

Ivanhoe Estate Stage 3

Clause 4.6 Variation Request – Building Height

Ivanhoe Estate, Macquarie Park
Land and Housing Corporation and Frasers Property Australia



'Gura Bulga'

Liz Belanjee Cameron

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

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

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

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

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

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1. Introduction

This Clause 4.6 variation request has been prepared by Ethos Urban on behalf of NSW Land and Housing Corporation (LAHC). It is submitted to the Department of Planning and Environment (DPE) in support of a State Significant Development (SSD- 30530150) application for the detailed design and delivery of Stage 3 of the Ivanhoe Estate Masterplan, otherwise referred to as 'Midtown'. Stage 3 comprises the detailed design, construction, and operation of Building B3 including landscaped areas, as well as the delivery of the new public open space area referred to as 'Shrimptons Creek', and enabling works such as earthworks, servicing, and new driveways.

This SSD is pursuant to the approved Ivanhoe Estate Concept Masterplan (SSD-8707) and follows the approved Stage 1 (SSD-8903) and Stage 2 (SSD- 15822622) works. It is a staged application in the meaning of Division 4.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act). In this respect, the detailed buildings proposed in this SSD application are generally consistent with the building heights that were established by the approved building envelopes as part of the Masterplan. This Clause 4.6 variation request does not seek to amend these approved building heights.

Accordingly, the purpose of this Clause 4.6 Variation Request is to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls in the Ryde LEP and to enable this next staged DA to be granted consent where it contravenes the applicable development standard. This variation request is administrative in nature and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant.

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 the height of buildings under Clause 4.3 of the Ryde LEP and should be read in conjunction with the Environmental Impact Statement prepared by Ethos Urban dated June 2023 and the Response to Submissions Report (RTS) prepared by Ethos Urban dated November 2023.

This Clause 4.6 variation request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravention of the standard. This Clause 4.6 variation request demonstrates that:

- The proposed tower of Building B3 has been designed to comply with the maximum building heights approved under the Ivanhoe Estate Masterplan (SSD 8707), to which this SSD is pursuant. Consistent with the approved Stages 1 and 2 SSDAs, minor rooftop elements including plant and services are provided above this envelope. Accordingly, this SSD application does not seek to vary what has already been approved within the Concept application.
- The development application will continue to achieve the objectives of the land use zone and the maximum height building development standards contained in Clause 4.3 of the Ryde LEP.
- The proposed development remains in the public interest notwithstanding the proposed variation of the development standard.
- The proposed development does not result in any adverse environmental impacts as a result of the variation to the maximum building height.

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 proposed variation to the mapped maximum building height, consistent with the approved Masterplan.

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. 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. Clause 4.3 provides that the maximum height shown on the Height of Building Map (sheet 04) for the site is 45m. 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** below.

- (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.*

The proposed development has a maximum height of 67.8m which exceeds the 45m development standard by 22.8m or 50.6%. The extent of exceedance of the height of buildings development control is outlined in **Figure 5** below.



Figure 1 Height of Buildings Map and approximate location of Building B3 (dotted)

Source: Ryde LEP / Ethos Urban

It is noted that subject area of the Ivanhoe Estate is legally described as Lot 13 in DP 1271599. This Clause 4.6 Variation Request applies only to part of this lot, being the Building B3 located on the eastern boundary of the Lot as outlined within **Figure 2** below.



Figure 2 *Ivanhoe Concept Masterplan staging plan, with the Stage 3 area highlighted*

Source *Bates Smart, edits by Ethos Urban*

2.1 Concept Masterplan

Consent was granted by the Minister for Planning and Public Spaces on 30 April 2020 for the Ivanhoe Estate Concept Masterplan (SSD-8707), which established the overall planning and assessment framework for the staged redevelopment of the Ivanhoe Estate. The proposed Stage 3 development is, therefore, pursuant to this approved Masterplan and cannot be inconsistent with the terms of this Masterplan in accordance with Section 4.24 of the EP&A Act.

Relevant to this request, the Masterplan assessed and approved building envelopes for each development block within the Estate, which has determined the height of each future building. The Masterplan heights and mapped height planes under the Ryde LEP are demonstrated at **Figure 3** and the Masterplan height for Building B3 is demonstrated at **Figure 4** below. Therefore, the Masterplan consent has already in effect approved the height of Building B3 which is being delivered in this Stage 3 application.

