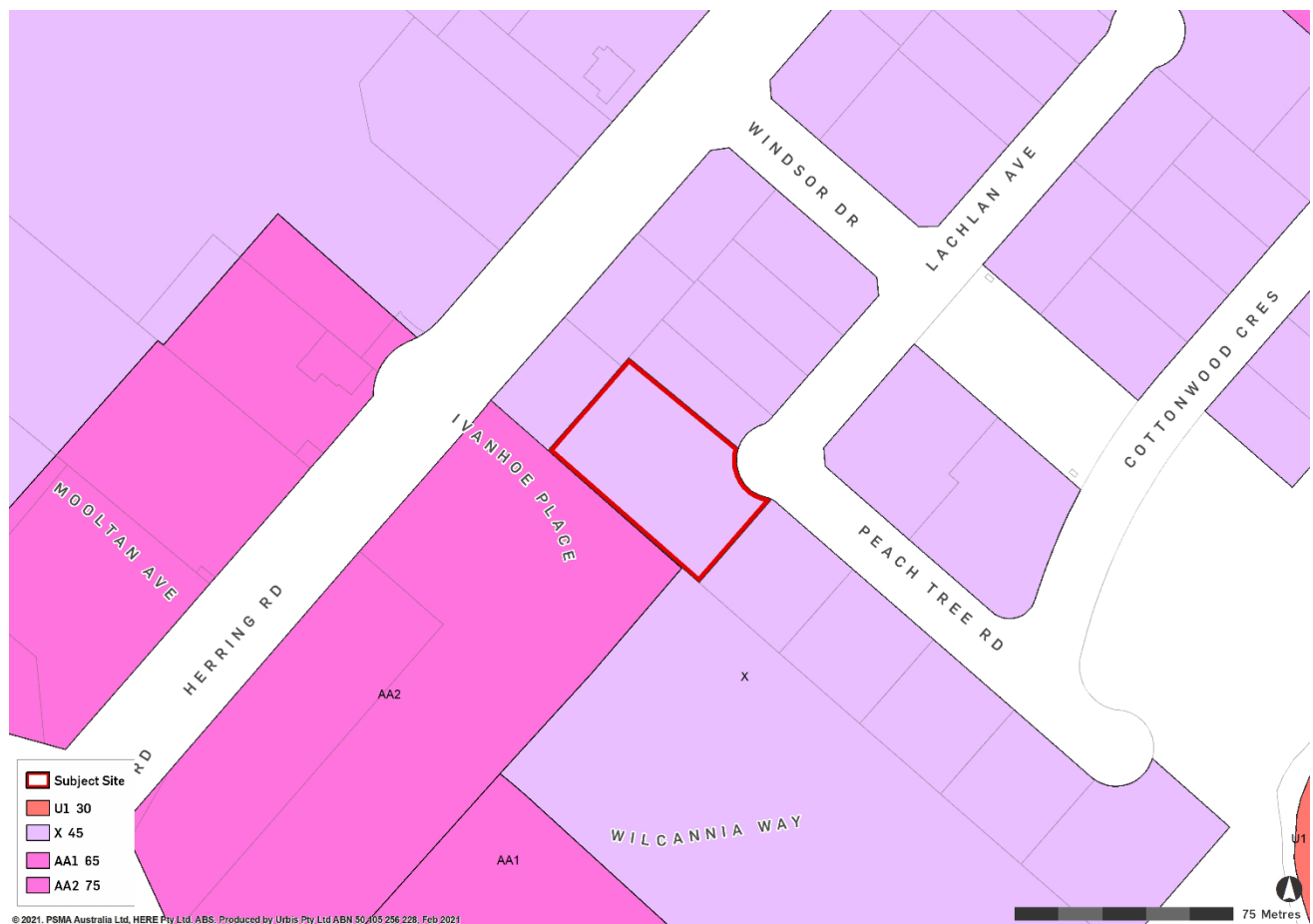
## 4. EXTENT OF CONTRAVENTION

This section of the report identifies the development standard which is proposed to be varied, including the extent of the contravention. A detailed justification for the proposed variation is provided in **Section 6** of the report.

### 4.1. VARIATION TO MAXIMUM BUILDING HEIGHT

The maximum height of building control under the RLEP 2014 is 45m as shown in Figure 3.

