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URBIS

CLAUSE 4.6 VARIATION REQUEST

5-11 Lachlan Avenue and
155-159 Herring Road,
Macquarie Park

Prepared for
**ONE GC MQ PARK PTY LTD C/O ONE GLOBAL
CAPITAL PTY LTD**
24 May 2023

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CLAUSE 4.6 VARIATION REQUEST – 155-159 HERRING RD & 5-11 LACHLAN
AVE, MACQUARIE PARK – MAY 2023

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1. INTRODUCTION

This Clause 4.6 Variation Request has been prepared on behalf of One GC MQ Park Pty Ltd c/o One Global Capital Pty Ltd (the applicant) and accompanies a Development Application (DA) for a residential-led mixed use development at 5-11 Lachlan Avenue and 155-159 Herring Road, Macquarie Park (the site).

This request seeks a minor variation to the maximum 45m height of building control (between 4.7% to 7.3%) that applies to the site under Clause 4.3 of the *Ryde Local Environmental Plan 2014* (Ryde LEP 2014). This variation request is made in accordance with Clause 4.6 of the Ryde LEP 2014.

This request should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Urbis (Rev 01, dated 6 December 2022) and the Architectural Plans prepared by Koichi Takada Architects (KTA) (dated 28 November 2022).

2. SITE DESCRIPTION

The site is located at 5-11 Lachlan Avenue and 155-159 Herring Road within the City of Ryde Local Government Area (LGA), on the south-eastern side of Herring Road between Ivanhoe Place and Windsor Drive. The site is bound by Herring Road to the north-west, Windsor Drive to the north-east, Lachlan Avenue to the south-east and Ivanhoe Place and 1-3 Lachlan Avenue to the south-west.

The site's topography comprises a significant level change of around 12m from a high of approximately RL 67.24 at the western corner of the site (at Herring Road and Ivanhoe Place), falling to RL 54.46 to the south-eastern corner of the site (at Windsor Drive and Lachlan Avenue).

The legal description of the site is outlined in **Table 1**, and the location of the site is shown in **Figure 1**.

Figure 1 Aerial Image of Site Location



Source: Urbis (2022)

Table 1 Legal Description of the Site

| Property Address | Title Description |
|------------------------|---------------------|
| 5 Lachlan Avenue | Lots 1-12, SP 12698 |
| 7 Lachlan Avenue | Lots 1-12, SP 14550 |
| 9 Lachlan Avenue | Lots 1-12, SP 22475 |
| 11 Lachlan Avenue | Lots 1-15, SP 6760 |
| 155 Herring Road | Lots 1-12, SP 6782 |
| 157 Herring Road | Lots 1-12, SP 6956 |
| 159 Herring Road | Lots 1-14, SP 16663 |
| TOTAL SITE AREA | 6,952.3 sqm |

3. PROPOSED DEVELOPMENT

This Clause 4.6 Variation Request has been prepared to accompany a DA for the demolition of existing buildings and structures and the construction of a residential-led mixed use development at 5-11 Lachlan Avenue and 155-159 Herring Road, Macquarie Park.

This application seeks consent for the following:

- The demolition of all existing buildings and structures, and the design, construction and use of three buildings, as follows:
 - **Tower A** – A part 13-storey and part 14-storey building up to a maximum height of 47.1m (RL 110.16) comprising residential accommodation and ground floor / lower ground floor retail uses.
 - **Tower B** – A 14-storey building up to a maximum height of 47.3m (RL 105.65) comprising residential accommodation.
 - **Tower C** – A 14-storey building up to a maximum height of 48.3m (RL 113.15) comprising residential accommodation and ground floor / lower ground floor retail uses.
- A total of 307 residential apartments across Towers A, B and C, and ground floor retail premises within Towers A and C, with a combined overall gross floor area (GFA) of 27,798 sqm (which equates to a maximum FSR of 4:1).
- Excavation for four (4) shared basement levels with consolidated vehicular access from Lachlan Avenue for parking, loading and servicing, storage, and associated plant, services and utilities.
- Associated communal open space, landscaping and public domain works, as well as the removal of existing trees.
- Provision of public art.
- Stratum subdivision.

The key numeric elements of the proposed development are outlined in **Table 2** below. Refer to the Architectural Plans prepared by Koichi Takada Architects (KTA) the following sections of this report for further details.