The purpose of this Clause 4.6 Variation Request is consequently to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls and to enable this next staged DA to be granted consent where it contravenes the development standard. This variation request is administrative in nature and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant. DPE's assessment of the proposed concept redevelopment of the Estate concluded that the Masterplan is of an appropriate density and scale that is consistent with the evolving character of the area. **Figure 5** and **Figure 6** demonstrate the proposed building height with regard to the approved Masterplan envelope.

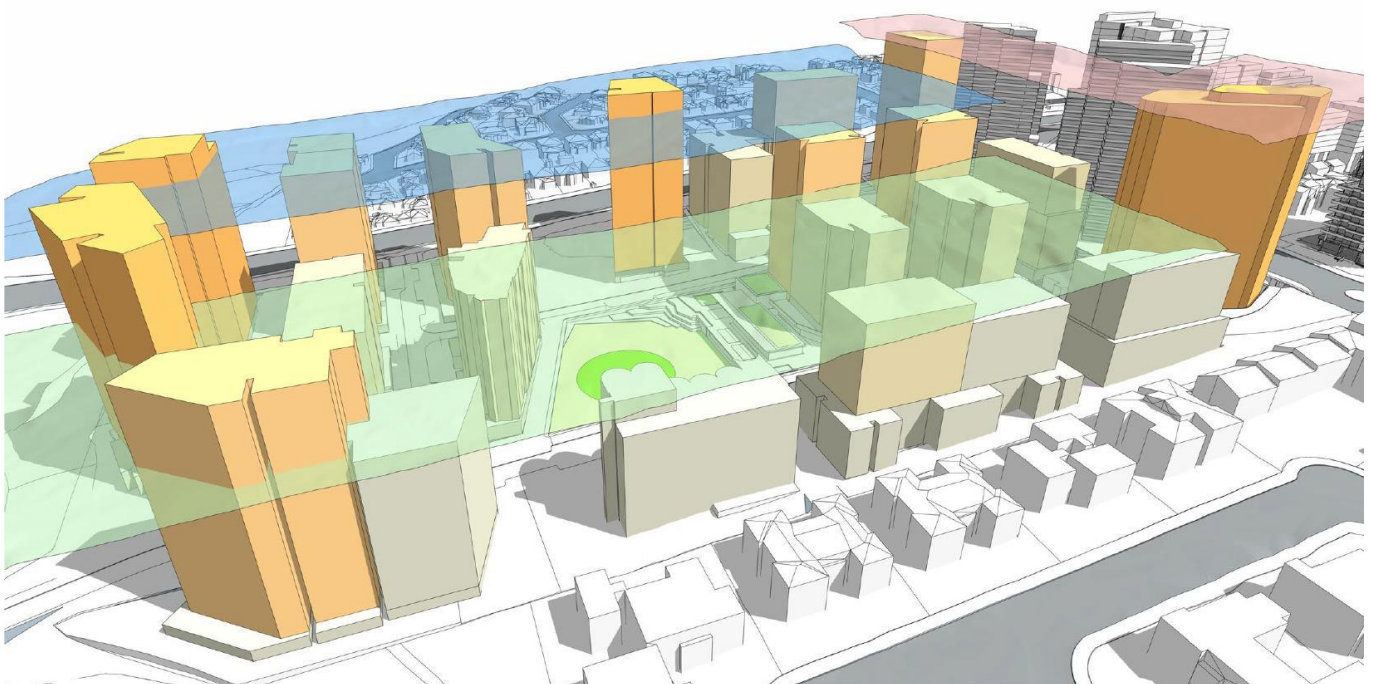


Figure 3
LEP

Masterplan indicative buildings and their interface with mapped height planes under the Ryde

Source

Bates Smart as part of the Concept Masterplan DA (SSD-8707)

