

Appendix T

Height Variation Request

Site 4 in Precinct 9, Edmondson Park

Proposed Lot 6 and Lot 7 (1801407_DA01), Edmondson Park NSW 2174

Submitted to Liverpool City Council

On behalf of UPG Edmondson Parkland Pty Ltd



'Gura Bulga'

Liz Belanjee Cameron

'Gura Bulga' – translates to Warm Green Country. Representing New South Wales.

By using the green and blue colours to represent NSW, this painting unites the contrasting landscapes. The use of green symbolises tranquillity and health. The colour cyan, a greenish-blue, sparks feelings of calmness and reminds us of the importance of nature, while various shades of blue hues denote emotions of new beginnings and growth. The use of emerald green in this image speaks of place as a fluid moving topography of rhythmical connection, echoed by densely layered patterning and symbolic shapes which project the hypnotic vibrations of the earth, waterways and skies.

Ethos Urban acknowledges the Traditional Custodians of Country throughout Australia and recognises their continuing connection to land, waters and culture.

We acknowledge the Gadigal people, of the Eora Nation, the Traditional Custodians of the land where this document was prepared, and all peoples and nations from lands affected.

We pay our respects to their Elders past, present and emerging.

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1.0 Introduction

This Variation Request is submitted to the Liverpool City Council (the Council) in support of a development application (DA) for a residential development at Site 4 in Precinct 9, Edmondson Park (the site). This DA seeks approval for a maximum building height of 25.85m on land that is subject to a maximum permitted building height control of 21m granted under the State Environmental Planning Policy (Precincts – Western Sydney Parkland City) 2021.

The proposed development relates to land that is located within the 'Edmondson Park South Site', which is subject to the provisions of Appendix 1 within the State Environmental Planning Policy (Precincts – Western Sydney Parkland City) 2021. Specifically, the provisions contained within Part 2 of Appendix 1 enables Council to grant consent for development even if the development contravenes a development standard, subject to satisfying the provisions contained within Clause 28 (refer to **Section 3.1** of this report).

Clause 28 of Part 2 aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

In this regard, it is acknowledged that the proposed development would comply with the maximum building height granted under the State Environmental Planning Policy (Precincts – Western Sydney Parkland City) 2021. Specifically, the DA in which this Variation Request is attached to, seeks to increase the maximum permitted building height across the land that accommodates the non-compliant part of the development from 21m (present) to 28m (proposed). This height amendment is also captured as part of Modification 5, or 'MOD 5', to the approved Concept Plan for Edmondson Park South (MP 10_0118) which is currently under assessment.

On this basis, primary purpose of this Variation Request is to satisfy the procedural requirement requested by Council as part of this DA. This requirement is established by Subclause (4) of Clause 28. This Variation Request demonstrates that the proposed height variation will not compromise the achievement of an acceptable outcome for the site, noting:

- As mentioned, this Variation Request is submitted to Council in order to address the procedural requirement for a formal justification of the proposed height variation, notwithstanding the proposed application of a 28m height control across the east part of the site under MOD 5.
- Under a scenario where the proposed height amendment under MOD 5 had been gazetted, it is acknowledged in passing that the proposal would comply with Clause 18 (Height of Buildings) of Part 2 within Appendix 1 of the SEPP.
- The fundamental purpose of Clause 18 is to establish the existing height limits that apply to land across the Edmondson Park South precinct. This is not considered to be relevant in the context of the DA or this Variation Request.
- The proposal is consistent with the objectives for the R1 General Residential Zone, and will not compromise the achievement of an appropriate transition in built form and land use intensity.
- The proposed variation would not give rise to any adverse environmental impacts, and is in the public interest.
- In the absence of any unacceptable environmental impact, there is no benefit from maintaining the standard to be varied that is not out-weighed by the public benefits associated with the delivery of additional housing at Site 4.

