

# ETHOS URBAN

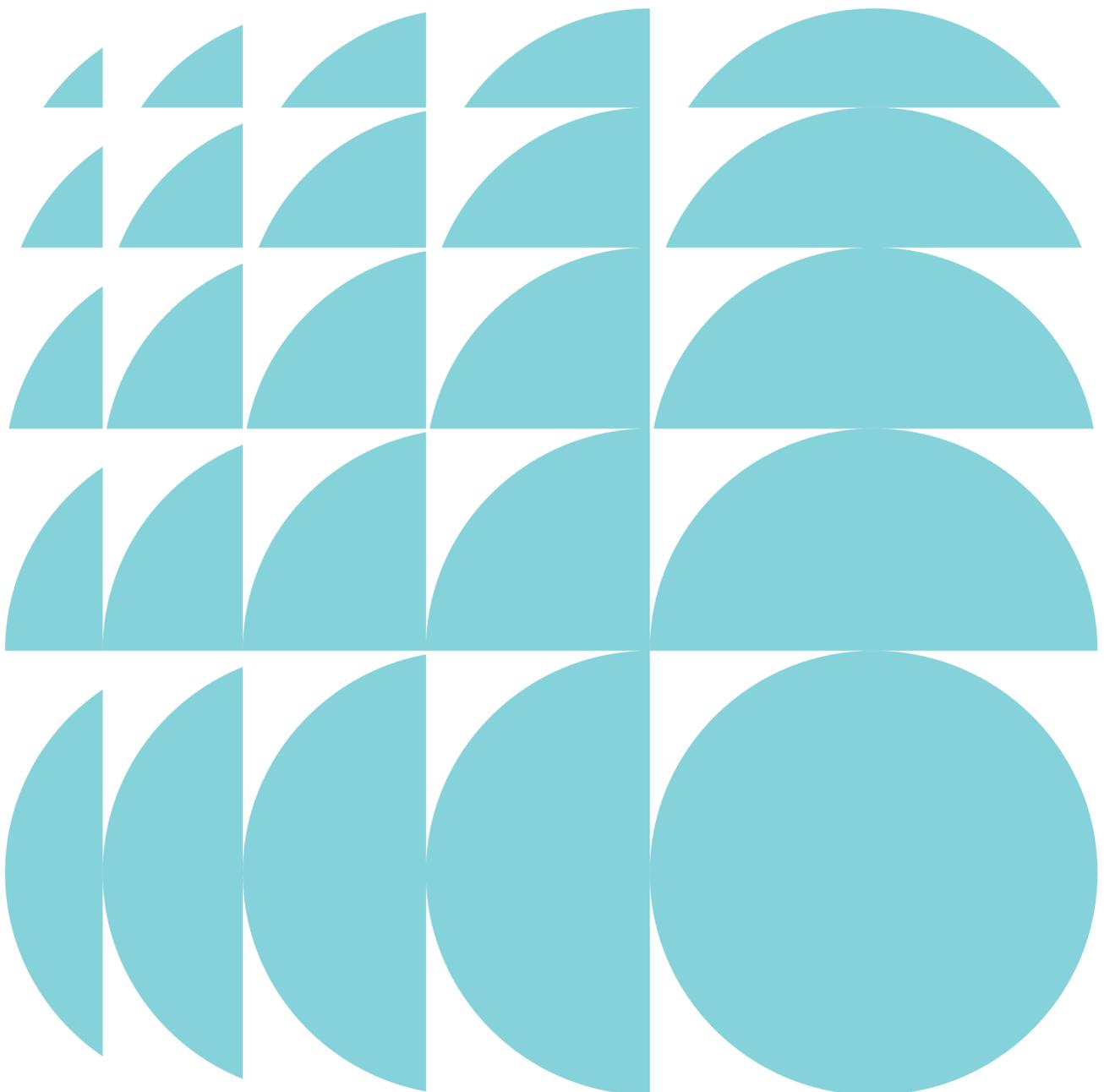
## Development Standard Variation Request

270 Miller Street, North Sydney  
Marist Catholic College North Shore  
SSD 10473

Submitted to Department of Planning, Industry  
and Environment

On behalf of Sydney Catholic Schools

23 December 2020 | 218786



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## 1.0 Introduction

### 1.1 Overview

This development standard variation request has been prepared by Ethos Urban on behalf of Sydney Catholic Schools (the Applicant) submitted to the Department of Planning, Industry and Environment (the Department) pursuant to Section 4.12 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) to accompany a State Significant Development Application (SSDA) for alterations and additions to Marist Catholic College North Shore at 270 Miller Street, North Sydney (the site).