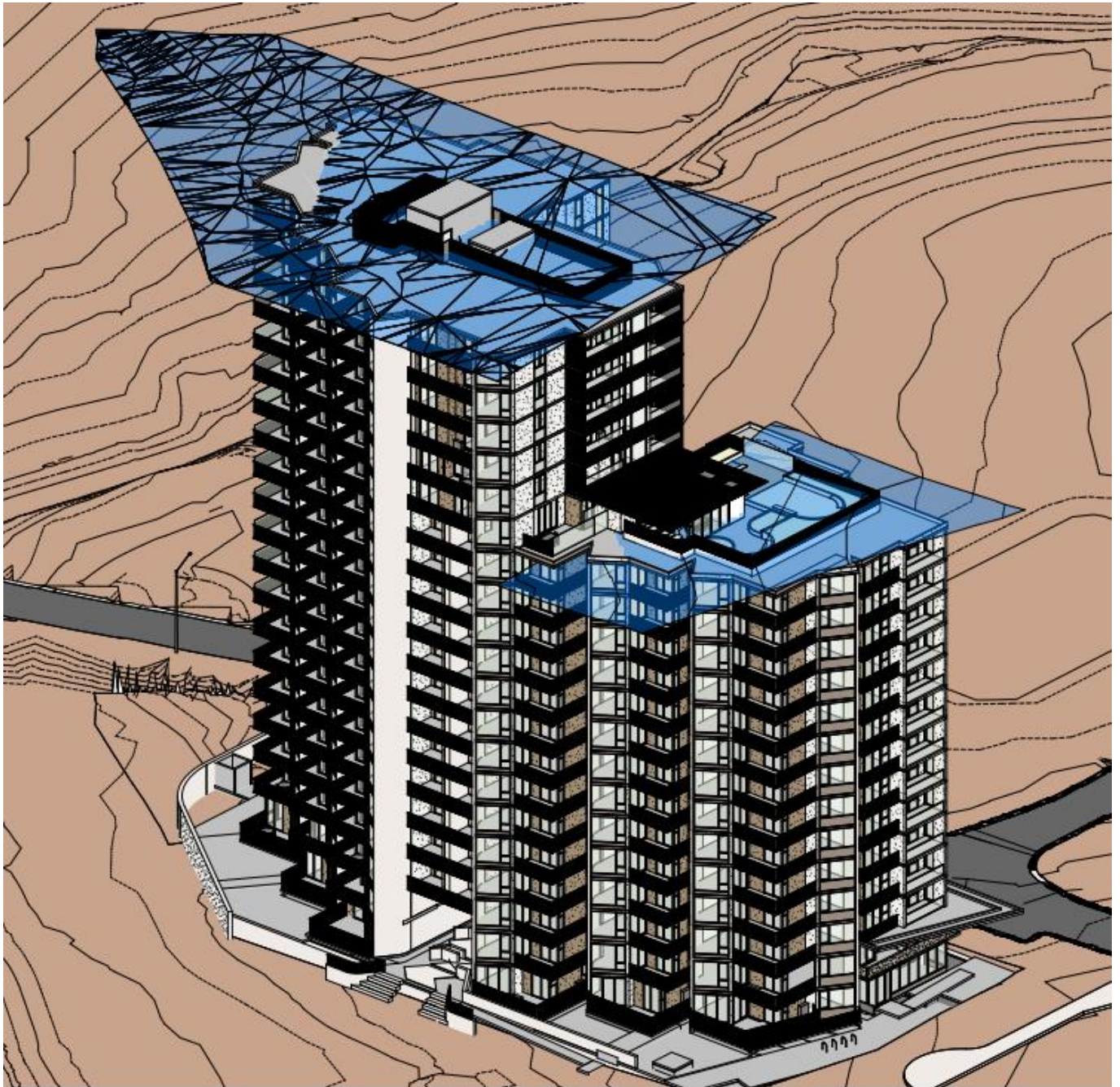


Figure 6 *Height plane diagram*

Source: Rothelowman

3. Justification for Contravention of the Development Standard

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] NSW LEC 827.
2. *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009.
3. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (*Initial Action*).
4. *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 (*Al Maha*)
5. *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386; and
6. *Moskovich v Waverley Council* [2016] NSWLEC 1015.
7. *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
8. *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130,

The relevant matters contained in clause 4.6 of the Ryde LEP, with respect to the maximum height development standard, are each addressed below, including with regard to these decisions.

