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1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban for Aspire Consortium on behalf of NSW Land and Housing Corporation. It is submitted to the Department of Planning and Environment (DP&E) in support of a State Significant Development Application (SSDA) for the redevelopment of Ivanhoe Estate at Macquarie Park (SSD DA_8707) and has been prepared in response to refinements made to the Ivanhoe Estate Concept Masterplan in addressing the range of matters raised by government agencies, authorities and the general public following two public exhibition periods.

The nature and range of changes made following the second exhibition period to the Masterplan are summarised as follows:

- Reduction in the total GFA from 278,000m² to 268,000m²
- Increased envelope setbacks to Epping Road to preserve the Sydney Turpentine Ironbark Forest.
- Retention of additional existing trees
- Improved interface with the Shrimptons Creek riparian corridor
- Redistribution of GFA in the form of increased building height to enable the above design improvements
- Deletion of left in and left out access road to Epping Road

Clause 4.6 of the *Ryde Local Environmental Plan 2014* (Ryde LEP) enables the consent authority to grant consent for development even though the development contravenes a development standard. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

This clause 4.6 variation request relates to the development standard for Height of Buildings under clause 4.3 of the Ryde LEP and should be read in conjunction with the Response to Submissions Report (RTS) prepared by Ethos Urban dated August 2018 and with the RTS Design Report prepared by Bates Smart.

The redevelopment of the Ivanhoe Estate provides a unique opportunity to truly masterplan a significant land holding of 8.2 hectares within the Herring Road Precinct. The variation to building height is predicated on optimising the built form outcome for the Ivanhoe Estate and to enhance amenity within the site and importantly to adjoining sites. In particular, the distribution of massing has been carefully considered to ensure that height responds sensitively to key interfaces. This has been achieved by preceding amendments to:

- Reducing building envelope height and width to Building A2 and part of Building A3 to improve the interface to the approved development to the north at 137-143 Herring Road
- Deletion of Building C2 to provide a community centre and to enhance solar access to the Village Green
- Repositioning of building height to Shrimptons Creek (including reducing their footprint) where the additional height will not result in undue environmental impact to nearby residential properties.

In addition to the above preceding amendments, building envelope setbacks have been increased to Epping Road to preserve the Sydney Turpentine Ironbark Forest and the left in and left out to Epping Road has been deleted. Accordingly, due to these amendments resulting in enhanced setbacks, improved interfaces and the preservation of additional trees, GFA has been redistributed to other building envelopes within the Masterplan that will more suitably accommodate additional building height.

It is critical to note that the variation sought will not exceed the maximum building height that can be achieved for the site pursuant to the Ryde LEP. Furthermore, due to the significant slope of the site, the RL of the proposed variation will be approximately 20 metres below the maximum RL permitted for the site.

This clause 4.6 variation request demonstrates that, notwithstanding the non-compliance with the building height development standard, the proposed development:

- Results in a better planning outcome through allowing for the strategic redistribution of bulk and scale to locations where its impacts are less than a complying development;

- Achieves the objectives of Clause 4.3 of the Ryde LEP;
- Provides a public benefit through provision of a unique mix of social, affordable, seniors and private dwellings supported by community benefit GFA and provision of open space in close proximity to transport and jobs.
- Will not result in any adverse environmental impacts as a result of the variation to the maximum building height; and
- Is considered to be in the public interest.

This clause 4.6 variation request demonstrates that compliance with the maximum building height development standard is unreasonable and unnecessary in this circumstance and that there are sufficient environmental planning grounds to justify the redistribution of building height on the site.

Therefore, the DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the Ryde LEP.

2.0 Clause 4.6 Variations

Clause 4.6 of the Ryde LEP is the statutory mechanism that allows the consent authority to grant consent to development that departs from a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards, including the building height control, to achieve better outcomes that are in the public interest.

Clause 4.6(3) of the Ryde LEP provides that:

4.6 Exceptions to development standards

(3) *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.*

Further, clause 4.6(4)(a) of the Ryde LEP provides that:

(4) *Development consent must not be granted for development that contravenes a development standard unless:*

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), 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.*

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. *Wehbe v Pittwater Council [2007] NSWLEC 827;*
2. *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009;*
3. *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;*
4. *Moskovich v Waverley Council [2016] NSWLEC 1015; and*
5. *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179.*

In accordance with the statutory requirements, and as guided by the above case law, this clause 4.6 request:

- identifies the development standard to be varied (**Section 3**);
- identifies the nature and extent of the variation sought (**Section 3.3**);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances (**Section 4.2**);
- demonstrates that there are sufficient environmental planning grounds to justify the variation (**Section 4.3**);
- demonstrates such that the consent authority can be satisfied that the proposal is in the public interest because it is consistent with the objectives of the standard and the objectives for development within the B4 Mixed use zone (**Section 4.4**); and
- provides an assessment of the matters the Secretary is required to consider before granting concurrence (**Section 4.5**) namely:
 - whether the contravention of the development standard raises any matter of significance for State or regional environmental planning; and
 - the public benefit of maintaining the development standard; and
 - any other matters required to be taken into consideration by the Secretary before granting concurrence.

Accordingly, development consent can be granted to the proposal despite the proposed deviation of the development standard because, pursuant to clause 4.6(4)(a), the consent authority can be satisfied that:

- this written request has reasonably addressed the matters required to be demonstrated by clause 4.6(3); and
- 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.

2.1 Is the Planning Control a Development Standard?

'Development Standards' are defined under Section 4(1) of the EP&A Act as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,"

The maximum building height control under clause 4.3 of the Ryde LEP is clearly and unambiguously a development standard.

3.0 Development Standard to be Varied

This clause 4.6 variation request seeks to justify contravention of the development standard set out in clause 4.3 of the Ryde LEP. Under the LEP, the site is identified as X, AA1 and AA2 on the Height of Buildings map which provides for building heights of 45m, 65m and 75m respectively.

Clause 4.3 of the Ryde LEP is reproduced below in its entirety and an extract of the Height of Buildings Map, to which that clause applies, is reproduced in **Figure 1**.

(1) *The objectives of this clause are as follows:*

- (a) to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- (b) to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*

- (c) to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,
- (d) to minimise the impact of development on the amenity of surrounding properties,
- (e) to emphasise road frontages along road corridors.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.



Figure 1 – Height of Buildings Map

Source: Ryde LEP / Ethos Urban

3.1 The Land Subject to this Clause 4.6 Variation

This Clause 4.6 request to vary a development standard pertains to land known as Ivanhoe Estate, Macquarie Park which comprises 17 individual allotments, as shown in **Figure 2**. The Masterplan site also incorporates adjoining land, being a portion of Shrimptons Creek and Lot 1 DP 859537 (2-4 Lyonpark Road).

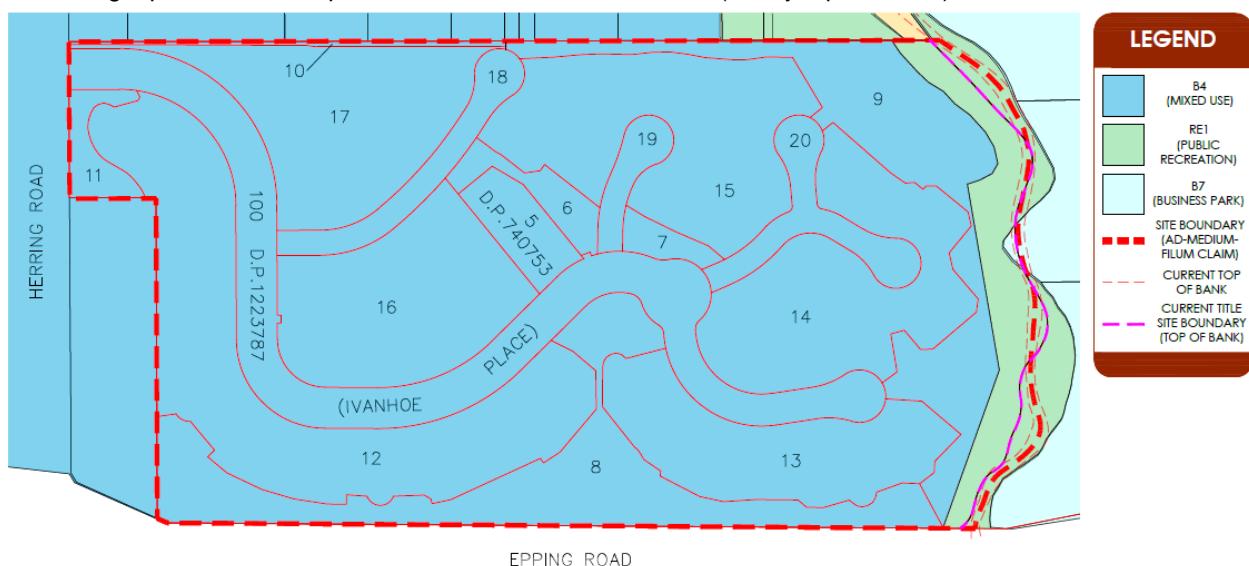


Figure 2 – Lot Boundaries and Zoning

Source: ADW Johnson

3.2 Extent of Variation Sought

The Masterplan, as proposed to be amended, has been designed to be generally consistent with the maximum height limits set by the Ryde LEP, which range from 45 to 75 metres across the site. However, given certain refinements to the Masterplan including the deletion of Building C2 to provide more public open space, reduced building heights and increased setbacks to reduce the impacts on the neighbouring properties and ecological communities, a height variation has been sought for six buildings across the Masterplan.