Figure 3 Maximum HOB – RLEP 2014



Source: NSW Legislation / Urbis

The extent of the proposed height variation pertains to the natural slope of the site which varies approximately 7.5m (RL 65m in the western corner to RL 57.5m at the eastern). The exceedance does not relate to any habitable spaces or gross floor area (GFA). The maximum proposed building height is:

- Maximum of **47.83m** to the following building elements:
  - Lift overrun;
  - Communal open space pergola structure;
  - Upper element of the wash closet;
  - Services such as stair pressurisation;
  - Building articulation elements such as the parapet walls; and
  - Some minor encroachment by the top corner of unit 1205 and 1305.

Selected DA drawings show the specific parts of the building which project above the 45m height plane (refer to **Appendix A**). The 45m 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.

3D massing of the proposed development with the 45m height plane overlay are provided in Figure 4 below, indicating the elements that exceed the maximum 45m building height control.

Figure 4 3D Massing showing height exceedances





Source: Bureau SRH

The following building elements will be located **above** the 45m building height plane:

- Lift overrun;
- Communal open space pergola structure;
- Upper element of the wash closet;
- Services such as stair pressurisation;
- Building articulation elements such as the parapet walls; and
- Some minor encroachment by the top corner of unit 1205 and 1305.

No habitable space of GFA is located above the 45m height line.

Table 3 below provides a summary of the height exceedances across the building.

Table 3 Maximum Building Height

Building Element	Maximum Height	Departure from the standard
Lift overrun	48.08m	+3.08m (6.8% increase)
Communal open space pergola	47.93m	+2.93m (6.5% increase)
Upper element of the wash closet	47.88m	+2.88m (6.4% increase)
Building articulation elements	47.15m	+2.15m (4.8% increase)
Top corner of unit 1205 and 1305	(Unit 1205) 45.98m	+0.98m (2.2% increase)
	(Unit 1305) 46.35m	+1.35m (3% increase)

## 5. RELEVANT ASSESSMENT FRAMEWORK

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

- (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.*

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

In determining whether to grant consent for development that contravenes a development standard, clause 4.6(3) requires that the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development by demonstrating:

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

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request adequately addresses each of the matters listed in clause 4.6(3). The consent authority should also be satisfied that that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which it is proposed to be carried out.

Clause 4.6(4)(b) requires the concurrence of the Secretary to have 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.*

The concurrence of the Secretary can be assumed to have been granted for the purpose of this variation request in accordance with the Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under section 64(1) of the Environmental Planning and Assessment Regulation 2000 and provides for assumed concurrence. A consent granted by a consent authority that has assumed concurrence is as valid and effective as if concurrence had been given.

The Secretary can be assumed to have given concurrence if the matter is determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular. The subject Development Application will be determined by the Sydney North Planning Panel.

This clause 4.6 request demonstrates that compliance with the Height of Building prescribed for the site in clause 4.6 of RLEP 2014 is unreasonable and unnecessary, that there are sufficient environmental planning grounds to justify the requested variation and that the approval of the variation is in the public interest because it is consistent with the development standard and zone objectives.

In accordance with clause 4.6(3), the applicant requests that the Height of Building development standard be varied.



## 6. ASSESSMENT OF CLAUSE 4.6 VARIATION

The following sections of the report provide a comprehensive assessment of the request to vary the development standards relating to the Height of Building standard in accordance with clause 4.6 of RLEP 2014.

Detailed consideration has been given to the following matters within this assessment:

- Varying development standards: A Guide, prepared by the Department of Planning and Infrastructure dated August 2011.
- Relevant planning principles and judgements issued by the Land and Environment Court.

The following sections of the report provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the LEP.

### 6.1. IS THE PLANNING CONTROL A DEVELOPMENT STANDARD THAT CAN BE VARIED? – CLAUSE 4.6(2)

The maximum Height of Building prescribed by clause 4.3 of RLEP 2014 is a development standard capable of being varied under clause 4.6(2) of RLEP 2014.

The proposed variation is not excluded from the operation of clause 4.6(2) as it does not comprise any of the matters listed within clause 4.6(6) or clause 4.6(8) of RLEP 2014.

### 6.2. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE? – CLAUSE 4.6(3)(A)

Historically, the most common way to establish a development standard was unreasonable or unnecessary was by satisfying the first method set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method requires the objectives of the standard are achieved despite the non-compliance with the standard.

This was recently re-affirmed by the Chief Judge in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [16]-[17]. Similarly, in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [34] the Chief Judge held that “establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary”.

