

Appendix R

Height Variation Request

Sites 1-3 in Precinct 9, Edmondson Park

Lots 1-5, 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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28/03/2024

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Contents

1.0	Introduction	4
1.1.1	Edmondson Park South Concept Approval: MP10_0118	5
1.1.2	Edmondson Park South Concept Plan (MP10_0118): Modification History	5
1.1.3	Proposed Amendment of the Concept Plan (MP10_0118: MOD 5)	6
1.1.4	Proposed Amendment of the SEPP (Precincts – Western Parkland City) 2021	6
1.1.5	Consistency with the Concept Plan MP 10_0118	7
2.0	Development Standard to be Varied	7
2.1	Is the Planning Control in Question a Development Standard?	7
2.2	Relevant Development Standard	7
2.3	Variation Sought to Existing Height Control	8
2.3.1	MP10_0118 (MOD 5)	8
3.0	Justification	9
3.1	Relevant Provisions of Clause 28 and Case Law	9
3.1.1	Subclause (4)	9
3.1.2	Subclause (5)	9
3.1.3	Case Law	9
3.2	Role of the Consent Authority	10
3.3	Clause 28(4)(a) – Compliance is unreasonable or unnecessary	10
3.3.1	First Method	11
3.3.2	Second Method	11
	Underlying Purpose of Clause 18	11
	Objectives of Clause 18	11
3.3.3	Fourth Method	12
3.3.4	Conclusion on Clause 28 – Subclause (4)(a)	13
3.3.5	Conclusion on Clause 28 – Subclause (4)(b)	13
3.4	Clause 28(5)(ii) – Consistency with Zone Objectives	13
3.4.1	R1 General Residential Zone Objectives	13
3.4.2	Public Interest	14
3.5	Other Matters for Consideration	14
3.5.1	Clause 28(6)(a) – State or Regional Environmental Planning Matters	14
3.5.2	Clause 28(6)(b) – Public Benefit of Maintaining the Development Standard	14
3.5.3	Clause 28(6)(c): Other Matters	14
4.0	Conclusion	15

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 Sites 1-3 in Precinct 9, Edmondson Park (the site). This DA seeks approval for the construction of 178 residential townhouses at the site, in addition to associated laneways, shared zones, and landscaping.

This Height Variation Request has been prepared to address a minor variation to the existing maximum permitted building height of 12m that applies across the entire site under the *State Environmental Planning Policy (Precincts – Western Sydney Parkland City) 2021* (Western Sydney Parkland City SEPP). The proposed height variation relates to the roof level (RL) heights of townhouses within Site 1 and Site 3. These townhouses are sited within an area of the site where it is proposed to apply a 21m height limit under MOD 5 to the approved Concept Plan for Edmondson Park South (MP 10_0118) which remains under assessment by the Department of Planning, Housing and Infrastructure.

Notwithstanding MOD 5, 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 Western Sydney Parkland City SEPP. The provisions that are contained within Part 2 of Appendix 1 enable the consent authority to approve a DA that contravenes a development standard subject to satisfying the provisions contained within Clause 28 (refer to **Section 3.1** of this report). Specifically, 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 is in breach of the existing maximum building height (12m) that currently applies across the site in its entirety. As such, this Height Variation Request has been prepared for the purpose of:

- Satisfying the procedural requirement for a Height Variation Request to be submitted to support this DA, notwithstanding the additional height proposed to be granted by MOD 5 (under assessment). The technical requirement for this Height Variation Request is established by Subclause (4) of Clause 28.
- Establishing environmental planning grounds for the proposed height variation, which is minor in nature.
- Demonstrating that the proposed height variation is supportable on individual planning merit. Specifically, this Height Variation Request has provided a justification for the proposed height variation that can be considered without regard for the imminent status of MOD 5.

