

# BaptistCare Macquarie Park Concept Masterplan

Clause 4.6 Variation Request

157 Balaclava Road, Macquarie Park  
BaptistCare



### 'Gura Bulga'

Liz Belanjee Cameron

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

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

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

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

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

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# 1.0 Introduction

This clause 4.6 variation request has been prepared by Ethos Urban on behalf of BaptistCare. It is submitted to the Department of Planning and Environment (the Department) in support of a State Significant Development Application (SSDA) for the redevelopment of BaptistCare's landholding at 157 Balaclava Road, Macquarie Park (the Site) within the City of Ryde Local Government Area (LGA).

This clause 4.6 variation request relates to the height of building development standard under clause 4.3 of the Ryde Local Environmental Plan 2014 (RLEP 2014) as well as section 87(2)(c) of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). This variation request should be read in conjunction with the Environmental Impact Statement (EIS) prepared by Ethos Urban dated 3 November 2022 and with the Masterplan Architectural Design Report prepared by BVN, as well as other supporting documentation.

Clause 4.6 of the RLEP 2014 enables the consent authority to grant consent for development even though the development contravenes a development standard of the RLEP 2014 or any other environmental planning instrument (such as the Housing SEPP). The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6(3) and (4)(a)(ii) requires the consent authority to consider a written request from the applicant that seeks to justify the contravention of the development standard. Clause 4.6(4)(a) and (b) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied:

- The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).
- 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.
- The concurrence of the Planning Secretary has been obtained.

The consent authority's satisfaction in respect of those matters must be informed by the objectives of clause 4.6, which are to provide an appropriate degree of flexibility in the application of the relevant controls and to achieve better outcomes for and from the development in question by allowing flexibility in particular circumstances.

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

- Achieves the objectives of Clause 4.3 of the RLEP 2014 by:
  - Ensuring building height is appropriately located so it does not result in adverse impacts on adjoining properties in terms of overshadowing and other environmental impacts such as visual privacy;
  - Appropriately locating height so that it corresponds to the existing and future nature of adjoining development;
  - Appropriately integrating land uses across the site and reinforcing the site's street frontages to Epping Road and Balaclava Road through the provision of active land uses at the ground level; and
  - Having regard to the nature of adjoining development including Morling College and Macquarie University where future connections may be considered.
- The proposal is consistent with the Principles of Policy (section 3 Housing SEPP) given it seeks to provide additional housing in accordance with the bonus floor area provisions and therefore, strict compliance with the building height development standard would result in the loss of entire storeys for these land uses or otherwise a decrease in public open space. Removing floor area, would ensure the underlying purpose of the Principles of Policy would be thwarted as it would not encourage co-living, build-to-rent or seniors housing, nor promote its delivery.
- Provides a public benefit through the provision of a unique mix of seniors housing, affordable housing, residential, and co-living dwellings supported by open spaces, retail, commercial, education establishment and allied health.
- There are sufficient environmental planning grounds to justify the variation as the proposed building height is compatible with the existing and future context, given the height and floor space has been appropriately distributed across the site to ensure the built form does not result in adverse amenity impacts.



- Supporting technical studies which accompany this DA confirm that the proposed development will not give rise to any significant adverse environmental impacts, and that any potential impacts can be addressed through appropriate mitigation measures.
- Will promote the orderly and efficient use of land, in accordance with the objects of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- Will remain in the public interest, notwithstanding the proposed variation to the development standard.
- Will not result in any adverse environmental impacts as a result of the variation to the maximum building height.

Therefore, the SSDA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the RLEP 2014.

## 2.0 Development Standards 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 RLEP 2014 and 87(2)(c) of the Housing SEPP. Clause 4.3 of the RLEP 2014 and 87(2)(c) of the Housing SEPP are reproduced below in their entirety (**emphasis added**) alongside an extract of the Height of Buildings Map, to which clause 4.3 applies, reproduced at **Figure 1**.

### 4.3 Height of buildings

(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.**

Section 87 is reproduced in its entirety below (**emphasis added**).

### 87 Additional floor space ratios

(1) *This section applies to development for the purposes of seniors housing on land to which this Part applies if—*

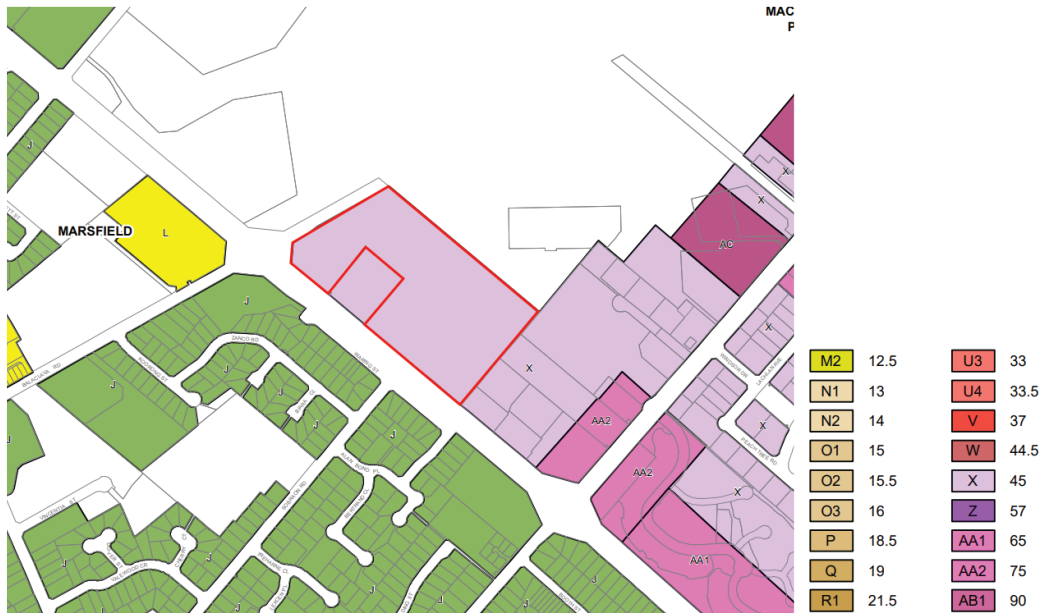
- (a) development for the purposes of a residential flat building or shop top housing is permitted on the land under another environmental planning instrument, or*
- (b) the development is carried out on land in Zone B3 Commercial Core.*

(2) *Development consent may be granted for development to which this Section applies if—*

- (a) the site area of the development is at least 1,500m<sup>2</sup>, and*
- (b) the development will result in a building with the maximum permissible floor space ratio plus—*
  - (i) for development involving independent living units—an additional 15% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units, or*
  - (ii) for development involving a residential care facility—an additional 20% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of the residential care facility, or*
  - (iii) for development involving independent living units and residential care facilities—an additional 25% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of independent living units or a residential care facility, or both, and*

**(c) the development will result in a building with a height of not more than 3.8m above the maximum permissible building height.**

Section 87 applies to the proposed development as residential flat buildings are a permissible form of development in the B4 Mixed Use zone under RLEP 2014. It is noted that the site area of the development is in excess of 1,500m<sup>2</sup>, therefore the development complies with the development standard in section 87(2)(a).



