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**URBIS**

# **CLAUSE 4.6 VARIATION REQUEST**

Height of Building

17-21 Lachlan Avenue and  
163 Herring Road, Macquarie  
Park

Prepared for

**LACHLAN AVENUE DEVELOPMENT PTY LTD**

Revised 18 May 2023

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# 1. INTRODUCTION

This revised Clause 4.6 Variation Request (**this Request**) has been prepared on behalf of Lachlan Avenue Development Pty Ltd (**the applicant**) and accompanies a Development Application (**DA**) for the demolition of the existing buildings and the construction of a part 10, part 13 and part 15 storey development for student accommodation at 17-21 Lachlan Avenue and 163 Herring Road, Macquarie Park (**the site**).

This request seeks an exception from the maximum height of building prescribed for the site under clause 4.3 of the *Ryde Local Environmental Plan 2014 (RLEP 2014)*. This variation 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 November 2022 and accompanying design and technical documentation.

The following sections of the report include:

- **Section 2:** description of the site and its local 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 located at 17-21 Lachlan Avenue and 163 Herring Road, Macquarie Park and is legally described as SP6781, SP6947, SP7041 and SP11078 (refer **Figure 1**). The site is in a highly prominent and strategic location and the proposal seeks to complement existing new high-rise developments recently constructed within Macquarie Park and planned future development of adjoining land.

Figure 1 Aerial image of the site location



Source: Urbis (2022)

Key characteristics of the site include:

- The site has a total site area of approximately 3,901.6m<sup>2</sup> and is subject to a level change of approximately 6m from north to south.
- The site has frontages to Herring Road (37.7m) to the north and Lachlan Avenue (50.5m) to the south. The eastern and western boundaries of the site adjoin residential developments.
- The site is currently occupied by four existing four-storey residential strata buildings, with car parking spaces on the ground level. Vehicular access to the site is currently available from both Herring Road and Lachlan Avenue.
- Existing trees surround the boundaries of the site and there are two mature trees towards the centre of the site.

Photographs of existing development within the site is provided at **Figure 2**.



Figure 2 Site photographs



Picture 1 Development at 17 Lachlan Avenue



Picture 2 Development at 19 Lachlan Avenue



Picture 3 Development at 21 Lachlan Avenue



Picture 4 Development at 163 Herring Road with

Source: Urbis (2022)

## 2.2. EMERGING CONTEXT

Macquarie Park is undergoing a significant transformation into a high-density urban centre. This change has been driven by the expansion of Macquarie University, construction of the M2 Motorway and more recently significant State Government investment in the Sydney Metro project which was completed in 2019.

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 further demonstrated in the Greater Sydney Region Plan and Northern District Plan, which identify Macquarie Park as the western gateway of the Eastern Economic Corridor.

Residential development in Macquarie Park has traditionally been characterised by 3-4 storey walk-up residential buildings. However, 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 Macquarie University Station Precinct, which aims to provide a new mixed use 'academic core' at Macquarie University, create opportunities for renewal within an 800m radius of the Macquarie University Station and deliver up to 5,800 new homes by 2031 in high-rise urban forms.

Developments along Herring Road to the west consist of podium forms with active frontage and built forms ranging in height from 3 storeys to a maximum of 22 storeys. More generally, the existing built form context (including approved developments but not yet constructed) in the surrounding area comprises medium to high density developments and student accommodation.

It is noted that the adjoining site to the north-east at 23-25 Lachlan Avenue recently received approval (July 2022) for a 15-storey student accommodation development (LDA2021/0138). This development involves a building height of up to 46.5m, representing a 3.3% variation to the height of buildings development standard. As outlined in the Council Assessment Report considered by the Sydney North Planning Panel, the height of the proposed building was considered acceptable for the following reasons:

- *The roofline of the development steps down to follow the slope of the land.*
- *The parts of the roofline which exceed the height limit are centrally located and will not generate additional shadowing.*
- *The height exceedance will not be visually perceptible from the public domain.*
- *The proposed building height is consistent with the desired future character of this locality which is undergoing significant transformation.*



### 3. PROPOSED DEVELOPMENT

This request has been prepared to accompany a DA for the demolition of the existing buildings and the construction of a purpose-built student accommodation (PBSA) development at 17-21 Lachlan Avenue and 163 Herring Road, Macquarie Park.