Therefore, the consent authority can be satisfied that there are sufficient grounds to support the proposed variation in accordance with the flexibility allowed under Clause 28 within Appendix 1 of the SEPP (Precincts – Western Sydney Parkland City) 2021.

This Variation Request demonstrates that compliance with the maximum permitted building height control is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravention of the standard

1.1.1 Edmondson Park South Concept Approval: MP10_0118

On 18 August 2011, the Planning Assessment Commission approved Concept Plan (MP 10_0118) and a concurrent Project Application (MP 10_0119) for the development of Edmondson Park South which provided for a development on approximately 413ha of land. Development that is provided for by the Concept Plan includes:

- Demolition of a number of existing buildings across the site.
- Site remediation works.
- Residential development of 3,530 dwellings.
- Development of the Edmondson Park town centre including 35,000-45,000m² of retail, business and commercial floor space, along with associated uses, including a single 'landmark' development' of up to 30m in height.
- Protection of approximately 150ha of conservation lands within regional parklands.
- Associated infrastructure.

To facilitate the orderly development of the Edmondson Park South precinct as envisaged under the Concept Plan, the precinct was listed under Appendix 16 of *State Environmental Planning Policy (State Significant Precincts) 2005*. In 2021 the State Significant Precincts SEPP was repealed and replaced by State Environmental Planning Policy (Precincts – Western Parkland City) 2021. This current SEPP, particularly Appendix 1 and accompanying Maps, implements the existing height standard that is to be varied.

Further reference should be made to the detailed overview of the planning framework for the site that is provided throughout Section 1.1 of the Statement of Environmental Effects (SEE) that has been prepared to support this DA.

1.1.2 Edmondson Park South Concept Plan (MP10_0118): Modification History

Since the approval of the original Concept Plan, amendments thereto have been proposed with some approved as outlined in **Table 1**.

Table 1 Modifications to MP10_0118

MOD	Overview	Status
MOD 1	Amend the timing for approval of a vegetation rehabilitation plan associated with remediation works.	Approved.
MOD 2	Modification in relation to the sales and information centre within Edmondson Park.	Approved.
MOD 3	Modification in relation to Sewerage Treatment Plan, Decommissioning and Remediation.	Approved.
MOD 4	Modifications in relation to maximum Gross Floor Area (GFA), maximum building height, number of dwellings, maximum parking rates etc.	Approved.
MOD 5	Revision to the Concept Plan boundary to include land owned by Landcom and the Office of Strategic Lands (OSL) and other modifications relating to school zone, road layout, dwelling yield and mix, building height and bushfire asset protection zones.	Pending: Awaiting Determination
MOD 6	Redistribute GFA within the Town Centre Core to reflect the further design development that has occurred since the original indicative scheme was developed.	Approved.
MOD 7	Modification to include a high school in the Edmondson Park Town Centre	Withdrawn.
MOD 8	Amendment to the Edmondson Park Frasers Town Centre Guidelines to reduce the car park rate for 2-bedroom dwellings in the Town Centre Core	Approved.
MOD 9	Modification to amend the Edmondson Park Frasers Town Centre Guidelines to reduce the car parking rate for two-bedroom dwellings within residential flat buildings in the Town Centre Core from 1.2 spaces per dwelling to 1 space per dwelling.	Withdrawn.

MOD 10	Modification to the Concept Plan, as it relates to Precinct 3 to increase dwelling numbers by 350 to a maximum of 600 (a total of 4,852 dwellings across the Concept Plan) and alter the road network hierarchy.	SEARs Issued.
MOD 11	Modification to the approved Design Guidelines to allow additional attached dwelling typologies with Residential Precincts 2 and 3.	Approved.
MOD 12	Modification to allow school lot within the town centre and relocate residential flat buildings from the town centre into Residential Precinct 3.	Pending: Awaiting Determination

1.1.3 Proposed Amendment of the Concept Plan (MPI0_0118: MOD 5)

MOD 5 will apply to the Landcom Town Centre North area of Edmondson Park, which encompasses the site of this DA. This modification was lodged in September 2018. It presents a variety of amendments to both the Concept Plan and the SEPP. The proposed amendments include changes to building height controls that apply across Edmondson Park Town Centre North.