These buildings are Building B3, C3, C4.1, C4.2, D2 and D4 as outlined in **Table 1**. Buildings A1, A2, A3.1, A3.3, B1.1, B1.2, B2, C1, C2, D1 and D3 all either comply with the maximum height controls or are significantly less than the maximum height permitted.

Table 1 Proposed building height

Building	LEP Height	Proposed Envelope Height (m)	Maximum Variation (m / %)	Variation in Building Volume
Building A1	75m	75 metres	-	-
Building A2	75m	45 metres	-30 metres (-40%)	-26,133m ³
Building A3	75m	75 metres	-75 metres (-100%)	-26,780m ³
Building B1.1	45 / 75m	45 metres	-30 metres (-40%)	-13,243m ³
Building B1.2	45m	45 metres	-	-
Building B2 (School)	45m	45 metres	-	-
Building B3	45m	45/65 metres	20 metres (44%)	17,230m ³
Building C1	45 / 65m	45/65 metres	-	-
Building C2	45 / 65m	10 metres	-55 metres (-85%)	-62,775m ³
Building C3	45 / 65m	55metres	+10 metres (15%) and -10 metres (15%)	-2,510m ³
Building C4.1	45 / 65m	75 metres	30 metres (70%)	30,492m ³
Building C4.2	45 / 65m	55 metres	10 metres (15%) and -10 metres (15%)	-
Building D1	65m	65 metres	-	-
Building D2	65m	75 metres	10 metres (15%)	7,105m ³
Building D3	65m	65 metres	-	-
Building D4	65m	65/70/75 metres	10 metres (15%)	9,746m ³
TOTAL			-45 metres	-66,869m³

It is prudent to note that 10 of the 16 buildings in the masterplan will comply with the maximum permitted building height. As detailed in **Table 1**, Building B1.1 and Building A2 are substantially below the maximum permitted building height by up to 30 metres. Furthermore, Building C2 (originally proposed at 65m in height) has been removed entirely and replaced with open space and a Community Facility building which will be substantially below the height limit by up to 55 metres. The impact of the height exceedances are generally internalised and will not result in adverse overshadowing to adjoining properties. The variation as a representation of building mass outside of the LEP compliant envelope is 6.4%.

On balance, the composition of building mass and the repositioning of building height provides for an enhanced interface to Shrimptons Creek, the adjoining development site to the north known as 137-143 Herring Road and the properties to the north fronting Peach Tree Road. **Figure 3** clearly depicts that building mass has been carefully substituted from the north-western side of the site to the south-eastern side of the site in order to improve overall amenity, solar access, increase open space and minimise the impact of overshadowing on sensitive land uses.

The Department should consider that it is well established in case law that the extent of the numerical variation does not form part of the test required to be exercised under clause 4.6. Recent decisions in respect of *Micaul Holdings P/L v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Moskorich v Waverley Council* (65% exceedance of FSR) reinforce this position.

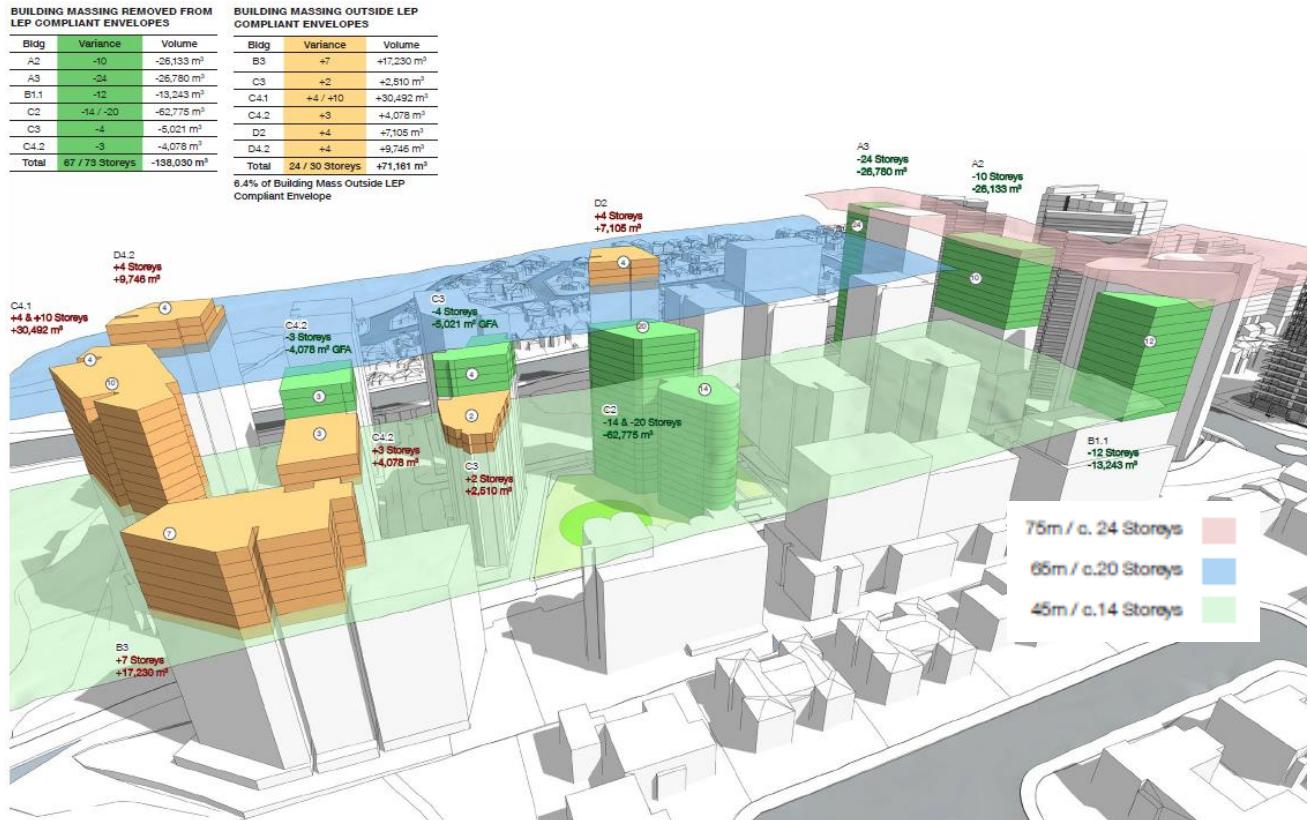


Figure 3 – Height Plane Map

Source: Bates Smart

3.3 Site Context

Site context is an important consideration when determining the appropriateness and necessity of a development standard. The Ivanhoe Estate is strategically significant and presents a unique opportunity to deliver social, affordable and private housing stock in close proximity to key transport infrastructure, services and employment within Macquarie Park.

Macquarie Park is recognised as a rapidly changing area in the NSW State Government's strategic planning policies, specifically A Plan for Growing Sydney, the Revised Draft North District Plan and the Draft Greater Sydney Regional Plan. Strategic plans have consistently identified Macquarie Park as an important centre within the economic corridor that extends from Macquarie Park through the Sydney CBD to Sydney Airport.

Macquarie Park is the largest non-CBD office market in Australia and is projected to become the largest non-CBD office market in Australia and Australia's fourth largest commercial precinct by 2030. At present, it accommodates a total of 878,950 square metres of office floor space. The Macquarie Park area is also significant for the cluster of health, education and high-tech industries, with the Revised Draft North District Plan identifying the area as a health and education precinct.

The Greater Sydney Commission has identified Macquarie Park as a Collaboration Area, where all tiers of government, stakeholders and the community will work together to ultimately produce a Place Strategy and Infrastructure Plan that responds to rapid growth and investment in the area. The Greater Sydney Commission has released the Draft Greater Sydney Regional Plan, which conceptualises metropolitan Sydney as three cities. Macquarie Park is part of the Eastern Harbour City, characterised by established financial, professional, health and education sectors. Urban renewal in the Eastern Harbour City is focussed on creating local identity and amenity.

Strategic planning for the area has also identified Macquarie Park as an urban renewal area, with the Herring Road Precinct, which includes the Ivanhoe site, forming part of the Department of Planning and Environment's Priority

Precinct program. The Herring Road Precinct focussed on the walking catchment around Macquarie University Railway Station and along Herring Road, which were predominantly zoned B4 Mixed Use under Ryde Local Environmental Plan 2012. In 2015 the process led to amendments to Ryde LEP to increase the height and density controls, particularly around the station and major road intersection approaches to the Precinct.

The Precinct is intended to deliver a significant number of dwellings by 2031, transforming the area into a vibrant centre that makes the most of the available transport infrastructure and the precinct's proximity to jobs, retail and education opportunities within the Macquarie Park corridor. The Priority Precinct process also identified additional infrastructure needed to support additional growth in the Precinct, which will be funded through local contributions to Council and works in kind.

The Concept SSDA is consistent with the desired outcomes derived from the strategic planning framework. The proposed built form and density is considered to be compatible in the context of Macquarie Park. The proposed development will still result in an appropriate level of development that contributes to and aligns with the intended development outcomes envisaged for the Precinct.

4.0 Justification for Contravention of the Development Standard

4.1 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

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.

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 made under clause 4.6 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 subclause 4.6(3)(a) of the LEP is the same as the language used in clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (**Fourth Method**).
5. 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 (**Fifth Method**).

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved notwithstanding the non-compliance (**First Method**) and the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance

with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (*our emphasis*) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

Section 4.1 of this document address the matters in clause 4.6(3)(a), and in particular how the objectives of the development standard are achieved notwithstanding the non-compliance with the numerical control.