**Figure 1** Excerpt from RLEP 2014 Height of Buildings Map (site outlined in red)

Source: City of Ryde via NSW Legislation

## 2.1 The Land Subject to this Clause 4.6 Variation

This Clause 4.6 request to vary a development standard pertains to the BaptistCare landholding at 157 Balaclava Road, Macquarie Park (the Site) within the BaptistCare Mixed-Use Precinct, as shown at Figure 2 Site aerial **Figure 2**.



 Site Boundary



NOT TO SCALE

**Figure 2** Site aerial

Source: Ethos Urban

## 2.2 Extent of Variation Sought

The Masterplan has been designed to be generally consistent with the maximum height limits set by the RLEP 2014 and bonus from the Housing SEPP, being 45m and 48.8m for buildings comprising seniors housing respectively. A height variation is sought for five buildings across the Masterplan, comprising Buildings F1, F2, J, M, and VV as outlined at **Table 1** below. Buildings A, B, C, D, E, F, G, H, K, L, N and O either comply with the maximum height controls or are significantly less than the maximum permitted height.

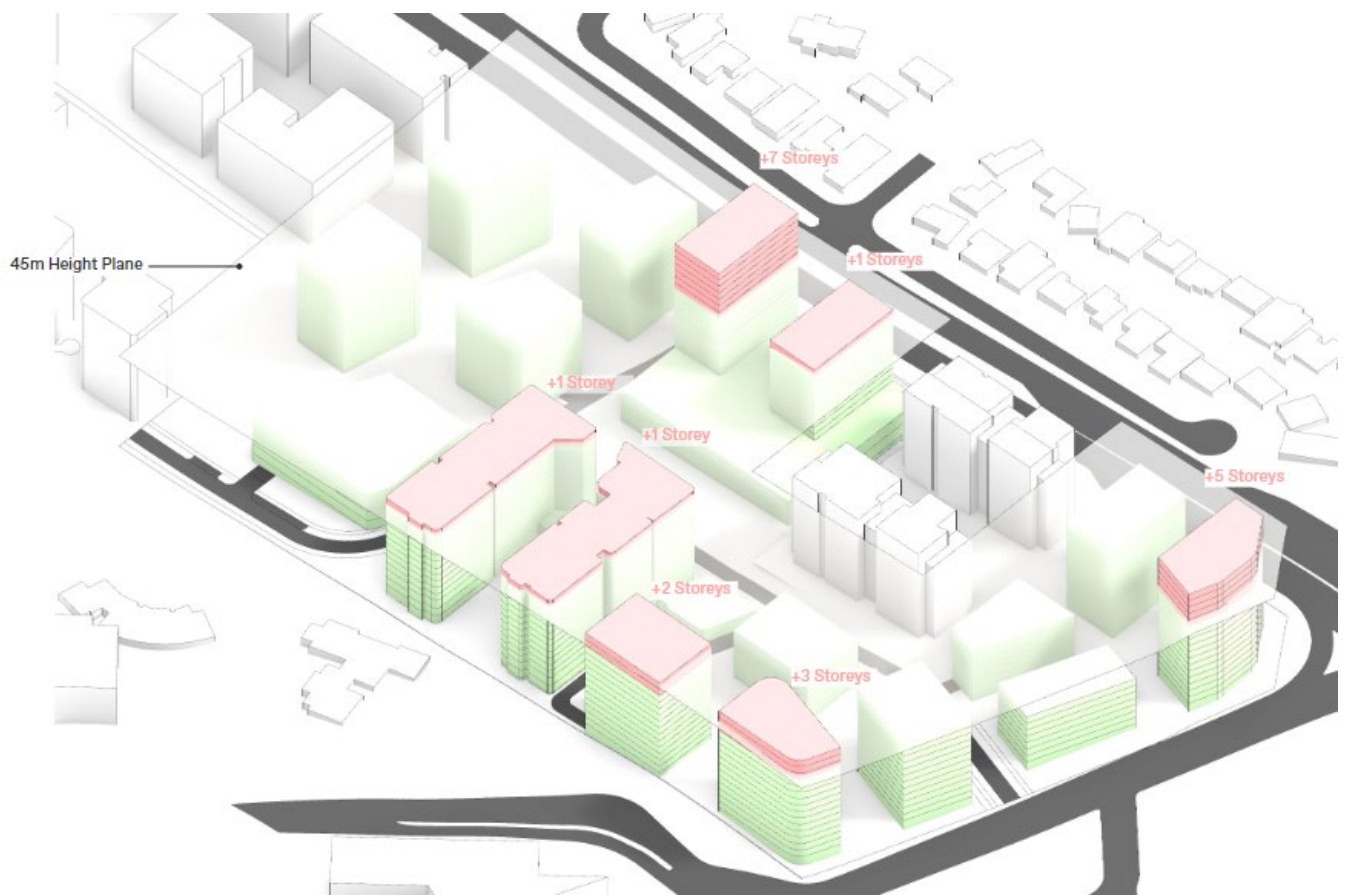
**Table 1** Proposed building height

Building	LEP Height (m) + Housing SEPP	Proposed Envelope Height (m)	Maximum Variation (m / %)
Building A (Superlot 5)	45	22.5	-22.5 metres (-50%)
Building B (Superlot 6)	48.8	41.6	-7.2 metres (-15%)
Building C (Superlot 7)	45	44.8	-0.2 metres (-0.5%)
Building D (Superlot 7)	45	44.8	-0.2 metres (-0.5%)
Building E (Superlot 6)	48.8	38.4	-10.4 metres (-21%)
Building F (Superlot 8)	45	16.5	-28.5 metres (-36%)
Building F1 (Superlot 8)	45	67.7	+22.7 metres (50.5%)
Building F2 (Superlot 8)	45	51.7	+6.7 metres (15%)
Building G (Superlot 9)	45	25.5	-19.5 metres (43%)
Building H (Superlot 9)	45	44.8	-0.2 metres (-0.5%)
Building J (Superlot 9)	45	57.6	+12.6 metres (28%)
Building K (Superlot 9)	45	25.6	-19.4 metres (43%)
Building L (Superlot 2)	45	41.6	-7.2 metres (-15%)
Building M (Superlot 1)	45	51.2	+6.2 metres (14%)
Building N (Superlot 3)	48.8	48	-0.8 metres (1.5%)
Building O (Superlot 3)	48.8	25.6	-19.4 metres (43%)
Building VV (Superlot 4)	48.8	50.65m	+1.85 (+4%)

It is prudent to note that 12 of the 17 buildings in the Masterplan will comply with the maximum permitted building height. As detailed in **Table 1**, Building A, Building F, Building G, Building K and Building O are substantially below the maximum permitted building height by approximately 20 metres. The impact of the height exceedances are generally internalised and will not result in adverse overshadowing to adjoining properties.