Key amendments to built form controls under the Concept Plan that are proposed by Mod 5 are summarised below:

- The introduction of a maximum Gross Floor Area (GFA) control under the Concept Plan (to some parts).
- Increase to maximum permitted building heights, which now range between 21m and 50m (and up to 67m for one landmark building). It should be noted that MOD 5 proposes the application of a 28m height limit across the area of land within the site that is the subject of this Variation Request.
- Amended mix of residential typologies, which now primarily comprise of Residential Flat Buildings, Mixed-use Apartment Buildings, Mansion Apartments, Terrace Houses, Terrace Cottages, Detached Cottages and Studio Dwellings.
- Exemption from the requirement for a Development Control Plan to be prepared, but only where the development is complimented by suitable Design Guidelines.
- In regard to the above, it is acknowledged that the Landcom Town Centre north Design Guidelines will apply to the site when Mod 5 is approved. Further reference should be made to Section 4.5 of the SEE, which considers these guidelines in the context of the proposed development.

1.1.4 Proposed Amendment of the SEPP (Precincts – Western Parkland City) 2021

As mentioned, MOD 5 presented a number of proposed amendments to the State Significant Precincts SEPP, which has since been repealed and replaced by the SEPP (Precincts – Western Parkland City) 2021. A detailed overview of the proposed amendments is provided at Section 1.1.4 of the SEE. As relevant to this Variation Request, it should be noted that MOD 5 proposes to amend the Height of Buildings Map as follows:

- Within the Station Precinct, to allow heights up to 50m, including heights up to 67m for one landmark building.
- Within the Maxwells Creek Precinct, to allow heights up to 28m.
- Within the Parkland Precinct, to allow heights up to 12m in Area 1 and up to 21m in a specified location.
- On the School Site, to allow heights up to 21m.

It is further noted in passing that MOD 5 will insert additional wording to Clause 27 and Clause 28 of Appendix 16 of the SEPP to prevent variations to the 12m height limit within specific parts of the area that is known as the 'Parkland Precinct' of the Town Centre North.

1.1.5 Consistency with the Concept Plan MP 10_0118

The Concept Plan (MP 10_0118) was approved on 18 August 2011. The approval provides for mixed use development including commercial, residential and retail uses. Open space, and associated facilities/infrastructure are also provided for. Consistency with the Concept Plan, as proposed to be modified by MOD 5, is demonstrated at Section 4.1.1 of the Statement of Environmental Effects.

However, as MOD 5 remains under assessment to date, this Variation Request is necessary to satisfy the procedural requirement for a formal variation request to be submitted to Council. As mentioned, this is required to address the proposed variation to the existing maximum permitted building height control that applies to the site.

2.0 Development Standard to be Varied

2.1 Is the Planning Control in Question a Development Standard?

The maximum permitted building height across the land that is the subject of this Variation Request (21m) is a development standard. This standard applies to the Residential Flat Building (RFB) Component of the proposed development under Clause 18 (Height of Buildings) of Part 2 within Appendix 1 of the SEPP.

2.2 Relevant Development Standard

This Clause 4.6 Variation Request seeks to justify contravention of the above-mentioned development standard. Under Clause 18, the east part of the site is subject to a maximum permitted building height of 21m, while a maximum permitted building height of 12m applies to the west part of the site.

As outlined by Section 3.0 of the SEE, the east part of the site (subject of this Variation Request) is to accommodate a residential apartment building that is referenced as the 'Residential Flat Building Component' for the purposes of this DA. The western part of the site is to accommodate 30 townhouses in what has been established as the 'Townhouse Component'. It is noted from the outset the Townhouse Component complies with the applicable maximum permitted building height of 12m that applies across the land that it is to be sited.