Table 2 Numeric Overview of Proposed Development

| Component | Proposed Development | |
|-------------------------|---|-------------------|
| Site Area | 6,952.3 sqm | |
| Land Uses / Total GFA | <i>Residential accommodation</i> | 27,025 sqm |
| | <i>Retail premises</i> | 773 sqm |
| | TOTAL | 27,798 sqm |
| Building Height | Tower A – Maximum building height of 47.1m (RL 110.16) Tower B – Maximum building height of 47.3m (RL 105.65) Tower C – Maximum building height of 48.3m (RL 113.15) | |
| Floor Space Ratio (FSR) | 4:1 | |

The proposed built form and architectural design of the development is illustrated in below.

4. VARIATION OF BUILDING HEIGHT STANDARD

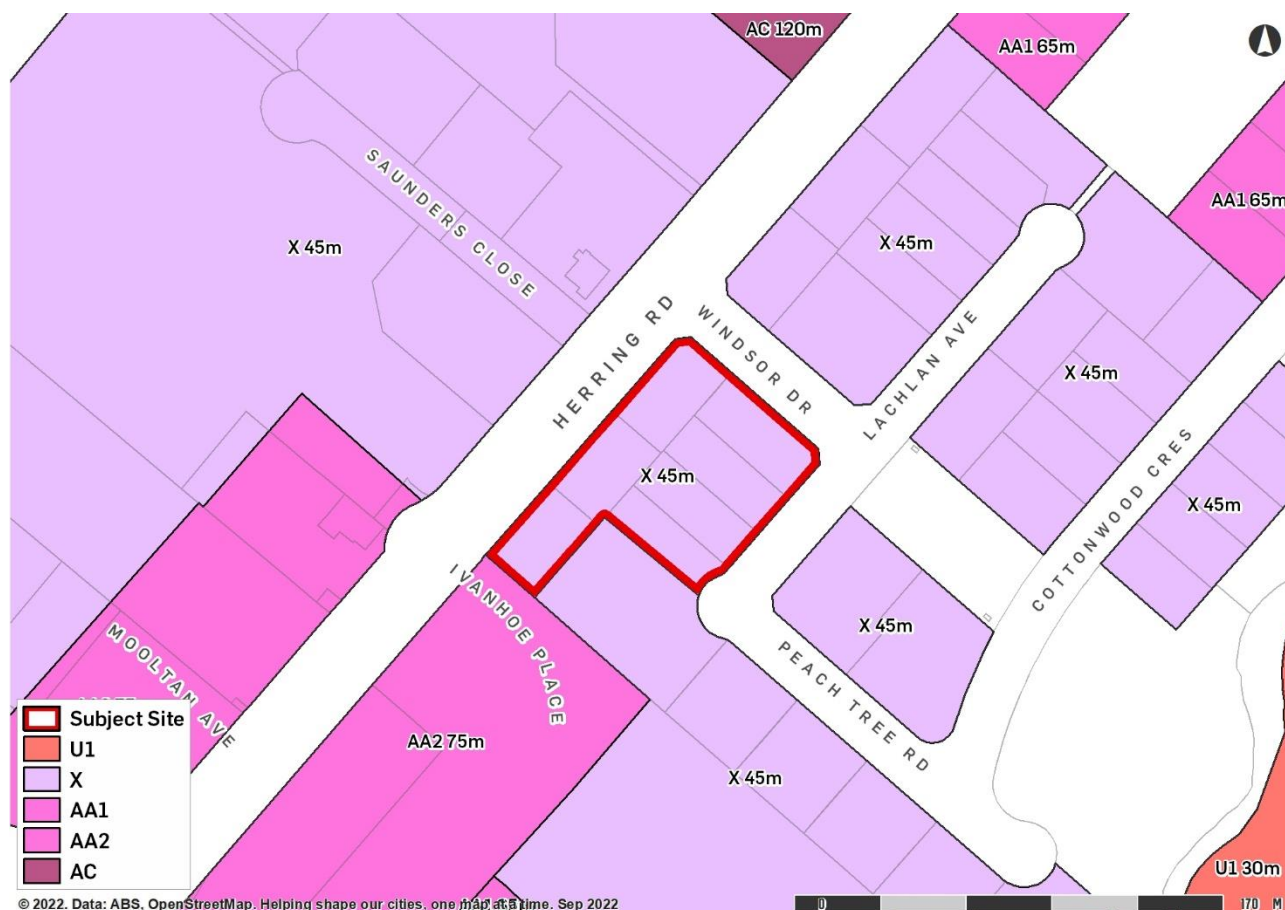
This section sets out the development standard, which is proposed to be varied, including the extent of the variation. Detailed justification for the proposed variation is provided in **Section 6** of this report.

4.1. DEVELOPMENT STANDARD

Clause 4.6 of Ryde LEP applies to development standards. The relevant building height control at clause 4.3(2) of the NSLEP 2013 requires that 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 maximum height of building control prescribed for the site is 45m. This is shown in **Figure 2** below. This Clause 4.6 Variation Request seeks a variation to the maximum building height prescribed for the site under clause 4.3 of the Ryde LEP 2014.