A summary of the key features of the proposal is provided below:

- Demolition of the existing buildings and structures within the site.
- Construction of a part 10, part 13 and part 15 storey development comprising 17,163m<sup>2</sup> gross floor area with a mix of land use activities including:
  - Basement: 45 car parking spaces, 19 electric bicycle parking spaces, 146 bicycle parking spaces, waste management facilities and ancillary services and facilities.
  - Lower levels: building entries to Lachlan Avenue and Herring Road, 874m<sup>2</sup> of communal area including lounges, cinema and communal laundry and 93.5m<sup>2</sup> office space.
  - Upper levels: student accommodation providing a total of 732 beds, including studios, 4-bed cluster units and 5-bed cluster units, internal communal spaces and additional external communal areas on Level 10.
- Landscaped courtyards at the ground plane and rooftop terraces at Level 10, including a swimming pool.
- Public domain improvements to Lachlan Avenue and Herring Road frontages, including footpath upgrades and new street trees.
- Removal of five trees within the site and four street trees along Lachlan Avenue.

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

Table 1 Numerical overview of proposed development

Parameter	Proposed
Total site area	3,901.6m <sup>2</sup>
Total gross floor area (GFA)	17,163m <sup>2</sup>
Total floor space ratio (FSR)	4.4:1
Height (storeys and maximum in height)	Part 13 (Herring Road) and part 15 (Lachlan Avenue) 45m with minor non-compliances of up to 47.36m
Deep soil	DCP compliant: 604m <sup>2</sup> (15.48%) Total deep soil: 1,625m <sup>2</sup> (41.6%)
Communal open space areas (external)	2,084m <sup>2</sup>