4.1.1 First Method: The underlying objectives or purposes of the development standard

The objectives of the development standard contained in clause 4.3 of the Ryde LEP are:

- (a) *to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*
- (b) *to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area,*
- (c) *to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,*
- (d) *to minimise the impact of development on the amenity of surrounding properties,*
- (e) *to emphasise road frontages along road corridors.*

The Masterplan seeks consent for mixed-use development that has been vigorously tested with an overarching architectural scheme which demonstrates an appropriate distribution of GFA within building envelopes throughout the Ivanhoe Estate. The indicative scheme, and with respect to the overall building mass proposed satisfies the objectives of the building height development standard, notwithstanding the numerical non-compliance.

Objective (a): *to ensure that street frontages of development are in proportion with and in keeping with the character of nearby development,*

The height limits for the Ivanhoe Estate were established as part of the Macquarie University Station (Herring Road) Priority Precinct process. The rationale for the heights, which was explained in the Herring Road Finalisation Report, was to provide:

- a 'gateway' on the land fronting Herring Road between Epping Road and Ivanhoe Place;
- buildings up to 20 storeys along Epping Road positioned behind the existing trees and vegetation which provides some screening and where the building shadows fall mainly onto Epping Road; and
- building heights up to 14 storeys on the northern half of the estate to manage overshadowing of other buildings and open space.

The Masterplan provides for a distinct approach to building height which varies across the site and where appropriate will be either higher or lower than the height limit to optimise solar access to the public domain and other buildings. Further, the built form is stepped across the site to transition down in height towards the northern boundary, which is entirely consistent with the overall principle of height gradation for the Precinct.

Building A1 immediately adjacent to Herring Road will act as a 'gateway' to the Ivanhoe Estate and will be 24 storeys in height. Building A1 is compliant with the LEP height limit thereby providing for an appropriate interface to Herring Road which is consistent with the objectives of the height standard.

Buildings immediately adjacent to Epping Road will range in height between 14 to 24 storeys. A3 will be 24 storeys in height which complies with the maximum height limit prescribed for this portion of the site adjacent to Epping Road. However, Building D2 will be 24 storeys and Building D4.2 will be part 22 and 24 storeys which exceeds the 20 storeys envisaged along Epping Road. The building height encroachments are acceptable for the following reasons:

- The buildings substantially exceed the setback requirement of 10m to Epping Road and are set back within a range of 12-24m. Building D4.2 is setback a minimum of 24 metres and the part of Building D2 which exceeds the height limit is setback 35.7 metres.
- The existing vegetation and tree canopy within the Epping Road setback area is proposed to be largely retained and embellished, thereby providing substantial landscape screening to Epping Road.

- Given the topography of the land which falls towards Shrimptons Creek, Building D2 and Building D4.2 will be materially lower than the height of Building A3 which complies with the height limit.
- The visual impact of the development, particularly from viewpoints along Epping Road, is considered to be acceptable.
- The proposal is commensurate with the desired future character of the Macquarie University Station Precinct

Accordingly, the proposal achieves Objective (a) and will deliver a built form outcome in keeping with the character of development envisioned for the Herring Road Precinct established by the planning framework including the DCP and LEP.

Objective (b): *to minimise overshadowing and to ensure that development is generally compatible with or improves the appearance of the area*

Overshadowing

Shadow diagrams have been prepared by Bates Smart based on the Indicative Reference Scheme and the Building Envelope. The shadow diagrams depict the shadow cast generated by the Indicative Reference Scheme and the Building Envelope during the Winter Solstice and Equinox and outlines the extent of the potential shadow cast generated by the LEP height plane.

During the Winter Solstice the main impact of the proposed development will be on the low-density residential properties on the opposite side of Epping Road. These shadow impacts are considered to be acceptable for the following reasons:

- The shadows casts are consistent with the impacts associated with a development of this scale and were envisaged for the site as part of the Priority Precinct rezoning process.
- The urban structure ensures there are gaps between buildings and their associated shadows, which results in intermittent shadows/sunlight passing over the properties during the affected period.
- The shadows predominantly fall on the front yards and roof areas of the dwellings and not their primary private open space.
- Where overshadowing of the primary private open space occurs (the rear yards), the shadows recede from these areas by midday and is completely clear of the properties by 1pm.

Notwithstanding the shadow impact, the Shadow Diagrams demonstrate that the Indicative Reference Scheme will ensure that the primary private open space of adjoining properties along Epping Road to the south will receive at least 2 hours solar access to at least 50% of the private open space area between 9am and 3pm on 21 June as required by the Ryde DCP.

With respect to the height variation, the outline of the LEP height plane demonstrates that the shadow cast generated by Buildings D2 and D4.2 which exceed the height limit will not generate additional shadow cast that would impact nearby residential properties when compared to the shadow cast generated by the LEP height plane. This is primarily because Buildings D2 and D4.2 are significantly setback from Epping Road in excess of the 10m requirement thereby reducing the extent of the shadow cast within the extent of the LEP height plane shadow cast.

The additional shadow cast generated by the additional height on Buildings B3, C4.1 and D4.2 adjacent to Shrimptons Creek will be dispersed throughout the day and will fall within the RMS Surplus Land on the opposite side of Epping Road, the Epping Road reservation, Shrimptons Creek and 2-4 Lyonpark Road. The additional shadow cast will not affect any nearby residential properties and therefore will not create any adverse impacts. Furthermore, the shadow diagrams clearly illustrate that the height variation will not cause additional shadow cast on Shrimptons Creek given that the compliant LEP height plane generates a shadow cast that would extent beyond the area of the creek.

In this regard, the overshadowing impacts created by the proposal are considered to be minor and acceptable and are not significantly accentuated by the proposed height variation.



Figure 4 – 9am Shadow Diagram

Source: Bates Smart

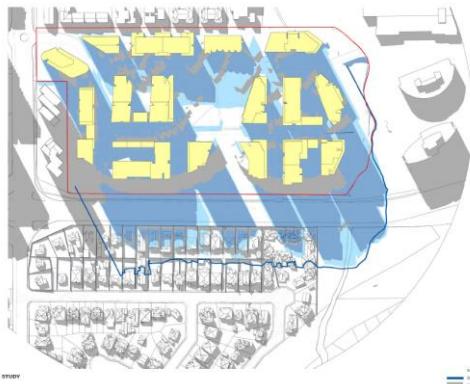


Figure 5 – 11am Shadow Diagram

Source: Bates Smart

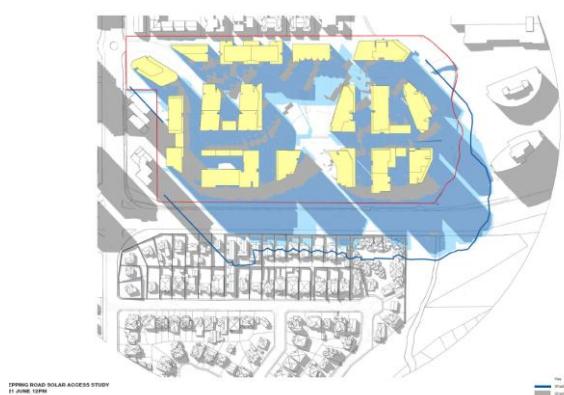


Figure 6 – 12pm Shadow Diagram

Source: Bates Smart



Figure 7 – 1pm Shadow Diagram

Source: Bates Smart

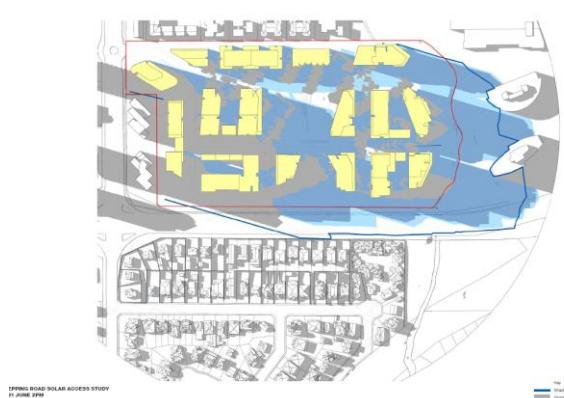


Figure 8 – 2pm Shadow Diagram

Source: Bates Smart

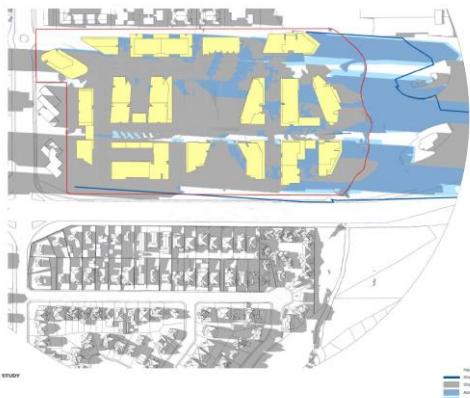


Figure 9 – 3pm Shadow Diagram

Source: Bates Smart

Appearance of the Area

The proposed development will maintain an appropriate visual relationship between new development in the area and the existing character of the area, having regard to the compatibility of its bulk and scale with the neighbourhood, and its appropriate transition with existing development in the streetscape and the desired future character of the Macquarie University Station Precinct.

The existing locality including the visual catchment along the northern side of Epping Road is generally characterised by both commercial and high-density residential buildings. The northern side of Herring Road has been subject to recent and ongoing residential redevelopment. This comprises the former Stanford Hotel site at 110-114 Herring Road, Macquarie Park which is being redeveloped to provide seven mixed use buildings up to 22 storeys in height, and the 'One Twenty' development at 120-126 Herring Road, Macquarie Park which is being redeveloped into a 23 storey mixed building with 192 apartments.