Figure 2 Extract of Ryde LEP 2014 Height of Buildings Map (Sheet HOB_004)



Source: Ryde LEP 2014 / Urbis 2022

4.2. PROPOSED VARIATION

The proposed variation to the maximum building height for each of the three buildings is set out in **Table 3**.

Table 3 Proposed Height Variation

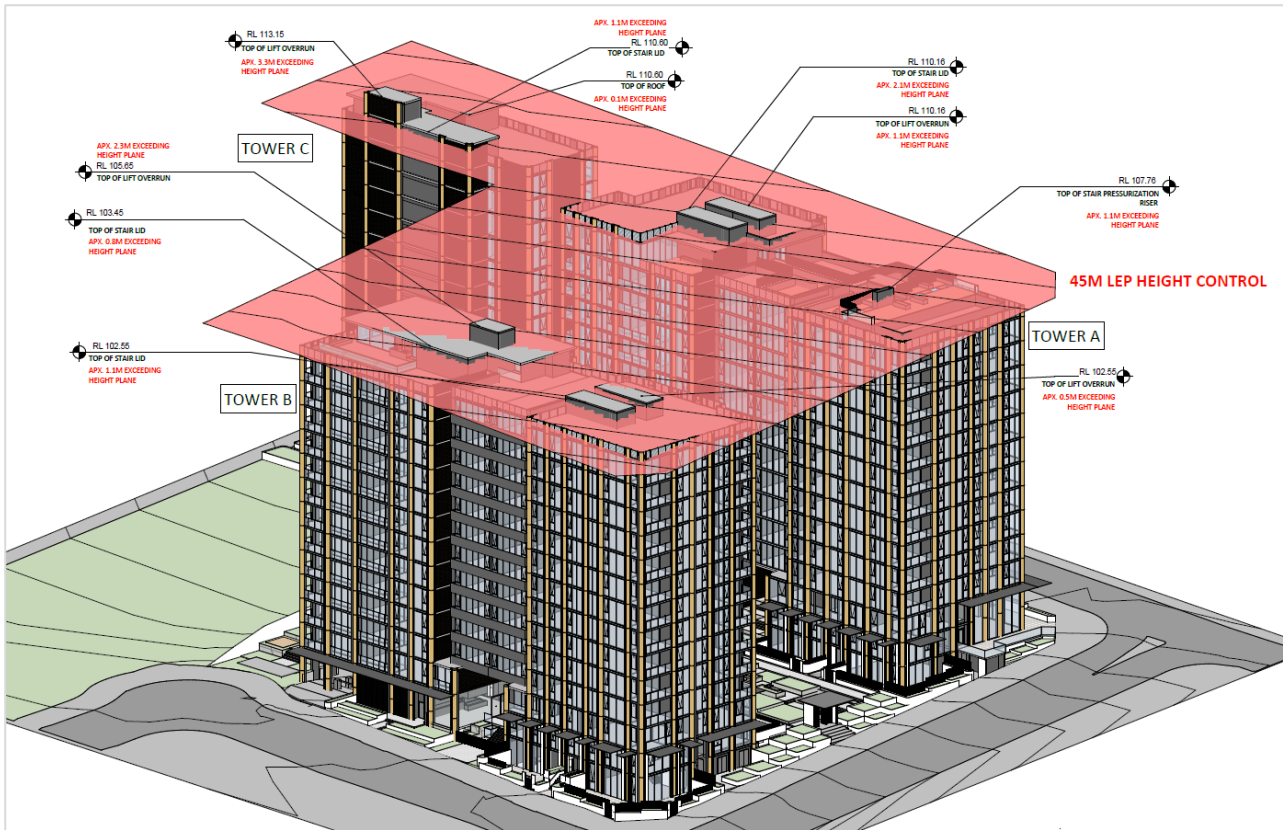
| Building | Height Control | Proposed Development | Extent of Variation |
|----------|----------------|----------------------|---------------------|
| Tower A | 45m | 47.1m (RL 110.16) | 2.1m (4.7%) |
| Tower B | 45m | 47.3m (RL 105.65) | 2.3m (5.1%) |
| Tower C | 45m | 48.3m (RL 113.15) | 3.3m (7.3%) |

The proposed variation to the maximum building height relates to the following roof elements:

- **Tower A** – The top of the lift overrun, stair lid, and stair pressurisation riser, and a small part of the upper most roof parapet.
- **Tower B** – The top of the lift overrun and stair lid, and a small part of the upper most roof parapet.
- **Tower C** – The top of the lift overrun, stair lid, and a small part of the lift core roof.