Clause 4.3 of *North Sydney Local Environmental Plan 2013* (NSLEP 2013) establishes a maximum building height development standard of 12 metres. The proposal involves an exceedance of this height and therefore a variation to the development standard is sought.

This development standard variation request demonstrates that compliance with the height 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. Therefore, the SSDA may be approved with the variation as proposed, in accordance with the flexibility allowed under Clause 42 of the Education SEPP.

### 1.2 Project Background

This SSDA seeks approval for:

- Site preparation work including remediation, demolition, excavation and tree removal.
- Retention of key buildings including St Mary's Church and Parish Centre, the former Presbytery and Monastery, St Mary's Primary School, the Ron Dyer Centre and some existing buildings on the western boundary.
- Demolition works, including demolition of existing buildings along Miller Street and Carlow Street, including the Early Learning Centre and terrace houses.
- Construction of a mixed-use education precinct comprising a high school and Early Learning Centre, including:
  - Adaptive reuse of the existing Presbytery, and alterations and additions to retained educational buildings;
  - Minor alterations to St Mary's Church to improve access from the north of the building;
  - Construction of a 5 storey (including basement) education building on the corner of Carlow Street and Miller Street;
  - Construction of 5 storey (including basement) building along Miller Street, accommodating teaching facilities, an Early Learning Centre, and an auditorium;
  - Construction of a new basement car park below the Carlow Street building, accessed off Carlow Street;
  - Provision of separated pick-up/drop-off areas for Kindergarten – 1 and Years 2 – 12; and
  - Provision of ancillary canteen/café uses.
- Landscaping and public domain works, including creation of a new public piazza fronting Miller Street, adjoining St Mary's Church.
- Services and utilities augmentation.

The site currently contains the Our Lady of the Way Parish and two separate schools, being Marist College North Shore and St Mary's Catholic Primary.

From 2021, Marist College North Shore and St Mary's Catholic Primary will combine to form a K-12 school, Marist Catholic College North Shore. Together with the Our Lady of the Way Parish, Marist College North Shore and St Mary's Catholic Primary will form part of a Pre-School to Year 12 Catholic co-educational and pastoral precinct in North Sydney. While Marist College North Shore has traditionally been single-sex, Marist Catholic College North Shore is also accepting Year 7 girls from 2021.

In addition, a 24-month study undertaken by Sydney Catholic Schools has identified a major deficiency in the provision of affordable, non-government education within the North Sydney Local Government Area (LGA). The study also identified that the choice for families is extremely limited, as almost all of the schools in North Sydney provide single-sex education, with co-educational schools significantly underrepresented. Sydney Catholic Schools, as operators of St Mary's Catholic Primary School and Marist College, is responding to this challenge and has identified a strategic response that can positively support North Sydney's future.

The announcement of the new Metro Station at Victoria Cross in November 2015 has also been, and will continue to be, a catalyst for the redevelopment of the North Sydney CBD. The subsequent acquisition of 50 McLaren Street in early 2017 for an entrance to the new Victoria Cross Metro Station further changes the context of the Precinct, providing excellent access to the Sydney Metro.

The proposed expansion and redevelopment of Marist Catholic College North Shore responds to the immediate need to provide additional co-educational high school capacity in North Sydney. It will also significantly improve teaching facilities and the quality of open space, while responding to the evolving strategic and built form context of North Sydney.

### 1.3 Clause 42: Contravention of a Development Standard

Ordinarily a Clause 4.6 variation request would be required to vary the height of buildings standard, however Clause 42 of *State Environmental Planning Policy (Educational Establishments and Childcare Facilities) 2017* (Education SEPP) states as follows:

*“Development consent may be granted for development for the purpose of a school that is State Significant development even though the development would contravene a development standard imposed by this or any other environmental planning instrument under which the consent is granted.”*

Therefore, a Clause 4.6 variation request is not required in this instance. Notwithstanding this, a justification in the style of a Clause 4.6 variation request has been provided below to provide an assessment of the proposed variation to Clause 4.3 of NSLEP 2013. Whilst Clause 4.6 does not apply to the proposal, the key elements in Clause 4.6 have been adopted as a structure to outline the suitability of the proposed building height.