3.1 Role of the consent authority

The role of the consent authority in considering this written request for a clause 4.6 variation has been explained 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).
- That the proposed development will be in the public interest because of its consistence with the objectives of the development standard and the zone objectives.

The consent authority is required to form these two 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. In particular, the

consent authority needs to be satisfied that there are proper planning grounds to grant consent and that the contravention of the standard is justified.

This report provides the basis for the consent authority to reach the required level of satisfaction. The relevant matters contained in clause 4.6 of the Ryde LEP, with respect to the height of buildings development standard, are each addressed below, including with regard to the above decisions.

3.2 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 Ryde 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:

- The objectives of the standard are achieved notwithstanding non-compliance with the standard (**First Method**).
- The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (**Second Method**).
- The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (**Third Method**).
- 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**).
- 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**).

Of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary is the **First Method** and also to a degree the **Fourth Method** as the proposal has been designed to comply with the approved building heights set under the Masterplan which already contravenes the development standard.

The First Method

3.2.1 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.

As explored in the sections below, the proposed development will achieve these development standards notwithstanding the proposed variations to the maximum building heights.

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

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

The proposed B3 Building tower is contained within the approved Ivanhoe Estate redevelopment site, and as such has been designed to be in accordance with the approved building envelopes and endorsed Design Guidelines. As detailed within the Architectural Plans and Design Reports (**Appendix B** of the EIS, as updated by the RTS Report in **Appendix C**), the proposed ground floor domain remains consistent with approved developments within the Ivanhoe Estate. Through the implementation of the green link to the north of the site, employing different materials and finishes to visually define the podium, and providing individual ground floor entrances for the office tenancy and residents for a more fine-grain and active treatment of the street frontages, the development will provide a street frontage consistent with the surrounding development and consistent with the Ivanhoe Estate Design Guidelines.

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

Overshadowing plans have been prepared and are provided with the Architectural Plans at **Appendix A** of the EIS (as updated by the RTS in **Appendix C**). These plans demonstrate that the proposed buildings are generally consistent with the extent of overshadowing assessed and approved as part of the Masterplan, recognising a degree of design development has occurred for the B3 building.

3.2.2.3 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 Macquarie Park Corridor as identified on the Ryde LEP's Centres Map. The Estate comprises a large, consolidated landholding currently owned by LAHC that is approved to be developed as a mixed-use development incorporating social, affordable and private dwellings in addition to a school, aged care facilities, community, childcare, office and retail uses pursuant to the Concept Plan. The redevelopment of the Estate utilises key public transport infrastructure and is considered to encourage a sustainable development pattern that does not adversely impact upon the orderly development of adjoining land.

The Stage 3 SSD application represents the next step in the delivery of this approved vision, including achieving the following:

- Providing a high-quality market housing that will benefit from close proximity to transport nodes such as the Macquarie University Station and bus stops located on Herring Road and Epping Road.
- Facilitate the delivery of an accessible open space, linking Wilga Park to Epping Road, being Shrimptons Creek corridor. The proposed development aligns with the principal objectives for transport orientated development and is well serviced by existing and proposed transport infrastructure.
- The site's size, locational characteristics and proposed uses make it a prime example of development that achieves t'e '30-minute city' concept in the North District Plan. It is located in close proximity to existing public open space, essential services, employment areas, and facilities that will service residents.

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

The proposed development, including the proposed variation to the mapped height limits, will not result in any significant or adverse additional environmental impacts beyond what has been assessed and approved as part of the Masterplan. In this respect, DPE's (previously DPIE) assessment of the Masterplan confirmed that *"although five buildings would exceed the RLEP 2014 height controls, the Department considers these buildings are located in areas*

of the site that would not increase any impacts or overshadowing of neighbouring residential properties beyond a fully complying form.”