An extract of the Height of Buildings Map as it relates to the site is provided at **Figure 1**. For further reference, the proposed amendment to the Height of Buildings Map under MOD 5 is shown at **Figure 2**.

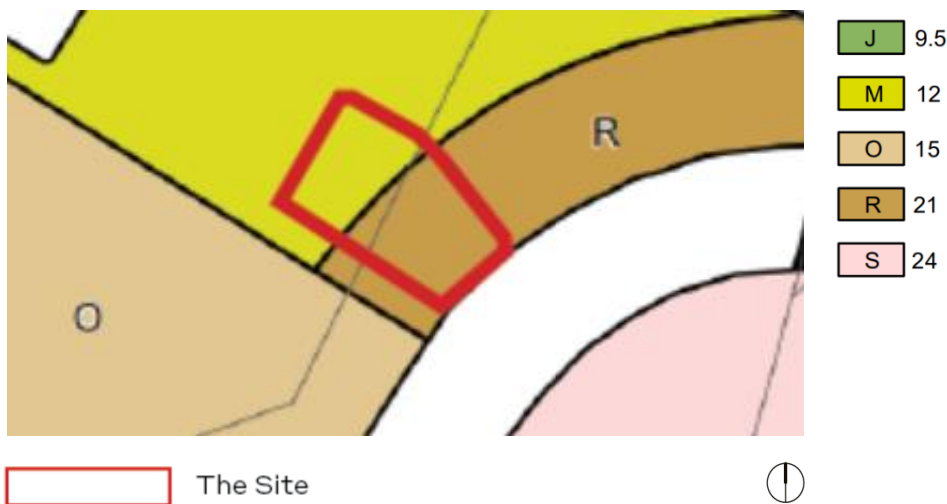


Figure 1 Existing Maximum Permitted Building Height Controls of 21m (east, to be varied) and 12m (west)

Source: SEPP (Precincts – Western Parkland City) 2021

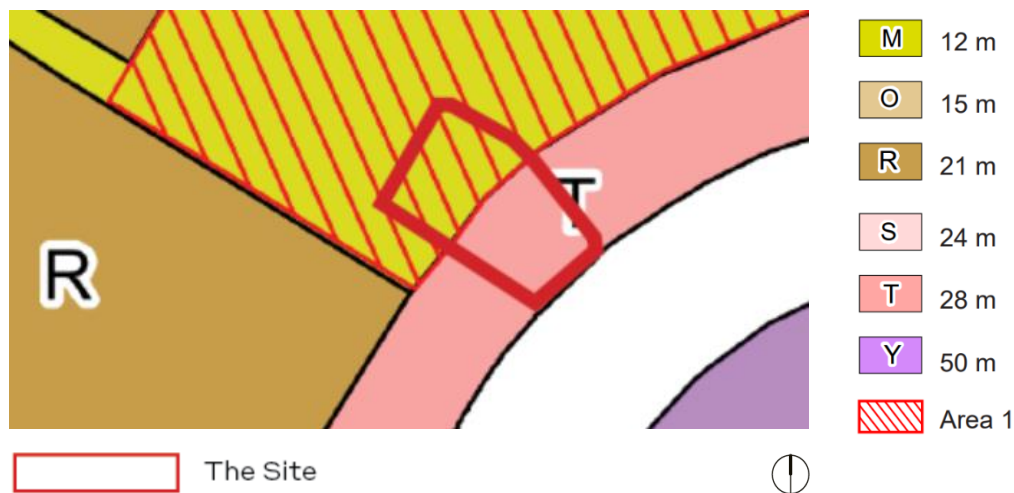


Figure 2 Proposed Maximum Permitted Building Height Controls of 28m (east) and 12m (west)

Source: MP10_0069 (Proposed MOD 5)

2.3 Variation Sought to Existing Height Control

The Residential Flat Building Component of the proposed development has a maximum building height of 25.85m under Clause 18. The extent of the proposed variation equates to 23.1% of this existing height limit.