Immediately to the north east of the site, a DA was recently approved for redevelopment of 137-143 Herring Road for two residential flat buildings accommodating approximately 297 dwellings across 22 storeys (City of Ryde reference: DA2017/0107).

In this regard, given the context of established and future built form, the proposal is not incompatible with the existing and desired character of the locality in relation to bulk and scale and will improve the appearance of the area.

Objective (c): to encourage a consolidation pattern and sustainable integrated land use and transport development around key public transport infrastructure,

The Ivanhoe Estate is located within the centre of the Macquarie Park Corridor as identified on the Ryde LEP Centres Map. The site is a large consolidated landholding currently owned by NSW Land and Housing Corporation which is proposed to be developed in its entirety for a mixed-use development incorporating a mix of social, affordable and private dwellings in addition to a school, aged care facilities, child care, office and retail uses. The redevelopment of the Ivanhoe Estate will utilise key public transport infrastructure and is considered to encourage a sustainable development pattern so as to not adversely impact upon the orderly development of adjoining land.

Transport Orientated Development

In accordance with the draft North District Plan, the proposal will deliver diverse housing typologies to meet the needs of changing communities and is ideally situated to provide new housing stock which will benefit from the close proximity to Macquarie University Station. Furthermore, the site will be highly accessible to a dedicated bus lane and associated bus stops proposed on Herring Road as part of the Macquarie Park Bus Priority and Capacity Improvements being carried out by Transport for NSW and NSW RMS.

The site is in close proximity to existing public open space, essential services, employment and facilities that will service residents and assist with the notion of the '30-minute city concept'. The site's size, locational characteristics and the proposed use make it a prime example of a site that is well situated to meet the objectives of the draft Plan. As such, the additional gross floor area proposed is well serviced by existing and proposed transport infrastructure, and enables a more diverse mix of land uses within the precinct. The proposed development aligns with the principal objectives for Transport Orientated Development.

Environmentally Sustainable Development

The Ivanhoe Sustainability Report explores a range of sustainability strategies, and outlines examples of best practice sustainable building principles that can be implemented through the delivery of the Masterplan. A key outcome of the redevelopment of the site will be to deliver a more sustainable community than is presently provided, in line with Fraser's standing as the foremost provider of Green Star communities in Australia.

The three key sustainability commitments for the Ivanhoe Estate comprise:

- 5 Star Green Star Design & As Built v1.1, as the minimum for all buildings;
- 6 Star Green Start Communities v1, for the Ivanhoe Masterplan site; and
- a 'Real Utilities' integrated infrastructure solution.

These commitments will be achieved across the staging and delivery of the development, drawing on various strategies in the design and operation of the Ivanhoe Estate. These comprise of initiatives to address the management and maintenance of buildings, the selection of construction materials, demand for resources such as water and power, the use of sustainable modes of transport, impacts to the local ecosystem, emissions, and general community wellbeing. It demonstrates that there are opportunities to implement best-practice sustainable building principles and improve the environmental performance of the community.

Objective (d): to minimise the impact of development on the amenity of surrounding properties

The exhibited Masterplan complied with the height of building control. The proposed variation is a direct response to the submissions made during public exhibition to minimise the impact of the development on the amenity of surrounding properties. The proposed variation is therefore necessary to better achieve consistency with the objective of the control compared to the resulting impact on amenity that would otherwise flow from a development complying with the development standard.

The specific impacts of the variation are considered below.

Wind Impact

A revised Wind Assessment has been prepared by Cermak Peterka Petersen (refer to **Appendix L**). The revised assessment considers the removal of Building C2 and changes to the height and massing of the remaining building envelopes. The changes to the Masterplan result in relatively minor changes to the original assessment, which found that the Masterplan is capable of achieving a suitable wind environment for pedestrians and of meeting the relevant safety criterion. The removal of Building C2 is expected to be beneficial for wind conditions around the Village Green. The assessment finds that the proposed Masterplan with respect to the exceedance of the height control, remains equally capable of achieving a suitable wind environment for pedestrians and of meeting the relevant safety criterion subject to appropriate mitigation measures.

Visual Impact Assessment

An updated Visual Impact Assessment has been prepared by Ethos Urban and Virtual Ideas to assess the revised Masterplan design. It has been revised to assess the redistribution of building height and to incorporate additional viewpoints as requested as part of the response to submissions.

The Visual Impact Assessment finds that the proposal will generally have a medium visual effect, with a high visual effect from limited viewpoints.

As set out in the exhibited EIS, whilst the overall visual impact of the proposal is medium, this impact is acceptable on the basis that the proposal is consistent with key strategic planning documents that seek to transform the character of Macquarie Park. Whilst the revised Masterplan results in a variation to building height, the refined design continues to incorporate elements which mitigate visual impact, including vegetation buffers, separation distances between building and building alignment.

The revised Visual Impact Assessment finds that the Masterplan, as proposed to be amended, has an acceptable visual impact. The breaches of the height control therefore do not result in any less acceptable impact than the formerly proposed fully compliant scheme.



Figure 10 – Original Epping Road Viewpoint

Source: Virtual Ideas



Figure 11 – Amended Epping Road Viewpoint (RTS 1)

Source: Virtual Ideas



Figure 12 – Proposed Epping Road Viewpoint (RTS 2)

Source: Virtual Ideas

Minimal Environmental Impact

The Masterplan as amended has minimised the impact of the development on the amenity of surrounding properties and is appropriate for the site specifically because:

- a high quality public domain with a variety of appropriately sized public and private open spaces can be achieved across the site;
- the shadow analysis demonstrates that the indicative scheme does not have any unacceptable adverse shadow impacts on the surrounding residential areas;

- the setbacks established for the site ensure the scale of buildings as perceived from the public domain is reduced;
- the Visual Impact Assessment concludes that the visual impacts are acceptable;
- the proposed masterplan is capable of achieving a suitable wind environment for pedestrians and of meeting the relevant safety criterion.
- traffic generation will not cause undue pressure on existing roads subject to a range of mitigation measures.
- the proposal will preserve and enhance the ecological corridor along Epping Road and Shrimptons Creek with any impacts to be appropriately offset.
- the development will be supported by existing and planned infrastructure which will have sufficient capacity to accommodate the proposed masterplan.

Objective (e): to emphasise road frontages along road corridors.

Herring Road Frontage

The Herring Road frontage will be anchored by Building A1 which will act as a gateway to the Ivanhoe Estate. Building A1 will adopt a recessed two-storey wall height at the base of the building and will include a child care centre and lobby thereby emphasising the road frontage as an active environment. Building A1 will adopt a grid type façade which will emphasise the base of the building and soften the appearance of the building as it rises. **Figure 12** depicts photomontage of Building A1 as viewed from the corner of Herring Road and Main Street.



Figure 13 Photomontage of Building A1 at the corner of Herring Road

Source: Bates Smart

Epping Road Frontage

The Masterplan emphasises the Epping Road frontage by providing a substantial building setback of a minimum of 10m to preserve existing vegetation and tree canopy part of the Sydney Turpentine Ironbark Forest. The setback proposed ranges between 12 to 43 metres and facilitates articulated building forms and openings between buildings to provide sightlines through the site. A green link is provided to enhance pedestrian connectivity between Epping Road and the Shrimptons Creek corridor via the Forest Playground and the Village Green. The built form along Epping Road and the landscaping treatment seeks to reinforce the road frontage. The proposed treatment to the Epping Road frontage is depicted in **Figure 13**.



Figure 14 Epping Road Frontage

Source: Hassell

4.1.2 Third Method: The underlying purpose or objective would be thwarted or defeated

The objectives of clause 4.3 of the Ryde LEP are clearly intended to manage the bulk and scale of buildings to ensure that future developments are compatible with the existing and envisaged future character for the area and are capable of contributing to the envisaged density of the Herring Road Precinct without creating additional environmental impacts.

The exhibited Masterplan complied with the height of building control. The proposed variation is a direct response to the submissions made during public exhibition to minimise the impact of the development on the amenity of surrounding properties. The proposed variation is therefore consistent with the underlying objective of the control that would otherwise be thwarted if the development standard was maintained.

4.1.3 Conclusion on clause 4.6(3)(a)

In the decision of Wehbe, the Chief Justice expressed the view that there are five different methods in which an objection to a development standard might be shown as unreasonable or unnecessary and is therefore well founded. Of relevance in this instance is the first and third methods, which are:

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*

As detailed in the section above, the Concept SSDA satisfies the building height objectives notwithstanding the proposed variation. The Concept SSDA will facilitate development that will continue to achieve the objectives of the standard and will not cause undue environmental impact. As the objectives of the development standard are met notwithstanding the breach, the first method is satisfied.

Further, the variation is a direct response to minimise the impact of the development on surrounding properties. Therefore if the standard was maintained it would thwart the underlying objective of the FSR control.

Having regard to the above, in our view it would be unreasonable and unnecessary to enforce strict compliance with the maximum building height development standard contained within Clause 4.3 of the Ryde LEP.

4.2 Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the Ryde LEP requires the departure from the development standard to be justified by demonstrating:

that there are sufficient environmental planning grounds to justify contravening the development standard.

In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. There are sufficient environmental planning grounds to justify contravention of the building height development standard in this specific instance.

The non-compliance with the building height control facilitates a development that will provide a uniquely diverse range of housing types and supporting ancillary uses to strengthen the local community. These specific uses are critical to the future of the Ivanhoe Estate to ensure a high level of social outcomes for the community.