An assessment of the potential impacts on the amenity of surrounding properties confirms the following:

- Wind: Assessment confirms that the environmental wind conditions at ground level are expected to meet the comfort criteria for pedestrian standing and walking, pass the safety criterion, and will be consistent with the DCP criteria for intended purpose.
- Visual and view impact: The Visual Impact Assessment prepared by Ethos Urban, with visualisations with prepared by Virtual Ideas indicate that the degree of impact is considered to be acceptable as the proposed buildings sit comfortably within the Masterplan building envelopes.
- Overshadowing: overshadowing plans are provided with the Architectural Plans at **Appendix A** of the EIS (as updated in **Appendix C** of the RTS). As discussed in relation to Objective (b) above, these plans demonstrate that the proposed building heights for Building B3 will not result in any overshadowing impacts to the amenity of surrounding residential properties external to the Ivanhoe Estate site and not result in any unreasonable overshadowing of other buildings within the estate that was not considered as part of the Masterplan.
- Transport, access and parking: the capacity of the proposed Stage 3 works is consistent with capacity that was assumed and assessed under the Masterplan. Accordingly, the proposed height and therefore capacity of Building B3 does not impact the operation of the surrounding road network or the approved intersection upgrades and internal road network approved under the Stage 1 SSDA.

3.2.2.5 Objective (d): to emphasise road frontages along road corridors.

The proposed development is entirely located within the Ivanhoe Estate, and as such it does not directly interface with any existing public road frontages or corridors. Notwithstanding this, the proposed development has been designed to align with the Masterplan building envelopes and Design Guidelines, which have informed the development's relationship to the future road network and surrounding areas. In this instance, the proposed buildings comply with the intended building setbacks to Main Street and the Neighbourhood Streets, providing a consistent built form treatment to these future roads.

The proposed Stage 3 works also include the rehabilitation and redevelopment of the Shrimptons Creek Corridor, which will preserve the existing vegetation and tree canopy as part of the Sydney Turpentine Ironbark Forest within the Shrimptons Creek Corridor.

The proposed variation to building heights, consistent with the Masterplan, therefore, does not impact the development's built-form relationship to existing or future roads.

Fourth Method

3.2.3 The development standard has been virtually abandoned or destroyed in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable

While this Clause 4.6 Variation Request is primarily made in relation to the First Method, the Fourth Method also applies as consent was granted to the Masterplan that departs from the standard, and as such compliance with the standard at this subsequent detailed phase would be unreasonable and unnecessary. As discussed in **Section 2.1** of this report, the proposed development is pursuant to the approved Masterplan which determined the height of each future building and hence has already granted consent to Building B3 exceeding the Ryde LEP mapped height limit.

The Department's assessment of the proposed concept redevelopment of the Estate concluded that the Masterplan is of an appropriate density and scale that is consistent with the evolving character of the area. In addition, the future design and built form would be compatible with the broader Herring Road Priority Precinct which is transitioning to high density, tower development, consistent with the strategic objectives for the area. The proposed development remains consistent with the envisaged scale of development in the Estate.

The purpose of this Clause 4.6 Variation Request is consequently to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls and to enable this next staged DA to be granted consent where it contravenes the development standard. This variation request is administrative in nature and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant.

3.2.4 Conclusion on clause 4.6(3)(a)

In summary, compliance with the building height development standard is considered unreasonable and unnecessary since:

- The objectives of the standard are achieved notwithstanding the noncompliance with the standard; and
- The development standard has been virtually abandoned or destroyed in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

As detailed in the sections above, this detailed SSD application satisfies the building height objectives notwithstanding the proposed variation. It will facilitate development that will continue to achieve the objectives of the standard and will not cause undue environmental impact, including any significant new or adverse impacts beyond those that were assessed and approved at the Masterplan stage. As the objectives of the development standard are met notwithstanding the breach, the first method is satisfied.

Further, the variation is consistent with the scale of development that is approved under the Masterplan. Accordingly, compliance with the Ryde LEP mapped height limits in this instance would result in a built form that is inconsistent with the Masterplan to which this DA is pursuant and would be unnecessary and unreasonable.

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.

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

The proposed development remains consistent with the environmental planning grounds identified under the Masterplan for the requirement to breach the mapped building height limits applying to the site. This subsequent detailed SSD applications represent the next stage in the delivery of this vision, and does not seek to change any of the approved built form outcomes for the Estate.