It is further noted that the component of the proposed development that is referred to as the 'Townhouse Component' in the Statement of Environmental Effects complies with the existing height control (12m) that applies to the west part of the site.

2.3.1 MP10_0118 (MOD 5)

As mentioned, this Variation Request is submitted to Council in order to address the procedural requirement for a formal justification of the proposed height variation, notwithstanding the proposed application of a 28m height control across the eastern part of the site under MOD 5 (despite it still being under assessment).

Under a scenario where the proposed height amendment had been gazetted, it is acknowledged in passing that the proposal would comply with Clause 18 (Height of Buildings) of Part 2 within Appendix 1 of the SEPP.

3.0 Justification

3.1 Relevant Provisions of Clause 28 and Case Law

3.1.1 Subclause (4)

Subclause (4) of Clause 28 within Appendix 1 of the SEPP stipulates that:

(4) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard 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.*

The following sections of this Variation Request demonstrate that the proposal satisfies both of the above-listed requirements that are established beneath Subclause (4). However, particular regard should be made to **Section 3.3** with reference to Subclause (4).

3.1.2 Subclause (5)

Subclause (5) of Clause 28 within Appendix 1 of the SEPP stipulates that:

(5) Development consent must not be granted for development that contravenes a development standard unless —

- (a) consent authority is satisfied that —*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subsection (4), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

3.1.3 Case Law

Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court in:

1. *1. Wehbe v Pittwater Council [2007] NSW LEC 827;*
2. *2. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*

This Clause 4.6 Variation Request also considers the following recent judgements.:

1. *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 (Initial Action)*;
2. *Baron Corporation Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 1552 (Baron Corporation)*; and
3. *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245 (Al Maha)*.

Provisions beneath Clause 28 of Appendix 1 that are relevant to this proposed variation are addressed by the sections below, including with regard to the case law that is referenced above.

3.2 Role of the Consent Authority

The role of the consent authority in considering the proposed variation has been established by the NSW Court of Appeal in *Initial Action* and in *Al Maha* to require that the consent authority needs to be satisfied in relation to two matters:

- That the applicant's request has adequately addressed the matters in Clause 4.6(4)(a)(i) [in this instance, the equivalent provision within the SEPP]; and
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

Council is required to form these opinions first before it considers the merits of the DA and it can only consider the merits of the DA if it forms the required satisfaction in relation to the matters.

Specifically, Council must be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified. This Variation Request has been prepared to assist Council in this regard.

3.3 Clause 28(4)(a) – Compliance is unreasonable or unnecessary.

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five traditional ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the types of ways were a closed class.

This case law is generally applied in the assessment of variations to development standards that have stated objectives. In this regard, it is noted that the standard to be varied does have stated objectives. Due to this, reference has been made to the objectives of the height of building standard under Clause 4.3 of the Liverpool Local Environmental Plan 2008. These have been considered as relevant to this DA at **Section 3.3.2** of this report.

While *Wehbe* related to objections made pursuant to *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1), the analysis can be of assistance to variations where Subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in Clause 28(4)(a) is the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Variation Request.

The five methods outlined in *Wehbe* are provided in list form below.

1. First Method:

The objectives of the standard are achieved notwithstanding non-compliance with the standard.

2. Second Method:

The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

3. Third Method:

The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

4. Fourth Method:

The development standard has been virtually abandoned or destroyed by the consent authority's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

5. Fifth Method:

The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

3.3.1 First Method

This Variation Request establishes that compliance with the development standard is unreasonable or unnecessary in these circumstances. This is because the objectives of the height standard to be varied are achieved notwithstanding the proposed variation (**First Method**).

3.3.2 Second Method

Clause 18 does not include objectives for the height standard to be varied. However, reference must be made to the underlying purpose and intended effect of this control. Based on the Concept Plan, and with passing reference to the objectives for Clause 4.3 of the Liverpool Local Environmental Plan 2008 (LLEP 2008), we understand these include:

- Establish the existing height limits that apply to land across the Edmondson Park South precinct.
- To permit building heights that encourage high quality urban form.
- To ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight.
- Achieve an appropriate transition in built form and land use intensity based on the Concept Plan.