On balance, the composition of the building mass and positioning of building height provides for an enhanced interface to the surrounding boundaries, especially the boundary adjacent to Morling Residential College to the east. **Figure 3** below clearly depicts that the building height has been carefully substituted from the north-eastern side of the site to the south-western side of the site in order to improve overall amenity, increase open space at the ground place, ensure appropriate solar access and minimise the impact of overshadowing on the more 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. Decisions in respect of *Micaul Holdings P/L v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) and *Maskorich v Waverley Council* (65% exceedance of FSR) reinforce this position.



**Figure 3** Height plane map

Source: BVN

## 2.3 Site Context

Site context is an important consideration when determining the appropriateness and necessity of a development standard. The BaptistCare Mixed-Use Precinct is strategically significant and presents a unique opportunity to deliver affordable and private housing supply, educational facilities and student accommodation 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 the Greater Sydney Region Plan and the North District 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.

It is the largest non-CBD office market in Australia and is projected to become the largest non-CBD office market in Australia. It is also projected to be Australia's fourth largest commercial precinct by 2030 and is currently the third largest centre for employment in Greater Sydney behind the Sydney CBD and Greater Parramatta. By 2036, Macquarie Park is projected to deliver between 73,000 and 79,000 jobs. The Mixed-Use Precinct sits inside the identified Macquarie Park corridor, which has been identified as a health and education precinct, holding significance in the clusters of health, education and high-tech industries.

The Greater Sydney Region Plan identifies the Mixed-Use Precinct as within the Eastern Harbour City, focused on leveraging its strong financial, health and education sectors. Macquarie Park is also identified as a Priority Growth Area, maintaining its role as a strategic centre and health and education precinct, intending to deliver a significant number of dwellings over the next 10-15 years, 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 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 the existing and future development in Macquarie Park and 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.



## 3.0 Clause 4.6 Variations

Clause 4.6 of the RLEP 2014 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 RLEP 2014 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.*

RebelMH Neutral Bay Pty Ltd v North Sydney Council [2019] NSWCA 130 clarified the requirements to satisfy for clause 4.6(3):

*“51.... in order for a consent authority to be satisfied that an applicant’s written request has ‘adequately addressed’ the matters required to be demonstrated by cl 4.6(3), the consent authority needs to be satisfied that those matters have in fact been demonstrated. It is not sufficient for the request merely to seek to demonstrate the matters in subcl (3) (which is the process required by cl 4.6(3)), the request must in fact demonstrate the matters in subcl (3) (which is the outcome required by cl 4.6(3) and (4)(a)(i)).”*

That is, in order to satisfy clause 4.6(3), it is not sufficient that the written requests simply seeks to address the matters in subclauses (a) and (b), but rather, the consent authority must form a view that the matters in subclauses (a) and (b) have been satisfied by the written request. Further, clause 4.6(4)(a) of the RLEP 2014 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 [our emphasis] 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.*

We underline the term “consistent” as the Court has clarified in *Moskovich v Waverley Council* [2016] NSWLEC 1015 at [53]:

53. *“The threshold of ‘consistency’ is different to that of ‘achievement’. The term ‘consistent’ has been considered in a judgements [sic] of the Court in relation to zone objectives and has been interpreted to mean ‘compatible’ or ‘capable of existing together in harmony’ (Dem Gillespies v Warringah Council (2002) 124 LGERA 147; Addenbrooke Pty Ltd v Woollahra Municipal Council [2008] NSWLEC 190) or ‘not being antipathetic’ (Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21). Whichever interpretation is adopted the test of ‘consistency’ is less onerous than that of ‘achievement’.”*

We highlight the final approach in that ‘consistency’ is less onerous than that of ‘achievement’. Below we demonstrate that the proposed development is consistent with the objectives of the B4 Mixed Use zone and the underlying purpose of section 87 of the Housing SEPP.

Assistance on the approach to considering a contravention to a development standard has been 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. Moskovich v Waverley Council [2016] NSWLEC 1015; and
4. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

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

- This written request has adequately 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 in section 87(2)(c) and the objectives of the B4 Zone.

### 3.1 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 RLEP 2014 is clearly and unambiguously a development standard.

Section 87 of the Housing SEPP is within Division 3 Development Standards of “Part 5 Housing for seniors and people with a disability” of the Housing SEPP. The provision provides FSR and building height bonuses to be applied to the maximum permissible FSR and building height on the site. This is considered a development standard not only on account of the name of the division section 87 sits within, but more importantly because it specifies fixed FSR and building height bonuses that directly influence the aspects of the development listed in section 4(1)(c) above. Therefore, section 87 of the Housing SEPP is also clearly and unambiguously a development standard.

## 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 ways in which it could be shown that a variation to a development standard was unreasonable or unnecessary. However, His Honour in that case (and subsequently in *Initial Action*) confirmed that these five ways are not exhaustive; they are merely the most commonly invoked ways. Further, an applicant does not need to establish all of the ways.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis may be of assistance in applying Clause 4.6 given that subclause 4.6(3)(a) uses the same language as Clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]; *Initial Action* at [16]).

As the language used in subclause 4.6(3)(a) of the RLEP 2014 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 and accordingly justifies the variation to the height of buildings development standard pursuant to the **First** and **Third Method** outlined in *Wehbe*.

#### 4.1.1 The objectives of the development standard are achieved notwithstanding the non-compliance (First Method)

The objectives of the development standard contained in clause 4.3 of the RLEP 2014 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.

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

The height limit for the Masterplan 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:

- Define the precinct's key activity streets of Herring Road and Waterloo Road with taller buildings.
- Focus the highest buildings of between 90m and 120m in areas closest to the train station.

- Enable precinct gateway sites to act as secondary opportunities for building height with buildings of up to 65m and 90m in height.
- Add definition and legibility to the Herring Road precinct as part of Macquarie Park.

The Masterplan aligns with the Herring Road Finalisation Report as it will locate additional built form on the corner of Balaclava Road and Epping Road where these land uses will act as 'gateway' buildings to the precinct. The distribution of GFA across the site, with taller building envelopes fronting the surrounding street network, will add legibility to the public domain and further activation to the precinct and Macquarie Park. While the proposal does seek to vary the maximum building height, it will not undermine the key activity streets and scale of buildings that are closest to the train station, where they are notably much taller in height.