### 1.4 Principles and Relevant Authorities

The principles and relevant authorities which have been considered in the preparation of this variation request are those found in:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;
- Wehbe v Pittwater Council [2007] NSWLEC 827 (“Wehbe”);
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (“Four2Five No 1”);
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 (“Four2Five No 2”);
- Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 (“Four2Five No 3”);
- Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;
- Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7;
- Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC118; and
- Al Maha Pty Ltd v Huajun Investments Pty Ltd.

## 2.0 Relevant Development Standard to be Varied

### 2.1 Clause 4.3 Height of Buildings

This variation request seeks to justify the contravention of the development standard set out in Clause 4.3 of NSLEP 2013, which states as follows:

- (1) *The objectives of this clause are as follows—*
  - (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
  - (b) *to promote the retention and, if appropriate, sharing of existing views,*
  - (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
  - (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
  - (e) *to ensure compatibility between development, particularly at zone boundaries,*
  - (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*
- (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.*

“Building height” is defined in NSLEP 2013 as follows:

*building height (or height of building) means—*

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

*including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like*

“Ground level (existing)” is defined in NSLEP 2013 as follows:

*ground level (existing) means the existing level of a site at any point.*

The maximum building height as specified on the Height of Buildings Map is 12 metres (see **Figure 1** below).



**Figure 1** Height of Buildings Map extract

Source: North Sydney Council

## 2.2 The Site Subject to this Variation Request

The site to which this variation request applies is known as 270 Miller Street, North Sydney and comprises 27 lots as follows:

**Table 1** Site Lots

Address	Lot and DP / SP	Area
264 Miller Street	Lot 7, 8, 9 & 10 DP1137247	8,235m <sup>2</sup>
34-36 Ridge Street	Lot 6 DP64401	930m <sup>2</sup>
40 Ridge Street	Lot 1 DP782363	930m <sup>2</sup>
270 Miller Street	Lot 7 DP176556	786m <sup>2</sup>
270 Miller Street	Lot 1, 2, 4, 5, 6, 8 & 9 SP1860	2,410m <sup>2</sup>
270 Miller Street	Lot A, B & C DP312439	880m <sup>2</sup>
270 Miller Street	Lot 13 & 14 DP1133414	2,733m <sup>2</sup>
270 Miller Street	Lot 1 DP747691	240m <sup>2</sup>
270 Miller Street	Lot 1 DP86012	1,085m <sup>2</sup>
270 Miller Street	Lot 1, 2 & 3 DP561243	2,765m <sup>2</sup>
270 Miller Street	Lot 1 DP310326	710m <sup>2</sup>
270 Miller Street	Lot 101 DP1110805	696m <sup>2</sup>
270 Miller Street	Lot 1 DP181153	20m <sup>2</sup>
<b>Total Site Area</b>		<b>22,420m<sup>2</sup></b>

The site has a total area of 22,420m<sup>2</sup> and has frontages to Miller Street of approximately 204m, Ridge Street of 223m, Ridge Lane of 102m and Carlow Street of 121m.

### 2.3 Site Context

The site is approximately 3.5km north of the Sydney CBD and the land surrounding the site is characterised by a mix of civic, commercial, and low-medium density residential development. The 9-storey residential building to the west of the site on Ridge Street is the tallest building in the block. Miller Street is the centre of community activities in North Sydney. The adjacent land is occupied by council, educational and recreational facilities. A number of educational facilities also lie within close proximity to the site, including Wenona School, Monte Sant' Angelo Mercy College, North Sydney Boys High School, North Sydney Public School, TAFE NSW Crows Nest, and Cammeraygal High School.

- **North:** To the north of the site, on the other side of Carlow Street, is the North Sydney Hotel, beyond which is North Sydney Boys High School and the primary intersection of Miller Street and Falcon Street.
- **East:** North Sydney Oval and St Leonards Park are located directly east of the site, on the opposite side of Miller Street.
- **South:** Tennis World and a number of local restaurants characterised by a traditional corner shop and shop-top typology. Stanton Library, Northside Produce Market, North Sydney Community Centre, and North Sydney Council are accessible through a pedestrian link known as "James Place" to the south of the site.
- **West:** West of the site generally comprises residential properties of a traditional terrace house style and 3-4 storey residential flat buildings.