Underlying Purpose of Clause 18

The fundamental purpose of Clause 18 is to establish the existing height limits that applies to land across the Edmondson Park South precinct. This is not considered to be relevant in the context of the DA or this Variation Request (**Second Method**).

Notwithstanding the above, we understand this does not preclude the DA from the need to address other objects of the standard to be varied, as set out beneath the first point of the list above. These are considered in the following subsection.

Objectives of Clause 18

This DA is considered in regard to the objectives for the existing height control to be varied below.

- **Establish the existing height limits that apply to land across the Edmondson Park South precinct.**

This reflects the fundamental purpose of Clause 18, which references the existing Height of Buildings Map that imposes a 21m height limit across the east part of the site. As established at the former subsection, this is not relevant in the context of the DA or this Variation Request.

- **To permit building heights that encourage high quality urban form.**

The proposal will deliver an outcome that will support the establishment of a high quality urban form. The following is noted in particular:

- **Maxwells Creek Interface: Refer to Section 4.2.1 of the SEE.**

The proposal will deliver necessary residential uplift across the part of the site that is within the Maxwells Creek Precinct. This will reinforce the vision for Maxwells Creek to be framed by medium/high density development, as necessary to optimise the amenity associated with this unique open space. Further reference must be made to the discussion that is provided by Section 4.2.1 of the SEE, which considers the proposed building height in relation to the Maxwells Creek interface.

- **Design Excellence: Refer to Section 4.4 of the SEE.**

The proponent engaged a highly experienced design team ahead of preparing this DA to prepare the architectural and landscape design packages that have been submitted in support of this DA.

This DA follows an extensive (and ongoing) dialogue between the Proponent and Landcom regarding the design excellence process that is being undertaken for the redevelopment of Sites 1-5. This process, as outlined by the Design Excellence Strategy that is appended to this DA.

The proponent has engaged with the DEP previously, and most recently on 12 May 2022 for the redevelopment of Site 5. We are open to further engagement with the DEP as necessary.

- **Overshadowing: Refer to Section 4.8 of the SEE.**

The proposal will not result in unacceptable overshadowing to the public domain or surrounding sites that are earmarked for residential development, including Site 5 to the immediate south across Buchan Avenue. This is demonstrated by the extent of the shadow footprint that will be cast from the proposed development during Winter Solstice, as shown in the shadow diagrams that are included with the Architectural Plans (Appendix A).

- **To ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight.**

The proposal presents an acceptable outcome in regard to solar amenity and sky views. The following is noted in particular:

- **Solar Amenity: Refer to Section 4.8 of the SEE.**

As established, the proposal will not result in unacceptable overshadowing to the public domain or surrounding sites that are earmarked for residential development.

- **Sky Views: No unacceptable reduction to sky views.**

The proposed development is sited at a location that is identified to provide residential uplift by accommodating medium/high density development, as necessary to optimise the amenity associated with the Maxwells Creek Corridor. The proposal is considered to present an outcome for the site that is reasonably anticipated in regard to height and bulk. There will not be any unacceptable reduction to sky views or vistas associated with the proposed development.

- **Achieve an appropriate transition in built form and land use intensity.**

The proposal will not compromise the achievement of an appropriate transition in built form and land use intensity. As mentioned, this Variation Request has been prepared to address the procedural requirement for a formal justification of the proposed variation, notwithstanding the proposed application of a 28m height control across the east part of the site under MOD 5.

The proposed amendment to the maximum permitted building height control that applies to the site is well-considered in regard to the transition in built form between Maxwells Creek Precinct and the Parkland Precinct. This is demonstrated by the documentation that has been submitted in support of MOD 5, which can be readily accessed via the Department of Planning and Environment's (DPE's) Major Projects website.