Importantly, the proposal 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 open space at the ground plane and provide appropriate 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 north-eastern boundary, which is entirely consistent with the overall principle of height gradation for the Precinct.

Buildings A, B, C, D and E are located on the south-eastern portion of the site, adjacent to the Macquarie Park Village Residential. Buildings C and D are compliant with the LEP height limit at 14 storeys in height, providing for an appropriate interface to existing development, consistent with the objectives of the height standard.

Buildings fronting Epping Road vary in height from 14 to 19 storeys. Building J will be 18 storeys in height and Building F1 19 storeys, which does not comply with the maximum height prescribed for the site. The building height encroachments are considered acceptable for the following reasons:

- There are a number of buildings of a similar scale that are approved, under construction or recently completed along Epping Road and therefore the taller building on site is in keeping with the established and future character for Macquarie Park along Epping Road and when viewed from the lower density areas adjacent.
- The buildings comply with the setback requirements of the RDCP 2014 of a minimum of 10 metres which enables the existing vegetation and tree canopy within the Epping Road setback area to largely be retained and further embellished, thereby providing substantial landscape screening to Epping Road.
- The urban form on the site has been scaled and located to provide diversity and architectural interest whilst enabling a series of smaller buildings in appropriate locations that enhance the public domain rather than a homogenous repetition of the same scale buildings across the site.

**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 BVN based on the indicative building envelopes. The shadow diagrams depict the shadow cast generated by the indicative building envelopes during each solstice and equinox.

The shadow diagrams show that the proposed maximum building envelope would result in additional overshadowing to buildings to the south and east of the site. The proposed maximum envelope is not considered to give rise to any unacceptable overshadowing impacts on existing or future public domain areas or adjoining properties during the winter solstice (refer to **Figure 4**), noting that further assessment of the actual shadows caused by any proposed buildings will be subject to further detailed assessment as part of the following stages and are considered appropriate as:

- To the south of the site fronting Epping Road (and the Waring Street service road), shadows are largely cast on the road network and on residential dwellings of varying degrees between 9am and 11am. Where shadow falls onto the dwellings fronting Epping Road, this is generally limited to the driveways and front yard of these properties, with the principal area of private open space (which is located at the rear of these properties), receiving the minimum requirements of 2 hours solar access during the winter solstice. Therefore, the shadow plans demonstrate that the indicative building envelopes will not create adverse shadow impacts to the residential dwellings on Epping Road during the winter solstice;
- Importantly, the shadow plans illustrate the while the proposal seeks to vary the maximum building height development standard, the shadow impact largely falls onto Epping Road and within the site from midday during the winter solstice;

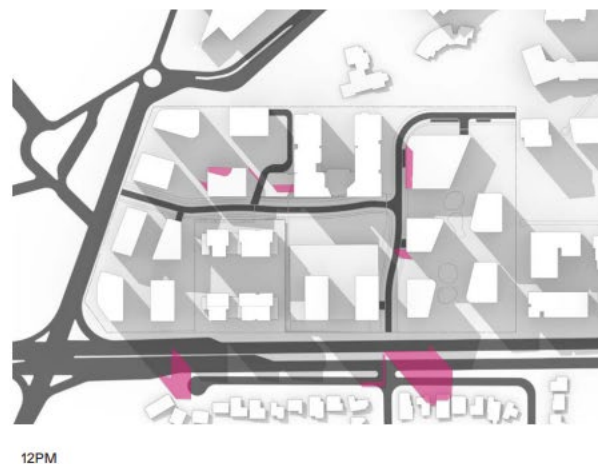
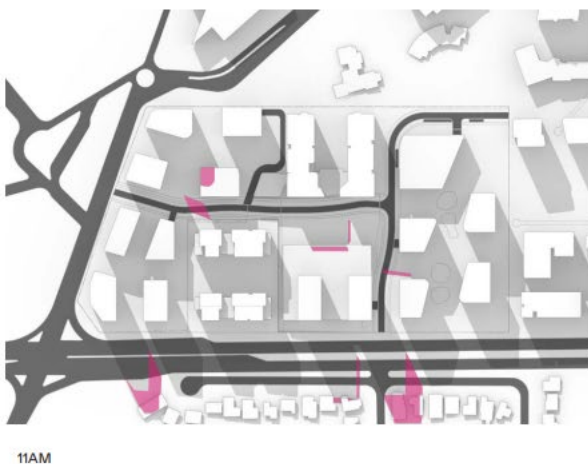
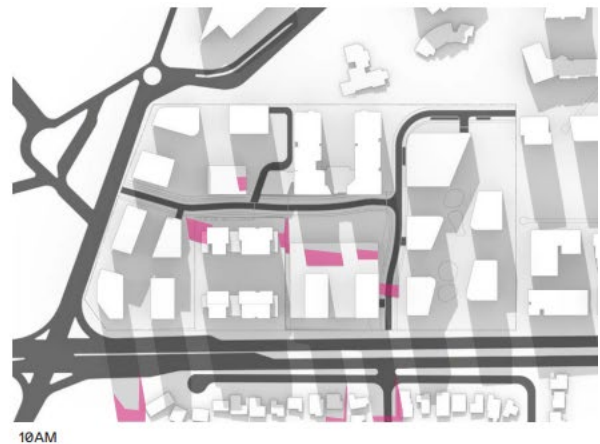


- To the east of the site, shadows are cast on Morling College and Macquarie Park Village Residential of varying degrees between 11am and 3pm. The proposed building envelopes of the Masterplan which cast shadows onto these buildings are entirely within the mapped maximum height permissible on the site and in turn, the overshadowing impact of the proposed envelope is considered to be reasonable and acceptable;
- The overshadowing plans also demonstrate that there will be no additional shadow cast to the north and west of the site, falling onto Balaclava Road and a minor part of Macquarie University; and
- The urban structure ensures that there are gaps between buildings and their associated shadows, which results in intermittent shadows/sunlight passing over the properties during the effected period.

During the summer solstice and spring equinox, shadow impacts are limited, with minor overshadowing to the front yards of properties on the opposite side of Epping Road during the early morning period of the equinox, with no overshadowing cast after 10am.

The impacts created by the proposal are considered to be minor and acceptable, particularly as the proposed building height and GFA has been distributed across the site, with regard to the site's context in Macquarie Park. Future detailed building design will further consider shadow impacts and incorporate measures, where possible, to minimise impacts to adjoining properties. The shadow impacts during the summer solstice, spring equinox and winter solstice are included in the Architectural Design Report at **Appendix E**.

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** Overshadowing diagrams (winter solstice)

Source: BVN

### 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 medium-high density residential buildings. To the east of the site is Ivanhoe Estate, comprising 16 buildings ranging in height from 10-75 metres. To the west of the site are numerous medium-density developments.