### 2.4 Nature and Extent of the Variation

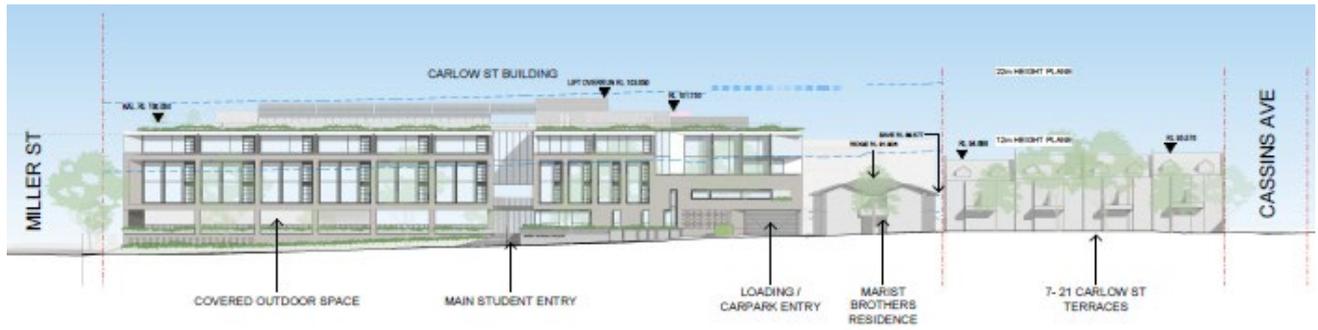
The site is subject to a maximum building height control of 12m. **Table 2** below describes the height of the proposed Miller and Carlow Street buildings, from the natural ground level to the top of the building, as defined in NSLEP 2013.

**Table 2 Building Heights**

Building Component	Proposed Top of Building RL	Existing Natural Ground RL	Maximum Building Height
Carlow Street Building – Lift Lobby Parapet	101.750	82.67	19.08m
Carlow Street Building – Lift Overrun	103.650	82.67	20.98m
Carlow Street Building – Top of PV Panels	103.000	81.96	21.04m
Miller Street Building – Plant Screen	101.250	82.10	19.15m
Miller Street Building – Lift Lobby Parapet	101.450	83.35	18.10m

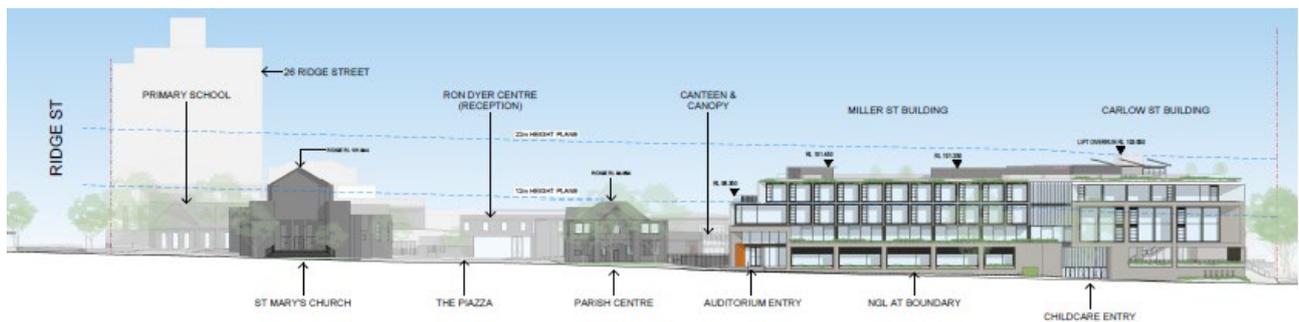
The non-compliance is at its greatest extent at the top of the PV panels on the Carlow Street Building at a height of 21.04m, resulting in a non-compliance of 9.04m or a variation of 75.3%.

Elevations of the non-compliances are provided in **Figure 2 – 4** below.