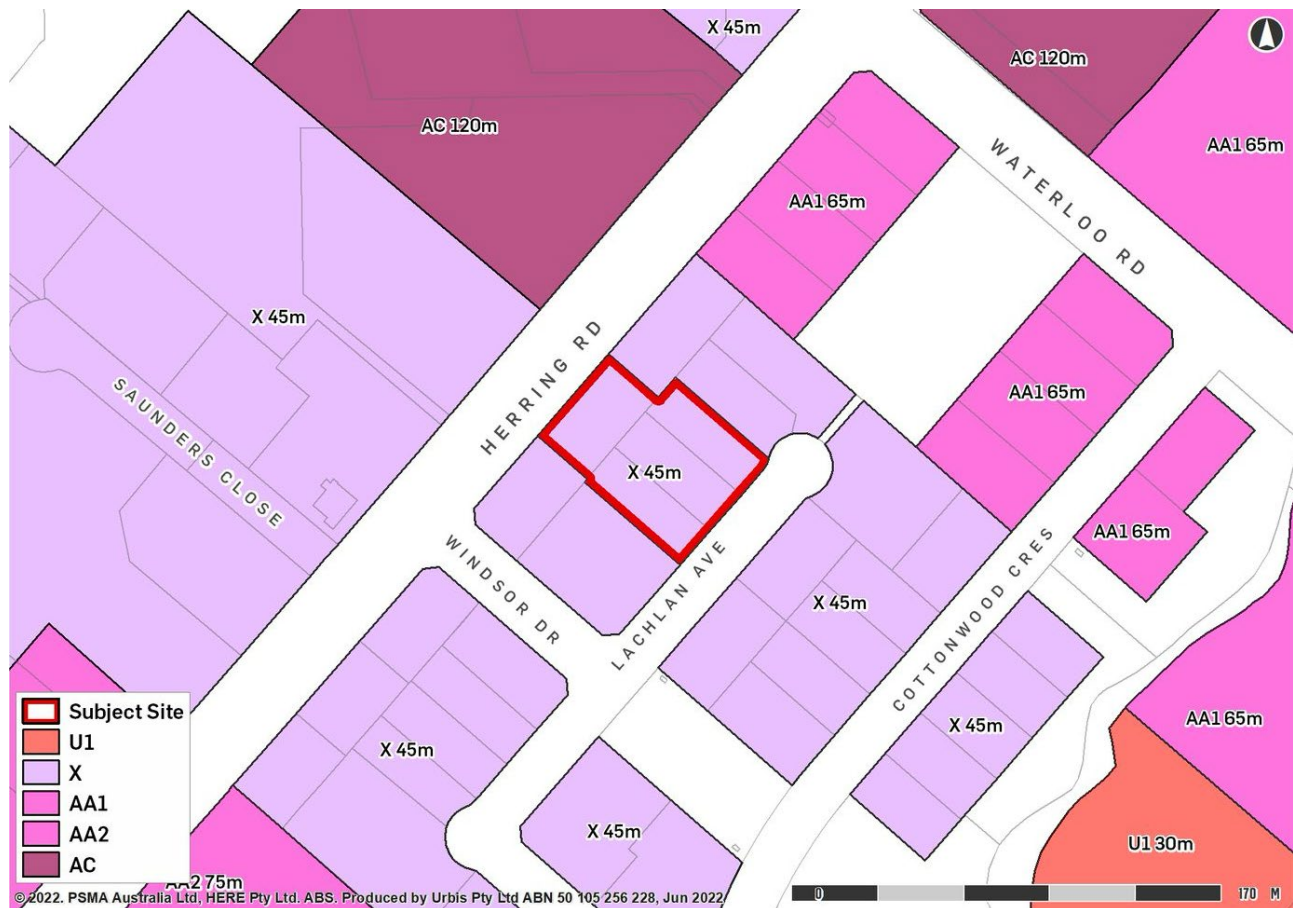
## 4. EXTENT OF CONTRAVENTION

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 site is subject to a maximum height of building control under the RLEP 2014 of 45m (refer **Figure 3**).

Figure 3 RLEP 2014 height of buildings map



Source: RLEP 2014 (as modified by Urbis) (2022)

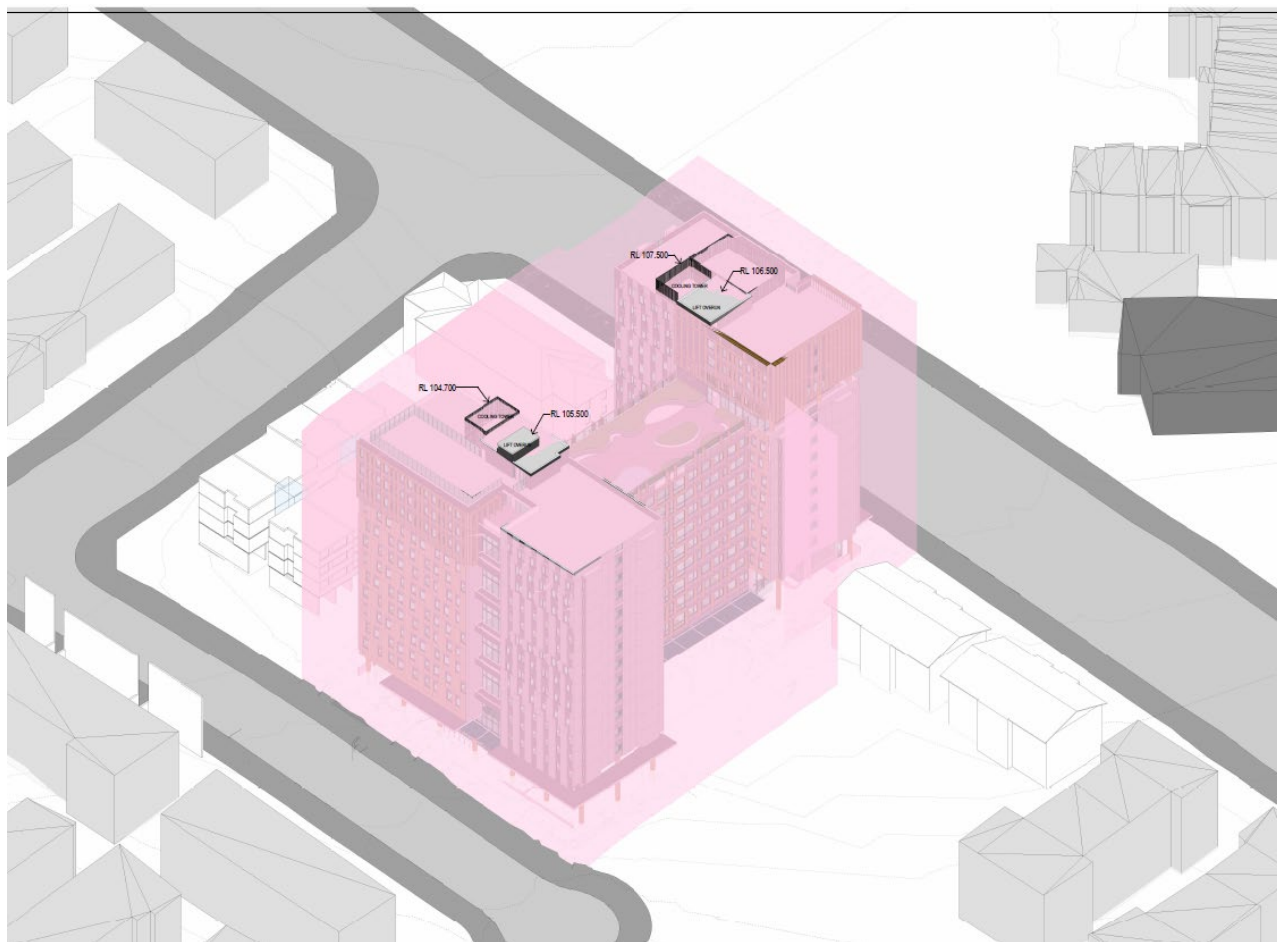
The extent of the proposed height variation relates to the natural slope of the site, which has a fall of approximately 6m from the Herring Road frontage to the Lachlan Avenue frontage.