4.2.1 Public Domain and Landscaping

The following section demonstrates that despite the proposed variations to the building height standard, the proposed Masterplan will achieve a high-quality public domain and landscape outcome.

Removal of Building C2 and Provision of Community Centre and Increased Public Open Space

The masterplan, as amended, will include the removal of Building C2 which was proposed originally under the masterplan as a part 14 and 20 storey mixed use building that had a direct interface to the village green. The building has been removed and will be replaced with a Community Centre for community and public use. The underlying aim is to enhance the public open space and community uses as part of the re-development of the Ivanhoe Estate.

The removal of Building C2 will result in the removal of approximately 14,451 square metres of residential GFA and will be replaced with a community centre that will integrate into the Village Green and Building C1. The provision of the community centre and rooftop open areas will increase the provision of open space in the Village Green by approximately up to 2,900m² (subject to detailed design)

The building envelope has been revised to include the provision of a community centre, which would be partially located below existing ground level and comprise a total of up to three storeys (subject to future design). The future community centre will present as one storey when viewed from ground level and be landscaped with a green roof to allow for an integrated transition to the Village Green.

Rather than comply with the height limit and locate a building at C2, the proposed Masterplan provides additional high quality public open space through redistributing that GFA, in the form of additional height on other buildings, thereby providing further environmental planning grounds to justify contravening the development standard.

The design changes are illustrated in **Figure 14** and **15** below.



Figure 15 – Original Masterplan

Source: Doug and Wolf

Figure 16 – Proposed Masterplan (RTS 2)

Source: Doug and Wolf

Rehabilitation of Shrimptons Creek Riparian Corridor

An enhanced riparian buffer has been incorporated into the refined Masterplan. The exhibited design proposed a 20 metre riparian corridor adjoining Shrimptons Creek in accordance with the NSW Office of Water *Guidelines for riparian corridors on waterfront land* and this buffer has been expanded through the incorporation of increased setbacks from the edge of the riparian corridor and additional 'forest threshold' green spaces along the creek. The buildings adjoining the creek are set back at least 5 metres, in accordance with the RDCP, and this setback area has been increased through refinement and reorientation of the building envelopes. The proposed riparian corridor and buffer area comprises a total of 2,470m², which is larger than the buffer that would be provided if the 10 metre setback recommended by Council was adopted and retains more trees. The proposed riparian buffer is illustrated at **Figure 16**.

Rather than comply with Council's DCP setback, the proposed Masterplan provides an enhanced interface with Shrimptons Creek and additional high quality public open space through redistributing GFA, in the form of additional height on other buildings, thereby providing further environmental planning grounds to justify contravening the development standard.

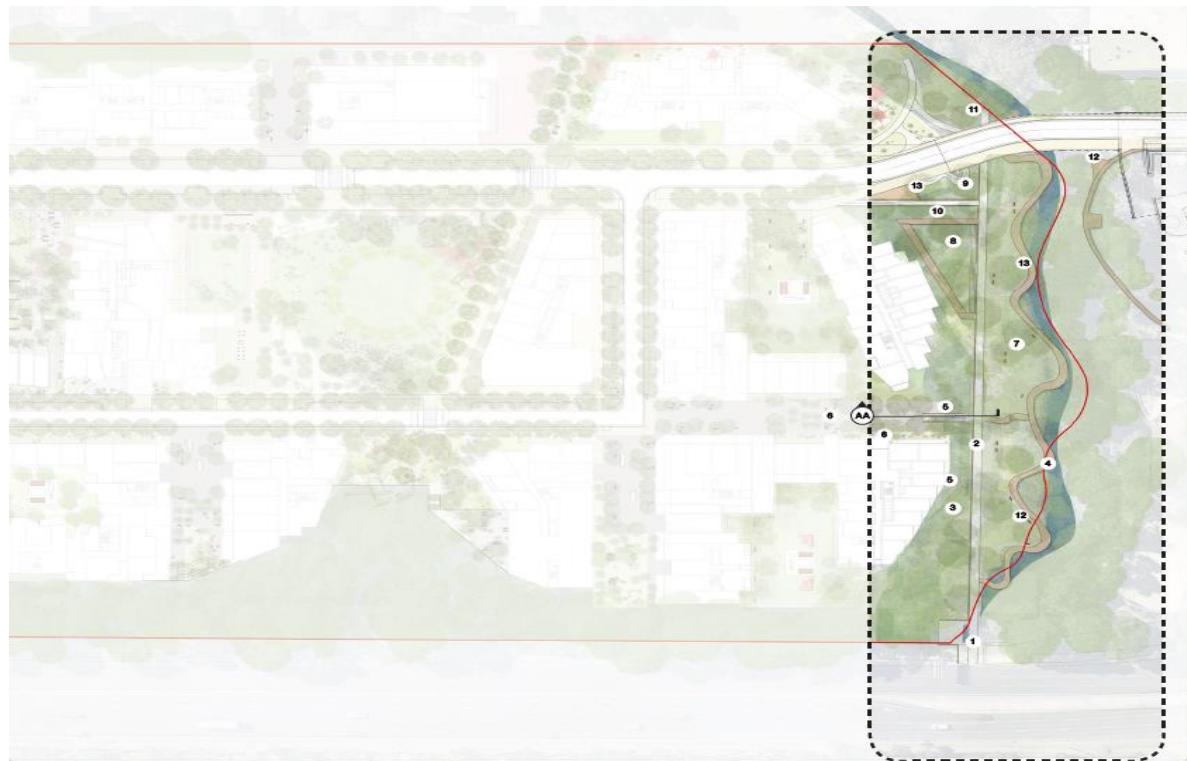


Figure 17 – Shrimptons Creek Indicative Plan

Source: Bates Smart

Deep Soil Landscaping

The proposed masterplan exceeds the deep soil area requirements applicable to the site under SEPP 65 and the Apartment Design Guide. The SEPP stipulates a minimum deep soil area of 7% of the site area whilst the proposed masterplan provides a deep soil area of 17.6% of the site. It is noted that the provision of deep soil has been increased by 2.6% as a result of the refinements made to the masterplan post-exhibition. This has been achieved by rationalising the building envelope and enhancing tree retention.

The objective of these controls is to enhance the landscaping area whilst limiting the footprint of the building envelopes. The proposed development incorporates a landscape scheme that will substantially enhance the landscaped setting of the site and surrounds, with provision made for significant canopy trees combined with native shrub and grass vegetation below the canopy, particularly through the preservation of the ecological corridor adjacent to Epping Road and the enhancement of the existing landscaped setback to the northern boundary.

The canopy trees are proposed to extend the length of the southern perimeter boundary in order to provide a strong landscape buffer. The exceedance of the deep soil area combined with the proposed landscape scheme assists in softening the built form from the public domain and adjoining properties. **Figure 17** depicts the proposed deep soil areas for the masterplan.

Rather than only provide the minimum deep soil requirement, the proposed Masterplan provides significantly more deep soil area, through reducing the building area and redistributing that GFA, in the form of additional height on other buildings, thereby providing further environmental planning grounds to justify contravening the development standard.

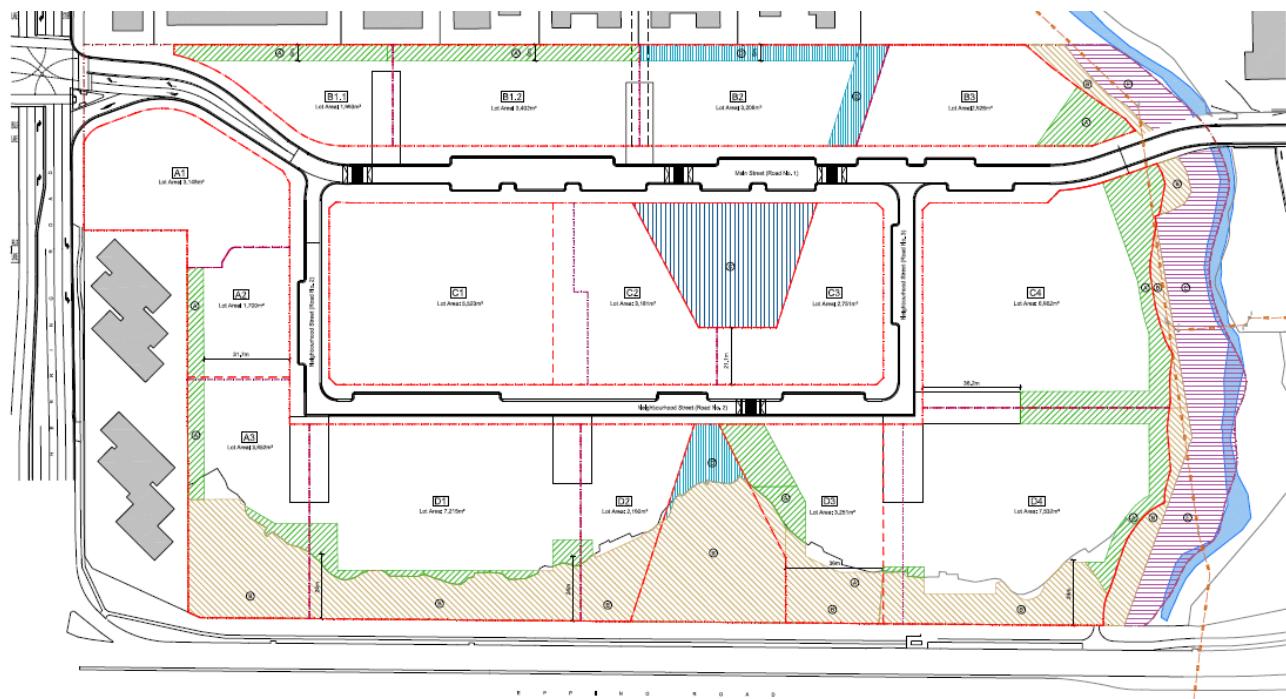


Figure 18 – Deep Soil Landscaping

Source: Bates Smart

Enhanced Public Domain and Open Space

The public domain concept is inspired by the idea of 'forest to neighbourhood', emphasising the existing bushland character along Epping Road and Shrimptons Creek. The public domain concept also seeks to clearly distinguish between Main Street and the surrounding neighbourhood streets. A landscape design theme has been developed that draws on the existing landscape and adapts it to the proposed Masterplan. The site's informal forested edges will infiltrate the urban grid, particularly through the Green Link that will run diagonally across the site and connect the Epping Road vegetation to the Shrimptons Creek corridor.