Following post-lodgement consultation with Council in relation to the DAs for Residential Flat Buildings (RFBs) at Site 4 and Site 5, it is understood that the above-listed matters are of particular concern to Council. The resolution of these matters, as provided by this Height Variation Request, is necessary to facilitate the approval of this DA. This Height Variation Request addresses each of the above-listed matters through demonstrating that the proposed height variation will not compromise the achievement of an acceptable outcome for the site. In this regard, it is noted that:

- 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 for 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 would not give rise to any adverse environmental impacts, and is in the public interest.
- There is no benefit from maintaining the standard to be varied that is not out-weighed by the public benefits associated with the proposed development of 178 new residential townhouses across Sites 1-3.

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 existing buildings.
- 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. The current SEPP, particularly Appendix 1 and accompanying Maps, implements the existing 12m height standard that is requested to be varied via this Clause 4.6 Statement.

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 submitted as the guiding document for 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.	Withdrawn.
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.	Withdrawn.

1.1.3 Proposed Amendment of the Concept Plan (MP10_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 will 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 21m height limit across the area of land towards the western extent of the site, which is the subject of this Variation Request.
Under a scenario where MOD 5 had been approved, the proposal would comply with this maximum permitted building height control and this Height Variation Request would not be required.
- 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. The Design Guidelines which form part of the Concept Plan (Mod 5) are intended to have the same intended effect to a Development Control Plan (DCP) and should be considered as such during the assessment of this DA.
- 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 **Appendix Q**, which considers these guidelines in the context of the proposed development.

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

MOD 5 presents 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 Height 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 21m across the land within the site that is the subject of this Height Variation Request.
- 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.

This will mean that development within the portion of the site that is not the subject of this Height Variation Request will not be permitted to breach the principle height limit of 12m that applies across the majority of Sites 1-3.

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 assessed at **Appendix P**. A condensed overview of this assessment is provided at **Section 4.2** of the SEE.

As mentioned previously, the Design Guidelines which form part of the Concept Plan (Mod 5) are intended to have the same intended effect to a Development Control Plan (DCP). Where it is proposed to vary the provisional design requirements that will apply under the Concept Plan (as proposed to be modified), this has been addressed with reference to the design intent of the existing Concept Plan and the intended effect of the Design Guidelines. Special reference should be made to **Section 4.2.1** of the SEE, which has addressed the proposed configuration of internal access roads and laneways in this manner.

As the status of MOD 5 remains under assessment, this Height 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 (12m) that currently applies to the entire site, including to the land over which an amended height control (21m) will be applied in due course.

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 (12m) is a development standard. This current standard applies across the entire site, including to the land over which an amended height control (21m) will be applied in due course. The height standard to be varied is imposed by 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 current maximum permitted building height (12m) applies across the entire site, including to the land over which an amended height control (21m) will be applied in due course.

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**.