3.3.3 Fourth Method

Edmondson Park is undergoing significant transformation from rural to urban land. Due in part to the rate that Edmondson Park has evolved to date, the Concept Plan has been the subject of a number of approved and proposed modifications (refer to **Table 1**).

In regard to the proposed application of a 28m height control across the east part of the site under MOD 5, Council has indicated a preference for procedural correctness to be maintained in the form of this Variation Request. Based on the changes to the scope of MOD 5 that have been presented to Council as a result of feedback gathered during the exhibition period and the content of additional information submissions, it is our understanding that the proposed height amendment is generally supported. This aspect of MOD 5 is considered to have reasonable prospects.

Notwithstanding the above, it is acknowledged that in order to reference the Fourth Method in support of this Variation Request, previous consents would have needed to be granted that present a departure from the existing height control. As this has not yet occurred within the immediate vicinity of the site, we understand that the Fourth Method cannot be referenced in support of this Variation Request. Notwithstanding this, we consider it necessary to provide the discussion above for the sake of clarity.

3.3.4 Conclusion on Clause 28 – Subclause (4)(a)

The above sections have demonstrated that compliance with the existing building height control standard is unnecessary in the circumstances of the case. This satisfies Subclause (4)(a) of Clause 28.

The principal purpose of Clause 18, which is to establish the existing height limits that apply to land across the Edmondson Park South precinct, is not relevant in the context of the proposed development. Notwithstanding this, the proposal supports all other objectives that are associated with the standard to be varied.

3.3.5 Conclusion on Clause 28 – Subclause (4)(b)

The former sections demonstrate that the proposed height variation is reasonably anticipated in the context of the site, and will not result in any unacceptable adverse impact. Based on this, there are sufficient environmental planning grounds to justify contravening the development standard. As demonstrated by **Section 3.4**, the proposed variation does not contravene any objectives that are associated with the R1 General Residential Zone.

3.4 Clause 28(5)(ii) – Consistency with Zone Objectives

In *Initial Action* at [27], it was held that it is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

It is established throughout **Section 3.3** that the proposal is consistent with the relevant objectives for the standard to be varied. However, this Variation Request is also required to address the objectives of the land use zone that applies to the site. The site is zoned R1 General Residential under Clause 7 of Part 2 to Appendix 1 of the SEPP. Consistency with the objectives for this land use zone is demonstrated at **Section 3.4.1**.

3.4.1 R1 General Residential Zone Objectives

The objectives for the R1 General Residential Zone are set out under Clause 9(1) of Part 2 to Appendix 1 of the SEPP. Consistency with the objectives for this land use zone is demonstrated below.

- **Objective (a) – Provide for the housing needs of the community.**

The proposal will provide a range of 1-3 bedroom apartments, in addition to 4-bedroom townhouses. The proposal also includes walk-up apartments at the podium level. The variety of dwellings proposed for Site 4 under this DA compliments the need for an 'appropriate housing mix', as cited in Pre-DA feedback that was received from Council. Further reference should be made to Table 2 of the SEE.

In accordance with Commitment 70 of the Concept Plan, affordable dwellings will be available in the Landcom Town Centre North and Residential Precincts. Landcom is expected to meet this commitment through its delivery of the Landcom Town Centre North core, particularly in the more accessible and higher density residential developments. Landcom did not require the landowners to make provision for affordable housing on the Site.

- **Objective (b) – Provide for a variety of housing types and densities.**

The site is zoned R1 General Residential. Residential Flat Buildings (RFBs) and terraces/townhouses are permitted with consent in this zone. It has been established at **Section 3.3.2** that the proposal will not compromise the achievement of an appropriate transition in built form and land use intensity with regard to the interface between the Parkland Precinct and Maxwells Creek Precinct.