The extent of the proposed variation is shown within height plane diagram at **Figure 3** (viewed from the corner of Lachlan Avenue and Windsor Drive, facing west). The extent of variation is also shown within the selected elevations at **Figure 4** and **Figure 5** below.

Figure 3 Height Plane Diagram Showing Extent of Proposed Variation



Source: KTA (2022)

Figure 4 Proposed North West Elevation (Herring Road) (Tower A and Tower C)



Source: KTA (2022)]

The drawing is a detailed architectural elevation of a proposed development. It features two main towers, Tower A (Beyond) and Tower B, both 14 stories high. To the left, a 'PROPOSED NEIGHBOURING DEVELOPMENT' is shown as a 13-story building. To the right, a '4 STOREY APT. BLDG.' is labeled '1-3 LACHLAN AVENUE'. The drawing includes various annotations: 'SITE BOUNDARY' on the left and right, 'PROPOSED SETBACK 12m' on the left, '45M LEP HEIGHT CONTROL' indicated by a red dashed line, and 'GO SETBACK 5m' on the right. Elevation markers on the right side include 'WINDSOR DRIVE' and 'BASEMENT 1' through 'BASEMENT 3'. The drawing also shows 'DRIVEWAY ENTRY' and 'BUILDING B ENTRY' at the base of the towers. The towers themselves have a modern design with glass facades and vertical structural elements. The drawing is a technical representation of a building design, showing the relationship between the proposed development and its surroundings.

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AVE, MACQUARIE PARK – MAY 2023

5. RELEVANT ASSESSMENT FRAMEWORK

Clause 4.6 of Ryde LEP 2014 includes provisions that allow for exceptions to development standards in certain circumstances. The objectives of clause 4.6 of Ryde LEP 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 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(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.*

For the purposes of clause 4.6(3)(a), the ways in which compliance with a development standard can be shown to be unnecessary (in that it is achieved anyway) or unreasonable (in that no purpose would be served) are as follows:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard.
2. Under this approach development standards are viewed not as the planning objectives, but as a means to achieve those objectives. If there is an alternative means to achieve the objective, then the objective would be achieved anyway (and hence compliance with the standard is unnecessary) and there is no purpose served by requiring compliance with the standard (and hence compliance would be unreasonable). This tends to be the most common way of establishing that compliance is unreasonable or unnecessary.
3. To establish that the underlying objective or purpose of the standard is not relevant to the development, and hence compliance with the standard is unnecessary.
4. To establish that the underlying objective or purpose of the standard would be defeated if compliance was required, and hence compliance with the standard is unreasonable.
5. To establish that the development standard has been virtually abandoned or destroyed by Council's own decisions departing from the standard, and hence compliance with the standard is unnecessary or unreasonable.
6. To establish that the zoning of the particular land was an anomaly or inappropriate, and as a result the development standard applying to zoning are also an anomaly or inappropriate, and hence compliance with the standard is unnecessary or unreasonable. (*Wehbe v Pittwater Council* (2007) 156 LGERA 446)

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 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.

This request focuses on the first method of showing that compliance is *unreasonable or unnecessary*, outlined below.

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 Planning Circular PS 20-002 'Variations to development standards', dated 5 May 2020 (prepared by the Department of Planning, Industry and Environment). This circular is a notice under section 55(1) of the *Environmental Planning and Assessment Regulation 2021* 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 Local Planning Panel or a Sydney Regional Planning Panel in accordance with the Planning Circular. The subject development application will be determined by the Sydney North Planning Panel.

6. ASSESSMENT OF CLAUSE 4.6 VARIATION

This section of the report provides a comprehensive assessment of the request to vary the maximum building height development standard in accordance with clause 4.6 of Ryde LEP 2014.

As part of this assessment, detailed consideration has been given to the following matters:

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

The following section provides detailed responses to the key questions required to be addressed within the above documents and clause 4.6 of the Ryde LEP 2014.

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

The maximum building height control prescribed by clause 4.3 of Ryde LEP 2014 is a development standard. 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 Ryde LEP 2014.

Therefore, the proposed maximum building height control is a development standard that is capable of being varied under clause 4.6(2) of the Ryde LEP 2014.