A segment of the site's block is occupied by a strata title allotment that is under separate ownership (SP9264). A DA for the site received approval on 22 May 2019 for the development of two 15 storey residential apartments buildings which will include 317 dwellings and three basement levels of car parking totalling 308 car spaces (City of Ryde reference: LDA2018/0171).

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 be 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 site is a large landholding owned by BaptistCare, within Macquarie Park and is proposed to be developed in its entirety for a mixed-use development incorporating a school, seniors housing, build to rent, student housing, residential and mixed uses including commercial and retail land uses. The redevelopment of the Mixed-Use Precinct 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.

### **Transit Orientated Development**

In accordance with the 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 Masterplan presents a high level of permeability for pedestrians to connect through to bus stops on Balaclava Road and Epping Road, connect through to Macquarie University as well as to the Macquarie University Metro Station.

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 District Plan. As such, the proposed land uses are well serviced by existing and proposed transport infrastructure, enabling a greater diversity in land uses within the Mixed-Use Precinct. Accordingly, the proposed development aligns with the principal objectives for Transport Orientated Development.

### **Environmentally Sustainable Development**

An Environmentally Sustainable Development (ESD) Report prepared by WSP (refer to **Appendix K**) 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 the relevant industry recognised building sustainability and environmental performance standards. The following sustainable environmental targets are aspired by this project:

- Minimum 5-star Green Star Rating, targeting 6-Star Green Star.
- Align with Greater Cities Commission and City of Ryde strategies and targets.
- Achieve a net zero carbon operation.
- Operate the site purely by renewable electricity.
- Successfully mitigate urban heat island effects by design 75% of the total site area to have Solar Reflectance Index.

These commitments will be achieved across the staging and delivery of the development, drawing on various strategies in the design and operation of the Mixed-Use Precinct. These comprise 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.

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

#### **Wind Impact**

A Wind Impact Assessment has been prepared by RWDI to assess the wind environment created by the proposed development (refer to **Appendix U**). The investigations undertaken by RWDI about the interaction of the region prevailing wind with the proposed massing of the Mixed-Use Precinct have confirmed that most internal areas are generally shielded from high winds. Further, it was determined that the proposed built form and massing is suitable for pedestrians while meeting the relevant safety criterion, with strategies to ensure wind mitigation including dense evergreen landscaping and avoidance of sharp corners in the detailed design of the buildings.

These assessments in turn concluded 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 and detailed design guidance. Further discussion is provided in **Appendix U**.

#### **Visual Impact Assessment**

A Visual Impact Assessment has been prepared by Urbis and is included at **Appendix T**. The intention of the VIA is to confirm that the proposed development is appropriate in terms of the site's context. Visual impacts, while significant (as inevitable for a development of such bulk and scale) are considered to be reasonable given the project's strategic merit and the provision of significant areas of open space.

The Assessment confirms that while the site will be most visible from the immediately surrounding streetscapes, the viewers within the immediate visual catchment will generally move throughout the area (in transit) and will therefore experience views for short, intermittent periods of time. Therefore, for all views modelled and assessed, the visual impacts were rated as low and through the adoption of various mitigation measures including retention of existing boundary vegetation where possible as well as proposed supplemental planting to filter view of built form, particularly at the lower level of the proposed development.

Importantly, the VIA found that:

- The proposed development does not block views to any scenic or highly valued features in the landscape or heritage items and predominantly blocks areas of existing development or sky;
- While the proposed development is visible in close views and greater in scale to others adjacent to it, the proposal is not dissimilar in form or character to other developments present within the immediate and wider visual catchment; and
- The significance of visual effects that would be caused by the proposed development are reduced where visual impacts are rated as low.

Further discussion is provided at **Appendix T**.

### **Minimal Environmental Impact**

The Masterplan has been designed to minimise the impact of the development on the amenity of surrounding properties and is appropriate for the site specifically as:

- 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 allow for appropriate retention of existing trees and further landscaping for the site ensure the scale of buildings as perceived from the public domain is reduced.
- 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 Visual Impact Assessment concludes that the visual impacts are acceptable.
- 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**

#### **Epping Road Frontage**

The Masterplan emphasises the Epping Road frontage by providing a substantial building setback of a minimum of 10m, as per the requirements of the RDCP 2014. This setback facilitates articulated building forms and extensive landscaping to reinforce the road frontage. The Epping Road frontage also provides a green link to enhance pedestrian connectivity between buildings to provide sightlines through the site.

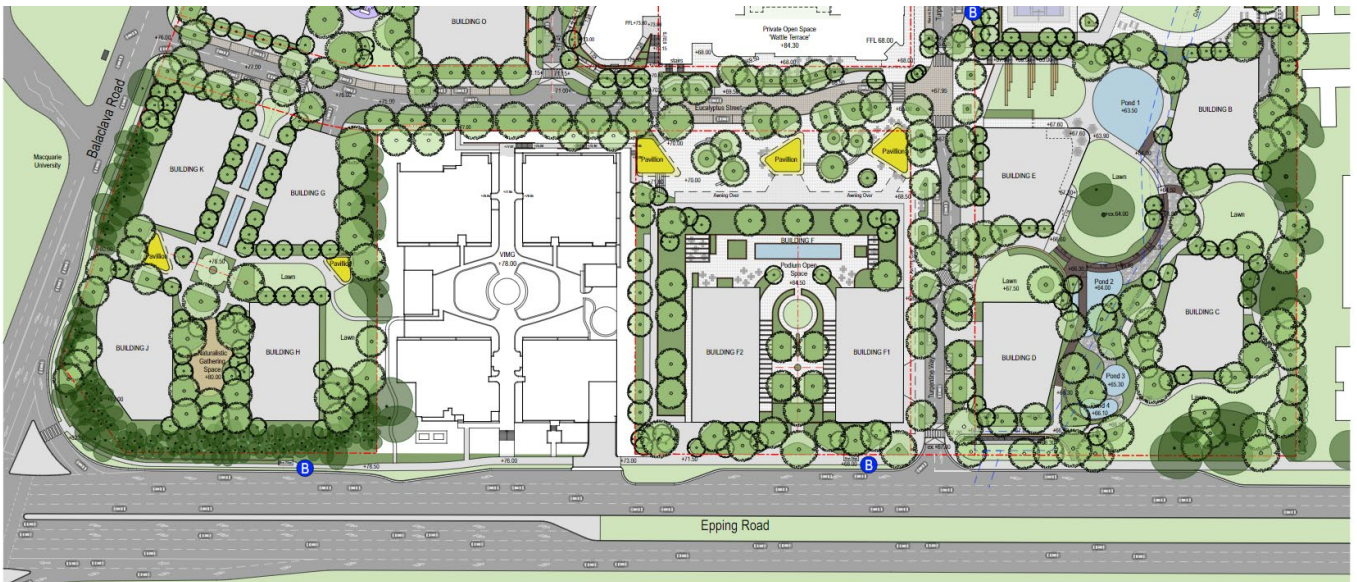
The land uses, built form and the landscaping treatment will reinforce this road frontage, while providing further activation from that which currently exists.