Utilising this concept of 'forest to neighbourhood', a hierarchy of primary, secondary and incidental public spaces are provided within the site. Primary public spaces are designed for civic and recreation purposes and will each have a different landscape character. The Village Green will be the predominant public space within the Estate and is a large outdoor recreation area that is intended for use by all residents and can accommodate a diverse range of events and activities. Supporting the primary public spaces are a series of secondary public spaces will also respond to the forest and neighbourhood landscape themes and include on-street gardens and planted areas suited to the quieter neighbourhood streets. At the boundaries of the site, forested urban gardens will delineate the transition to the existing bushland. Incidental open spaces will be created throughout the site with street furnishings and planting to create spaces for sitting and meeting.

The approach to the public domain has informed the urban structure which draws on the site's existing landscape features with a diagonal sequence of high quality public open spaces connecting the turpentine forest along Epping Road with the public open space on Shrimptons Creek. The public domain approach sets up a framework of development blocks across four precincts. Overall, the proposed masterplan will provide of high quality and accessible public and communal open space areas within the site as depicted in **Figure 18**.



Figure 19 – Open Space and Public Domain

Source: Bates Smart

4.2.2 Refinements to the Masterplan

The redevelopment of the Ivanhoe Estate provides a unique opportunity to truly masterplan a significant land holding of 8.2 hectares within the Herring Road Precinct. The variation to building height is predicated on optimising the built form outcome for the Ivanhoe Estate and to enhance amenity within the site and importantly to adjoining sites. The distribution of massing has been carefully considered to ensure that height responds sensitively to key interfaces.

Improved Interface to 137-143 Herring Road

A Development Application was recently approved by the Sydney North Planning Panel on 16 February 2018 for the redevelopment of 137-143 Herring Road (City of Ryde reference: DA2017/0107). The approval permits the construction of two residential flat buildings each with a height of 23 storey and 24 storeys and will accommodate 285 apartments and 4 levels of basement car park. The building closest to the Ivanhoe site adopts progressive side setbacks that range from 3m to 12m from the eastern and southern boundaries. It is also noted that variations to the ADG building separation requirements were supported subject to mitigation measures including privacy screens adjacent to the interface of the site.

To improve the built form interface to the approved development at 137-143 Herring Road, the masterplan has been revised to reduce the impacts of the development which have been created by the non-compliances approved at 137-143 Herring Road. Specifically, the building height for Building A2 envelope and part of A3 has been reduced from 75m to part 45m and 75m. In addition to a reduction in building heights, the depth and bulk of the building envelope has been reduced to provide:

- Increased building separation to the approved development of 137-143 Herring Road from 10m to a minimum of 12m and 14.7m;
- Increased building setback to Epping Road from 10m to 18m;
- Retention of additional trees adjacent to Epping Road;
- Dual core layout with less apartments per building;

- Increased apartment sizes; and
- Living rooms positioned away from the interface of 137-143 Herring Road to enhance privacy and minimise direct overlooking.

The changes to the envelopes and indicative scheme for Building A2 and A3, as depicted in **Figure 19**, will enhance the interface to 137-143 Herring Road but inevitably has the effect of reducing GFA for this portion of the site that would otherwise be capable of achieving a building height of up to 75 metres. Block A2 and A3 are subject to the highest development standards for the Ivanhoe Estate however are being significantly underutilised given the interface to 137-143 Herring Road. The refinement to the building envelope will effectively result in up to 66,869m³ of building volume not being utilised within the permitted envelope.

In this respect, it is critical to note that the ability to redistribute building height would be limited if the site was subject to fragmented ownership. For example, if Block A2 and A3 were under separate title, development of the site may potentially result in a scheme that seeks to maximise the building envelope to a height of 75 metres. This may result in a poor built form interface to the approved development at 137-143 Herring Road and would inevitably result in a development that receives less than 70% solar access. Therefore, the masterplan approach for the Ivanhoe Estate provides the ability to test the building massing across a large landholding and provide for a better environmental planning outcome. This has been achieved by redistributing building height from Block A2 and A3 to Block C4 and D4 adjacent to Shrimptons Creek.

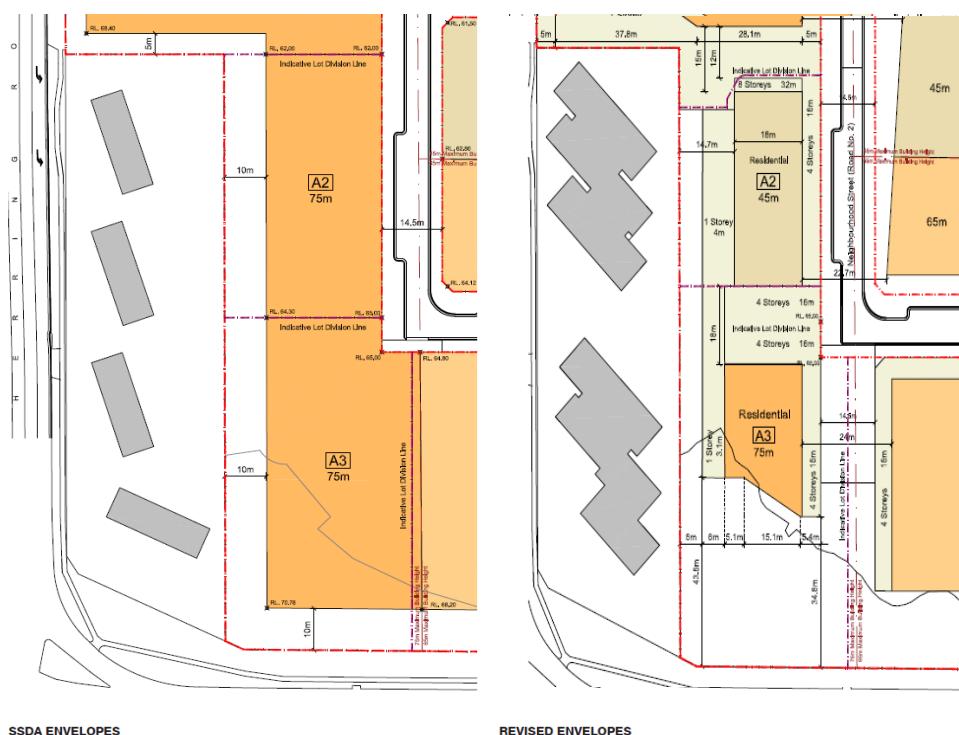


Figure 20 – Interface to 137-143 Herring Road

Source: Bates Smart

Improved Interface to Shrimptons Creek

The revised Masterplan will provide for a vastly improved interface to Shrimptons Creek. This has been achieved by enhancing the buffer area to the riparian corridor and rationalising the building footprints of Building C4 and D4.

The exhibited design proposed a 20 metre riparian corridor adjoining Shrimptons Creek in accordance with the NSW Office of Water *Guidelines for riparian corridors on waterfront land* and this buffer has been expanded through the incorporation of increased setbacks from the edge of the riparian corridor and additional 'forest threshold' green spaces along the creek. The buildings adjoining the creek are set back at least 5 metres, in accordance with the Ryde DCP, and this setback area has been increased through refinement and reorientation of the building envelopes. The proposed riparian corridor and buffer area comprises a total of 2,470m², which is larger than the buffer area that would be provided if a 10 metre setback recommended by Council was adopted and retains more

trees. The enhanced buffer area has also resulted in the retention of 106 additional trees adjacent to Shrimptons Creek and Epping Road.

In addition to an enhanced riparian buffer, the building envelopes for Building C4 and D4 have been substantially reduced to maximise tree retention and provide building forms that are sympathetic to the creek. A 2-4 storey podium level has also been expressed at the creek to provide for articulated tower forms and to enhance the upper elements of the building from the creek in order to reduce perceived bulk and scale. The upper levels of the building will be setback a minimum of 8 metres from the edge of the riparian corridor. The reduction in the building envelopes have also resulted in buildings th

The proposed riparian buffer is illustrated at **Figure 20**.



Figure 21 – Building Interface to Shrimptons Creek

Source: Bates Smart

Redistribution of Building Height

The Masterplan, as amended, provides for substantial improvements to the overall built form and public open space outcomes for the Ivanhoe Estate. These key improvements include the following:

- Reducing building envelope height to Building A2 and part of Building A3 to improve the interface to the approved development to the north at 137-143 Herring Road
- Deletion of Building C2 to provide a community centre and to enhance solar access to the Village Green
- Repositioning of building height to Shrimptons Creek where the additional height will not result in undue environmental impact to nearby residential properties.

In order to offset for the reduction in GFA as a result of reducing the envelopes for Blocks A2, A3, C3 C4 and D4 in addition to the removal of Building C2, the redistribution of building mass has been explored through a

comprehensive design testing exercise. The testing was informed on parameters to improve overall amenity, solar access, increase open space, increase tree retention and minimise the impact of overshadowing on sensitive land uses.