- **Objective (c) – Enable other land uses that provide facilities or services to meet the day to day needs of residents.**

The proposal promotes local and state government initiatives in relation to urban growth and densification by increasing the density of residential housing in close proximity to services, public transport, employment opportunities and educational facilities. In particular, it is noted that:

- There is one primary school (under construction) and one college within walking distance of the site, as detailed at Section 2.6.2 of the SEE.
- The Edmondson Park Train Station is 300m to the south-east of the site. The station is serviced by the T2 (Leppington/CBD) and T5 (Leppington/Richmond) lines. The station is within a comfortable walking catchment from the site based on the Integrated Public Transport Service Planning Guidelines (IPT Guidelines). Refer to Section 2.7.1 of the SEE.
- The site is also serviced by several high-frequency bus routes, as outlined at Section 2.7.1 of the SEE.

- The site will benefit from planned improvements to the transport network across south-west Sydney, including the planned extension of the existing T2 Train Line from Leppington to the T1 Train Line at St Marys. Refer to Section 2.7.2 of the SEE.
- The Concept Plan Approval for Edmondson Park South provides for the development of the Edmondson Park town centre, which will include ~35,000m² to ~45,000m² of retail, business and commercial floor space.

3.4.2 Public Interest

Section 4.26 of the SEE demonstrates that the site is suitable to accommodate the proposed development. Section 4.27 of the SEE concludes that the documentation submitted in support of this DA has demonstrated that the proposal is in the public interest.

3.5 Other Matters for Consideration

Under clause 28(6), in deciding whether to grant concurrence, the Secretary must consider the below-listed matters.

(6) In deciding whether to grant concurrence, the Secretary must 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.*

These matters are addressed from **Section 3.5.1** to **Section 3.5.3**.

3.5.1 Clause 28(6)(a) – State or Regional Environmental Planning Matters

The proposed variation does not raise any matter of significance for State or regional planning. However, it is noted that the proposal presents a suitable outcome for land that is sited within the South West Priority Growth Area.

3.5.2 Clause 28(6)(b) – Public Benefit of Maintaining the Development Standard

The proposed variation would not give rise to any adverse environmental impacts. It is not considered that there would be any additional public benefits offered by a compliant scenario. In this regard, it is acknowledged that compliance with the existing height control would decrease residential yield. This would present a reduction to the public benefits associated with the residential uplift that is achieved by the proposal.

3.5.3 Clause 28(6)(c): Other Matters

There are no other matters that need to be considered by the Secretary before granting concurrence.

4.0 Conclusion

This Variation Request demonstrates that compliance with the height standard to be varied is unreasonable and unnecessary in the circumstances of the case, and that the DA presents a well-rounded and robust justification for this variation. The proposed variation will not inhibit the orderly and economic use of the land in an appropriate manner, and will provide for a better outcome in planning terms.

It is further noted that:

- As mentioned, this Variation Request is submitted to Council in order to address the procedural requirement for a formal justification of the proposed height variation, notwithstanding the proposed application of a 28m height control across the east part of the site under MOD 5.
- Under a scenario where the proposed height amendment under MOD 5 had been gazetted, it is acknowledged in passing that the proposal would comply with Clause 18 (Height of Buildings) of Part 2 within Appendix 1 of the SEPP.
- The fundamental purpose of Clause 18 is to establish the existing height limits that apply to land across the Edmondson Park South precinct. This is not considered to be relevant in the broader context of the DA or in relation to this Variation Request.
- The proposal is consistent with the objectives for the R1 General Residential Zone, and will not compromise the achievement of an appropriate transition in built form and land use intensity.
- The proposed variation would not give rise to any adverse environmental impacts, and is in the public interest.
- In the absence of any unacceptable environmental impact, there is no benefit from maintaining the standard to be varied that is not out-weighed by the public benefits associated with the delivery of additional housing at Site 4.

Therefore, the consent authority can be satisfied that there is sufficient justification for the proposed variation, which presents an acceptable outcome for the site in accordance with the flexibility allowed under Clause 28 within Appendix 1 of the State Environmental Planning Policy (Precincts – Western Sydney Parkland City) 2021.