It is noted that detailed design testing was undertaken at the Masterplan stage that revealed that rather than complying with the mapped building heights across the Estate, a better outcome could be achieved by redistributing building mass to Buildings B3, C4 and D4 adjacent to Shrimptons Creek, Building D2 adjacent to Epping Road, and to Buildings C3 and C4.2 located internally to the south of the Village Green. As a result of the redistribution of building mass, these buildings would exceed the maximum building height limit but would provide an improved environmental planning outcome. This is because:

- Building heights are stepped 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.
- Ensuring the building envelopes provided better building separation, solar access and helped preservation of the ecological communities.
- The site slopes and falls towards Shrimptons Creek and the masterplan has been designed to address the topography of the land. This ensures that the height of the buildings respond to the topography of the site, and does not result in change to the height profile of the development area.

In addition to the above, in *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer to grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in Section 1.3 of the EP&A Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, below outlines how the proposed development is consistent with each object notwithstanding the proposed variation to the building height development standard.

Object	Comment
<p><i>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,</i></p>	<p>The proposed development is part of a wider redevelopment of the Ivanhoe Estate which will provide diverse types of housing and community facilities to support the social and economic welfare of the community. The proposed development delivers significant public benefits to the site and is consistent with the Masterplan (as subject to be modified). The proposed variation to the mapped building heights facilitates maximising the development potential of the B3 site, which in turn assists in the provision of social and affordable housing on the site, which provides a public benefit of State significance. Adherence to the development standards in this instance would require removing the upper floors of Building B3, compromising the feasibility of the development and impacting the intent of the building height distribution across the site approved as part of the Masterplan.</p> <p>Further, as has been addressed in the EIS and the supporting documents, the proposed development has been designed to achieve a high standard of sustainability consistent with the targets set under the Masterplan. The proposal demonstrates the proper management and conservation of resources, both through sustainable design and through the efficient use of LAHC land.</p>
<p><i>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</i></p>	<p>The principles of Ecological Sustainable Development, as set out in Schedule 2 of the EP&A Regulations. A key outcome of the redevelopment of the Estate is also to deliver a more sustainable community than was previously provided, in-line with Fraser’s standing as the foremost provider of Green Star communities in Australia. The proposed development will achieve the sustainability benchmarks established under the Masterplan as confirmed in the Sustainability Assessment provided at Appendix AA of the EIS. These include a 5 Star Green Star Design & As Built v1.1, 6 Stars NatHERS commitment with 7 stars aspiration, sustainable transport options, and the use of a ‘Real Utilities’ integrated infrastructure solution. The Estate as a whole is also targeted to achieve 6-star Green Star Communities v1.1 and precinct-wide averaged Basix 45 Energy and 45 Water targets.</p>
<p><i>(c) to promote the orderly and economic use and development of land,</i></p>	<p>The proposal is necessary to deliver the orderly redevelopment of the site as envisioned under the Ivanhoe Estate Concept Masterplan and subsequent Architectural Design Competition.</p>
<p><i>(d) to promote the delivery and maintenance of affordable housing,</i></p>	<p>As noted above, the wider redevelopment of the Ivanhoe Estate will provide diverse types of housing including, affordable, social, market, and seniors housing.</p>
<p><i>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</i></p>	<p>The proposed development is seeking consent to rehabilitate Shrimptons Creek to ensure the vitality and conservation of flora and fauna, and protection of the corridor.</p>
<p><i>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</i></p>	<p>There are no heritage items on the site, however the site has an extensive Aboriginal cultural heritage. Engagement with the Traditional Custodians of the land has been undertaken to ensure positive opportunities to celebrate Country. This is detailed in Section 6.2 of the EIS.</p>

<i>(g) to promote good design and amenity of the built environment,</i>	The proposed development including the proposed variation to the mapped height limits, will not result in any significant or adverse additional environmental impacts beyond what has been assessed and approved as part of the Masterplan.
<i>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</i>	The proposed buildings and associated works have been designed to meet all relevant design and building standards, or are capable of meeting such standards as identified in the environmental assessments accompanying the EIS. This will be demonstrated further as part of the detailed design and construction phases.
<i>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</i>	Consultation has been undertaken with various levels of government and government agencies during the preparation of this SSDA, as outlined in Section 6.3 of the EIS.
<i>(j) to provide increased opportunity for community participation in environmental planning and assessment.</i>	Community consultation and participation to date has informed, and will continue to assist, the development and operation of the proposed development. This is detailed in Section 6.0 of this EIS. Further consultation will be carried out during exhibition of the application, through the design development process, prior to the commencement of construction, and throughout the construction period.