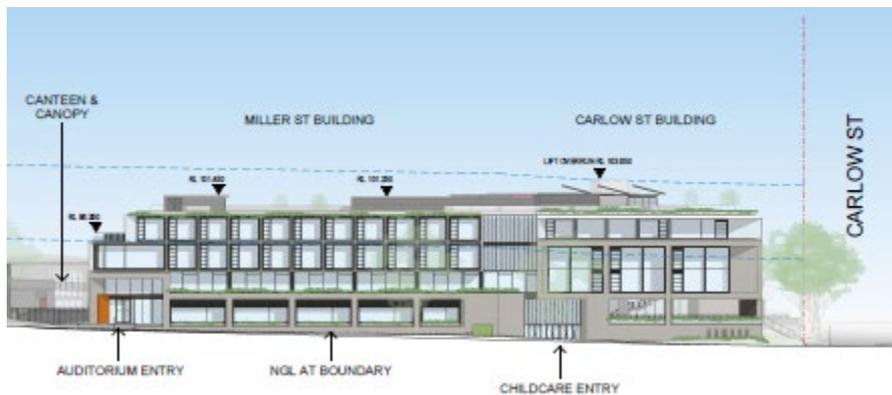
**Figure 2 Carlow Street Elevation**

Source: WMK



**Figure 3 Miller Street Elevation 1**

Source: WMK



**Figure 4 Miller Street Elevation 2**

Source: WMK

### 3.0 Justification for Contravention of the Development Standard

Clause 4.6(3) of NSLEP 2013 provides as follows:

- (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.*

Clause 4.6(4)(a) of NSLEP 2013 provides as follows:

- (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 Planning Secretary has been obtained.*

#### 3.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

##### 3.1.1 The underlying objectives or purposes of the development standards

The objectives of the development standard are set out in Section 2.1 above and are as follows:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

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

The proposal is consistent with the objectives of the standard as set out in **Section 3.1.1** above for the following reasons.

#### Objective (a)

The greatest extent of non-compliance occurs towards the north-eastern part of the site due to the need to accommodate an undercroft outdoor space as a covered play area for students. A key driver for the design has been to concentrate density in the northern and north-eastern parts of the site, to maintain the existing heritage character of the St Mary's Primary School, St Mary's Catholic Church, and St Mary's Presbytery in the southern portion of the site.

**Objective (b)**

There are no existing views of significance across the site.

**Objective (c)**

The shadow diagrams forming part of the development application illustrate that no adverse overshadowing impacts will arise from the proposal.

**Objective (d)**

The proposal does not give rise to any adverse privacy impacts on nearby residents. The built form has been positioned to reduce impacts on nearby residential properties, with existing school buildings along the site's western boundary being retained. The acoustic impact assessment and the visual impact assessment provided with the development application demonstrate that the proposal is acceptable from both acoustic impact and visual impact perspectives.

**Objective (e)**

The site is predominantly zoned SP2 Infrastructure (Educational Establishment), however contains a small area of land zoned R4 High Density Residential in the north-east corner of the site. The site is surrounded by residential uses to the north and west. The buildings have been carefully designed to respond to one another as a holistic school precinct, reflecting an appropriate bulk and scale in accordance with the surrounding development to the north, west, and south of the site. As noted above, the built form has been located to reduce impacts on residential zoned land to the west, with existing school buildings along the site's western boundary being retained.

**Objective (f)**

The bulk and scale of the proposed development is appropriate when considered in the context of the site's surroundings, and will not give rise to any adverse amenity impacts such as privacy or view sharing. The scale and density of the proposal reflects the future intended character of the North Sydney Civic Centre, consistent with the strategic planning policies applying to the site. The North Sydney Draft Civic Precinct and Surrounds Planning Study intends for the site to be a diverse, mixed use visual environment. The scale of built form in this area is variable, and includes existing buildings of substantial scale. Therefore, maintaining a "village feel" does not preclude some larger buildings, provided that they do not prejudice the areas overall mixed built form and consequent visual layering and vibrancy. Through its nature, including its being contained to the north-east of the site and replacement of an existing, ageing building of similar scale, it is considered that the proposal retains this overall visual character. In addition, it is considered that the Ridge Street activity centre arguably makes the greatest individual contribution to a "village feel". The proposal will not have a significant visual impact on this centre.

Furthermore, the shadow diagrams provided with the development application illustrate that the proposal will not give rise to any adverse overshadowing impacts.