The following building elements will be located above the 45m building height plane as shown in **Figure 4**:

- Lift overruns
- Cooling tower screens
- South-eastern end of Lachlan Avenue parapet

Importantly, the exceedance does not relate to any habitable spaces or gross floor area (**GFA**).

Figure 4 Building envelope height plane diagram



Source: AJ+C (2022)

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.

A summary of the height exceedances across the development is summarised in **Table 2**.

Table 2 Maximum building height

Building element	Maximum height measured from existing ground level	Departure from the standard
<i>Lachlan Avenue Wing</i>		
Lift overrun	47.36m (RL 105.500)	2.36m
Plant screen structure	45.6m (RL 104.700)	0.6m
<i>Herring Road Wing</i>		
Plant screen structure	47.00m (RL 107.500)	2m
Lift overrun	46.00m (RL 196,599)	1m

## 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 2012 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 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.*

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 DA will be determined by the Sydney North Planning Panel.

This clause 4.6 request demonstrates that compliance with the height of buildings standard prescribed for the site in clause 4.3 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 buildings 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 buildings development 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 RLEP 2014.

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

The height of building development standard 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 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]).

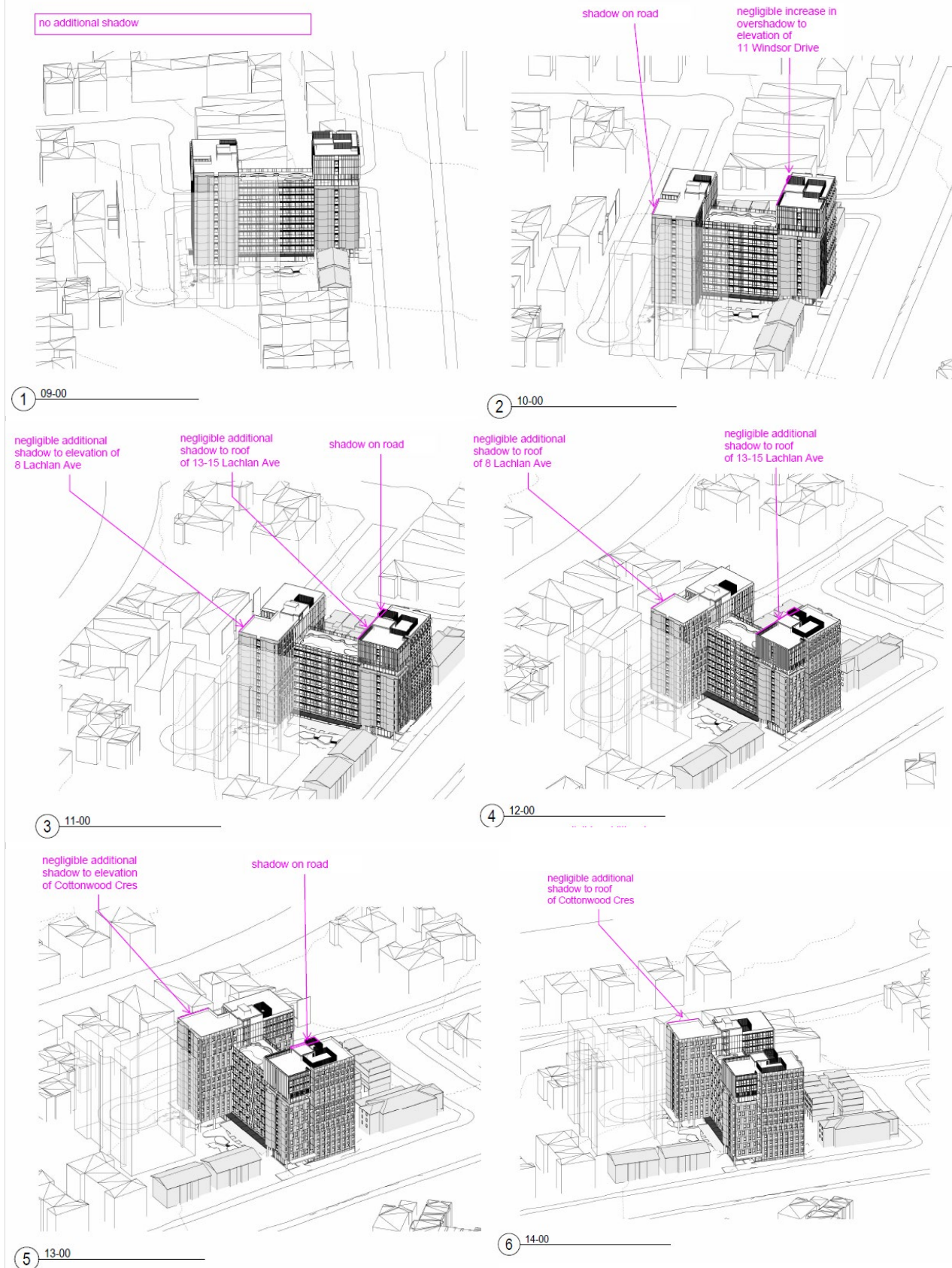
- ***The objectives of the standard are achieved notwithstanding non-compliance with the standard*** (the first method in *Wehbe v Pittwater Council* [2007] NSWLEC 827 [42]-[43])