#### **Balaclava Road Frontage**

To Balaclava Road, the proposed land uses are mixed use and conventional residential and co-living (student housing). The Masterplan adopts a 5m setback from Balaclava Road, in accordance with the RDCP 2014. This will reinforce the site's street frontage along Balaclava Road, while also providing appropriate opportunity for increased landscaping including deep soil and landscaping embellishments, further providing visual interest and amenity where appropriate.

The interface to Epping Road and Balaclava Road is illustrated on the landscape plan at **Figure 5**.





**Figure 5 Landscape site plan illustrating built form envelopes and landscaping embellishment to Epping Road (south) and Balaclava Road (west)**

Source: Arterra

#### **4.1.2 The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method)**

The objectives of clause 4.3 of the RLEP 2014 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 underlying intent of the bonus floor space provisions as provided by the Housing SEPP is to incentivise a diverse range of housing (co-living, build-to-rent and seniors housing) in specific zones. This is achieved via differing FSR bonuses applying to these forms of development. The underlying object and purpose of the additional floor space, aligns with section 3 Principles of Policy of the Housing SEPP that states:

- (a) enabling the development of diverse housing types, including purpose-built rental housing,*
- (b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) minimising adverse climate and environmental impacts of new housing development,*
- (f) reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) mitigating the loss of existing affordable rental housing.*

Accordingly, as the proposed complies with the FSR provisions and bonuses as provided under the Housing SEPP, the underlying purpose and Principles of Policy of the Housing SEPP would be defeated or thwarted if strict compliance was required and therefore compliance is unreasonable for the following reasons:

- The proposed development utilises the FSR bonuses available under the Housing SEPP for co-living, affordable housing and seniors housing that are intended to incentivise a diversity of housing. The proposal is consistent with the purpose of the Policy given it seeks to provide additional housing in accordance with the bonus floor area provisions and therefore, strict compliance with the building height development standard would result in the loss of entire storeys for these land uses or otherwise a decrease in public open space. Removing floor area, would ensure the underlying purpose of the Principles of Policy would be thwarted as it would not encourage co-living, build-to-rent or seniors housing, nor promote its delivery.

- Given GFA is distributed across the site, and other building envelopes sit far below the maximum building height development standard, the proposed Masterplan presents a scheme that is able to minimise adverse amenity impacts upon adjoining properties and the locality in terms of overshadowing, visual privacy, views and perceived density.
- Further, as the exceedance is restricted to certain building envelopes, it does not create increased density on the site about what is contemplated by the Principles of Policy of the Housing SEPP. Indeed, other building envelopes sit substantially below the 45m height plane and therefore, the proposal reflects a scheme that is suitable for the site and its context.
- The Masterplan seeks consent for the 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 Mixed-Use Precinct. 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.

#### 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. Indeed, strict compliance with the maximum building height development standard is likely to result in deletion of residential floor space for the purposes of seniors housing, affordable housing and co-living which would be contrary to the Principles of Policy of the Housing SEPP.

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.

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 RLEP 2014 and also as provided under Section 87 of the Housing SEPP.

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

Clause 4.6(3)(b) of RLEP 2014 requires the consent authority to be satisfied that the applicant's written request has adequately addressed clause 4.6(3)(b), by demonstrating:

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

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action v Woollahra Municipal Council [24] and Turland v Wingecarribee Shire Council [42]).

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site. 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. The applicable circumstances that relate to the site are discussed below.

#### 4.2.1 Ground 1: Additional housing

As discussed, there are no specific objectives contained within the relevant divisions of the Housing SEPP where bonus floor space or building height provisions are applied for specific uses however, the implied underlying object or purpose is to incentivise diverse forms of housing in specific zones under Section 3 – Principles of Policy. The proposal directly aligns with the Principles of Policy by way of the following:

- The proposal utilises the floor space bonuses and also the height bonus pursuant to Section 87 of the Housing SEPP, which is intended to incentivise seniors housing, co-living (student housing) and affordable housing. The Master Plan seeks to adopt the additional floor space bonuses attributed to each use to enable appropriate and FSR compliant uplift across the site. While the proposal seeks to vary the maximum building height control, the bonuses afforded under the Housing SEPP would not be achieved and therefore the proposal would result in the delivery of less seniors, affordable and co-living housing which does not align with the Principles of Policy.
- Strict compliance with the maximum building height control would result in the loss of entire storeys of the development and the underlying intent of the Policy would be thwarted as it would not encourage or promote the delivery of diverse forms of housing.
- The maximum building height variations have been thoroughly analysed to ensure GFA is distributed across the site so as to retain amenity for residents within and adjoining the site, while allowing for an increase in public and private open space across the entire site.
- The proposal will promote diverse forms of housing in an area which makes use of existing and planned infrastructure, while reinforcing and promoting the Herring Road as a mixed use precinct.

Accordingly, the proposal demonstrates that compliance with the building height development standard is unreasonable and unnecessary in that the Principles of Policy of the Housing SEPP would be thwarted if strict compliance was required.

#### 4.2.2 Ground 2: Visual Impact and Built Form Transition

As illustrated in the Architectural Plans included in **Appendix E**, the proposal clearly responds to the form of adjoining development alongside the B4 zone objectives. The Masterplan adopts a first principles urban design led approach to deliver the best built form outcome on the site, with the proposed buildings fronting Epping Road and Macquarie University increasing in height in response to the existing built form, surrounding residential context and future public domain requirements.

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 3-19 storeys fronting Epping Road and 8-18 storeys fronting Balaclava Road with buildings adjacent to the northern and eastern boundaries appropriately setback and are generally lower in scale. This creates a transition in height from the east to the west, with those that exceed the height limit being strategically located along Epping Road and Balaclava Road. It is noted that the proposal seeks a marginal exceedance in building height to the rear of the site, however, as this portion of the site sits adjacent to Macquarie University it is considered that any perceived amenity impacts can be appropriately mitigated. Importantly, to Morling College to the site's south-east, the building height sits well below the maximum 45m building height allowing for an appropriate response to adjoining development. This 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 south and east of the site.

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. It is considered that the variation in building heights 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 in accordance with SEPP 65 and the Apartment Design Guide. Each internal building interface will comply with the minimum building separation requirement of the ADG as illustrated at **Appendix E**.

Moreover, the landscaping strategy, including 23% deep soil and 39% tree canopy coverage across the site, will allow for the retention of existing mature trees and dense landscaping to further mitigate the scale of the building and provide appropriate acoustic and visual privacy. The proposal will provide a positive impact on the streetscape and is considered to provide an appropriate built form in the context of the surrounding development.