**3.1.3 The extent of the non-compliance is acceptable and reasonable**

The proposed non-compliance with the 12 metre maximum building height standard in Clause 4.3 of NSLEP 2013 is acceptable and reasonable in the circumstances of the case for the following reasons:

- The Education SEPP enables new school buildings, including classrooms, halls and offices, of up to 22m in height to be approved as Complying Development. The proposal, including the height variation, is within this 22m Complying Development height limit.
- The development will be visually attractive and sympathetic to the existing and emerging character of the area.
- The development will maintain the neighbourhood amenity and character of the local area.
- The proposed additional height will enable built form to be focussed on the northern part of the site, away from sensitive heritage items, and will enable the creation a new publicly accessible piazza adjacent to St Mary's Church.

- The bulk and scale of the development is considered appropriate and compatible with surrounding existing development and expected future character of the area.
- The site is of a sufficient size to accommodate the proposed development.

#### **3.1.4 The non-compliance results in a better planning outcome**

The non-compliance results in a better planning outcome in that it enables the provision of high quality co-education facilities at an existing Catholic school. The buildings, including the proposed height variations, have been designed to integrate into the context of surrounding developments and will enable the delivery of a significant new publicly accessible open space, and retention of the site's significant heritage buildings and their curtilage.

As noted above, the Education SEPP seeks to assist in the efficient delivery of high-quality education facilities. To provide the flexibility to accommodate the built form requirements of schools, the Education SEPP enables development consent to be granted for SSD even though the development would contravene a development standard imposed by the Education SEPP or any other environmental planning instrument under which the consent is granted. The Education SEPP also enables new school buildings, including classrooms, halls and offices, of up to 22m in height to be approved as Complying Development. Given that the proposed buildings are within the 22m height limit for Complying Development, it is considered that the proposed variation to the development standard is well founded as they could theoretically be constructed as complying development.

The proposal also responds to the need to maximise open space and respect heritage significant buildings on the site. The campus is constrained by a number of factors, and there is limited open space available on the site. Improving and enhancing access to open space is a key principle of the development. Whilst lower buildings with larger footprints could be designed, the proposed building form seeks to balance the provision of at-grade open space with an appropriate built-form. This includes the creation of a publicly accessible piazza adjacent to St Mary's Church, and undercroft play space at the corner of Miller and Carlow Streets which requires a greater floor to ceiling height at ground level.

The concentration of the built form in the north of the site also enables the curtilage of the site's heritage significant buildings to be retained and enhanced. As noted above, lower buildings with larger footprints could have been designed, but this would have required buildings to be positioned adjacent to St Mary's Church and the Presbytery, which would have negatively impacted the curtilage of these buildings.

It is considered that the proposed response represents a better planning outcome.

Finally, following the decision in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, it can be noted that Clause 4.6 does not require that a proposed development which relies on a variation to a development standard must have a better (or neutral) environment planning outcome than one which is compliant with the standard.

#### **3.1.5 There is an absence of significant adverse impact**

There is an absence of significant adverse impacts for the reasons set out above in Sections 3.1.3 and 3.1.4.

### **3.2 Environmental planning grounds to justify contravening the development standard**

The contravention of the maximum building height development standard is justified on environmental planning grounds specific to this development for the following reasons:

- The bulk and scale of the proposal is compatible with the existing and expected future development on adjoining sites.
- The additional height will enable the creation of a new, publicly accessible open space.
- Focussing built form in the northern part of the site will enable the retention of the site's heritage significant buildings and their curtilage.
- The proposed building setbacks have been designed to attenuate the perceived bulk and scale of the development.

- The form and configuration of the proposal is sympathetic to the topography of the site.
- Buffer landscaping has been implemented into the design to soften the appearance of buildings along the street frontages.
- A contemporary palette of materials will be utilised to contribute to the modulation of the building façade.
- The proposed development will have an appropriate relationship with adjoining development.

The proposal is consistent with the objectives of the relevant planning instrument and will result in no significant adverse environmental planning impacts. The inherent characteristics of the site, including its size, existing use and surrounding development, make the development the subject of this proposal eminently suitable and entirely justifiable on environmental planning grounds.

Furthermore, Clause 42 of the Education SEPP provides that contravention of a development standard imposed in an environmental planning instrument is acceptable so that development consent may be granted without the requirement for a Clause 4.6 variation request. This is specified in the following terms:

*“Development consent may be granted for development for the purpose of a school that is State Significant development even though the development would contravene a development standard imposed by this or any other environmental planning instrument under which the consent is granted.”*

### **3.3 The development is in the public interest because it is consistent with the objectives of the zone and development standard**

Pursuant to existing case law of *Ex Gratia P/L v Dungog Council* ([2005] NSWLEC 148), the question that needs to be answered to establish if a development is in the public interest is “Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development?”