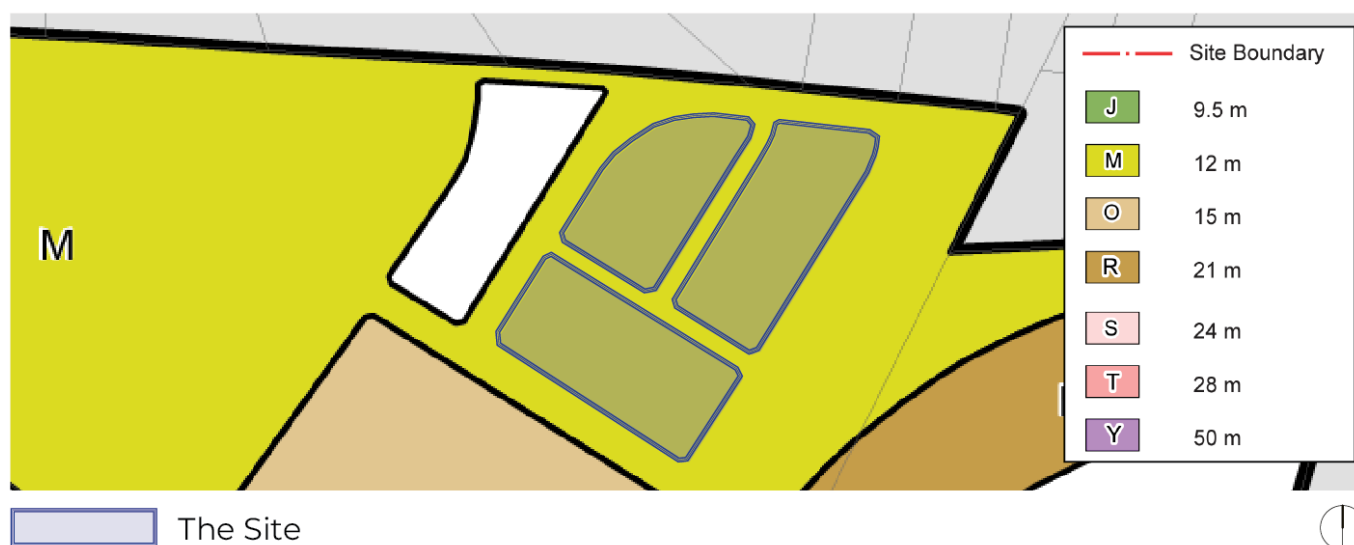


Figure 1 Existing Maximum Permitted Building Height Control – 12m applicable to the site

Source: SEPP (Precincts – Western Parkland City) 2021



Figure 2 Proposed Maximum Permitted Building Height Controls of 21m (west) and 12m (east majority)

Source: MP10_0069 (Proposed MOD 5)

2.3 Variation Sought to Existing Height Control

The proposed height variation relates to the roof level (RL) heights of townhouses within Site 1 and Site 3 which are in breach of the current maximum permitted building height control (12m) that applies across the entire area of Sites 1-3.

It is understood that the extent of the proposed height variation needs to be based on the townhouse roofline where the extent of the height breach is the greatest (Lot 1.13). This townhouse has a maximum roofline height of 13.37m, which presents a height breach of 1.37m. This height breach equates to 11.42% of the existing height standard (12m) that is to be varied.

A visual that shows the extent of the proposed height variation is provided at **Figure 3** for reference.

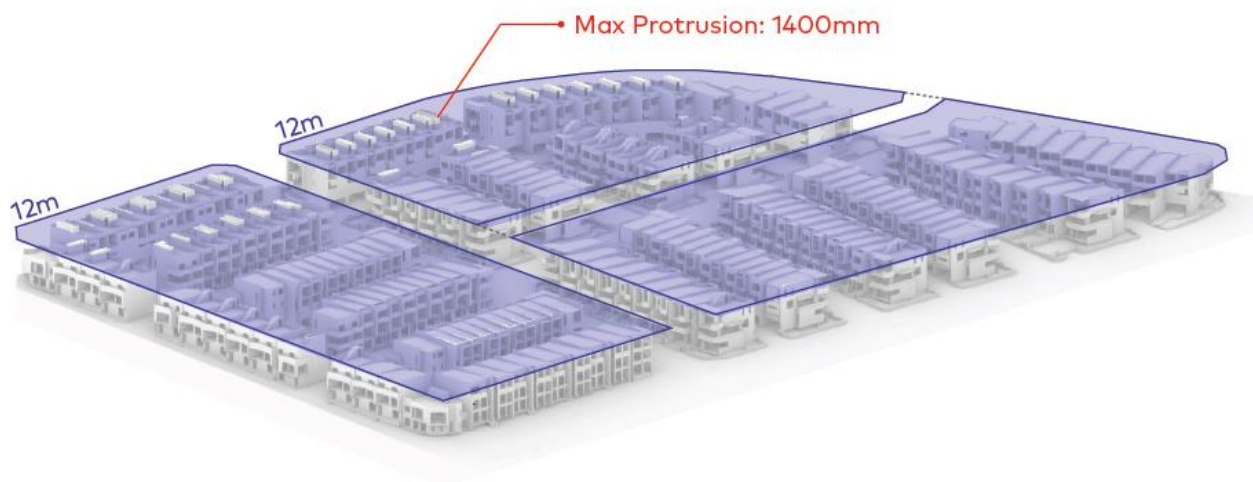


Figure 3 Proposed Height Variation to Existing (12m) Height Control

Source: Cox

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 21m height control across the western part of the site under MOD 5 (under assessment). It has been established by this report and the documentation that has been prepared to support this DA (incl. SEE) that MOD 5 is considered to have reasonable prospects for approval.