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

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

This was 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 of the NSWLEC 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 Clause 4.6 Variation 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:

- ***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])

For the purposes of clause 4.6(3) and 4.6(4), it is necessary to address the relevant objectives of the development standard. The objectives are dealt with in turn below 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 |
|---|---|
| (a) <i>To ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,</i> | <p>The proposed development is consistent with the nature, scale and character of recently completed developments to the north, west and south of the site. This includes the completed mixed use developments on the opposite side of Herring Road (at 120-128 Herring Road), and the Neue residential development at 137-139 Herring Road to the south.</p> <p>The proposal is also consistent with the emerging character of development within the broader precinct including the proposed residential development at 1-3 Lachlan Avenue (to the south, currently under assessment), and the Midtown Macquarie Park redevelopment (formerly known as Ivanhoe Estate, which will be delivered in stages and is currently under construction).</p> <p>The existing residential buildings towards the east of the site were constructed around the 1970s and comprise 3-4 storeys in height which are setback from the street. These buildings represent the historic character of Macquarie Park and do not reflect the future character reflected within the current planning controls.</p> <p>The proposed development is consistent with this objective.</p> |
| (b) <i>To minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,</i> | <p>The proposed variation to the building height control predominantly relates to roof plant / services which are located at the low point of the site as it slopes down towards the south east. These roof elements include:</p> <ul style="list-style-type: none"> ▪ Lift overruns ▪ Stair pressurisation risers and stair lids ▪ A small portion of the upper most roof parapets <p>These roof top elements are setback from the street and/or the roof parapet, and positioned centrally on the roof of all three buildings to minimise their appearance from the public domain surrounding the site.</p> <p>The extent of additional overshadowing due to the variation above the 45m height plane is minor, and would have a negligible effect on overall overshadowing and amenity to the nearby properties to the south when compared to a scheme that strictly complies with the height control.</p> <p>The proposed development is consistent with this objective.</p> |
| (c) <i>To encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,</i> | <p>The proposed development consolidates a total of seven (7) existing lots to deliver a mixed-use development in a location which benefits from improved public transport connections between Macquarie Park and other metropolitan centres throughout Sydney. These improved public transport connections include the Sydney Metro line from Macquarie University Station which opened in 2019, as well as the Macquarie Park Precinct bus interchange.</p> <p>The proposed development is consistent with this objective.</p> |

| Objectives | Assessment |
|--|--|
| (d) <i>To minimise the impact of development on the amenity of surrounding properties,</i> | <p>The proposed siting and configuration of the buildings on site achieves compliant building separating distances with the adjacent development at 1-3 Lachlan Avenue (noting that this site is subject to a development application for a residential development of a similar scale which is currently under assessment). These compliant building separation distances seek to maximise amenity and privacy to surrounding residential developments.</p> <p>The roof top elements that project above the height plane do not contribute to the overall bulk and scale of the proposed development, will have an imperceptible impact on the amenity of surrounding properties when compared to a scheme that strictly complies with the height control.</p> <p>The proposed development is consistent with this objective.</p> |
| (e) <i>To emphasise road frontages along road corridors.</i> | <p>The site's main frontage is to Herring Road, a regional road that connects the site to the M2 Motorway and Epping Road. The proposed development has been designed to provide an articulated façade with vertical elements that responds to the emerging high density character of Herring Road and provides differentiation between buildings. This reinforces its importance within the Macquarie Park Corridor.</p> <p>The proposed development is consistent with this objective.</p> |

As set out within the table above, the objectives of the building height development standard are achieved, notwithstanding the non-compliance with the standard in the particular circumstances described in this Clause 4.6 Variation Request.

6.3. ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD – CLAUSE 4.6(3)(B)

The NSWLEC judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, assists in considering the sufficient environmental planning grounds. At [24], Preston CJ observed that 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, 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...”

Preston CJ also observed at [87] that there is no basis in clause 4.6 to:

“... directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.”

Furthermore, In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in section 1.3 of the Act.

While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 5** we consider how the proposed development is consistent with each object, as and if relevant, notwithstanding the proposed variation of the building height development standard.

Table 5 Objects of the EP&A Act

| Object | Comment |
|---|--|
| <i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,</i> | <p>The proposal promotes the social and economic welfare of the community and a better environment through the delivery of a mixed-use residential and retail development.</p> <p>The development will support new jobs during the construction and operational phases of the project in close proximity to existing transport facilities.</p> |
| <i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i> | <p>The proposal will satisfy the required standards of ecologically sustainable development including various initiatives being explored such as; minimising waste from demolition, construction and operations, water conservation and quality of stormwater, passive design and natural ventilation and energy efficiency, and the health and wellbeing of the building's occupants.</p> <p>Further, the proposed minor height variation will have no significant negative impact on environmental and social considerations.</p> |
| <i>(c) to promote the orderly and economic use and development of land,</i> | <p>The proposed development promotes the orderly and economic use and development of the site by demolishing the existing buildings and delivering a new mixed-use development which provides a significant increase in housing and local ongoing employment in proximity to the existing Macquarie University Metro Station and Macquarie Shopping Centre.</p> <p>The proposed minor height variation is considered an orderly design outcome that responds to the sloping topography of the site and entails primarily lift overrun and other plant / services which is consistent with other recent approvals and constructed developments in the locality.</p> |
| <i>(d) to promote the delivery and maintenance of affordable housing,</i> | <p>There is no applicable policy requiring the delivery and maintenance of affordable housing for development applications.</p> |
| <i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i> | <p>The proposed development including the minor height variation will have no impact on threatened species or ecological communities and their habitats.</p> |
| <i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i> | <p>The proposed development is not adjacent to any identified heritage items or conservation areas.</p> |