This question is addressed in Section 3.3.1 and 3.3.2 below.

#### **3.3.1 Consistency with the objectives of the development standard**

The proposal is consistent with the objectives of the height standard for the reasons set out in Section 3.1.2 above and having regard to all other relevant considerations, it is considered to be in the public interest. Therefore, the public advantages of the proposed development (including contravention of the development standard) outweigh any disadvantages.

#### **3.3.2 Consistency with the objectives of the zone**

The majority of the site is zoned SP2 Infrastructure (Educational Establishment), the objectives of which are:

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.

The proposal is consistent with these objectives.

A smaller portion of the site is zoned R4 High Density Residential under the North Sydney LEP 2013 (on the corner of Carlow Street and Miller Street). The permissibility of the proposal in the R4 zone is address in the EIS forming part of this SSDA.

The objectives of the R4 zone are as follows:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

- To ensure that a reasonably high level of residential amenity is achieved and maintained.

The proposal is not inconsistent with the above objectives of the R4 zone. The site is used for the purpose of an educational establishment, which can be said to inherently provide a day-to-day service for residents. Further, the proposed development, including the variation to the height of buildings development standard, will not result in significant adverse amenity impacts.

When considering the proposal against the objectives of the SP2 and R4 zones respectively, the development for which consent is sought will deliver public advantages which will outweigh any public disadvantages.

### **3.3.3 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

The proposed contravention of the 12 metre height of buildings development standard will not raise any matter of significance for State or regional environmental planning. The proposed variation has been demonstrated to be appropriate for the specific circumstances of the development and would be highly unlikely to result in an unfavourable precedent for the assessment of other development applications.

Rather, failure to allow the proposed height variation would prevent the delivery of a piece of educational infrastructure which is deemed to have State significance.

### **3.3.4 The public benefit of maintaining the development standard**

There is no notable public benefit in maintaining the development standard. Rather, strict compliance with the maximum building height standard would limit the ability to meet demand for co-education school facilities in the LGA, would prevent the delivery of the publicly accessible piazza and undercroft play space, and would limit the ability to improve the curtilage of the site's heritage items as detailed at Section 3.1.4. Compliance with the development standard would not result in any public benefit, and will not improve the amenity or environmental impacts of the development.

## 4.0 The Five Part Test

The “Five Part Test” was established by the NSW Land and Environment Court in *Wehbe v Pittwater Council* [2007] NSWLEC 827, which the consent authority may elect to use in addition to the principles of Clause 4.6 when determining a variation to a development standard. The Five Part Test is intended to determine whether the variation to the development standard is well-founded.

The Five Part Test is set out in **Table 3** below with corresponding commentary relating to the proposed development.

**Table 3 The Five Part Test**

Address	Lot and DP / SP
1. <i>The objectives of the standard are achieved notwithstanding noncompliance with the standard</i>	This test is satisfied for the reasons set out in Section 3.1.2.
2. <i>The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.</i>	The proposal does not reply on this point. When assessed against the underlying objectives of the standard, the proposal satisfies the intent of the standard in terms of suitability in relation to neighbourhood amenity and character, with no adverse impacts.
3. <i>The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.</i>	If strict compliance with the building height standard was required, the development would not be sufficiently responsive to the site’s context and the benefits of the development would not be achieved.
4. <i>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 unreasonable and unnecessary</i>	The proposal does not reply on this point.
5. <i>Compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.</i>	The proposal does not reply on this point.

## 5.0 Conclusion

Compliance with the maximum building height development standard in Clause 4.3 of NSLEP 2013 is unreasonable and unnecessary in the circumstances of the case.

There are sufficient environmental planning grounds to justify that the non-compliance and the proposal is in the public interest because it is consistent with the objectives of the height standard and the zoning of the site.

Additionally, Clause 42 of the Education SEPP provides that development consent may be granted for a development which contravenes a development standard in an environmental planning instrument without the need for a Clause 4.6 variation request.

As such, the proposal is deemed acceptable notwithstanding its non-compliance with the 12m building height standard.