The specific objectives of the height of building development standard as specified in clause 4.3 of RLEP 2014 are detailed in **Table 3** overleaf. An assessment of the consistency of the proposed development with each of the objectives is also provided.

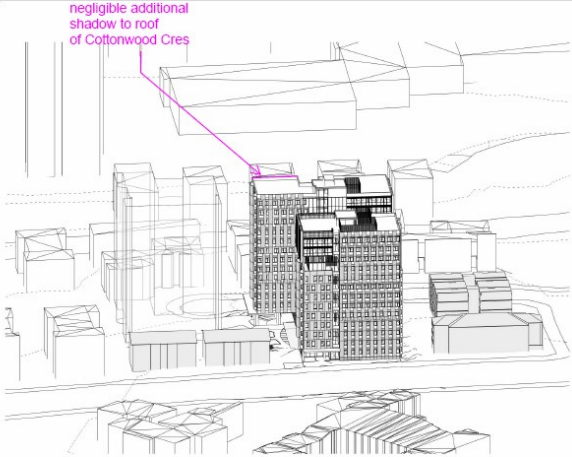
Table 3 Assessment of consistency with clause 4.3 objectives

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 built form in this locality but is most relevant to the desired future character, which is encouraged through the current height and FSR provisions applicable to this part of Macquarie Park.</p> <p>The proposed design seeks to provide a contemporary built form consistent with the emerging character of the Macquarie University Station Priority Precinct, which aims to create opportunities for renewal within an 800m radius of the station and deliver up to 5,800 new homes by 2031 in high-rise urban forms.</p> <p>The height exceedance is limited to the following elements which will not be visible when viewed from Lachlan Avenue and Herring Road:</p> <ul style="list-style-type: none"> <li>▪ Lift overruns.</li> <li>▪ Cooling tower screens.</li> <li>▪ South-eastern end of the Lachlan Avenue parapet.</li> </ul> <p>The proposed development complies with building separation and setback requirements for the site. In addition, the street facades incorporate deep vertical recesses that break the massing into more slender proportions that reflect the scale envisaged for the precinct by the current planning controls.</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>Sun-eye diagrams have been prepared by AJ+C for the proposed development. As shown in <b>Figure 5</b>, the shadows cast by the non-compliant roof elements have a negligible effect on overshadowing compared to a compliant scheme on the site.</p> <p>The proposal will significantly improve the appearance and quality of the site and increase tree canopy coverage in the area. The site is entirely consistent with desired future character of Macquarie Park, which is undergoing transition.</p>