| | |
|---|---|
| <p>(g) <i>to promote good design and amenity of the built environment.</i></p> | <p>The proposed development has been designed by award-winning architects KTA that has created elegant building forms and high quality communal spaces and active street edge uses.</p> <p>Furthermore, this scheme has been subject to a rigorous pre-lodgement planning and urban design review on two separate occasions which has informed the master planning of the building forms on site.</p> <p>The proposed minor variation in height plant and lift overruns will have no significant impact beyond that of a compliant building envelope.</p> |
| <p>(h) <i>to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i></p> | <p>The proposed development is capable of complying with relevant BCA requirements. The minor variation in building height does not prevent the development from complying with the BCA. Potential construction related impacts will be able to be managed.</p> |
| <p>(i) <i>to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i></p> | <p>This Object is not relevant to the proposed development.</p> |
| <p>(j) <i>to provide increased opportunity for community participation in environmental planning and assessment.</i></p> | <p>The proposal has yet to be publicly exhibited, we expect Council will determine the necessary level of community engagement in the project once it has been formally submitted.</p> |

In addition to considering the variation against the objects of the Act, we provide additional assessment as guided by *Initial Action* above.

The site's topography comprises a significant level change of around 12m from a high of approximately RL 67.24 at the western corner of the site (at Herring Road and Ivanhoe Place), falling to RL 54.46 to the south-eastern corner of the site (at Windsor Drive and Lachlan Avenue). The significant level change across the site means the minor exceedance above the 45m height plane occurs on the parts of the three buildings which are located at the low point of the site (i.e. towards the south east).

The minor variation to the building height relates predominantly to roof top plant, services, lift overruns and a small portion of the upper level roof parapets. These roof top elements have been setback from the perimeter of each of the three buildings and positioned in a central location where possible. The intent of setting back these roof top elements away from the building perimeters is to minimise or eliminate their visibility such that they are not perceived from the surrounding public domain, and to also minimise any additional overshadowing on the nearby residential properties to the south.

The extent of additional overshadowing caused by the roof top elements which exceed the 45m height limit is shown within **Figure 4** and **Figure 5** within the area shaded blue. This additional overshadowing is cast by the roof top elements from Tower C only. Any additional overshadowing due to the roof top elements which exceed the height limit above Towers A and B is contained within the existing shadow cast by these buildings. There will be no additional overshadowing to neighbouring properties due to the minor height exceedances above Towers A and B.

This analysis shows that this additional overshadowing from Tower C would have negligible effect on overall overshadowing and amenity to the nearby properties to the south when compared to a scheme that strictly complies with the height control. The extent of shadow that falls on an existing residential building at 3pm

falls on a side blank wall. The minor variation will not result in any significant or unacceptable impacts on amenity, privacy or overshadowing to the adjacent properties to the south.

Importantly, the parts of the buildings that exceed the maximum building height do not comprise any habitable floor space. The proposed development also complies with the maximum floor space ratio (FSR) control for the site, and the minor variation to the height control (in conjunction with a compliant FSR) will ensure that the overall built form comprises a scale and massing which is appropriate for the site and consistent with the emerging character of development within the Macquarie Park Corridor.

Overall, the proposed development is consistent with the nature and scale of the emerging character of the Macquarie Park Corridor, which is undergoing significant transformation into a high density strategic centre.

These specific circumstances of the proposal and the site constitute sufficient environmental planning grounds which justify the proposed variation to the development standard.