### 4.2.3 Ground 3: Public Domain and Landscaping

The following section demonstrates that despite the proposed variations to the building height development standard, the proposed Masterplan will facilitate achieving a higher quality public domain and landscape outcome than a compliant proposal through the redistribution of GFA above the height limit to provide additional area at ground level.

#### Re-imagining Kikkiya Creek

In the eastern and primary open space area, an opportunity has been envisaged and designed by Arterra to re-imagine and represent the original creekline. This is achieved through a series of artificial ponds and managed water features, that will be connected via a stream that winds through the eastern portion of the site. Visual links through an extension of vegetation downstream the Kikkiya Creek will provide further greening, enhance the Connection with Country and provide numerous biodiversity and placemaking contributions to the site.

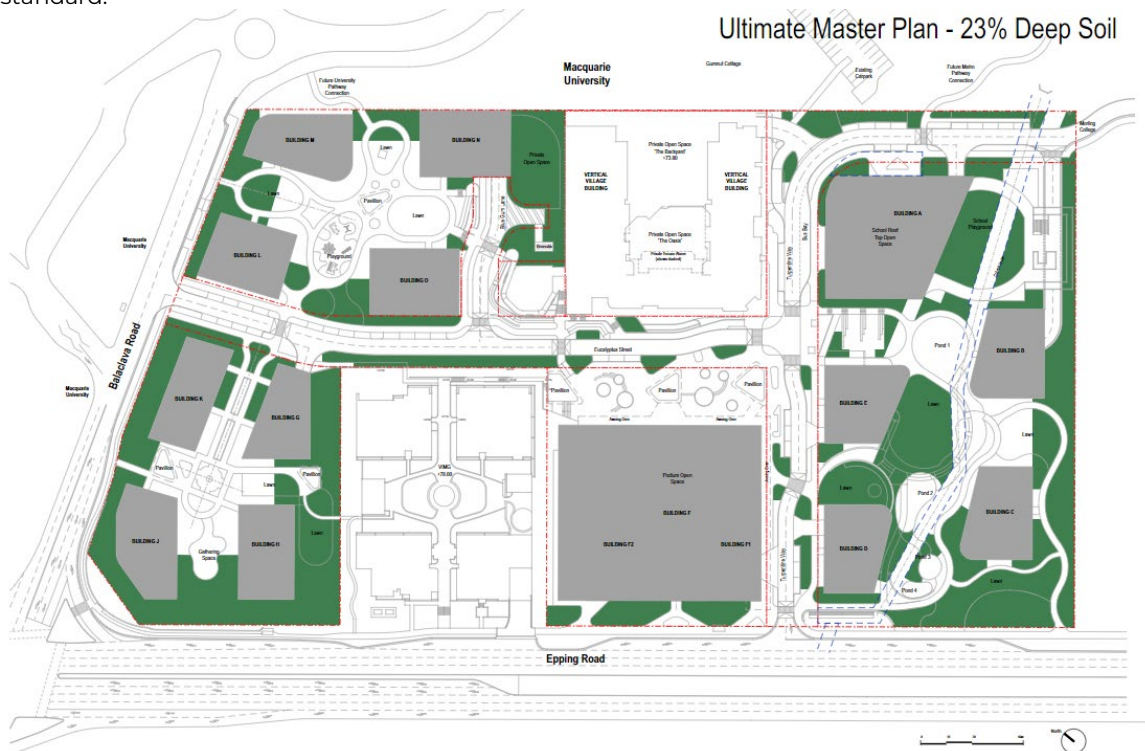
#### Deep Soil Landscaping

The proposed Masterplan exceeds the deep soil requirements applicable to the site under Housing SEPP, SEPP 65 Apartment Design Guide and the RDCP 2014. The RDCP stipulates a minimum deep soil of 20% of the site area whilst the proposed Masterplan provides 23% deep soil which has been achieved by rationalising the building envelope.

The objective of these control 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 enhancement of the existing landscaping, especially at the eastern portion of the site.

The canopy trees are proposed to extend the length of the southern perimeter boundary in order to provide a strong landscape buffer, totalling 39% total tree canopy cover. 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 6** illustrates the proposed deep soil areas for the Masterplan.

Rather than only providing 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 6** Proposed deep soil

Source: Arterra



## Enhanced Public Domain and Open Space

The public domain and open space concept is inspired by the vision to:

*“create a well considered and sustainable extension to the existing Macquarie Park corridor that is well connected and creates a vibrant community.”*

Key to this vision is the reinforcement of creating a sense of place that reflects the character of the area and responds to existing conditions. A focus has been on Connecting with Country through the establishment of design principles in collaboration with Fellingham Consultancy and Design (refer to **Appendix E**) to develop a scheme that draws on the existing landscape character and adapts it to the proposed Masterplan.

To create a functional and well considered design that is integrated across the site, the concept has adopted a hierarchy of public spaces including areas for passive and active recreation to support the residential and working populations within the site and surrounding areas. The various areas of open space across the site include:

- **The Eastern Creek Park** – naturalistic open space that embraces water in the east and provides a variety of planted and open spaces between towers, with accessible boardwalks, bridges and walkways;
- **The Central Urban Plaza** – a vibrant and active central urban plaza focusing on pedestrian and cyclist movement and providing versatile gathering spaces and a retail and dining core;
- **The Play Park** – a versatile park between the western towers, with active play opportunities, kickabout and exercise areas; and
- **The South West Park** – a versatile parklet between the western towers designed to contain more contemplative and restful space and a naturalistic gathering space set amongst mature trees along Epping Road. Additional tree planting and landscaping works will be accommodated with accessible pathways, shelters, seating and barbecue facilities and pavilions.

Planning open space will also be provided for the future school which will include sporting grounds and playground facilities across 0.22hectares. The proposed landscape Masterplan is shown at **Figure 7**.

At the boundaries of the site, retention of existing trees and further landscaping embellishments will delineate the transition between the site and the wider area. Incidental open spaces will be created throughout the site with street furnishings and planting to create spaces for sitting and meeting.

This approach to the public domain has informed the urban structure which draws on the site's existing landscape features with a sequence of high quality public open spaces connecting the existing landscaping elements along Epping Road with the original creekline. This public domain approach sets up a framework of development blocks across the precincts and will provide a high quality and accessible ground plane, for all residents, visitors, workers to utilise.



**Figure 7 Primary areas of active and recreational open space**

Source: Arterra

#### 4.2.4 Consistency with the Objects of the Environmental Planning and Assessment Act 1979

In *Initial Action*, the Court stated that the phrase “environmental planning grounds” is not defined but would refer grounds that relate to the subject matter, scope and purpose of the EP&A Act, including the objects in Section 1.3 of the Act. While this does not necessarily require that the proposed development should be consistent with the objects of the Act, nevertheless, in **Table 2** we consider how the proposed development is consistent with each object, notwithstanding the proposed variation of the height development standard.