This Request addresses the first method outlined in *Wehbe v Pittwater Council* [2007] NSWLEC 827. This method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

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 Request also addresses the third method, that the underlying objective or purpose of the development standard would be undermined, defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (*Initial Action* at [19] and *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24]). Again, this method alone is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

The Request also seeks to demonstrate the ‘unreasonable and unnecessary’ requirement is met because the burden placed on the community by not permitting the variation would be disproportionate to the non-existent or inconsequential adverse impacts arising from the proposed non-complying development. This disproportion provides sufficient grounds to establish unreasonableness (relying on comments made in an analogous context, in *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the Height of Building development standard as specified in clause 4.3 of RLEP 2014 are detailed in Table 4 below. An assessment of the consistency of the proposed development with each of the objectives is also provided.

Table 4 Assessment of consistency with clause 4.3 objectives

Objectives	Assessment
<p><i>(a) 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 building in this locality but is most relevant to the intended future 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 immediately adjoining the site are 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 residential towers and mixed-use developments, nonetheless, the proposed design responds to the existing form with a 4-storey podium the sits comfortably in the existing landscape.</p> <p>The proportioning of the entire building façade fronting Lachlan Avenue is consistent with what is envisaged for this precinct which is undergoing transition. The height exceedance is limited to the following elements which will not be visible when viewed from Lachlan Avenue:</p> <ul style="list-style-type: none"> <li>▪ Lift overrun;</li> <li>▪ Communal open space pergola structure;</li> <li>▪ Upper part of the wash closet;</li> <li>▪ Services such as stair pressurisation;</li> <li>▪ Building articulation elements such as the parapet walls; and</li> <li>▪ Some minor encroachment by the top corner of unit 1205 and 1305.</li> </ul> <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>

Objectives	Assessment
<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 shadow diagrams contained within the Architectural Package demonstrate that the protrusions do not result in any additional shadow impact. The generally compliant building envelope shadow impacts are not expedited by the proposed variation.</p> <p>The proposal will significantly improve the appearance of the Macquarie Park area and is consistent with future character of the area, which is undergoing transition. The proposal achieves 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>As part of the DA process, multiple efforts to consolidate the site and adjoining site at 155 Herring Road was made. An offer was made at market value and was rejected by the landowners. The principles of site isolation and the approaches with the adjoining landowner are detailed in the Statement of Environmental Effects submitted with this DA.</p> <p>The site is in close walking distance of the Macquarie University Metro Station and bus interchange.</p> <p>The proposal achieves this objective.</p>
<p><i>(d) to minimise the impact of development on the amenity of surrounding properties;</i></p>	<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 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 as the exceedances are internalised on the roofplane. The exceedances are not visible from the immediate public domain.</p> <p>The proposal achieves this objective.</p>
<p><i>(e) to emphasise road frontages along road corridors.</i></p>	<p>The subject site does not front a major road corridor; however its design has been articulated to create an attractive interface with Herring Road. The minor exceedance in height by the lift overrun, pergola, upper element of the wash closet, services, building articulation elements and minor encroachment by the top corner of unit 1205 and 1305 does not detract from the achievement of this objective.</p> <p>The proposal achieves this objective.</p>

The objectives of the development standard are achieved, notwithstanding the non-compliance with the standard in the circumstances described in this variation report.

- **The underlying object or purpose would be undermined, if compliance was required with the consequence that compliance is unreasonable** (the third method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43] as applied in *Linfield Developments Pty Ltd v Cumberland Council* [2019] NSWLEC 131 at [24])

Whilst the object or purpose of Clause 4.3 of RLEP as shown in Table 4 would not be undermined if compliance was required, the proposed development, subject to the proposed exceedance remains fully capable meeting the objectives of Clause 4.3.

- **The burden placed on the community (by requiring strict compliance with the HOB standard) would be disproportionate to the (non-existent or inconsequential) adverse consequences attributable to the proposed non-compliant development** (cf *Botany Bay City Council v Saab Corp* [2011] NSWCA 308 at [15]).

Full compliance with Clause 4.3 would restrict residents from utilising the rooftop communal open space or benefit from the views and solar amenity associated with the building's orientation. The proposed exceedance will have nil impact on the local community as the protrusions do not result in any additional shadow impact and are not visible from the public domain.

### **6.3. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD? – CLAUSE 4.6(3)(B)**

The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering the sufficient environmental planning grounds. Preston J observed:

*“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*

*...there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”*

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 lift overrun, the pergola structure in the communal open space, upper element of the wash closet, services, building articulation elements and some minor encroachment by the top corner of unit 1205 and 1305. 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 or intensify the proposed use. Further, these exceedances assist in ensuring a high quality and complete design for the building through architectural façade elements and the rooftop pergola for example and creation of appropriate access to the communal roof top open space. This is shown in the level 13 floor plan, where by the lift core is built into the internal corridor, offering a level of separation between the communal open space area as well as indirect wind amelioration onto the adjoining seating areas.