3.3.1 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 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 are delivered for the community.

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

3.4.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the maximum height of buildings development standard, for the reasons discussed in **Section 3.1.2** of this report.

3.4.2 Consistency with objectives of the zone

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

The proposal 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 Masterplan will in-turn facilitate a unique mix of social, affordable, seniors and private dwellings supported by community uses. In this respect, compliance with the Ryde LEP mapped building heights would erode the ability to provide a diverse mixture of land uses, resulting in a development that would be contrary with the predominant zone objective.
- The proposed variation to the building height development standards will facilitate next stage of the orderly and economic redevelopment of the Estate, which is 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 dwelling targets in the Macquarie University Station Priority Precinct.

- The proposed does not seek consent for a change of use. 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 Masterplan will in-turn facilitate a unique mix of social, affordable, seniors and private dwellings supported by community uses.
- The proposed redevelopment and rehabilitation works to Shrimptons Creek provides accessible connections to the Epping Road underpass to the southwest and to Wilga Park to the north east. The redevelopment of Shrimptons Creek will provide further connections to public transport patronage at Epping Road.
- The proposed variation to the building height development standards will facilitate next stage of the orderly and economic redevelopment of the Estate, which is zoned for high density development within walking distance of the Macquarie University Station and Macquarie Shopping Centre.
- The proposed development will promote the strong links between Macquarie University and research institutions and businesses within the Macquarie Park corridor, as it will provide residential accommodation close to education and research institutes as well as businesses.

3.4.3 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. As discussed further in **Section 3.5.2** below, there would be a significant impact to public benefits and therefore the public interest if the development complied with the mapped height limits.

3.4.4 Conclusion on clause 4.5(4)(a)(ii)

The proposed development is in the public interest, notwithstanding the proposed variation to building height, since it:

- Is consistent with the objectives of the building height development standard.
- Is consistent with the objectives of the B4 Mixed Use Zone.
- Is consistent with the height of buildings outlined within the Ivanhoe Masterplan.

3.5 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:*
- (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 in detail below.

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

The variation of the building height development standard does not raise any matter of significance for State or regional planning. We do note, however, that the proposal is consistent with the most recent metropolitan plan for Sydney, A Plan for Growing Sydney in that it:

- Locates employment, open space, and residential accommodation in a highly accessible location within the Macquarie Park CBD.
- Provides accommodation and services to meet the needs of the local population, both at the present time and in the future as Sydney's population grows and ages;

- is well located to public transport connections; and
- does not affect any heritage assets.

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

Strict compliance with the mapped height of buildings development standard at this latter stage of the project would severely impede the delivery of appropriately scaled and high-quality transit orientated development and impact the delivery of the approved Masterplan as a whole. If compliance with the mapped height of buildings development standard was complied with, it would result in a significant loss of market housing apartments. This would also contravene the approved Masterplan which must be considered to understand the public benefit provided by the non-compliance (being increased open space, preservation of trees, preservation of critically endangered ecological community and increased riparian setbacks).

3.5.3 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 Director General is required to take into consideration when granting concurrence to this Clause 4.6 variation request.

4. Conclusion

The assessment above demonstrates that compliance with the Masterplan. 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.

Fundamentally, the purpose of this Clause 4.6 Variation Request is to address where the detailed building designs (consistent with the approved building envelopes) do not align with the mapped building height controls in the Ryde LEP and to enable this next staged DA to be granted consent where it contravenes the applicable development standard in a manner consistent with the Ivanhoe Estate Masterplan as already approved by the Minister. This variation request is therefore administrative in nature and does not introduce any changes to the built form controls established under the approved Masterplan to which this application is pursuant.

Notwithstanding this, the Clause 4.6 request demonstrates that the proposed Stage 3 works will deliver a wholistically better outcome for the Site. The proposal will provide a high-quality residential tower and critical open space infrastructure to support the Macquarie Park Corridor.

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.