Accordingly, the design testing revealed that building mass could be appropriately redistributed to Buildings B3, C4 and D4 adjacent to Shrimptons Creek, Building D2 adjacent to Epping Road and Building C3 and C4.2 located internally to the south of the Village Green. As a result of the redistribution of building mass, these buildings exceed the maximum building height limit. Notwithstanding the height variation, it is considered that the redistribution of building mass will provide for a better environmental planning outcome when compared with the original height compliant Masterplan scheme. This is because:

- Building heights across the site are stepped in a strategic manner across the site to provide a clear and distinct hierarchy of buildings with the tallest buildings located to the north-east of the site in proximity to Herring Road.
- The building footprint of the building envelopes and indicative development scheme have been substantially reduced in order to promote enhanced open space, tree retention, preservation of ecological communities, building separation and solar access.
- The amendments to the Masterplan have broadly resulted in a reduction in overall GFA for the site from 278,000m² to 268,000m².
- The village green being the principal public open space area has been increased in area from 3,100m² to up to approximately 6,000m² (subject to the community centre design).
- The amendments to the Masterplan have resulted in the retention of 179 additional trees when compared to the original Masterplan.
- Buildings substantially exceed the setback requirement of 10m to Epping Road and are set back within a range of 12 - 43m. Building D4.2 is setback a minimum of 24 metres.
- Buildings on an average weighted scale exceed the setback requirement of 5m to the Shrimptons Creek Riparian Corridor increasing the buffer area from the original Masterplan from 1,180m² to 2,470m².
- The portion of massing above the height plane for Building D2 and Building D4.2 will not generate adverse shadow impacts to the low-density residential properties on the opposite side of Epping Road.
- The portion of massing above the height plane for Building D4.2, C4 and B3 will not affect any nearby residential properties and therefore will not create any adverse impacts. Furthermore, the shadow diagrams clearly illustrate that the height variation will not cause additional shadow cast on Shrimptons Creek given that the compliant LEP height plane generates a shadow cast that would extend beyond the area of the creek.
- Given the topography of the land which falls towards Shrimptons Creek, each of the six buildings which exceed the height limit will not extend beyond the height of Buildings A1 and A3 which complies with the height limit.
- The visual impact of the development, particularly from viewpoints along Epping Road, is considered to be acceptable.

It is critical to note that the maximum RL achievable on the site in a manner which complies with the LEP height limits is RL 141, represented by a building in the location of Building A3 built to a height of 75 metres above ground level on that part of the site. That maximum achievable RL sets a benchmark for visibility of buildings on the site from Epping Road, Herring Road and private properties in the vicinity of the site. Each of the buildings which are proposed to exceed the height controls for the site are well below that benchmark RL. For example, Building D2 reaches RL 121.7 which is approximately 20 metres below the benchmark RL.

Therefore, the variation will not result in buildings protruding above the skyline permitted by the LEP when considered in the context of Building A1 and A3 and the approved development to the north at 137-143 Herring Road and the opposite side of Herring Road. **Figure 21** depicts the Epping Road perspective of the Indicative Development Scheme which clearly illustrates that the highest buildings will be sited towards Herring Road.

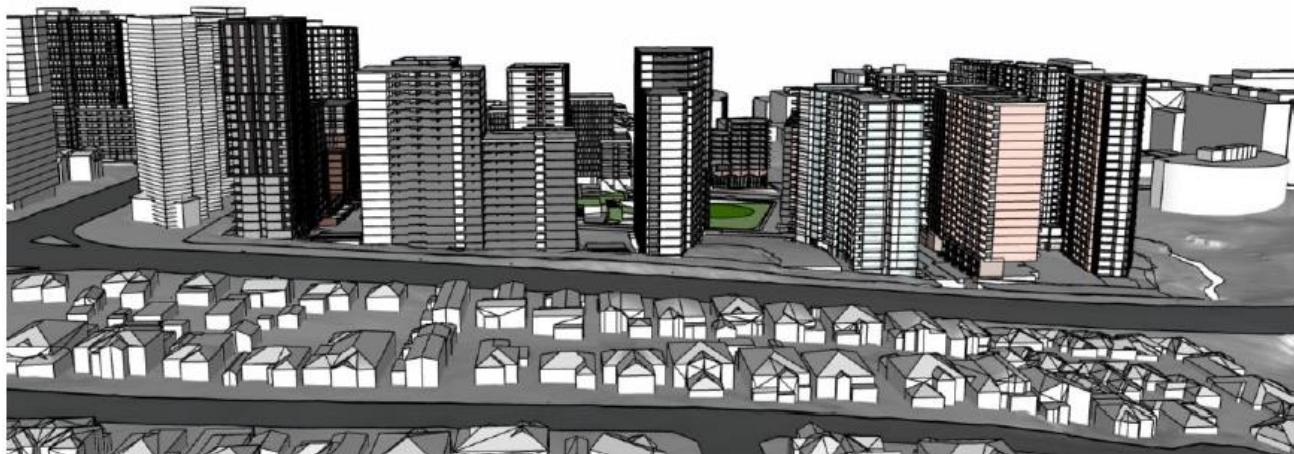


Figure 22 – Composition of Building Height

Source: Bates Smart

4.2.3 Building Form and Massing

The building form and massing of the proposed masterplan aims to provide a sympathetic response to the surrounding urban context through the transition of building heights from 14-24 storeys adjacent to Epping Road reducing to 9-20 storeys in height adjacent to the northern boundary. Buildings adjacent to the northern boundary are appropriately setback thereby providing opportunities for the retention of landscaping and enhancing separation to the northern boundary. The proposed building form and massing, when combined with landscaping and separation, will assist in minimising the perceived bulk and scale of buildings when viewed from residential properties to the north.

The height and proportion of buildings adjacent to Epping Road is commensurate of the character envisaged for the Macquarie University Station Precinct. Buildings adjacent to Shrimptons Creek will adopt fragmented building forms to provide smaller building footprints and to address the alignment of the creek and to enhance tree retention. With respect to the interface to Herring Road, Building A1 will act as a landmark building and will identify the corner of Ivanhoe Place and Herring Road as a gateway to the Ivanhoe Estate. The building will adopt a curvature footprint which seeks to maximise the northerly orientation and assists in minimising bulk and scale.

The design of the development with respect to massing is considered to respond appropriately to the curtilage of the site and surrounds. The proposed building envelope plan is considered to provide opportunities to promote good vertical and horizontal articulation of buildings, thereby enhancing the architectural quality and visual appearance of the development when viewed from the public domain. This will be partly achieved by promoting a human scale to residential streets in the form of 2-4 storey wall heights. It is considered that the variation to building height will not result in a development of excessive bulk and scale.

Additionally, the form and massing of buildings have been enhanced through provision of generous building separation accordance with SEPP 65 and the Apartment Design Guide. Each internal building interface will generally comply with the minimum building separation requirement of the ADG as depicted in **Figure 22**.

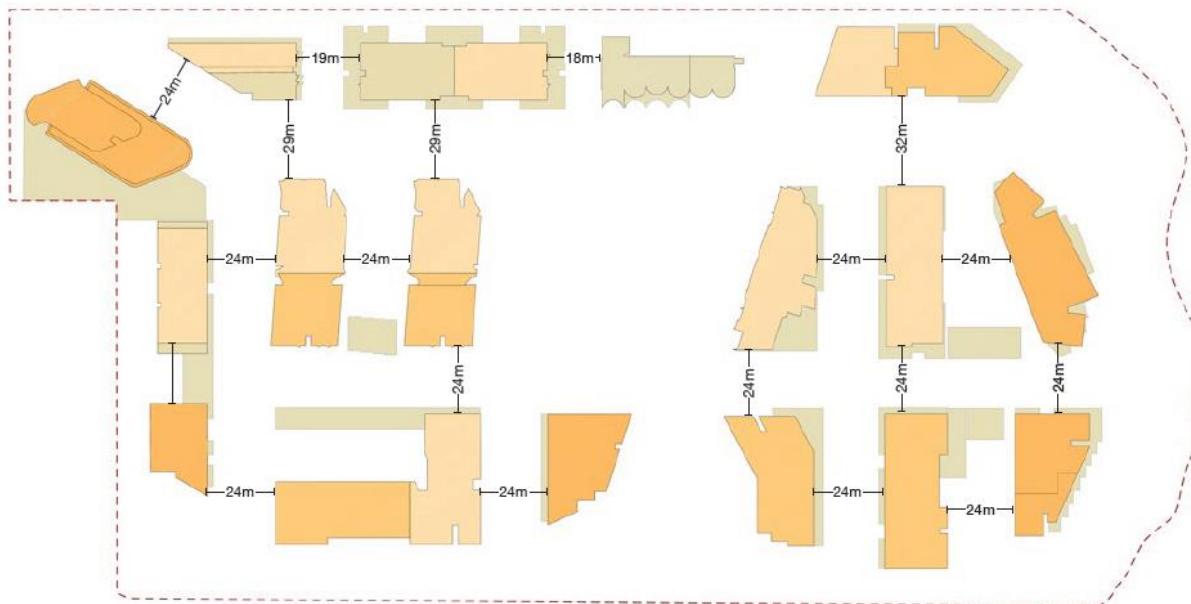


Figure 23 – Building Separation

Source: *Bates Smart*

4.2.4 Housing Diversity

The Ivanhoe Estate Redevelopment is being undertaken as part of the Communities Plus initiative. Communities Plus is a new approach to renewing and increasing the amount of social housing stock in NSW. The approach aims to unlock the value of public-housing estate land owned by the Land and Housing Corporation (LAHC).