**Table 2 Assessment of proposed development against the objects of the EP&A Act**

Object	Comment
(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,	<p>The proposed development will promote the economic and social welfare of the community through the introduction of a tangible improvement in building form and public benefits that will simultaneously respond to the site's context and deliver various land uses such as a school, seniors housing and affordable housing in the City of Ryde LGA.</p> <p>Further, as has been addressed in the EIS and the supporting documents, the proposed Masterplan has been designed to achieve a high standard of sustainability targets. Accordingly, the Masterplan demonstrates the proper management and conservation of resources, both through sustainable design and efficient use of the BaptistCare land.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal has been designed to incorporate ecologically sustainable design principles by allowing an appropriate development on an existing site and in a location that will have minimal environmental impacts and will support the economic health of the City of Ryde. The height exceedance will not impact the ecologically sustainable principles of development.
(c) to promote the orderly and economic use and development of land,	The proposed variation to the building height development standard will facilitate the orderly and economic redevelopment of a large site zoned for mixed use and high density development within walking distance of the Macquarie University Station and Macquarie Shopping Centre.
(d) to promote the delivery and maintenance of affordable housing,	The proposed variation to the mapped height limit directly promotes the delivery of affordable housing that is integrated with market housing, to offset the cost of delivering new affordable housing and to provide well-integrated communities.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The proposed Masterplan incorporates biodiversity offset measures, tree protection, and replacement planting to conserve the natural environment. The Masterplan has also been designed with high regard to the surrounding natural environment as well as ensuring any environmental impacts are minimised or mitigated wherever possible.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	<p>The proposed development is accompanied by an Aboriginal Cultural Heritage Assessment Report (<b>Appendix A</b> of the EIS), and has been assessed with regard to Connecting with Country (<b>Appendix E</b>). In this respect, the proposal has been designed to identify and protect or manage Aboriginal cultural heritage.</p> <p>Further, FCAD have provided strategies which have informed the design of the Masterplan. This input has originated from discussions with Traditional Custodians and Aboriginal community groups, improving the sustainable management of built and cultural heritage on the site.</p>
(g) to promote good design and amenity of the built environment,	As discussed in the sections above, the proposed development, including the proposed variation to the mapped height limits, will not result in any significant environmental impacts beyond what has been justified above. The design development of the Masterplan has been subject to an internal design competition and State Design Review Panel (SDRP) meetings, ensuring the proposal promotes good design and amenity of the built environment.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The proposed development will comply with all relevant construction codes and standards and will promote the health and safety of occupants.

Object	Comment
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The proposed development is SSD and therefore will be assessed by DPE with the consent authority being the Minister (or delegate of) or the Independent Planning Commission. Relevant government authorities will be notified of the proposed development and invited to comment, including the City of Ryde.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The proposed development will be publicly notified.

#### 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 BaptistCare Mixed-Use Precinct 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 height of building 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 proposal will directly assist in meeting the current and growing need for modern seniors housing, build-to-rent, affordable, and conventional housing that will allow residents to age in place and meet the changing demographics and growing population. The increase in the diversity of housing typologies is consistent with the high density environment and the existing and future character of the area.
- The proposed variation is predicated on providing a mixture of compatible land uses including a school, seniors housing, build to rent, retail, student housing, residential and mixed uses such as commercial and allied health. 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 the Greater Sydney Region Plan 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.



## 4.4 Secretary's Concurrence

Under Clause 4.6(4)(b) of RLEP 2014, the Secretary's concurrence is required prior to any variation being granted. Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6, subject to the conditions in the table in the notice.

The concurrence of the Secretary of DPE can be assumed under clause 4.6(4)(b). This is because:

- a. Under clause 64(1) of the Environmental Planning and Assessment Regulation 2000 (NSW), the Planning Secretary (as a concurrence authority) may, by written notice given to the consent authority, inform the consent authority that occurrence may be assumed subject to such qualifications or conditions as are specified in the notice.
- b. Such written notice was given by means of planning circular PS 18-003 "Variations to development standards" dated 21 February 2018. Under the planning circular, consent authorities for SSD may assume the Secretary's concurrence where development standards will be contravened. Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

In any event (when considering the factors set out in clause 4.6(5)):

- a. the contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- b. there is public benefit in the additional building height, which outweighs the benefit of maintaining the development standard.

## 5.0 Conclusion

This Clause 4.6 variation request to the maximum building height control as provided under Clause 4.3 of the RLEP 2014 and Section 87(2)(c) of the Housing SEPP comprehensively demonstrates that the buildings which exceed the permissible building heights proposed for the Masterplan are appropriate in the context of the design approach and surrounding development.

The assessment above demonstrates that compliance with the height of buildings development standard contained in clause 4.3 of the RLEP 2014 and Section 87(2)(c) of the Housing SEPP 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 height development standard, the proposed development:

- Achieves the objectives of Clause 4.3 of the RLEP 2014 by:
  - Ensuring building height is appropriately located so it does not result in adverse impacts on adjoining properties in terms of overshadowing and other environmental impacts such as visual privacy;
  - Appropriately locating height so that it corresponds to the existing and future nature of adjoining development;
  - Appropriately integrating land uses across the site and reinforcing the site's street frontages to Epping Road and Balaclava Road through the provision of active land uses at the ground level; and
  - Having regard to the nature of adjoining development including Morling College and Macquarie University where future connections may be considered.
- Is consistent with the Principles of Policy (section 3 (b) and (d) of the Housing SEPP) given it seeks to provide additional housing in accordance with the bonus floor area provisions and therefore, strict compliance with the building height development standard would result in the loss of entire storeys for these land uses or otherwise a decrease in public open space. Removing floor area, would ensure the underlying purpose of the Principles of Policy would be thwarted as it would not encourage co-living, build-to-rent or seniors housing, nor promote its delivery.
- Provides a public benefit through the provision of a unique mix of seniors housing, affordable housing, residential, and co-living dwellings supported by open spaces, retail, commercial, education establishment and allied health.
- Will promote the orderly and efficient use of land, in accordance with the objects of the Environmental Planning and Assessment Act 1979 (EP&A Act).

- Is in the public interest as the proposal is consistent with the applicable land use zone and intent of the development standard.
- 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.

This Clause 4.6 variation demonstrates that the proposed development is overwhelmingly in the public interest and optimises the opportunity to provide additional seniors housing in a strategic location. Indeed, strict compliance is likely to result in a deletion of floor space for the purposes of seniors housing, co-living or affordable housing which would be contrary to the intent of Section 3 Principles of Policy of the Housing SEPP and the RLEP 2014.

For reasons set out in this written request, the proposed SSDA should be approved with the minor variation as proposed in accordance with the flexibility allowed under Clause 4.6 of the RLEP 2014.