Figure 5 Level 13 Floor Plan



Source: Bureau SRH

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of building non-compliance in this instance.

#### 6.4. HAS THE WRITTEN REQUEST ADEQUATELY ADDRESSED THE MATTERS IN SUB-CLAUSE (3)? – CLAUSE 4.6(4)(A)(I)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

Each of the sub-clause (3) matters are comprehensively addressed in this written request, including detailed consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The written request also provides sufficient environmental planning grounds, including matters specific to the proposal and the site, to justify the proposed variation to the development standard.

#### 6.5. IS THE PROPOSED DEVELOPMENT IN THE PUBLIC INTEREST? – CLAUSE 4.6(4)(B)(II)

Clause 4.6(4)(a)(ii) states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the zone.

The consistency of the development with the objectives of the development standard is demonstrated in Table 4 above. The proposal is also consistent with the land use objectives that apply to the site under RLEP. The site is located within the B4 Mixed Use zone. The proposed development is consistent with the relevant land use zone objectives as outlined in Table 5 below.

Table 5 Assessment of compliance with land use zone objectives

Objective	Assessment
<ul style="list-style-type: none"> <li>To provide a mixture of compatible land uses.</li> </ul>	The proposed development comprises residential uses that is compatible by the adjoining residential

Objective	Assessment
	<p>character of the area and responds to the needs of the future population whilst having regard to proximate Macquarie Shopping Centre and public transport corridors.</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 site is within close walking distance to high frequency transport services, and cycle links connecting with local employment and education locations and the wider Metropolitan Area.</p> <p>The proposal will deliver a pedestrian linkage to Ivanhoe Place to support the permeability and walkability of the site in relation to its contextual setting.</p> <p>The proposal is consistent with this objective.</p>
<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 residential accommodation in proximity to local employment and education which is consistent with the Greater Sydney Commission's aim to provide jobs closer to homes. Whilst the proposal will not deliver business activities, the future residents will benefit from the site's proximity to jobs and education services.</p> <p>The proposal is therefore 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>	<p>Whilst not student accommodation, 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. The site is in easy walking distance to Macquarie University.</p> <p>The proposal is consistent with this objective.</p>

The above table demonstrates the proposed development will be in the public interest notwithstanding the proposed variation to the maximum building height, as 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.

## 6.6. HAS THE CONCURRENCE OF THE PLANNING SECRETARY BEEN OBTAINED? – CLAUSE 4.6(4)(B) AND CLAUSE 4.6(5)

The Secretary can be assumed to have concurred to the variation under Department of Planning Circular PS 18–003 'Variations to development standards', dated 21 February 2018. This circular is a notice under 64(1) of the *Environmental Planning and Assessment Regulation 2000*.

The Secretary can be assumed to have given concurrence as the matter will be determined by an independent hearing and assessment panel or a Sydney district or regional planning panel in accordance with the Planning Circular.

The matters for consideration under clause 4.6(5) are considered below.

- **Clause 4.6(5)(a) – does contravention of the development standard raise any matter of significance for State or regional environmental planning?**

The proposed non-compliance with the maximum building height will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variation is minimal and 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.

- **Clause 4.6(5)(b) - is there a public benefit of maintaining the planning control standard?**

The proposed development achieves the objectives of the maximum building height and the land use zone objectives despite the technical non-compliance.

It has been demonstrated that the proposed variation arises due to the slope of the land and the need to create a functional rooftop communal open space area.

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.

- **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, however, there are no known additional matters that need to be considered within the assessment of the clause 4.6 variation request prior to granting concurrence, should it be required.



## 7. CONCLUSION

For the reasons set out in this written request, strict compliance with the Height of Building development standard contained within clause 4.3 of RLEP 2014 is unreasonable and unnecessary in the circumstances of the case. Further, there are sufficient environmental planning grounds to justify the proposed variation and it is in the public interest to do so.

It is reasonable and appropriate to vary the maximum Height of Building to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposed development remains consistent with the objectives of Clause 4.3 of RLEP.
- The elements protrude beyond the 45m height plane are not habitable.
- The height exceedances do not result in any addition shadow or amenity impact, nor do they result in views to other private domain areas or units. The exceeding elements of the development are not visible from the public domain.
- A compliant building envelope would restrict residents from being able to utilise the rooftop communal open spaces.

For the reasons outlined above, the clause 4.6 request is well-founded. The development standard is unnecessary and unreasonable in the circumstances, and there are sufficient environmental planning grounds that warrant contravention of the standard. In the circumstances of this case, flexibility in the application of the Height of Building development standard should be applied.

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