When the height-specific aspect of MOD 5 is considered in isolation, specifically the 21m height control that is proposed for the western extent of the site, it is reasonable to assume that the amended height control will apply in due course. As mentioned, the proposed development would comply with the maximum permitted building height under this scenario. However, it is acknowledged that this alone does not establish solid planning grounds for the proposed height variation due to its impending status of determination. This Height Variation Request has sought to justify the proposed height variation on current environmental planning grounds, which should be considered on merit.

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 Height 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 Western City Parkland SEPP]; and
- That the proposed development will be in the public interest because of its consistency 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 Height 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 under Clause 18 of the SEPP does not 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 (LLEP 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 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 12m height restriction across the entire area of Sites 1-3. As established within 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:

- **Design Excellence:**

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 in a pre-lodgement, and post-lodgement capacity, and most recently on 8 February 2024 for the redevelopment of Sites 1-3 which the DEP advised that the Proponent provide pergola with trellis structures on the rooftops of the terraces. An exhaustive response to matters that were raised by the DEP in relation to the development of Sites 1-3 has been provided with this DA.

- **Overshadowing:**

The proposal will not result in unacceptable overshadowing to the public domain or surrounding sites that have been identified for residential development under the Concept Plan. 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**).

- **Residential Amenity:**

The proposed height variation is necessary to provide for the delivery of roof level terraces at the proposed residential townhouses that slightly breach the height limit. These roof level terraces will maximise access to high-amenity district views, will provide quality private open space to residents, and will improve the level of solar amenity that is afforded to these future occupants.

This DA, including the SEE and the appended documentation, has addressed other assessment matters that relate to residential amenity, including (but not limited to) privacy, acoustic amenity and visual amenity. In this regard, it is not considered that the proposed height variation inhibits the potential for an amenable design outcome at Sites 1-3, which has been achieved by this DA.

- **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:**

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:**

The proposed development is sited at a location that is identified to provide residential uplift in the form of 178 residential townhouses, as necessary to optimise the transit-orientated context for the site which has ready access to a range of education opportunities, public open spaces, and public / active transport infrastructure.

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 to the SEPP 12m height limit, notwithstanding the proposed application of a 21m height control across the western 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, Housing and Infrastructure'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 21m height control across the western part of the site under MOD 5 to the Concept Plan, Council has indicated a preference for procedural correctness to be maintained in the form of this Height 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 of approval.

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. We do however consider it to be necessary for the discussion above to be provided 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 Sites 1-3, 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(l) 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 178 new residential townhouses that will each contain either 3 bedrooms or 4 bedrooms. The proposed development forms part of a broader development strategy across Sites 1-5, which will deliver a range of different apartment and townhouse design typologies to address the changing demographic profile of Edmondson Park, which is located within a rapidly evolving urban release area.

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. 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 a built form outcome that is appropriate in the context of Sites 1-3.

- **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 immediate to 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. Sites 1-3 will benefit from ready access to these future services, which will afford a high level of amenity and convenience to future residential occupants of the proposed development.

3.4.2 Public Interest

Section 4.27 of the SEE demonstrates that the site is suitable to accommodate the proposed development. This section 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** of this Height Variation Request.

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 not provide for the delivery of roof level terraces at particular townhouses concentrated within the west of the site (the benefits of which have been well-established by this DA). 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 21m height control across the western aspect 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 Sites 1-3, and the amenity benefits associated with the provision of roof level terraces at 37 of the proposed townhouses.

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*.