Figure 6 Proposed Extent of Overshadowing (9:00am – 2:00pm at Mid-Winter)



Picture 1 Overshadowing at 09:00am on 21 June



Picture 2 Overshadowing at 10:00am on 21 June



Picture 3 Overshadowing at 11:00am on 21 June



Picture 4 Overshadowing at 12pm on 21 June



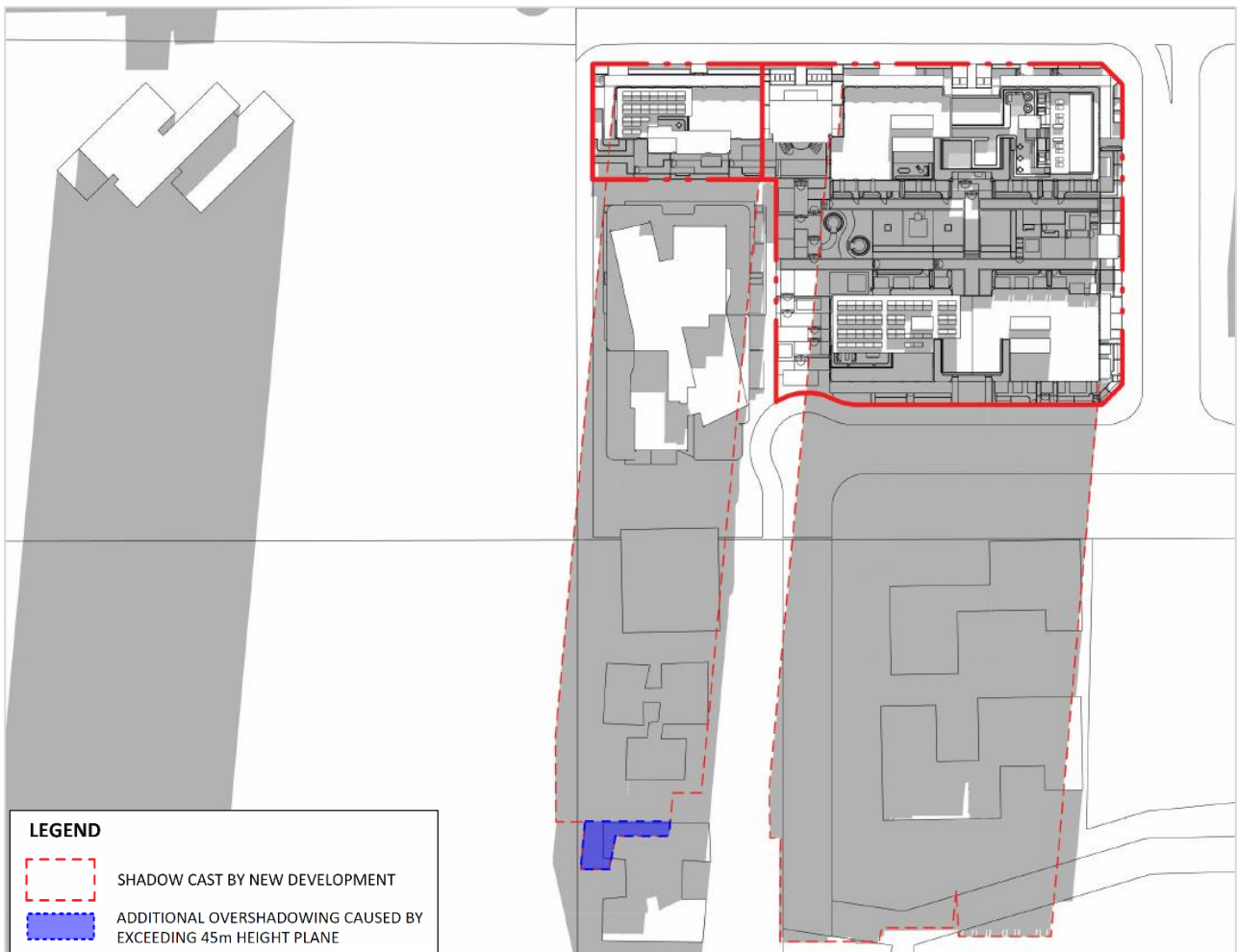
Picture 5 Overshadowing at 1:00pm on 21 June

Source: KTA (2022)



Picture 6 Overshadowing at 2:00pm on 21 June

Figure 7 Proposed Extent of Overshadowing (3:00pm at Mid Winter)



Source: KTA (2022)

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 matters within sub-clause (3) have been comprehensively addressed in this written request. This includes 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.

6.6. MEANING OF “CONSISTENT”

A development that is consistent with zone objectives does not need to promote the objective concerned strictly, but it encompasses development which may be complementary or ancillary to development which promotes the objective concerned. A development is not consistent with zone objectives if it is antipathetic development to those objectives: *Coffs Harbour Environment Centre Inc v Coffs Harbour City Council* (1991) 74 LGRA 185. It follows that the test of consistency is low.

6.7. CONSISTENCY WITH STANDARD

Table 4 above demonstrates that the development achieves the objectives of the building height development standard. As the development achieves the objectives (as applicable) it is plainly consistent with those objectives. Consistency with the objectives of the MU1 zone are dealt with in turn below.