Figure 5 Sun-eye diagrams – 9am to 3pm on 21 June



Source: AJ+C (2022)

Objectives	Assessment
 <p>negligible additional shadow to roof of Cottonwood Cres</p> <p>7 15:00</p> <p>Source: AJ+C (2022)</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>The proposal consolidates four lots for a high-density student accommodation development within walking distance from the Macquarie University Metro Station and bus interchange.</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 control will not impact the amenity of surrounding properties. The rooftop plant and lift overruns have been sited towards the centre of the northern and southern wings of the development and will not be visually perceptible from surrounding properties. The exceedance does not relate to any habitable spaces and will therefore does not cause privacy impacts.</p> <p>As highlighted in the sun-eye diagrams at <b>Figure 6</b>, there is no material overshadowing cast by the development compared to a compliant built form.</p>
<p><i>(e) to emphasise road frontages along road corridors.</i></p>	<p>The site has a frontage to Herring Road, which is a busy regional road connecting the M2 and Epping Road.</p> <p>The façade treatment incorporates strong articulation, which provides a high-quality and attractive frontage to Herring Road, which is currently punctuated with high-rise built form. The non-compliant elements are well set back from the street edge and do not detract from the achievement of 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])

Not relied upon.

- The burden placed on the community (by requiring strict compliance with the FSR 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]).

Not relied upon.

### 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:

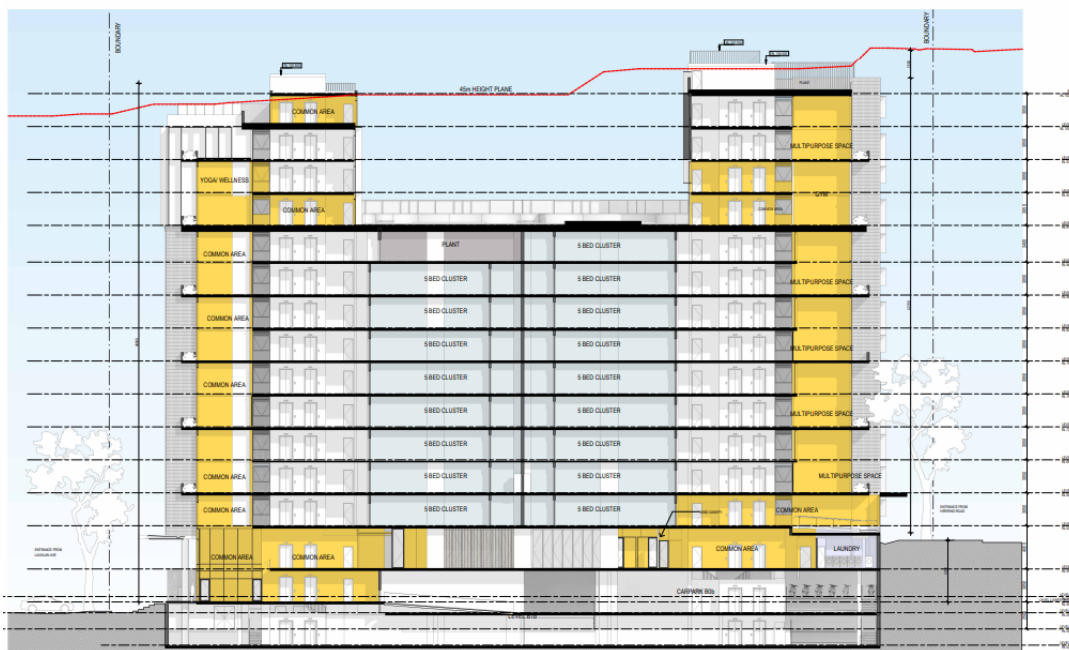
*“...in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must 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 contravening the development standard, given the following:

- The proposal results in a built form that responds positively to the constraints of the site and in particular, the steep topography between Herring Road and Lachlan Avenue as shown in **Figure 6**. The development presents as a part 13 and part 15 storey building consistent with the desired future character of the locality, which is undergoing significant transformation, including the recently approved 15 storey development at 23-25 Lachlan Avenue to the immediate north-east.