The overarching theme of Communities Plus is to "develop new mixed communities where social housing blends in with private and affordable housing, with better access to transport and employment, improved community facilities and open space".

This is achieved through redeveloping the site at higher density, with components available for the private market and components for social and affordable housing. The central intended benefit of this approach is to provide the government with a practical path to finance growth in the overall supply of new social housing.

Social and Affordable Housing

The key driver of this proposal is to renew and provide additional social housing on the site whilst also contributing to the stock of affordable housing, seniors housing and market housing. NSW FACS confirms that the total number of applicants in NSW currently on the waiting list for social housing is close to 60,000 people, which excludes people waiting for a transfer. There is also a well-recognised demand for affordable housing, housing that caters to an ageing population, and housing that can meet substantial forecast population growth. The proposal will substantially increase the supply of social housing (approximately 950 dwellings) and provide affordable housing (approximately 128 dwellings) to help meet existing and forecast demands.

Future Directions identifies that "approximately 40% (41,000 dwellings) of social housing in NSW are located in concentrated housing estates", which can experience high levels of crime, unemployment, poor access to essential services, and tenancy management problems that can lead to further social polarisation and disadvantage. It recognises the need to de-concentrate estates and develop accessible and integrated communities, which can also reduce the stigmatisation felt by social housing tenants. The site represents an ideal opportunity to move away from the former 'housing estate' model, and towards integrated communities with better social outcomes, which is a key driver of the Masterplan. It represents a pioneering development where social housing blends with private and affordable housing, to create a strong, integrated and resilient community with excellent access to transport, employment, improved community facilities and open space.

The proposed variation to building height facilitates maximising the provision of social and affordable housing on the site which provides a public benefit of State significance.

Seniors Housing

In the next 20 years, Sydney's population will grow by 1.6 million people. To meet the needs of a larger and changing population a wider variety of housing is needed to suit the changing make-up of the population. More than 1 million people will be over the age of 65 years by 2031.

Goal 2 of *A Plan for Growing Sydney* is to 'provide a city of housing choice', with homes that meet our needs and lifestyles. As the population ages, many people will choose to downsize their homes, with most preferring to remain in their communities. Research from the Metropolitan Development Program and the Demography Unit at the Department of Planning and Environment estimates that around 50 per cent of people looking to purchase a new residence stay within their current Local Government Area. Housing choice is also increasingly about 'universal housing' that allows people to stay in their home as they age. The private sector, supported by community groups and governments, are making this type of housing more available. The proposal would include dwellings that are designed in accordance with 'universal housing' principles.

The Ryde LGA has an ageing population and the delivery of this specific type of housing will meet the metropolitan housing choice goal as well as a key need in the LGA. It will increase housing choice close to existing services and with access to public transport. The provision of seniors housing in this strategic location will provide a more manageable housing opportunity for empty nesters and seniors, looking to downsize, remain close to family and maintain social networks. Seniors above the age of 55 within the Ryde LGA represent 24.8% of the population according to 2016 Census data.

The proposal will increase the supply of seniors housing (approximately 270 self-contained dwellings) and provide a residential aged care facility comprising 120 beds to help meet existing and forecast demands.

4.2.5 Conclusion on clause 4.6(3)(b)

The consent authority can be reasonably satisfied that this written request has adequately addressed the matters in clause 4.6(3) and that there are sufficient environmental planning grounds to justify contravening the development standard in this instance as the non-compliance with the building height control facilities a development that will provide a uniquely diverse range of housing types and supporting ancillary uses to strengthen the local community. These specific uses are critical to the future of the Ivanhoe Estate to ensure a high level of social outcomes for the community.

4.3 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

4.3.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the maximum building height development standard, for the reasons discussed in this report.

4.3.2 Consistency with objectives of the zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To ensure employment and educational activities within the Macquarie University campus are integrated with other businesses and activities.*
- *To promote strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor.*

The proposal in its entirety satisfies the B4 Mixed Use zone objectives for the following reasons:

- The proposed variation is predicated on providing a mixture of compatible land uses including a diverse range of housing typologies. The underlying reason for the proposed variation to the building height development standard is on the premise that the proposal will facilitate a unique mix of social, affordable, seniors and private dwellings supported by community benefit GFA. In this respect, compliance with the standard would likely erode the ability for the site to provide a diverse mixture of land uses and thereby result in a development that would be contrary with the predominant zone objective.
- The proposed variation to the building height development standard will facilitate the orderly and economic redevelopment of a large site zoned for high density development within walking distance of the Macquarie University Station and Macquarie Shopping Centre. The proposed development will therefore assist in achieving the earmarked dwelling targets in the Macquarie University Station Priority Precinct, and thereby will satisfy the strategic objectives of A Plan for Growing Sydney and the North Central District Plan.
- The proposed school is intended to service the local catchment and as a result of its operation will have benefits through enhanced community interaction and synergies with the Macquarie University campus.

4.3.3 Overall public interest

In accordance with the requirements of Clause 4.6(4)(a)(ii), the proposed development and variation to the development standard is in the public interest because it achieves the objectives of both the development standard and the land use zone.

4.4 Other Matters for Consideration

Under clause 4.6(5), in deciding whether to grant concurrence, the Director-General must consider the following matters:

(5) *In deciding whether to grant concurrence, the Secretary must consider:*

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- the public benefit of maintaining the development standard, and*
- any other matters required to be taken into consideration by the Secretary before granting concurrence.*

These matters are addressed in detail below.

4.4.1 Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation to the building height development standard is a matter of significance for State and regional planning, as the proposed variation is directly linked with the provision of social and affordable housing. The Greater Sydney Region Plan identifies that Sydney needs an estimated 4,000-8,000 additional affordable dwellings per annum to meet the needs of lower income groups. The Plan recognises that the ability to accommodate social and affordable housing will be different for each area. The Ivanhoe Estate is the only site identified in the North District Plan (NDP) for the purposes of creating an integrated community including social housing. As recognised in the NDP the subject site provides a unique opportunity to make a significant contribution to the provision of social and affordable dwellings to meet the identified demand.

The NDP also specifically identifies that publicly owned land, including social housing in renewal precincts, may provide opportunities to optimise the co-location of social infrastructure and mixed uses at the heart of neighbourhoods. The proposed development is directly aligned with the NDP's desire to co-locate housing with social infrastructure and mixed uses in order to create neighbourhoods.

4.4.2 Clause 4.6(5)(b): The public benefit of maintaining the development standard

There is no public benefit in maintaining the numerical building height development standard in this instance. Maintaining and enforcing the development standard in this case would result in a development with reduced public

open space areas and a less desirable relationship with neighbouring sites. Increasing open space and reducing building height to address those matters without redistribution of gross floor area to other less sensitive parts of the site would unreasonably constrain the orderly and economic development of this strategically significant site, and unnecessarily reduce the amount of housing intended to be accommodated on this key site with excellent public transport access as well as reducing the various community benefits that the revised scheme is able to deliver.

The exhibited Masterplan complied with the height control, and the proposed variations are in direct response to concerns raised by the public. Therefore, maintaining the standard would not be in the public interest.

In some circumstances, it may be in the public benefit for development controls to be strictly applied, for example if an undesirable precedent could be set. This Site and the development project, is however highly unique and therefore unable to create an undesirable precedent for varying the building height standard on other land in the Macquarie University Station Precinct.

The proposed development represents a unique opportunity to provide a truly tenure blind master planned community of the type and scale of development envisaged. There would be few consolidated sites in Government ownership that are of a sufficient size to accommodate the planned increase in social housing, and arguably none that would have equivalent access to jobs, transport, education, and essential services. The proposal makes efficient use of underutilised land containing existing social housing that no longer caters to NSW's changing demographics or the target objective 70:30 ratio of private to social housing to enable more integrated communities.

This Site and the proposed masterplan represent an exceptional circumstance that warrants a variation of the building height control to allow a better outcome to be delivered. It is therefore considered to be in the public interest that a variation to the development standard is supported in this case.

4.4.3 Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Director-General before granting concurrence.

To our knowledge here are no other matters that the Secretary is required to take into consideration when granting concurrence to this Clause 4.6 variation request.

5.0 Conclusion

The assessment above demonstrates that compliance with the maximum building height development standard contained in clause 4.3 of the Ryde LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded. It is considered that the variation allows for the orderly and economic use of the land in an appropriate manner, whilst also allows for a better outcome in planning terms.

This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the maximum building height development standard, the proposed development:

- the proposed flexible application of controls achieves better planning outcomes than would be achievable by strict adherence to the controls across the development site;
- it is in the public interest as the proposal is consistent with the applicable land use zones and development standards;
- the additional height is compatible with the scale and character of the area and will it not result in additional adverse amenity or environmental impacts compared to a complying scheme;
- the non-compliance with the development standard does not raise any matters of State and regional planning significance;
- there is no public benefit in maintaining the building height development standard adopted by the environmental planning instrument for this site given the particular circumstances described in this request; and
- legal precedent has been addressed as part of this clause 4.6 variation request, and concludes the unique circumstances of this Site and the development proposal are such that they and this justification cannot be replicated.

The clause 4.6 request demonstrates that the proposed development will deliver a holistically better outcome for the Site, and the broader community. Overall, the proposal optimises the extraordinary opportunity to establish a high-quality development that creates a revitalised Precinct and provides significant public benefits.

For the reasons set out in this written request, the Concept SSDA should be approved with the variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the Ryde LEP.