6.8. CONSISTENCY WITH MU1 – MIXED USE ZONE

The proposed development is also consistent with the objectives of the MU1 Mixed Use zone that applies to the site under the Ryde LEP 2014. This is demonstrated within **Table 6** below.

Table 6 Assessment of Compliance with Land Use Zone Objectives

| Objective | Assessment |
|--|--|
| <i>To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</i> | <p>The proposed development will provide both short- and long-term employment opportunities. Short term employment opportunities will be generated through the construction of the development. Longer term employment opportunities will be providing in the servicing and maintenance of the development and in the operation of the retail component of the development.</p> <p>The proposed development is consistent with this objective.</p> |
| <i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse</i> | <p>The proposed development includes retail areas along the site's Herring Road frontage at the ground floor (within Towers A and C). These retail spaces will contribute to the creation of a vibrant streetscape and will encourage pedestrian activity in the Macquarie Park Corridor. The activation of the frontages will provide enhanced</p> |

| Objective | Assessment |
|--|---|
| <i>and functional streets and public spaces</i> | <p>opportunities for casual surveillance improving the functionality of the streetscape as a safe and secure environment.</p> <p>The proposed development is consistent with this objective.</p> |
| <i>To minimise conflict between land uses within this zone and land uses within adjoining zones</i> | <p>The proposed mixed-use development (comprising residential and retail land uses) is permissible with consent within the MU1 Mixed Use zone. The site is located within the Macquarie Park Corridor in an area which is surrounded by existing and future high density residential and mixed-use developments, and which is predominantly zoned MU1.</p> <p>The proposal is consistent with the emerging scale and character of development within the Macquarie Park Corridor. The site is located within a residential apartment precinct on the edge of Macquarie Park commercial area. The proposed development is therefore consistent with the character of the area and will not result in conflict with adjoining land uses.</p> <p>The proposed development is consistent with this objective.</p> |
| <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i> | <p>Small scale retail spaces have been provided along the ground floor of Towers A and C. These retail spaces will facilitate businesses that will improve residential amenity by providing local convenient services to residents of the proposed development, as well as the surrounding community. It will also establish the potential night time active uses that will enhance the vibrancy of the streetscape.</p> <p>The proposed development is consistent with this objective.</p> |
| <i>To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.</i> | <p>The site is located in a residential precinct adjacent to the university.</p> <p>The proposal will provide residential accommodation in close proximity to local employment and education activities which is consistent with the strategic planning framework objectives of providing homes close to jobs. The proposed development complements the existing and future desired character of the Macquarie Park Corridor and will support the development of a vibrant health and education precinct where residents can live, work and play.</p> <p>The proposed development is consistent with this objective.</p> |
| <i>To promote strong links between Macquarie University and research institutions and businesses in the Macquarie Park corridor.</i> | <p>The proposal supports the strengthening of connections between Macquarie University and other businesses and research institutions within the corridor by providing residential apartments and convenience retail space in close proximity.</p> <p>The apartments will provide additional accommodation options in the area for occupation by future students and staff of the university, and future employees of nearby businesses and research institutions. The retail tenancies would also provide employment opportunities for the community. The provision of new housing will support the university</p> |

| Objective | Assessment |
|-----------|---|
| | and business operations in offering opportunity to live close to work and study. The proposed development is consistent with this objective. |

As demonstrated within the table above, the proposed development is in the public interest as it achieves the objectives of the land use zone, and it also achieves the objectives of the development standard (notwithstanding the variation to the building height standard in the particular circumstances described within this Clause 4.6 Variation Request).

6.9. 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 Planning Circular PS 20-002 ‘Variations to development standards’, dated 5 May 2020. This circular is a notice under section 55(1) of the *Environmental Planning and Assessment Regulation 2021*.

The Secretary can be assumed to have given concurrence as the matter will be determined by a Sydney Regional Planning Panel in accordance with the Planning Circular.

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

6.10. CLAUSE 4.6(5)(A) – DOES CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISE ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING?

The proposed variation to the maximum building height of 4.7-7.3% from the 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.

6.11. CLAUSE 4.6(5)(B) - IS THERE A PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD?

The proposed development achieves the objectives of the building height development standard and the land use zone objectives despite the technical non-compliance. The additional height proposed has been demonstrated to be appropriate and supportable in the circumstances of the case.

There is no material impact or benefit associated with strict adherence to the development standard and there is no compelling reason or public benefit derived from maintenance of the standard.

6.12. 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 as part of the assessment of this Clause 4.6 Variation Request prior to granting concurrence, should it be required.

DISCLAIMER

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