Figure 6 Section 3 showing 45m height control



Source: AJ+C (2022)



- As highlighted in **Figure 6** above, the proposed development is predominantly well under the maximum building height for the site. The design has sought to strategically minimise massing in the central portion of the site adjacent to 13-15 Lachlan Avenue to minimise visual impacts and overshadowing.
- The development complies with the FSR, building separation and deep soil controls for the site. Accordingly, the non-compliance does not result in an over-development of the site and does not contribute to unreasonable visual bulk, overshadowing or view loss.
- The 300mm non-compliance of the parapet along Lachlan Avenue will not be discernible from neighbouring properties or the public realm compared to a compliant built form. The rooftop plant and lift overruns are sited towards the central areas of the built form and are well set back from the site boundaries. Accordingly, the non-compliant roof elements will not be visible from the public domain and adjoining sites as demonstrated in **Figure 8** and **Figure 9**.

Figure 7 Photomontage from Herring Road (looking south-west)



Source: *Virtual Ideas* (2022)

Figure 8 Photomontage from Lachlan Avenue (looking north-west)



Source: Virtual Ideas (2022)

- As demonstrated previously, the protrusions result in negligible additional shadow impact when compared to a compliant scheme.
- The roof top plant and lift overruns are a fundamental component to the proper functioning of the residential building. The proposed development has made provision for plant in the basement where possible, with the remaining equipment located on the rooftop being the only reasonable locations to house the building services.

Based on the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed height of buildings standard 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.

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 2014. The site is located within the MU1 Mixed Use zone. The proposed development is consistent with the relevant land use zone objectives as outlined in **Table 4**.

Table 4 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>	While the proposal does not involve business, retail or light industrial uses, the future residents will be within walking distance of such uses. As such, the proposal will offer housing close to shops, services and employment opportunities. A small office is provided adjacent to the Lachlan Avenue entry associated with the management of the facility.
<i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i>	The location of entries and communal areas will activate the street frontages and provide an engaging pedestrian environment. Given the highly accessible nature of the site, the proposal does not provide any dedicated car parking spaces for the residents, therefore promoting public transport patronage and encouraging walking and cycling, thereby attracting pedestrian traffic.
<i>To minimise conflict between land uses within this zone and land uses within adjoining zones.</i>	<p>The proposed development comprises student accommodation that is compatible with the surrounding residential and educational uses in the surrounding area. The proposal is suitably located near public transport, including the Macquarie University Metro Station and the bus interchange at Macquarie Shopping Centre.</p> <p>The minor non-compliance with the height control will not result in any additional amenity impacts to surrounding residential properties compared to a compliant development.</p>
<i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i>	The street level entries include communal spaces and the main office area (to Lachlan Avenue), which will activate the street frontages and facilitate passive surveillance of the adjoining streetscapes.
<i>To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.</i>	<p>The proposal provides student accommodation within a highly accessible location to support Macquarie University and other local businesses.</p> <p>While the proposal will not deliver business activities, the future residents will benefit from the site's proximity to employment and educational activities in the immediate area.</p>

Objective	Assessment
<i>To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.</i>	The proposal involves high-quality accommodation for tertiary students that is integrated with the surrounding educational and research activities, retail and business services and public transport. The proposal is therefore consistent with this objective and will deliver a compatible complementary land use within the Macquarie Park corridor.

The proposal is considered to be in the public interest as the development is consistent with the objectives of the development standard, and the land use objectives of the zone.

## 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 height of buildings 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.

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

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

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.

- **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 Buildings 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 height of buildings standard to the extent proposed for the reasons detailed within this submission and as summarised below:

- The proposal is compliant with clause 4.6(3) because a strict compliance with the height development standard is unreasonable and unnecessary in the circumstances of the case. The proposal achieves the objectives of the development standard as provided in clause 4.3 of RLEP 2014 and is consistent with the objectives for development within the MU1 Mixed Use Zone despite non-compliance.
- There are sufficient environmental planning grounds to justify contravening the height development standard. As demonstrated by the proposal, the built form has been developed in response to site topography and is entirely consistent with the desired future character of the locality.
- The non-compliant roof elements above the 45m height control are not habitable.
- The height exceedances do not result in any material shadow or amenity impacts and do not cause privacy issues for neighbouring properties. The non-compliant roof elements will not be visible from the public domain and adjoining residential properties.
- The scale of development in the surrounding area, which includes older style walk-up flats interspersed with contemporary apartment buildings, demonstrates that compliance with the height development standard is not required in order to achieve the desired future character of the area.
- Flexibility with the height standard ensures the proposal is in the public interest.

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 standard should be applied.



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